

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

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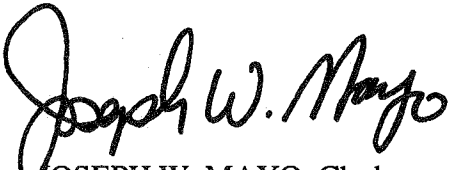
H.P. 299

House of Representatives, January 23, 1997

An Act to Clarify the Manner in Which Decedents' Estates Are to Be Distributed.

(EMERGENCY)

Reference to the Committee on Judiciary suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative THOMPSON of Naples.

2 **Emergency preamble.** Whereas, Acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
as emergencies; and

4
6 **Whereas,** Public Law 1995, chapter 525 adopted the Uniform
Prudent Investor Act and made related and conforming changes in
the Probate Code to be effective on January 1, 1997; and

8
10 **Whereas,** some provisions of Public Law 1995, chapter 525 as
adopted conflict with other provisions of the Probate Code and
may create unintended and burdensome income tax consequences for
12 heirs and devisees; and

14 **Whereas,** the Legislature desires to correct the
inconsistencies created by its adoption of Public Law 1995,
16 chapter 525 by the 117th Legislature and to avoid the unintended
tax consequences of that chapter; and

18
20 **Whereas,** an emergency exists because of the effective date
of the earlier legislation; and

22 **Whereas,** in the judgment of the Legislature, these facts
create an emergency within the meaning of the Constitution of
24 Maine and require the following legislation as immediately
necessary for the preservation of the public peace, health and
26 safety; now, therefore,

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

30 **Sec. 1. 18-A MRSA §3-703, sub-§(a), ¶(2),** as enacted by PL 1995,
c. 525, §1 and affected by §4, is amended to read:

32 (2) A Except as provided in section 3-906, subsection (a),
34 paragraphs (1) and (2), a personal representative may make
distribution of an estate's assets in cash or in kind, in
36 accordance with the devisees' best interests, and is not
required either to liquidate the estate's assets or to
38 preserve them for distribution.

40 **Sec. 2. 18-A MRSA §3-703, sub-§(a), ¶(3),** as enacted by PL 1995,
c. 525, §1 and affected by §4, is repealed and the following
42 enacted in its place:

44 (3) If all devisees whose devises are to be funded from the
residue of an estate agree, in a written instrument signed
46 by each of them and presented to the personal
representative, on an investment manager to direct the
48 investment of the estate's residuary assets, the personal
representative may, but need not, rely on the investment
50 advice of the investment manager so identified or delegate

2 the investment management of the estate's residuary assets
3 to such manager and, in either case, may pay reasonable
4 compensation to the manager from the residue of the estate.
5 A personal representative who relies on the advice of, or
6 delegates management discretion to, an investment manager in
7 accordance with the terms of this section is not liable for
8 the investment performance of the assets invested in the
9 discretion of, or in accordance with the advice of, such
10 investment manager.

11 **Sec. 3. 18-A MRSA §3-906, sub-§(a),** as amended by PL 1993, c.
12 371, §3, is further amended to read:

13 (a) Unless a contrary intention is indicated by the will,
14 the distributable assets of a decedent's estate shall must be
15 distributed ~~in-kind-to-the-extent-possible-through-application~~
16 ~~of-the-following-provisions:~~ as follows.

17 (1) A specific devisee ~~is-entitled-to-distribution-of~~ must
18 receive the thing devised to ~~him~~ that devisee, and a spouse
19 or child who has selected particular assets of an estate as
20 provided in section 2-402 shall must receive the items
21 selected.

22 (2) Any homestead or family allowance or pecuniary devise
23 may be satisfied by value in kind ~~provided, in the personal~~
24 representative's discretion, if:

25 (i) The person entitled to the payment has not
26 demanded payment in cash;

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

30 (iii) No residuary devisee has requested that the
31 asset ~~in-question to be distributed~~ remain a part of
32 the residue of the estate or if, a residuary devisee
33 has requested that the asset to be distributed remain a
34 part of the residue of the estate, there are
35 insufficient other assets to which no residuary devisee
36 has made such a request to permit satisfaction of the
37 estate's obligations and funding of all pecuniary
38 devises made under the decedent's will.

39 (3) For the purpose of valuation under paragraph (2),
40 securities regularly traded on recognized exchanges, if
41 distributed in kind, are valued at the price for the last
42 sale of like securities traded on the business day prior to
43 distribution, or, if there was no sale on that day, at the

2 median between amounts bid and offered at the close of that
3 day. Assets consisting of sums owed the decedent or the
4 estate by solvent debtors as to which there is no known
5 dispute or defense are valued at the sum due with accrued
6 interest or discounted to the date of distribution. For
7 assets which that do not have readily ascertainable values,
8 a valuation as of a date not more than 30 days prior to the
9 date of distribution, if otherwise reasonable, controls. For
10 purposes of facilitating distribution, the personal
11 representative may ascertain the value of the assets as of
12 the time of the proposed distribution in any reasonable way,
13 including the employment of qualified appraisers, even if
14 the assets may have been previously appraised.

15 (4) The residuary estate ~~must~~ may be distributed ~~in--a~~
16 ~~manner--that--is--equitable~~ by the personal representative in
17 cash or in kind, in accordance with the best interests of
18 the residuary devisees. Residuary assets may be
19 distributed, at the personal representative's discretion, in
20 pro rata or non pro rata shares; except that residuary
21 assets not distributed pro rata must be valued as of the
22 date on which they are distributed.

23 **Sec. 4. Retroactivity.** This Act applies retroactively to
24 January 1, 1997.

25 **Emergency clause.** In view of the emergency cited in the
26 preamble, this Act takes effect when approved, unless otherwise
27 indicated.

31 SUMMARY

32 Public Law 1995, chapter 525 enacted a version of the
33 Uniform Prudent Investor Act. As part of that legislation, the
34 Maine Revised Statutes, Title 18-A, section 3-703, which
35 describes the fiduciary duty of personal representatives, was
36 also amended to conform the standard of prudence for personal
37 representatives to the standard set out in the new legislation
38 for trustee prudence. The changes made, however, conflict with
39 other provisions of the Probate Code and may create unintended
40 tax consequences.

41 This bill eliminates the assumption in Title 18-A, section
42 3-906 that estate assets will be distributed in kind. The
43 assumption is replaced by a statement that the personal
44 representative has a duty to distribute the estate in the manner
45 that serves all the devisees' best interests. This bill also
46 requires that if residuary devisees want to assume responsibility
47 for direction of investments, they must all agree on the identity
48
49
50

2 of an investment manager who can give consistent investment instructions to the personal representative.