

# MAINE STATE LEGISLATURE

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(New Title)  
New Draft of S. P. 721, L. D. 1871  
SECOND REGULAR SESSION

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ONE HUNDRED AND NINTH LEGISLATURE

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**Legislative Document**

**No. 1990**

S. P. 792

In Senate, March 11, 1980

Reported by Senator Collins of Knox, from the Committee on Judiciary printed under Joint Rules No. 2.

MAY M. ROSS, Secretary of the Senate

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY

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**AN ACT to Amend the Probate Code.**

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Be it enacted by the People of the State of Maine, as follows:

**Sec. 1.** 18-A MRSA § 1-201, ¶ (20), as enacted by PL 1979, c. 540, § 1, is amended by adding after the 2nd sentence the following:

**In any proceeding or hearing affecting a trust estate or estate of a decedent, ward or protected person, when the estate includes assets derived from benefits paid by the Veterans Administration, the administrator of Veterans Affairs of the United States shall be an "interested person."**

**Sec. 2.** 18-A MRSA § 2-505, sub-§ (c), as enacted by PL 1979, c. 540, § 1, is repealed.

**Sec. 3.** 18-A MRSA § 3-306, first sentence, as enacted by PL 1979, c. 540, § 1, is amended to read:

The moving party must give notice as described by section 1-401 of his application for informal probate to any person demanding it pursuant to section 3-204, **to an heir, devisee or personal representative who has not waived notice in a writing filed with the court**, and to any personal representative of the decedent whose appointment has not been terminated.

**Sec. 4.** 18-A MRSA § 3-310, as enacted by PL 1979, c. 540, § 1, is amended to read:

**§ 3-310. Informal appointment proceedings; notice requirements**

The moving party must give notice as described by section 1-401 of his intention to seek an appointment informally: (1) to any person demanding it pursuant to section 3-204; ~~and~~ (2) **to an heir or devisee, who has not waived notice in a writing filed with the court;** and (3) to any person having a prior or equal right to appointment not waived in writing and filed with the court. No other notice of an informal appointment proceeding is required.

**Sec. 5. 18-A MRSA § 3-706, first sentence**, as enacted by PL 1979, c. 540, § 1, is amended to read:

Within 3 months after his appointment, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall prepare and file or ~~may~~ **furnish** an inventory of property owned by the decedent at the time of his death, listing it with reasonable detail, and indicating as to each listed item, its fair market value as of the date of the decedent's death, and the type and amount of any encumbrance that may exist with reference to any item.

**Sec. 6. 18-A MRSA § 3-706, last ¶**, as enacted by PL 1979, c. 540, § 1, is amended to read:

The personal representative shall ~~send~~ **furnish** a copy of the inventory to interested persons who request it. He ~~shall~~ **may** also file the original of the inventory with the court.

**Sec. 7. 18-A MRSA § 3-707, first sentence**, as enacted by PL 1979, c. 540, § 1, is amended to read:

The personal representative ~~shall~~ **may** employ a qualified and disinterested appraiser to assist him in ascertaining the fair market value of **all assets** as of the date of the decedent's death ~~of all assets~~; **but shall employ an appraiser for determining the value of real estate or securities not regularly traded on recognized exchanges.**

**Sec. 8. 18-A MRSA § 3-806, sub-§ (a), first sentence**, as enacted by PL 1979, c. 540, § 1, is amended to read:

As to claims presented in the manner described in section 3-804 within the time limit prescribed in section 3-803, the personal representative may ~~may~~ **furnish** a notice to any claimant stating that the claim has been disallowed.

**Sec. 9. 18-A MRSA § 3-806, sub-§ (a), last sentence**, as enacted by PL 1979, c. 540, § 1, is amended to read:

Failure of the personal representative to ~~may~~ **furnish** notice to a claimant of action on his claim for 60 days after the time for original presentation of the claim has expired has the effect of a notice of allowance.

