

# MAINE STATE LEGISLATURE

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THE  
REVISED STATUTES

OF THE  
STATE OF MAINE,

PASSED JANUARY 25, 1871;

TO WHICH ARE PREFIXED  
THE CONSTITUTIONS

OF THE  
UNITED STATES AND OF THE STATE OF MAINE:

WITH AN APPENDIX.

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BY AUTHORITY OF THE LEGISLATURE.



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## CHAPTER 74.

## WILLS, THEIR EXECUTION AND DEVISES.

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## NUNCUPATIVE WILLS.

- SEC. 18. Nuncupative wills, where and when made, exception.
19. Testimony to prove, not receivable after six months; exception.
20. Not effectual to dispose of property exceeding one hundred dollars, unless three witnesses were present.

SEC. 1. A person of sound mind, and of the age of twenty-one years, may dispose of his real and personal estate by will, in writing, signed by him, or by some person for him at his request, and in his presence, and subscribed in his presence by three credible attesting witnesses, not beneficially interested under said will. (a)

Will, by whom and how made. R. S. c. 74, § 1. 1859, c. 120.

SEC. 2. When the witnesses are competent at the time of attestation, their subsequent incompetency will not prevent the probate of the will. Property not disposed of by will, is to be distributed as the estate of an intestate.

Witnesses competent at the time, sufficient. Property not willed, distributed. R. S. c. 74, § 2. 22 Me. 438.

SEC. 3. A will so executed is valid, until destroyed, altered, or revoked by being intentionally burnt, canceled, torn, or obliterated by the maker, or by some person by his direction and in his presence, or by a subsequent will, codicil, or writing, executed as a will is required to be; or revoked by operation of law from subsequent changes in the condition and circumstances of the maker.

Will, how rendered invalid, or revoked. R. S. c. 74, § 3. 4 Me. 341. 22 Me. 413.

(a) 21 Me. 461; 22 Me. 438; 34 Me. 162; 42 Me. 72; 45 Me. 571; 46 Me. 168, 289; 47 Me. 474; 48 Me. 193; 52 Me. 165.

**CHAP. 74.** **SEC. 4.** Lands, into which the testator, at the time, has a right of entry though not seized of them, and lands, of which he is subsequently disseized, pass by his will, as they would, if not devised, have descended to his heirs; and his devisee will have the same remedy for their recovery, as his heirs would have had.

What lands of testator pass by will.  
R. S. c. 74, § 4.

**SEC. 5.** Real estate owned by the testator, the title to which was acquired after the will was executed, will pass by it, when such appears to have been his intention.

Lands subsequently acquired, pass by will.  
R. S. c. 74, § 5.

**SEC. 6.** When property is taken by execution from a devisee or legatee of it, or sold by order of court for payment of debts, all the other devisees, legatees, and heirs are to pay to him their proportion thereof, so as to make the loss fall equally on all, according to the value of the property received by each from the testator, except as provided in the following section.

Property taken from a devisee for payment of debts, loss to be borne equally.  
R. S. c. 74, § 6.

**SEC. 7.** If the testator has made a specific bequest, so that, by operation of law, it is exempted from liability to contribute for payment of debts, or if he has required an application of his estate for that purpose different from the provisions of the preceding section, the estate is to be appropriated according to the provisions of the will. No part of the estate can be exempt from liability for payment of debts, if required.

Assets for payment of debts, how marshaled.  
R. S. c. 74, § 7.

**SEC. 8.** A child of the testator, born after his death and not provided for in his will, takes the same share of his estate, as he would if his father had died intestate, to be assigned by the judge of probate and taken from all the devisees in proportion to the value of what they respectively receive under the will, unless, by a specific devise or some other provision of the will, a different apportionment is necessary to give effect to the intention of the testator respecting that portion of his estate which passes by the will.

Posthumous child takes share of estate as if no will; how taken.  
R. S. c. 74, § 8.

