Effective 5/8/2018

75-3-107 Probate and testacy proceedings -- Ultimate time limit -- Presumption and order of intestacy.

(1) An informal probate proceeding or formal testacy proceeding, other than a proceeding to probate a will previously probated at the testator's domicile, may not be commenced more than three years after the decedent's death, except:

(a) if a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding;

(b) appropriate probate or testacy proceedings may be maintained in relation to the estate of an absent, disappeared, or missing person for whose estate a conservator has been appointed, at any time within three years after the conservator becomes able to establish the death of the protected person; or

(c) a proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful, may be commenced within the later of 12 months from the informal probate or three years from the decedent's death.

(2) The limitations provided in Subsection (1) do not apply to proceedings to construe probated wills or determine heirs of an intestate. In cases under Subsection (1)(a) or (b), the date on which a testacy proceeding is properly commenced shall be considered to be the date of the decedent's death for purposes of other limitations provisions of this title which relate to the date of death.

(3) If no will is probated within three years from death, the presumption of intestacy is final and the court shall upon filing a proper petition enter an order to that effect.

(4) Notwithstanding the time restriction in Subsection (1), the court has continuing jurisdiction to:

(a) determine what property was owned by the decedent at the time of death; and

(b) appoint, formally or informally, a personal representative or special administrator to administer the decedent's estate, except the following may not be presented against the estate:

(i) a homestead allowance;

(ii) exempt property;

(iii) a family allowance;

(iv) a support allowance;

(v) an elective share of the surviving spouse; and

(vi) a claim other than expenses of administration.

Amended by Chapter 244, 2018 General Session