

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 918

6
7 H.P. 648

House of Representatives, March 5, 1985

8 Reference to the Committee on Judiciary suggested and ordered printed.

9 EDWIN H. PERT, Clerk

10 Presented by Representative Jacques of Waterville.

11
12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-FIVE
16

17 AN ACT to Amend the Law Relating to Spousal
18 Elective Shares under the Probate
19 Code.
20

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

23 Sec. 1. 18-A MRSA §1-504, as enacted by PL 1979,
24 c. 540, §1, is amended to read:

25 §1-504. Certification of wills and appointments of
26 personal representatives involving real es-
27 tate

28 Within 30 days after a will has been proved or
29 allowed, or an appointment of a personal representa-
30 tive has been made upon an assumption of intestate
31 status and where the petition for the appointment in-
32 dicates that the deceased owned real estate, ~~or a pe-~~
33 ~~tion for an elective share has been filed where the~~
34 ~~will or the petition upon which appointment of a per-~~
35 ~~sonal representative has been granted indicates that~~

1 the deceased owned real estate, the register shall
2 make out and certify to the register of deeds in the
3 county where any affected real estate is situated (1)
4 a true copy of so much of the will as devises real
5 estate, or (2) an abstract of the appointment of the
6 personal representative, ~~or (3) a true copy or ab-~~
7 ~~stract of the petition for an elective share,~~ as the
8 case may be. Each certification shall include a de-
9 scription of the real estate, so far as it can be
10 furnished from the probated will or the petition upon
11 which the appointment was made, and the name of the
12 decedent and of the devisees or heirs. In the case of
13 a will, the certification shall also set forth the
14 date of the allowance of the will and designate
15 whether it was probated formally or informally. In
16 the case of the formal probate of a will that was
17 previously informally probated, and of an informally
18 probated will that was subsequently denied probate in
19 formal proceedings, the register of probate shall
20 certify such formal probate or formal denial of pro-
21 bate to the register of deeds to which the prior in-
22 formally probated will was certified, setting forth
23 the date of the formal probate or denial. The regis-
24 ter of deeds receiving such copy or certification
25 shall forthwith file the same, minuting thereon the
26 time of the reception thereof, and record it in the
27 same manner as a deed of real estate.

28 Sec. 2. 18-A MRSA §1-602, ¶(1), as amended by PL
29 1981, c. 279, §10, is further amended to read:

30 (1) For making and certifying to the register of
31 deeds copies of devises of real estate, abstracts
32 of petitions for appointment of a personal repre-
33 sentative ~~or for an elective share,~~ and any other
34 document for which such certification is re-
35 quired, \$6, except as otherwise expressly pro-
36 vided by statute. The fee shall be paid by the
37 personal representative, petitioner or other per-
38 son filing the document to be certified when the
39 copy of the devise or abstracts are made. The
40 register of deeds shall receive the fee set in
41 Title 33, section 751 when the certified copy is
42 furnished to him.

43 Sec. 3. 18-A MRSA §2-201, as amended by PL 1983,
44 c. 441, §1, is repealed.

1 Sec. 4. 18-A MRSA §2-204, as enacted by PL 1979,
2 c. 540, §1, is amended to read:

3 §2-204. Waiver of rights

4 The right of ~~election of a surviving spouse and~~
5 ~~the rights of the surviving spouse~~ to homestead al-
6 lowance, exempt property and family allowance, or any
7 of them, may be waived, wholly or partially, before
8 or after marriage, by a written contract, agreement
9 or waiver signed by the party waiving after fair dis-
10 closure. Unless it provides to the contrary, a waiver
11 of "all rights," or equivalent language, in the prop-
12 erty or estate of a present or prospective spouse or
13 a complete property settlement entered into after or
14 in anticipation of separation or divorce is a waiver
15 of all rights to ~~elective share~~, homestead allowance,
16 exempt property and family allowance by each spouse
17 in the property of the other and a renunciation by
18 each of all benefits which would otherwise pass to
19 him from the other by intestate succession or by vir-
20 tue of the provisions of any will executed before the
21 waiver or property settlement.

