

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)



129th MAINE LEGISLATURE

SECOND REGULAR SESSION-2020

Legislative Document

No. 1863

H.P. 1334

House of Representatives, December 23, 2019

An Act To Amend the Maine Uniform Probate Code

Reported by Representative BAILEY of Saco for the Probate and Trust Law Advisory Commission pursuant to the Maine Revised Statutes, Title 18-C, section 1-803.

Received by the Clerk of the House on December 19, 2019. Referred to the Committee on Judiciary pursuant to Joint Rule 308.2 and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

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

2 **Sec. 1. 18-C MRSA §3-306**, as enacted by PL 2017, c. 402, Pt. A, §2 and affected
3 by PL 2019, c. 417, Pt. B, §14, is amended to read:

4 **§3-306. Informal probate; notice requirements**

5 The moving party shall give notice as described by section 1-401 of the moving
6 party's application for informal probate to any person demanding notice pursuant to
7 section 3-204, to an heir, devisee or personal representative who has not waived notice in
8 a writing filed with the court and to any personal representative of the decedent whose
9 appointment has not been terminated. If the decedent was 55 years of age or older, the
10 moving party shall give notice as described in section 1-401 to the Department of Health
11 and Human Services. Except as provided in section 3-705, no other notice of informal
12 probate is required.

13 **Sec. 2. 18-C MRSA §3-310**, as enacted by PL 2017, c. 402, Pt. A, §2 and affected
14 by PL 2019, c. 417, Pt. B, §14, is repealed and the following enacted in its place:

15 **§3-310. Informal appointment proceedings; notice requirements**

16 The moving party shall give notice as described by section 1-401 of the moving
17 party's intention to seek an appointment informally to:

18 **1. Person demanding notice.** Any person demanding notice pursuant to section
19 3-204;

20 **2. Heir or devisee.** An heir or devisee who has not waived notice in writing and
21 filed with the court; and

22 **3. Person having right to appointment.** Any person having a prior or equal right to
23 appointment not waived in writing and filed with the court.

24 If the decedent was 55 years of age or older, the moving party shall give notice as
25 described in section 1-401 to the Department of Health and Human Services. No other
26 notice of an informal appointment proceeding is required.

27 **Sec. 3. 18-C MRSA §3-706, sub-§1**, as enacted by PL 2017, c. 402, Pt. A, §2
28 and affected by PL 2019, c. 417, Pt. B, §14, is amended to read:

29 **1. Duty to file or mail inventory.** Within 3 months after appointment, a personal
30 representative who is not a special administrator or a successor to another personal
31 representative who has previously discharged this duty shall prepare and file with the
32 court or mail to all interested persons who request it an inventory of property owned by
33 the decedent at the time of death, listing it with reasonable detail and indicating as to each
34 listed item its fair market value as of the date of the decedent's death and the type and
35 amount of any encumbrance that may exist with reference to any item. The inventory
36 must also include a schedule of credits of the decedent, with the names of the obligors,

1 the amounts due, a description of the nature of the obligation and the amount of all such
2 credits, exclusive of expenses and risk of settlement or collection.

3 **Sec. 4. 18-C MRSA §3-801, sub-§1**, as enacted by PL 2017, c. 402, Pt. A, §2
4 and affected by PL 2019, c. 417, Pt. B, §14, is amended to read:

5 **1. Notice by publication.** Unless notice has already been given under this section, a
6 personal representative upon appointment shall publish a notice to creditors announcing
7 the appointment and the personal representative's address and notifying creditors of the
8 estate to present their claims within 4 months after the date of the first publication of the
9 notice or be forever barred. The notice to creditors must be published once a week for 2
10 successive weeks in a newspaper of general circulation in the county in which the ~~court~~
11 ~~that appointed the personal representative is located~~ decedent was domiciled at the time
12 of death.