**Sec. 10. 18-A MRSA § 3-906, sub-§ (a), ¶ (2), sub-¶ (ii)**, as enacted by PL 1979, c. 540, § 1, is amended to read:

(ii) The property distributed in kind is valued at fair market value as of the date of its distribution; **and**

**Sec. 11. 18-A MRSA § 3-906, sub-§ (a), ¶ (2), sub-¶ (iii)**, as enacted by PL 1979, c. 540, § 1, is amended to read:

(iii) No residuary devisee has requested that the asset in question remain a part of the residue of the estate ~~and~~.

**Sec. 12. 18-A MRSA § 3-906, sub-§ (a), ¶ (2), sub-¶ (IV)**, as enacted by PL 1979, c. 540, § 1, is repealed.

**Sec. 13. 18-A MRSA § 3-906, sub-§ (a), ¶ (3), first sentence**, as enacted by PL 1979, c. 540, § 1, is amended to read:

For the purpose of valuation under paragraph (2) securities regularly traded on recognized exchanges, if distributed in kind, are valued at the price for the last sale of like securities traded on the business day prior to distribution, or if there was no sale on that day, at the median between amounts bid and offered at the close of that day ~~but any effects of the carryover basis of appreciated carryover basis property under the Internal Revenue Code must be taken into consideration in fulfilling the duty of the personal representative to act fairly with regard to all distributees and with regard to the interests of all persons interested in the estate.~~

**Sec. 14. 18-A MRSA § 5-104**, as enacted by PL 1979, c. 540, § 1, is amended by adding at the end a new sentence to read:

**A delegation by a court appointed guardian shall become effective only when the power of attorney is filed with the court.**

**Sec. 15. 18-A MRSA § 5-304**, as enacted by PL 1979, c. 540, § 1, is amended by adding at the end a new paragraph to read:

**In its order, the court may make separate findings of fact and conclusions of law. If a party requests separate findings and conclusions, within 5 days of notice of the decision, the court shall make them.**

**Sec. 16. 18-A MRSA § 5-307, sub-§ (b), first 2 sentences**, as enacted by PL 1979, c. 540, § 1, are amended to read:

~~An order adjudicating incapacity may specify a minimum period, not exceeding one year, during which no petition for an adjudication that the ward is no longer incapacitated may be filed without special leave. Subject to this restriction, the~~ **The** ward or any person interested in his welfare may petition for an order that he is no longer incapacitated, and for removal or resignation of the guardian.

**Sec. 17. 18-A MRSA § 5-410, sub-§ (c)** is enacted to read:

**(c) A facility or institution licensed under Title 22, section 1817, or an owner, proprietor, administrator, employee or other person with substantial financial interest in the facility or institution, may not act as conservator of the estate of a resident of that facility or institution, unless**

**he is entitled to appointment under subsection (a), paragraphs (3), (4), (5) or (6).**

**Sec. 18. Effective date.** This Act shall take effect on January 1, 1981.

#### STATEMENT OF FACT

This committee new draft makes the following changes in the Probate Code:

Sec. 1. Requires that the Veterans Administration receive notice as an interested party whenever veterans' benefits might be affected.

Sec. 2. Repeals the limitation that interested witnesses to a will may only receive their intestate share.

Sec. 3 & 4. Requires notice of informal probate be given to heirs, devisees or personal representatives unless they waive receiving notice.

Secs. 5 & 6. Correct the language of the Probate Code and repeals the mandatory filing of inventories.

Sec. 7. Amends the requirement of mandatory appraisal by requiring appraisal only of real estate and securities not regularly traded on recognized exchanges.

Secs. 8 & 9. Correct language.

Secs. 10, 11, 12 & 13. Repeal language related to the use of "carry-over basis" in valuing estate assets.

Sec. 14. Includes section 1 of L. D. 1871, but requires filing of a power of attorney only for court appointed guardians.

Sec. 15. Includes section 3 of L. D. 1871.

Sec. 16. Includes section 5 of L. D. 1871.

Sec. 17. Includes the concept of section 9 of L. D. 1871.

Sec. 18. Provides an effective date to coincide with the effective date of the Probate Code.