22 Sec. 5. 18-A MRSA §§2-205, 2-206 and 2-207, as
23 enacted by PL 1979, c. 540, §1, are repealed.

24 Sec. 6. 18-A MRSA §2-401, as enacted by PL 1979,
25 c. 540, §1, is amended to read:

26 §2-401. Homestead allowance

27 A surviving spouse of a decedent who was domi-
28 ciled in this State is entitled to a homestead allow-
29 ance of \$5,000. If there is no surviving spouse, each
30 minor child and each dependent child of the decedent
31 is entitled to a homestead allowance amounting to
32 \$5,000 divided by the number of minor and dependent
33 children of the decedent. The homestead allowance is
34 exempt from and has priority over all claims against
35 the estate. Homestead allowance is in addition to any
36 share passing to the surviving spouse or minor or de-
37 pendent child by the will of the decedent unless oth-
38 erwise provided, or by intestate succession ~~or by way~~
39 ~~of elective share.~~

1 Sec. 7. 18-A MRSA §2-402, as amended by PL 1983,
2 c. 441, §3 and c. 480, Pt. A, §14, is repealed and
3 the following enacted in its place:

4 §2-402. Exempt property

5 In addition to the homestead allowance, the sur-
6 vinging spouse of a decedent who was domiciled in this
7 State is entitled from the estate to value not ex-
8 ceeding \$3,500 in excess of any security interests
9 therein in property exempt under Title 14, chapter
10 507, subchapter II, Article 7 on the date of death of
11 the decedent. If there is no surviving spouse, chil-
12 dren of the decedent are entitled jointly to the same
13 value. If encumbered chattels are selected and if the
14 value in excess of security interests, plus that of
15 other exempt property, is less than \$3,500, or if
16 there is not \$3,500 worth of exempt property in the
17 estate, the spouse or children are entitled to other
18 assets of the estate, if any, to the extent necessary
19 to make up the \$3,500 value. Rights to exempt prop-
20 erty and assets needed to make up a deficiency of ex-
21 empt property have priority over all claims against
22 the estate, except that the right to any assets to
23 make up a deficiency of exempt property shall abate
24 as necessary to permit prior payment of homestead al-
25 lowance and family allowance. These rights are in ad-
26 dition to any benefit or share passing to the surviv-
27 ing spouse or children by the will of the decedent
28 unless otherwise provided or by intestate succession.

29 Sec. 8. 18-A MRSA §2-403, 2nd ¶, as enacted by
30 PL 1979, c. 540, §1, is amended to read:

31 The family allowance is not chargeable against
32 any benefit or share passing to the surviving spouse
33 or children by the will of the decedent unless other-
34 wise provided, or by intestate succession, ~~or by way~~
35 ~~of elective share~~. The death of any person entitled
36 to family allowance terminates his right to allowance
37 not yet paid.

38 Sec. 9. 18-A MRSA §2-514, sub-§(a), as amended
39 by PL 1983, c. 816, Pt. A, §7, is further amended to
40 read:

1 (a) Any person may execute a will on the follow-
2 ing form and the will shall be presumed to be reason-
3 able. This section does not limit any spousal
4 rights, rights to exempt property or other rights set
5 forth elsewhere in this Code.

6 Maine Statutory Will

7 NOTICE TO THE PERSON WHO SIGNS THIS WILL:

8 1. THIS STATUTORY WILL HAS SERIOUS LEGAL EFFECTS
9 ON YOUR FAMILY AND PROPERTY. IF THERE IS ANYTHING IN
10 THIS WILL THAT YOU DO NOT UNDERSTAND, YOU SHOULD CON-
11 SULT A LAWYER AND ASK HIM TO EXPLAIN IT TO YOU.

