

MAINE STATE LEGISLATURE

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(New Draft of H.P. 936, L.D. 1219)

FIRST REGULAR SESSION

ONE HUNDRED AND ELEVENTH LEGISLATURE

Legislative Document

No. 1669

H.P. 1256

House of Representatives, May 23, 1983

Reported by the Majority from the Committee on Judiciary and printed under Joint Rule 2.

Original bill presented by Representative Soule of Westport.

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-THREE

AN ACT to Revise Certain Sections of
the Probate Code.

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

Sec. 1. 18-A MRSA §2-201, sub-§(b), as enacted by PL 1979, c. 540, §1, is amended to read:

(b) If a married person not domiciled in this State dies, the right, if any, of the surviving spouse to take an elective share in property in this State is governed by the law of the decedent's domicile at death, provided that no claim is made to real property located in this State which was conveyed for value by the decedent during his lifetime.

Sec. 2. 18-A MRSA §2-202, ¶(3), as enacted by PL 1979, c. 540, §1, is amended to read:

1 (3) For purposes of this section a bona fide
2 purchaser is a purchaser for value in good faith and
3 without notice of any adverse claim. Any recorded
4 instrument on which the register of deeds shall note
5 by an appropriate stamp "Maine Real Estate Transfer
6 Tax Paid" is prima facie evidence that the transfer
7 described was made to a bona fide purchaser.

8 Sec. 3. 18-A MRSA §2-402, as enacted by PL 1979,
9 c. 540, §1, is amended to read:

10 §2-402. Exempt property

11 In addition to the homestead allowance, the sur-
12 viving spouse of a decedent who was domiciled in this
13 State is entitled from the estate to value not
14 exceeding \$3,500 in excess of any security interests
15 therein in property exempt under Title 14, ~~section~~
16 4401 chapter 507, subchapter II, Article 7 on the
17 date of death of the decedent. If there is no sur-
18 viving spouse, children of the decedent are entitled
19 jointly to the same value. If encumbered chattels are
20 selected and if the value in excess of security
21 interests, plus that of other exempt property, is
22 less than \$3,500, or if there is not \$3,500 worth of
23 exempt property in the estate, the spouse or children
24 are entitled to other assets of the estate, if any,
25 to the extent necessary to make up the \$3,500 value.
26 Rights to exempt property and assets needed to make
27 up a deficiency of exempt property have priority over
28 all claims against the estate, except that the right
29 to any assets to make up a deficiency of exempt prop-
30 erty shall abate as necessary to permit prior payment
31 of homestead allowance and family allowance. These
32 rights are in addition to any benefit or share pass-
33 ing to the surviving spouse or children by the will
34 of the decedent unless otherwise provided, by intes-
35 tate succession, or by way of elective share.

36 Sec. 4. 18-A MRSA §3-910, as enacted by PL 1979,
37 c. 540, §1, is amended to read:

38 §3-901. Successors' rights if no administration

39 If property distributed in kind or a security
40 interest therein is acquired for value by a purchaser
41 from or lender to a distributee who has received an

1 instrument or deed of distribution from the personal
2 representative, or is so acquired by a purchaser from
3 or lender to a transferee from such distributee, the
4 purchaser or lender takes title free of rights of any
5 interested person in the estate and incurs no personal
6 liability to the estate, or to any interested
7 person, whether or not the distribution was proper or
8 supported by court order or the authority of the personal
9 representative was terminated before execution
10 of the instrument or deed. This section protects a
11 purchaser from or lender to a distributee who, as
12 personal representative, has executed a deed of distribution
13 to himself, as well as a purchaser from or
14 lender to any other distributee or his transferee. To
15 be protected under this provision, a purchaser or
16 lender need not inquire whether a personal representative
17 acted properly in making the distribution
18 in kind, even if the personal representative and the
19 distributee are the same person, or whether the
20 authority of the personal representative had terminated
21 before the distribution. Any recorded instrument
22 described in this section on which the register
23 of deeds notes by an appropriate stamp "Maine Real
24 Estate Transfer Tax Paid" shall be prima facie evidence
25 that the transfer was made for value.

26

STATEMENT OF FACT

27 The new draft replaces the original bill, retains
28 section 2 of the original bill and adds 3 new sections.
29

30 At common law, a widow was entitled to "dower,"
31 which was a right, for the remainder of her life, to
32 a portion, usually 1/3, of certain lands owned by her
33 husband. In a society which classifies much of a
34 person's wealth as personal property, dower was
35 inadequate protection for a widow. In addition, dower
36 rights often created problems in clearing a title to
37 real property. Because of this, many states abolished
38 dower and the widower's counterpart, courtesy,
39 with a right to a statutory share in the deceased
40 spouse's estate. In cases involving a will, this
41 statutory share may be elected in lieu of the provisions
42 of a will.

1 In 1979, when Maine enacted its version of the
2 Uniform Probate Code, the statutory elective share,
3 referred to as the spouse's right by descent, was
4 replaced by the concept of an augmented estate. The
5 surviving spouse has a right to elect to take 1/3 of
6 the augmented estate. In determining the value of the
7 augmented estate, allowances are made for transfers
8 which the deceased spouse may have made to deliber-
9 ately prevent the surviving spouse from receiving his
10 statutory share of the estate and to prevent the sur-
11 viving spouse from taking an unfairly large "elective
12 share" when that spouse has already been adequately
13 provided for by life insurance or other means,
14 including distributions by the deceased spouse prior
15 to his death.

16 One means of trying to divest the widow of dower
17 rights was to sell the land, often to a relative or
18 friend, for less than full value and retain the pro-
19 ceeds as personal property, not subject to dower.
20 Under common law, these land transfers were often
21 held to be subject to the wife's dower interest. If
22 the wife had signed a release of her dower interests,
23 the purchase was no longer subject to her dower
24 rights. Deeds without this spousal release were
25 clouded.

26 The statutory replacements for dower, the aug-
27 mented estate, takes into account personal property.
28 It also avoids the problem involved when the land was
29 sold for full value to a bona fide purchaser, by
30 including the amount of money received for the sale
31 in the augmented estate. Transfers for less than full
32 value made within 2 years of the deceased spouse's
33 death are still subject to an interest of the sur-
34 viving spouse, unless the surviving spouse also
35 signed the deed. Some jurisdictions have declared
36 that any transfer might be found to be for less than
37 full value and require both signatures on the deed.
38 Land conveyed without both signatures may be
39 unmarketable. Transfer of land by a married person
40 still takes place without the signature of both
41 spouses. Sections 2 and 4 of the new draft aid in
42 clearing titles to this land by providing prima facie
43 evidence of transfer to a "bona fide purchaser" when
44 the deed has been stamped indicating that the real
45 estate transfer tax has been paid. This will aid the

1 marketability of titles concerning land of this
2 nature which does not have both signatures on the
3 deed but will still allow valid challenges, where
4 applicable.

5 The Probate Code, Title 18-A, section 2-201, sub-
6 section (b), states that the elective share to prop-
7 erty in Maine available to a surviving spouse of a
8 nonresident who dies in this State is governed by the
9 law of the decedent's domicile. Section 1 states that
10 any Maine property of the decedent conveyed for value
11 before the decedent died is not subject to that elec-
12 tive share regardless of the law of the decedent's
13 domicile.

14 Section 4 deletes a statutory cross reference to
15 the Revised Statutes, Title 14, section 4401, which
16 was repealed and replaces it with a more accurate
17 cross reference to the entire newly-enacted Article.

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