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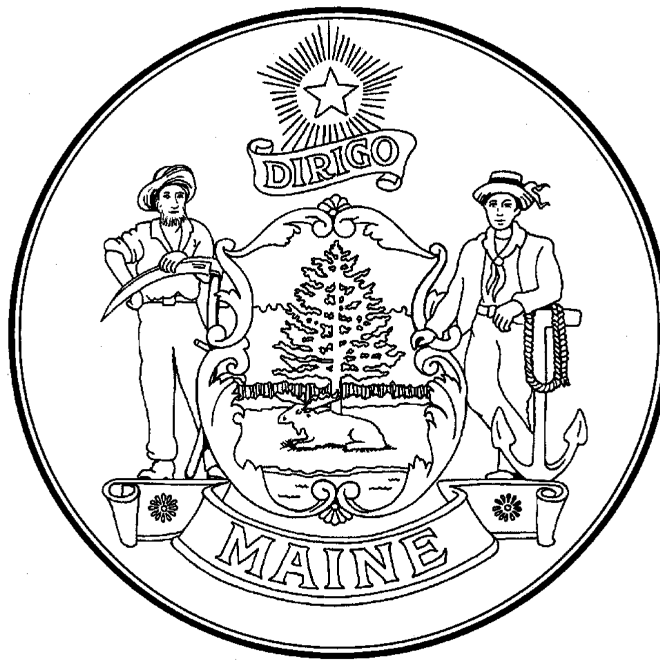

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CHAPTER 3

PROBATE

Subch.		Sec.
I.	General Provisions	101
II.	Out-of-State Wills	151

SUBCHAPTER I

GENERAL PROVISIONS

Sec.
101. Necessity of proving and allowing will to pass estate.
102. Petition for probate; notice.
103. Competency of witnesses.
104. Depositions.
105. Witness or deposition where no objection to will.
106. Subscribing witness in Armed Forces.
107. Granting of letters testamentary.
108. Wills lost or carried out of State; limitations.
109. Instructions in will regarding bond.

§ 101. Necessity of proving and allowing will to pass estate

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.

R.S.1954, c. 169, § 15.

§ 102. Petition for probate; notice

Whenever a will is presented for probate, the judge of probate having jurisdiction thereof shall assign a time and place for a hearing and cause public notice thereof to be given. In addition thereto, said judge may, at his discretion, order personal notice upon such persons as he deems necessary.

R.S.1954, c. 154, § 5.

§ 103. Competency of witnesses

When the witnesses are competent at the time of attestation, their subsequent incompetency will not prevent the probate of the will.

R.S.1954, c. 169, § 2.

§ 104. Depositions

When any of the witnesses of a will offered for probate, or any other witness whose testimony is required to prove the signatures of the testator or of the witnesses of such will, live out of the State or more than 30 miles distant or, by age or indisposition of body, are unable to attend court, their depositions, taken as provided in Title 16, chapter 3, subchapter V, or before a magistrate, notary public or justice of the peace authorized by commission from the judge, shall be competent evidence in the absence of such witnesses.

R.S.1954, c. 154, § 6; 1955, c. 4; 1957, c. 103.

§ 105. Witness or deposition where no objection to will

When it clearly appears to the judge by the written consent of the heirs at law or otherwise that there is no objection thereto, he may decree the probate of any will upon the testimony of one or more of the 3 subscribing witnesses required by law, who can substantiate all the requisite facts, and the affidavit of such witness or witnesses taken before the register of probate may be received as evidence; or, in the cases described in section 104, upon the depositions of one or more of the subscribing witnesses, substantiating the facts.

R.S.1954, c. 154, § 7.

§ 106. Subscribing witness in Armed Forces

When it appears to the judge that a will offered for probate was executed before witnesses who at the time they subscribed their names thereto were serving in or present with the Armed Forces of the United States or as merchant seamen, and that such will cannot be proved as otherwise provided by law because one or more or all of the subscribing witnesses to the will, at the time the will is offered for probate, are serving in or present with the Armed Forces of the United States or as merchant seamen, or are dead or mentally or physically incapable of testifying or otherwise unavailable, the judge may decree the probate of such will upon the testimony in person or by deposition of at least 2 credible disinterested witnesses that the signature to the will is in the handwriting of the person whose will it purports to be or upon other sufficient proof of such handwriting. The foregoing provision shall not preclude the judge, in his discretion, from requiring in addition, the testimony in person or by deposition of any available subscribing witness, or proof of such other pertinent

facts and circumstances as the judge may deem necessary to decree the probate of such will. When such will is proved and allowed, it shall have the same force and effect as a will proved and allowed as otherwise provided by law.

