

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND NINTH LEGISLATURE

AT THE

SECOND REGULAR SESSION

January 2, 1980 to April 3, 1980

AND AT THE

THIRD SPECIAL SESSION

May 22, 1980

PUBLISHED BY THE DIRECTOR OF LEGISLATIVE RESEARCH IN
ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 164, SUBSECTION 6.

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PUBLIC LAWS
OF THE
STATE OF MAINE
AS PASSED AT THE
SECOND REGULAR SESSION
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ONE HUNDRED AND NINTH LEGISLATURE
January 2, 1980 to April 3, 1980

Sec. 2. 24 MRSA § 2405, sub-§ 1, first sentence, as repealed and replaced by PL 1979, c. 290, § 2, is amended to read:

The association shall not issue any policies with an inception date after July 1, 1980 1981, and in no event shall issue a policy providing for coverage after July 1, 1981 1982.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective March 31, 1980

CHAPTER 690

S. P. 792 — L. D.1990

AN ACT to Amend the Probate Code.

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

Sec. 1. 18 MRSA §§ 4161 — 4163, as repealed by PL 1979, c. 540, § 24-C, are reenacted to read:

§ 4161. Authorization

A bank or trust company organized and doing business under the laws of any state or territory of the United States of America, including the District of Columbia, and a national bank, duly authorized so to act, may be appointed and may serve in this State as trustee, whether of a corporate or personal trust, executor, administrator, guardian, conservator or committee for an incompetent person, or in any other fiduciary capacity, whether the appointment is by will, deed, court order or decree, or otherwise, when and to the extent that the state, territory or district in which such bank or trust company is organized grants authority to serve in like fiduciary capacities to a bank or trust company organized and doing business under the laws of this State and authorized to serve in like fiduciary capacities.

§ 4162. Application

Before qualifying or serving in this State in any fiduciary capacity, as defined in section 4161, such bank or trust company shall file an application for authority with the Secretary of State in the same form and subject to the same fees as required by Title 13-A, chapter 12. Such application shall be accompanied by a certificate, made within 90 days of filing, from the official having supervision of banks and trust companies where the bank was organized or is domiciled, indicating that it is duly authorized or presently existing, that it has authority to

act in the fiduciary capacity for which it is qualifying and that such jurisdiction grants authority to serve in like fiduciary capacities to a bank or trust company organized under the laws of this State and authorized to serve in like fiduciary capacities. If the person supervising banks and trust companies cannot certify to reciprocity, it shall be done by the attorney general of its state of domicile. In addition, such application shall designate the Secretary of State as the person upon whom all notices and processes issued by or to any court of this State shall be served in any action or proceeding relating to any trust, estate or matter within this State in which such bank or trust company is acting in any fiduciary capacity with like effect as personal service on such bank or trust company, such designation shall be irrevocable so long as any such liability shall remain outstanding against such bank or trust company in this State. Upon receipt of such notice or process, the Secretary of State shall forthwith forward the same by registered mail to such bank or trust company at the address stated in the application.

§ 4163. Limitation

Sections 4161, 4162, 4163-A or this section shall not be construed to prohibit, permit or affect in any other way the right of a bank or trust company, organized and doing business under the laws of any other state, territory or district than Maine, including a national bank doing business in any other state, to establish in this State a place of business, branch office or agency for the conduct of business as a fiduciary.

Sec. 2. 18 MRSA § 4163-A is enacted to read:

§ 4163-A. Corporation; application

Nothing in sections 4161 to 4163 or this section shall require any corporation to file an application pursuant to sections 4161 to 4163 or this section if the corporation is deemed not to be doing business in this State under Title 13-A, section 1201 and Title 18-A, section 7-105.

Sec. 3. 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 under Article V, affecting a trust estate or estate, when the ward or protected person has received benefits from the Veterans Administration within 3 years, the Administrator of Veterans Affairs of the United States shall be an "interested person."

Sec. 4. 18-A MRSA § 2-505, sub-§ (c), as enacted by PL 1979, c. 540, § 1, is repealed.

Sec. 5. 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. 6. 18-A MRS § 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. 7. 18-A MRS § 3-603, **first sentence**, as enacted by PL 1979, c. 540, § 1, is amended to read:

No bond is required of a personal representative appointed in informal proceedings, except (1) upon the appointment of a special administrator; (2) when an executor or other personal representative is appointed to administer an estate under a will containing an express requirement of bond; **or** (3) when bond is required under section 3-605; ~~or (4) when there is no will and all of the heirs have not made a written waiver.~~

Sec. 8. 18-A MRS § 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 ~~mail~~ **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. 9. 18-A MRS § 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. 10. 18-A MRS § 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. 11. 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~~ **furnish** a notice to any claimant stating that the claim has been disallowed.

Sec. 12. 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. 13. 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. 14. 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. 15. 18-A MRSA § 3-906, sub-§ (a), ¶ (2), sub-¶ (IV), as enacted by PL 1979, c. 540, § 1, is repealed.

Sec. 16. 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. 17. 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. 18. 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. 19. 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. 20. 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. 21. Effective date. This Act shall take effect on January 1, 1981.

Effective January 1, 1981

CHAPTER 691

H. P. 1965 — L. D. 2011

AN ACT to Clarify the Education Laws.

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

Sec. 1. 20 MRSA § 304, 2nd sentence, as amended by PL 1967, c. 224, § 2, is further amended to read:

To procure funds for capital outlay purposes, as defined in section 3457, **or for school construction projects, as defined in section 3471**, the school directors of said district are authorized to issue bonds and notes of the district.