13 **Sec. 5. 18-C MRSA §5-906, sub-§5**, as enacted by PL 2017, c. 402, Pt. A, §2
14 and PL 2019, c. 417, Pt. B, §14, is amended to read:

15 **5. Defective notice.** A power of attorney executed in this State is valid and
16 enforceable 2 years after execution if the notice required by section 5-905, subsection 2
17 or the former Title 18-A, section 5-905, subsection (b) is included but is incomplete or
18 defective in any respect.

19 **Sec. 6. 18-C MRSA §5-931, sub-§1, ¶D**, as enacted by PL 2017, c. 402, Pt. A,
20 §2 and affected by PL 2019, c. 417, Pt. B, §14, is amended to read:

21 D. Create or change a beneficiary designation. The authority under this paragraph,
22 unless otherwise expressly limited in the power of attorney, includes the authority to
23 create, change or revoke a transfer on death deed as defined in section 6-402,
24 subsection 6;

25 **Sec. 7. 18-C MRSA §8-301, sub-§2, ¶A**, as enacted by PL 2017, c. 402, Pt. A,
26 §2 and affected by PL 2019, c. 417, Pt. B, §14, is amended to read:

27 A. The Code applies to any wills of decedents who die on or after the effective date;

28 **Sec. 8. 18-C MRSA §8-301, sub-§2, ¶A-1**, as enacted by PL 2019, c. 417, Pt. A,
29 §103, is amended to read:

30 A-1. The intestate succession provisions of Article 2, Part 1, Subpart 1, the elective
31 share provisions of Article 2, Part 2 and the exempt property and allowances
32 provisions of Article 2, Part 4 apply to the estates of decedents who die on or after the
33 effective date;

34 **Sec. 9. 18-C MRSA §8-301, sub-§2, ¶B**, as enacted by PL 2017, c. 402, Pt. A,
35 §2 and affected by PL 2019, c. 417, Pt. B, §14, is amended to read:

36 B. The Code applies to any proceedings in court pending on the effective date or
37 commenced on or after the effective date regardless of the time of the death of the
38 decedent except to the extent that in the opinion of the court the former procedure

1 should be made applicable in a particular case in the interest of justice or because of
2 infeasibility of application of the procedure of this Code;

3 **Sec. 10. 18-C MRSA §8-301, sub-§2, ¶C**, as amended by PL 2019, c. 417, Pt.
4 A, §103, is further amended to read:

5 C. Every personal representative appointed prior to September 1, 2019 continues to
6 hold the appointment but has only the powers conferred by this Code and is subject to
7 the duties imposed with respect to any act occurring or done on or after the effective
8 date, and a guardian or conservator appointed prior to September 1, 2019 has the
9 powers conferred by this Code on guardians and conservators, unless otherwise
10 limited by the original order of appointment or subsequent court order under this
11 Code;

12 **Sec. 11. 18-C MRSA §8-301, sub-§2, ¶F**, as amended by PL 2019, c. 417, Pt.
13 A, §103, is further amended to read:

14 F. For an adoption decree entered before ~~September 1, 2019~~ January 1, 1981 and not
15 amended after ~~September 1, 2019~~ January 1, 1981, the child is the child of both the
16 former and adopting parents for purposes of intestate succession, notwithstanding
17 section 2-117, unless the decree provides otherwise.

18 **Sec. 12. Retroactivity.** That section of this Act that amends the Maine Revised
19 Statutes, Title 18-C, section 8-301, subsection 2, paragraph F applies retroactively to
20 September 1, 2019.

21 SUMMARY

22 This bill includes recommendations from the Probate and Trust Law Advisory
23 Commission pursuant to the Maine Revised Statutes, Title 18-C, section 1-803.

24 The bill amends Title 18-C, section 3-306 to add language that previously existed in
25 Title 18-A, section 3-306 in order to ensure that heirs, devisees and personal
26 representatives are given notice of the filing of an application for informal probate.

