

**TITLE 49**

**WILLS AND DECEDENTS**

**ESTATES**



## TITLE 49

### WILLS AND DECEDENTS' ESTATES

#### CHAPTER

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#### CHAPTER 1

#### INTESTATE SUCCESSION

##### Section

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**§1-101. Short title.** — This chapter is known and may be cited as the “Intestate Succession Act of 1977.”

Source: D.L. No. 4L-155-78 §1, 9/20/78

**§1-102. Definitions.** — As used in this chapter:

- (1) “Children” means male and female children born of a marital union.
- (2) “Descendant” means one who is descended lineally from the body of another except as provided in §1-106.
- (3) “Intestate” means a person who dies without making a valid will or without otherwise disposing of his real and personal property of which he has the right to dispose at the time of his death.
- (4) “Will” means a will made in accordance with Chapter 2.

Source: D.L. No. 4L-155-78 §2, 9/20/78

**§1-103. Rules of succession.** — The real and personal property of an intestate shall devolve in equal, undivided shares to all members of the first class enumerated in this section in which there is at least one living member at the time of the death of the intestate. A class shall be deemed to have living members if there is at least one living descendant to a predeceased class member; PROVIDED that in the event that any member of the class has predeceased the intestate the share of the real and personal property which would have gone to that member had he not predeceased the intestate, shall devolve upon the descendants of that member by right or representation in accordance with this section. The classes of intestate succession are as follows:

- (1) To the children of the intestate;
- (2) If there be none, to the parents of the intestate;
- (3) If there be none, to the grandparents of the intestate;
- (4) If there be none, to the great grandparents of the intestate;
- (5) And so forth, ad infinitum, in accordance with this chapter.

Source: D.L. No. 4L-155-78 §3, 9/20/78

**§1-104. Rules of succession if there be no heirs. —**

(1) If there be no heirs of the intestate as enumerated in §1-103, the succession to any real property of the intestate shall be determined jointly by the Nahmwarki of the local jurisdiction wherein the property is located and the Governor, or his authorized representative. In the event there is no Nahmwarki of the local jurisdiction wherein the property is located, the local chief executive shall serve in lieu of the Nahmwarki in such determination. If there be no person so determined as entitled to receive the real property of the intestate, the property shall escheat to the Pohnpei Public Lands Trust Board of Trustees to hold in trust for the people of Pohnpei.

(2) If there be no heirs of the intestate as enumerated in §1-103, the personal property of the intestate shall escheat to the office of the Director of the Department of Treasury and Administration to be sold at public auction, the proceeds of which shall be deposited in the general fund of Pohnpei as the realization of general revenues to be expended in accordance with state law for public purposes.

Source: D.L. No. 4L-155-78 §4, 9/20/78

**§1-105. Spouse's rights. —** Notwithstanding §§1-103 and 1-104, the living spouse of the intestate shall receive one-third of all personal property of the intestate and a life estate in all real property of the intestate; PROVIDED, HOWEVER, that such life estate may not be assigned, sold or otherwise transferred.

Source: D.L. No. 4L-155-78 §5, 9/20/78

**§1-106. Adoption. —** An adopted child shall, for the purposes of this chapter, be considered as the child and descendant of the adoptive parents, and not of the natural parents.

Source: D.L. No. 4L-155-78 §6, 9/20/78

Notes: 1. D.L. No. 2L-226-71 §1, 7/6/71 amended PDC §12-104. 2. D.L. No. 4L-155-78 §7, 9/20/78 repealed PDC §§12-101 – 12-105.

## CHAPTER 2 WILLS

### Section

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**§2-101. Capacity; limitation.** — Any person of sound mind who is 18 years of age or older may make a will in accordance with this chapter, but such will may only dispose of property, which at the time of his death, the testator has a right to dispose of without consent of any other person or any official.

Source: S.L. No. 1L-80-86 §1, 1/1/87

**§2-102. Definitions.** — As used in this chapter, the following definitions apply:

- (1) “Person” includes either man or woman, single or married.
- (2) “Will” includes codicil.

Source: S.L. No. 1L-80-86 §2, 1/1/87

**§2-103. Witnesses.** —

(1) Any person competent to be a witness generally in the state may act as an attesting witness to a will.

(2) No will is invalidated because attested to by an interested witness, but any interested witness shall, unless the will is also attested to by two disinterested witnesses, forfeit so much of the provisions made for him therein as in the aggregate exceeds in value, as of the date of the testator's death, what he would have received had the testator died intestate.

(3) No attesting witness is interested unless the will gives to him some personal and beneficial interest.

Source: S.L. No. 1L-80-86 §3, 1/1/87

**§2-104. Execution.** — The execution of a will under this chapter, other than a handwritten or oral will, must be by the signature of the testator and of at least two witnesses as follows:

(1) *Testator.* The testator shall signify to the attesting witness that the instrument is his will and either himself sign, or acknowledge his signature already made, or, at his direction and in his presence, have someone else sign his name for him. In any of the above cases the act must be done in the presence of two or more attesting witnesses.

(2) *Witnesses.* The attesting witnesses must sign in the presence of the testator, and in the presence of each other.

Source: S.L. No. 1L-80-86 §4, 1/1/87

**§2-105. Handwritten will.** — A handwritten will is a will in the handwriting of the testator. A handwritten will may be made under this chapter without any witness, but the signature and all its material provisions must be in the handwriting of the testator and his handwriting must be proved by two witnesses.

Source: S.L. No. 1L-80-86 §5, 1/1/87

**§2-106. Oral will. —**

(1) An oral will is a will presented verbally by the testator. An oral will may be made under this chapter only by a person in imminent peril of death, whether from illness or otherwise, and shall be valid only if the testator dies as a result of the impending peril. An oral will must be:

- (a) Declared to be his will by the testator before two disinterested witnesses; and
- (b) Submitted for probate within six months after the death of the testator unless the court, for good cause, permits it to be submitted later.