12 2. THIS WILL DOES NOT DISPOSE OF PROPERTY WHICH
13 PASSES ON YOUR DEATH TO ANY PERSON BY OPERATION OF
14 LAW OR BY CONTRACT. FOR EXAMPLE, THE WILL DOES NOT
15 DISPOSE OF JOINT TENANCY ASSETS OR YOUR SPOUSE'S
16 ELEGITIVE SHARE, AND IT WILL NOT NORMALLY APPLY TO
17 PROCEEDS OF LIFE INSURANCE ON YOUR LIFE OR YOUR RE-
18 TIREMENT PLAN BENEFITS.

19 3. THIS WILL IS NOT DESIGNED TO REDUCE DEATH
20 TAXES OR ANY OTHER TAXES. YOU SHOULD DISCUSS THE TAX
21 RESULTS OF YOUR DECISIONS WITH A COMPETENT TAX ADVI-
22 SOR.

23 4. YOU CANNOT CHANGE, DELETE, OR ADD WORDS TO
24 THE FACE OF THIS MAINE STATUTORY WILL. YOU SHOULD
25 MARK THROUGH ALL SECTIONS OR PARTS OF SECTIONS WHICH
26 YOU DO NOT COMPLETE. YOU MAY REVOKE THIS MAINE STAT-
27 UTORY WILL AND YOU MAY AMEND IT BY CODICIL.

28 5. THIS WILL TREATS ADOPTED CHILDREN AS IF THEY
29 ARE NATURAL CHILDREN.

30 6. IF YOU MARRY OR DIVORCE AFTER YOU SIGN THIS
31 WILL, YOU SHOULD MAKE AND SIGN A NEW WILL.

32 7. IF YOU HAVE ANOTHER CHILD AFTER YOU SIGN THIS
33 WILL, YOU SHOULD MAKE AND SIGN A NEW WILL.

34 8. THIS WILL IS NOT VALID UNLESS IT IS SIGNED BY
35 AT LEAST TWO WITNESSES. YOU SHOULD CAREFULLY READ
36 AND FOLLOW THE WITNESSING PROCEDURE DESCRIBED AT THE
37 END OF THIS WILL.

1 shall be distributed in equal shares to my children
2 and the descendants of any deceased child.

3
4 (signature)

5 C. I leave the following stated amounts to the
6 persons named:

7
8 (name) (amount) (signature)

9
10 (name) (amount) (signature)

11
12 (name) (amount) (signature)

13
14 (name) (amount) (signature)

15
16 (name) (amount) (signature)

17 2.5 UNDISTRIBUTED PROPERTY. If I have any property
18 which, for any reason, does not pass under the other
19 parts of this will, all of that property shall be
20 distributed as follows: (Draw a line through any un-
21 used space.)

22 (this paragraph only valid if signed)

23 Article 3. Nomination of guardian,
24 conservator and personal representative

25 3.1 GUARDIAN. (If you have a child under 18 years
26 of age, you may name at least one person to serve as
27 guardian for the child.)

1 THIRD PERSONAL
2 REPRESENTATIVE (signature)

3 I sign my name to this Maine Statutory Will on
4 at in the State of .
5 (date) (city)

6 Your Signature

7 STATEMENT OF WITNESSES (You must have two witnesses.)

8 Each of us declares that the person who signed
9 above willingly signed this Maine Statutory Will in
10 our presence or willingly directed another to sign it
11 for him or her or that he or she acknowledged that
12 the signature on this Maine Statutory Will is his or
13 hers or that he or she acknowledged that this Maine
14 Statutory Will is his or her will and we sign below
15 as witnesses to that signing.

16 Signature

17 Printed name

18 Address

19 Signature

20 Printed name

21 Address

22 (b) Forms for executing a statutory will shall
23 be provided at all Probate Courts for a cost equiva-
24 lent to the reasonable cost of printing and storing
25 the forms. A statutory will shall be deemed to be
26 valid if the blanks are filled in with a typewriter
27 or in the handwriting of the person making the will.
28 Failure to complete or mark through any section or
29 part of a section in the statutory will shall not in-
30 validate the entire will. Failure to sign any sec-

1 tion or part of a section in the statutory will re-
2 quiring a signature shall only invalidate the part
3 not signed, except as specifically provided in para-
4 graph 2.4.