R.S.1954, c. 154, § 8.

§ 107. Granting of letters testamentary

When a will is proved and allowed, the judge of probate may issue letters testamentary thereon to the executor named therein, if he is legally competent, accepts the trust and gives bond to discharge the same when required; but if he refuses to accept on being duly cited for that purpose, or if he neglects for 20 days after probate of the will so to give bond, the judge may grant such letters to the other executors if there are any capable and willing to accept the trust.

R.S.1954, c. 154, § 9.

§ 108. Wills lost or carried out of State; limitations

When the last will of any deceased person, who had his domicile in the State at the time of his death, is lost, destroyed, suppressed or carried out of the State and cannot be obtained after reasonable diligence, or is in the custody of any tribunal or magistrate in another state or in a foreign country and cannot be produced in this State, its execution and contents may be proved by a copy, and by the testimony of the subscribing witnesses thereto, or by any other evidence competent to prove the execution and contents of a will, and upon proof of the continued existence of such lost will, unrevoked up to the time of the testator's death, letters testamentary shall be granted as on the last will of the deceased, the same as if the original had been produced and proved. When such original will is produced for probate, the time during which it has been lost, suppressed, concealed or carried out of the State shall not be taken as a part of the limitation provided in section 1555.

R.S.1954, c. 154, § 10.

§ 109. Instructions in will regarding bond

Letters testamentary may issue and all acts required by law or otherwise under the will may be done and performed by the executor without giving bond, or by his giving one in a specified sum, or without sureties, when the will so provides, but when it

appears necessary or proper, the judge may require him to give bond with sureties as in other cases.

R.S.1954, c. 154, § 11.

SUBCHAPTER II

OUT-OF-STATE WILLS

Sec.

151. Proof of wills from other jurisdictions.
152. Allowance of wills proved in other jurisdictions.
153. Wills from places not requiring probate; notarial wills.
154. Granting of letters; settling of estate.

§ 151. Proof of wills from other jurisdictions

Any will executed in another state or country, according to the laws thereof, may be presented for probate in this State in the county where the testator resided at the time of his death, and may be proved and allowed and the estate of the testator settled, as in case of wills executed in this State.

R.S.1954, c. 154, § 14.

§ 152. Allowance of wills proved in other jurisdictions

A will proved and allowed in another state or country according to the laws thereof may be allowed and recorded in this State in the manner and for the purposes hereinafter mentioned. A copy of the will and the probate thereof, duly authenticated, shall be produced by the executor or by any person interested to the judge of probate in any county in which there is estate, real or personal, on which the will can operate. Whereupon the judge shall assign a time and place for hearing and cause public notice thereof to be given. After such hearing, if the judge considers that the instrument should be allowed in this State as the will of the deceased, he shall order the copy to be filed and recorded. Such will shall then have the same force as if it had been originally proved and allowed in the same court in the usual manner, but nothing herein shall give any operation and effect to the will of an alien different from what it would have had if originally proved and allowed in this State.

R.S.1954, c. 154, § 15.

§ 153. Wills from places not requiring probate; notarial wills

When a duly authenticated copy of a will from any state or country where probate is not required by the laws of such state or country, with a duly authenticated certificate of the legal custodian of such original will that the same is a true copy and that such will has become operative by the laws of such state or country, and when a copy of a notarial will in possession of a notary in a foreign state or country entitled to the custody thereof, the laws of which state or country require that such will remain in the custody of such notary, duly authenticated by such notary, is presented by the executor or other persons interested to the proper court in this State, such court shall appoint a time and place of hearing and notice thereof shall be given as in case of an original will presented for probate. If it appears to the court that the instrument ought to be allowed in this State as the last will and testament of the deceased, the copy shall be filed and recorded and the will shall have the same effect as if originally proved and allowed in the said court.

R.S.1954, c. 154, § 16.

§ 154. Granting of letters; settling of estate

After allowing and recording any will, the judge of probate may grant letters testamentary or of administration with the will annexed thereon, and proceed in the settlement of the estate found in this State in the manner provided by its laws with respect to the estates of persons who were inhabitants of any other state or country. The letters thus granted shall extend to all the estate of the deceased within this State and exclude the jurisdiction of the probate court in every other county. Such administration may be granted in any county in which lands of the testator, subject to the operation of his will, remain undisposed of for more than 20 years from his decease. Section 109 applies to such proceedings; or the court may, upon issuing letters testamentary, require such bond, with or without sureties, as may have been required by the court before which such will was originally approved and allowed.

R.S.1954, c. 154, § 17.