27 The bill adds language to Title 18-C, section 3-310 that previously existed in Title
28 18-A, section 3-310 in order to ensure that heirs and devisees are given notice of the
29 filing of an application for informal appointment of a personal representative. The
30 changes to Title 18-C, section 3-310 parallel the amendment made to Title 18-C, section
31 3-306.

32 The bill amends Title 18-C, section 3-706, subsection 1 to clarify that the personal
33 representative is required to send a copy of the inventory to all interested persons "who
34 request" the inventory. Both the former counterpart provision under Title 18-A and the
35 counterpart provision under the Uniform Probate Code require the personal representative
36 to furnish the inventory only to persons "who request" the inventory; Title 18-C, section
37 3-706, subsection 2 states that "the personal representative shall furnish the inventory to
38 interested persons who request it."

1 The bill amends Title 18-C, section 3-801, subsection 1 to require that notice of the
2 appointment of a personal representative be published to creditors in the county where the
3 decedent was domiciled at the time of death, rather than in the county in which the court
4 that appointed the personal representative is located. When an application for
5 appointment of a personal representative is transferred from the county where the
6 decedent was domiciled to another county before the date of the appointment of the
7 personal representative, notice to creditors by publication in the county to which the
8 application was transferred will be unlikely to be seen by interested persons and creditors.

9 The bill amends Title 18-C, section 5-906, subsection 5, which was added to the
10 Maine Uniform Power of Attorney Act with an effective date of September 1, 2019 and
11 which governs the validity of executed powers of attorney, to add language clarifying that
12 the subsection does not affect powers of attorney executed before September 1, 2019. The
13 notices required in powers of attorney by Title 18-C, section 5-905, subsection 2 include
14 references to Title 18-C. The notices required in powers of attorney under Title 18-A,
15 section 5-905, subsection (b) were identical to the notices required by Title 18-C, section
16 5-905, subsection 2 with the exception of including references to Title 18-A rather than to
17 Title 18-C. Subsection 5 was added to Title 18-C to protect against the likelihood that
18 attorneys or others preparing powers of attorney might overlook the need to change the
19 notices to reference Title 18-C.

20 The bill amends Title 18-C, section 5-931 to clarify that the authority of an agent
21 under a power of attorney to create or change a beneficiary designation, unless otherwise
22 expressly limited in the power of attorney, includes the authority to create, change or
23 revoke a transfer on death deed. As the Maine Uniform Power of Attorney Act currently
24 reads, there is ambiguity as to whether an agent under a power of attorney has the
25 authority to create, change or revoke a transfer on death deed created under the Uniform
26 Real Property Transfer on Death Act, which became effective on September 1, 2019.
27 Under Title 18-C, section 5-931 of the Maine Uniform Power of Attorney Act, there are
28 several powers that an agent may exercise only if the authority to exercise the powers is
29 expressly granted in the power of attorney. Among those powers is the power to create or
30 change a beneficiary designation. Because a transfer on death deed is a type of
31 beneficiary designation, this bill amends Title 18-C, section 5-931, subsection 1,
32 paragraph D to make it clear that an agent who has the authority to create or change a
33 beneficiary designation also has the authority to create, change or revoke a transfer on
34 death deed.

35 The bill amends Title 18-C, section 8-301, subsection 2, paragraph A-1 to add a
36 reference to the intestate succession provisions of Title 18-C to avoid any ambiguity as to
37 the timing of the applicability of the intestate succession provisions of Title 18-C.

38 The bill amends Title 18-C, section 8-301, subsection 2, paragraphs A, B and C to
39 add language clarifying that the provisions are effective "on or after" the effective date of
40 Title 18-C.

41 The bill amends Title 18-C, section 8-301, subsection 2, paragraph F to restore the
42 intestate succession involving adoptions completed before the original Probate Code took
43 effect in 1981. Public Law 2019, chapter 417 erroneously changed the date to September
44 1, 2019. The bill makes the correction retroactive to September 1, 2019.