5 Sec. 10. 18-A MRSA §§2-602 and 3-101, as enacted
6 by PL 1979, c. 540, §1, is amended to read:

7 §2-602. Choice of law as to meaning and effect of
8 wills

9 The meaning and legal effect of a disposition in
10 a will shall be determined by the local law of a par-
11 ticular state selected by the testator in his instru-
12 ment unless the application of that law is contrary
13 to ~~the provisions relating to the elective share de-~~
14 ~~scribed in Part 2,~~ the provisions relating to exempt
15 property and allowances described in Part 4 or any
16 other public policy of this State otherwise applica-
17 ble to the disposition.

18 §3-101. Devolution of estate at death; restrictions

19 The power of a person to leave property by will,
20 and the rights of creditors, devisees, and heirs to
21 his property are subject to the restrictions and lim-
22 itations contained in this Code to facilitate the
23 prompt settlement of estates. Upon the death of a
24 person, his real and personal property devolves to
25 the persons to whom it is devised by his last will or
26 to those indicated as substitutes for them in cases
27 involving lapse, renunciation, or other circumstances
28 affecting the devolution of testate estate, or in the
29 absence of testamentary disposition, to his heirs, or
30 to those indicated as substitutes for them in cases
31 involving renunciation or other circumstances affect-
32 ing devolution of intestate estates, subject to home-
33 stead allowance, exempt property and family allow-
34 ance, to rights of creditors, ~~elective share of the~~
35 ~~surviving spouse,~~ and to administration.

36 Sec. 11. 18-A MRSA §3-902, sub-§(a), as enacted
37 by PL 1979, c. 540, §1, is amended to read:

38 (a) Except as provided in subsection (b) and ex-
39 cept as provided in connection with the share of the
40 surviving spouse who elects to take an elective

1 share, shares of distributees abate, without any
2 preference or priority as between real and personal
3 property, in the following order: (1) property not
4 disposed of by the will; (2) residuary devises; (3)
5 general devises; (4) specific devises. For purposes
6 of abatement, a general devise charged on any specif-
7 ic property or fund is a specific devise to the ex-
8 tent of the value of the property on which it is
9 charged, and upon the failure or insufficiency of the
10 property on which it is charged, a general devise to
11 within the extent of the failure or insufficiency. Abatement
12 within each classification is in proportion to the
13 amounts of property each of the beneficiaries would
14 have received if full distribution of the property
15 had been made in accordance with the terms of the
16 will.

17 Sec. 12. 18-A MRSA §5-408, ¶(3), as enacted by
18 PL 1979, c. 540, §1, is amended to read:

19 (3) After hearing and upon determining that a
20 basis for an appointment or other protective or-
21 der exists with respect to a person for reasons
22 other than minority, the court has, for the benef-
23 fit of the person and members of his household,
24 all the powers over his estate and affairs which
25 he could exercise if present and not under dis-
26 ability, except the power to make a will. These
27 powers include, but are not limited to power to
28 make gifts, to convey or release his contingent
29 and expectant interests in property including
30 marital property rights and any right of survi-
31 vorship incident to joint tenancy or tenancy by
32 the entirety, to exercise or release his powers
33 as trustee, personal representative, custodian
34 for minors, conservator, or donee of a power of
35 appointment, to enter into contracts, to create
36 revocable or irrevocable trusts of property of
37 the estate which may extend beyond his disability
38 or life, to exercise options of the disabled per-
39 son to purchase securities or other property, to
40 exercise his rights to elect options and change
41 beneficiaries under insurance and annuity poli-
42 cies and to surrender the policies for their cash
43 value, ~~to exercise his right to an elective share~~
44 ~~in the estate of his deceased spouse~~ and to re-
45 nounce any interest by testate or intestate suc-