**SEC. 9.** A child, or the issue of a deceased child not having any devise in the will, takes the share of the testator's estate, which he would if no will had been made, unless it appears that such omission was intentional, or not occasioned by mistake, or that such child or issue had a due proportion of the estate during the life of the testator.

A child or his issue, having no devise, takes as an heir; Exceptions.  
R. S. c. 74, § 9.  
32 Me. 268.

**SEC. 10.** When a relative of the testator, having a devise of real or personal estate, dies before the testator, leaving lineal descendants, they take such estate as would have been taken by such deceased relative if he had survived.

When a devisee dies before the testator, lineal heirs take the devise.  
R. S. c. 74, § 10.  
49 Me. 159.

**SEC. 11.** When a share of the testator's estate descends as provided in the eighth and ninth sections, the person taking it is liable to contribute, and may claim contribution, as provided in section six.

Who contributes to the loss of devisee.  
R. S. c. 74, § 11.

**SEC. 12.** When a person, liable to contribute as provided in the sixth section, cannot pay his proportion, the others bear the loss, each in proportion to the value of the property received by him. If any one liable to contribute dies without having paid his proportion, his

When one cannot contribute, loss borne equally.  
R. S. c. 74, § 12.

executor or administrator is liable therefor as for the debt of the deceased. CHAP. 74.

SEC. 13. When a part of the real estate of a testator is not disposed of by his will, and the personal estate is not sufficient to pay his debts, such undivided real estate is to be applied for that purpose in exoneration of the real estate devised, unless it appears that a different arrangement was made in the will for that purpose, and then the assets are to be applied according to its provisions. Real estate not devised, applied to pay debts, before what is devised; exception. R. S. c. 74, § 13.

SEC. 14. All cases of contribution, arising under this chapter, may be determined in an action at law, if the case will allow it, or in the probate court subject to appeal, or in the supreme judicial court by a bill in equity. Cases of contribution, how determined. R. S. c. 74, § 14.

SEC. 15. No will is effectual to pass real or personal estate, unless proved and allowed in the probate court. Its probate by that court is conclusive proof of its execution. Will, not effectual unless proved and allowed in probate court. Proof there, conclusive. R. S. c. 74, § 15. 27 Me. 17.

SEC. 16. A devise of land must be construed to convey all the estate of the devisor therein, unless it appears by his will that he intended to convey a less estate. Devise of land conveys all the estate of devisor. R. S. c. 74, § 16. 36 Me. 211.

SEC. 17. When executors or trustees are directed to pay a legacy to a person or a corporation, on conditions precedent, and no time is stated in the will, or in the charter or by-laws of the corporation for their performance, a reasonable time is allowed therefor, not exceeding five years from the probate of a will; and if not so performed, it shall be administered as undivided estate, unless otherwise disposed of by the will. When legacy is to be paid on condition, and no time stated, how to be administered. R. S. c. 74, § 17.

#### NUNCUPATIVE WILLS.

SEC. 18. A nuncupative will must be made during the last sickness of the testator, at his home, or at the place where he resided ten days before making it, unless he is suddenly taken sick from home, and dies before returning to it. But a soldier in actual service, or mariner at sea, may dispose of his personal estate and wages without regard to the provisions of this chapter. Nuncupative wills, where and when made. R. S. c. 74, § 18. 2 Me. 298. 8 Me. 167. 53 Me. 561.

SEC. 19. No testimony can be received to prove any testamentary words as a nuncupative will, after the lapse of six months from the time they were spoken, unless the words or the substance of them were reduced to writing within six days after they were spoken. Testimony to prove not received after six months; exception. R. S. c. 74, § 19.

SEC. 20. No nuncupative will can be effectual to dispose of property exceeding in value one hundred dollars, unless proved by the oath of three witnesses, who were present at the making of it, and were requested by the testator to bear witness that such was his will. Not effectual to dispose of property exceeding \$100, unless three witnesses were present. R. S. c. 74, § 20. 2 Me. 298.