(2) An oral will made under this chapter may dispose of personal property only and to an aggregate value not exceeding \$5,000.

(3) An oral will made under this chapter neither revokes nor changes an existing written will.

Source: S.L. No. 1L-80-86 §6, 1/1/87

**§2-107. Wills executed outside the state or under foreign law. —** A will executed outside the state in a manner prescribed by this chapter or a written will executed in a manner prescribed by the law of the place of its execution, or by the law of the testator's domicile at the time of its execution, shall have the same force and effect in the state as if executed in the state in compliance with this chapter.

Source: S.L. No. 1L-80-86 §7, 1/1/87

**§2-108. No retroactive application. —** This chapter shall not apply to wills executed in the state before the date this chapter takes effect.

Source: S.L. No. 1L-80-86 §8, 1/1/87

Notes: 1. S.L. No. 1L-80-86 §9, 1/1/87 supersedes 13 TTC §§1 – 9 (1980) and by inference PDC §12-100, 3/71.

2. D.L. No. 4L-97-77 §1, 5/13/77 amended PDC §12-100(b). 3. D.L. No. 4L-97-77 §2, 5/13/77 added PDC §12-100(c).

## CHAPTER 3 PROBATE OF SMALL ESTATES

### Section

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**§3-101. Complaints for transfer of decedent's personalty to beneficiaries and creditors; when authorized.** — When a decedent leaves personal property, including but not limited to cash, bank or other accounts, wages or salary due, shares of stock or other interest in any business enterprise, and goods and chattels of any nature, of a total value not exceeding \$1,000, and known debts, if any, of less than that amount, and the person or persons entitled to the personal property left by the decedent cannot readily obtain possession thereof, the surviving spouse, any adult child, including an adopted child, either parent, any brother or sister, the eldest brother of decedent's mother, or the head of the lineage of the decedent may file a sworn complaint in the Trial Division of the Pohnpei Supreme Court or, if the total value of the personal property does not exceed \$100, in the local court, within whose jurisdiction the decedent resided at the time of his death if he was a resident of the state of Pohnpei, or within whose jurisdiction all or part of the personal property is located if decedent was not a resident of the state of Pohnpei, asking the issuance of an order that such personal property be transferred to the complainant. If none of the persons named in this section file such complaint within 90 days of the death of the decedent, then any creditor of the decedent may file a sworn complaint as set forth herein.

Source: TTC §343(a) (1966); 13 TTC §51 (1970); 13 TTC §51 (1980)

**§3-102. Complaints for transfer of decedent's personalty to beneficiaries and creditors; contents.** — Such sworn complaint shall set forth the name, residence, and date of death of the decedent, and the names and addresses of the surviving spouse, children, brothers, and sisters of the decedent, and the eldest living brother of decedent's mother or, if none of the above persons survived the decedent, the name, address, and relationship of the nearest surviving relative. The complaint shall also state the total value of the personal property, and the property, if any, that passed or is to pass under such will, and to whom it went or is to go, and shall contain the promise of the complainant to pay, as far as the assets of the estate permit, the debts of the decedent or to see that the said debts are paid by someone authorized by local custom, and to distribute the balance, if any, to the person or persons entitled thereto.

Source: TTC §343(b) (1966); 13 TTC §52 (1970); 13 TTC §52 (1980)

**§3-103. Order of transfer; procedure if transfer withheld.** — Upon the filing of such complaint, if it appears to the court that the ends of justice will be served, the court may issue an order, either without notice or after such notice as it deems proper, directing the transfer of the personal property to the complainant, or to such other person as the court deems proper, directing that the transferee pay, as far as the assets of the estate permit, the debts of the decedent, or see that they are paid, and then distribute the balance, if any, to the person or persons entitled thereto. Whoever transfers money or other property to the complainant, or to any other person appointed by the court as set forth above, shall incur no liability thereby, nor shall such person thereafter be held to account for the same to any

person. Any person upon whom demand is made to transfer money or other property under the terms of such order who denies the right of the complainant or other transferee to receive the same shall, within ten days of the demand being made upon him to transfer such money or other property, file his answer in the same court that issued the order, setting forth the grounds that entitle him to retain possession thereof. Upon the filing of such answer, the court shall, after notice to the complainant or other transferee, set the matter down for hearing and make such finding and enter such further order as the ends of justice require.

Source: TTC §343(c) (1966); 13 TTC §53 (1970); 13 TTC §53 (1980)

**§3-104. Procedure if debts exceed value of assets.** — If the transferee finds, after the receipt of the personal property under such order of transfer, that the debts of decedent do in fact exceed the value of the property received, he shall make no further distribution of the same, but shall at once report the facts to the court that issued the order, setting forth the money and other personal property received, the disbursements he has already made, the names and addresses of the recipients of the property already disbursed, and the reason therefor, and shall list all known debts of decedent, including those that have recently come to the transferee's attention. The transferee shall take no further action save by order of the court.

Source: TTC §343(d) (1966); 13 TTC §54 (1970); 13 TTC §54 (1980)

**§3-105. Responsibility of transferee.** — The transferee shall be personally responsible for any property received by him under any order issued pursuant to this chapter, and any party claiming an interest in such property may, after demand, maintain an action against the transferee; PROVIDED, that no such action shall be brought against the transferee after two years from the date of the order under which the property was transferred to him.

Source: TTC §343(e) (1966); 13 TTC §55 (1970); 13 TTC §55 (1980)

## TITLE 50 [RESERVED]

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