MAINE STATE LEGISLATURE

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TITLE 18

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PART 1

WILLS AND PROBATE OF WILLS

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CHAPTER 1

WILLS

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SUBCHAPTER I

GENERAL PROVISIONS

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§ 1. By whom and how made

A person of sound mind and of the age of 21 years and a married person, widow or widower of any age may dispose of his real and personal estate by will, in writing, signed by him, or by some person for him at his request and in his presence, and subscribed in his presence by 3 credible attesting witnesses. All beneficial devises, bequests and legacies to a subscribing witness are void except that if such interested witness would be entitled to any share of the estate in case the person making the will had died intestate, he shall take only that part of the devise or bequest made to him in the will that equals but does not exceed in value the share of the estate of the person making the will which he would have taken if such person had died intestate.

R.S.1954, c. 169, § 1; 1957, c. 302.

§ 2. Deposit of wills in registry of probate; proceedings after death

A will may be deposited for safekeeping in the registry of probate in the county where the testator lives, and the register, on being paid $1, shall receive and keep it and give a certificate of the deposit thereof. Such will shall be enclosed in a sealed wrapper, indorsed with the name and residence of the testator, and the date when deposited, and may have indorsed thereon the name of any person to whom it is to be delivered after the death of the testator, and shall not be opened nor read until delivered to the testator, or to some person authorized to receive it by a written order signed by the testator and attested by one witness, and the register may require the person presenting the same to make oath that it is genuine. After the testator's death the will shall be delivered to the person, if any, entitled by the indorsement on the wrapper to receive it; or, if not demanded before the next probate court thereafter, it may then be publicly opened and retained in the probate office until offered for probate; but, if the jurisdiction of the estate belongs in another court, it

shall be delivered to the executors or other persons entitled to its custody, to be presented for probate in such other court.

R.S.1954, c. 154, § 3.

§ 3. Lands of testator passing by will

Lands into which the testator, at the time, has a right of entry although not seized of them and lands of which he is subsequently disseized pass by his will, as they would, if not devised, have descended to his heirs; and his devisee has the same remedy for their recovery, as his heirs would have had.

R.S.1954, c. 169, § 4.

§ 4. After-acquired lands

Real estate owned by the testator, the title to which was acquired after the will was executed, will pass by it when such appears to have been his intention.

R.S.1954, c. 169, § 5.

§ 5. Construction of devise

A devise of land conveys all the estate of the devisor therein, unless it appears by his will that he intended to convey a less estate.

R.S.1954, c. 169, § 16.

§ 6. Property not willed

Property not disposed of by will shall be distributed as the estate of an intestate.

R.S.1954, c. 169, § 2.

§ 7. Testamentary additions to trusts

A devise or bequest, the validity of which is determinable by the law of this State, may be made by a will to the trustee or trustees of a trust established by the testator or by the testator and some other person or persons or by some other person or persons, including a funded or unfunded life insurance trust, although the trustor has reserved any or all rights of ownership of the insurance contracts, if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will, executed before or concurrently with the execution of the testator's will or in the valid last will of a person who has

predeceased the testator, regardless of the existence, size or character of the corpus of the trust. The devise or bequest shall not be invalid because the trust is amendable or revocable, or both, or because the trust was amended after the execution of the will or after the death of the testator. Unless the testator's will provides otherwise, the property so devised or bequeathed shall not be deemed to be held under a testamentary trust of the testator but shall become a part of the trust to which it is given and shall be administered and disposed of in accordance with the instrument or will setting forth the terms of the trust, including any amendments thereto made before the death of the testator, regardless of whether made before or after the execution of the testator's will, and, if the testator's will so provides, including any amendments to the trust made after the death of the testator. A revocation or termination of the trust before the death of the testator shall cause the devise or bequest to lapse.

1963, c. 34.

§ 8. Wills rendered invalid or revoked

A will executed under section 1 is valid until it is destroyed, altered or revoked by being intentionally burnt, canceled, torn or obliterated by the maker, or by some person by his direction and in his presence, or by a subsequent will, codicil or writing executed as a will is required to be; or revoked by operation of law from subsequent changes in the condition and circumstances of the maker.

R.S.1954, c. 169, § 3.

§ 9. Custodians of wills; duty

Whoever has the custody of a will shall, after the testator's death, deliver it into the probate court having jurisdiction thereof or to the executor therein named. Any executor, having such will in his custody, shall file it in such court. If such executor or other person, having been duly cited for that purpose, neglects to do so without reasonable cause for 30 days after notice of the testator's death, he may be committed to jail by the judge's warrant, there to be kept in close custody until he so delivers the will or is released by the judge or otherwise by order of law. He is liable to any party for the damage which he has sustained by such neglect.

R.S.1954, c. 154, § 4.

§ 10. Suppressing, secreting or destroying will

Whoever willfully suppresses, secretes, defaces or destroys any last will and testament of a deceased person, in his possession or under his control, with intent to injure or defraud any person interested therein, shall be punished by a fine of not more than $1,000 and by imprisonment for less than one year.

R.S.1954, c. 133, § 30.

SUBCHAPTER II

NUNCUPATIVE WILLS

Sec.
51. Requirements.
52. Proof within 6 months.
53. Limitation as to property affected.
54. Approval; notice.

§ 51. Requirements

A nuncupative will must be made during the last sickness of the testator at his home or at the place where he resided 10 days before making it, unless he is suddenly taken sick from home and dies before returning to it. But a soldier in actual service or mariner at sea may dispose of his personal estate and wages without regard to this chapter.

R.S.1954, c. 169, § 18.

§ 52. Proof within 6 months

No testimony can be received to prove any testamentary words as a nuncupative will after the lapse of 6 months from the time when they were spoken, unless the words or the substance of them were reduced to writing within 6 days after they were spoken.

R.S.1954, c. 169, § 19.

§ 53. Limitation as to property affected

No nuncupative will is effectual to dispose of property exceeding in value $100, unless proved by the oath of 3 witnesses who were present at the making of it and were requested by the testator to bear witness that such was his will.

R.S.1954, c. 169, § 20.

§ 54. Approval; notice

No letters testamentary or probate of any nuncupative will shall pass the seal of any court of probate until 14 days after the decease of the testator; nor shall such will be approved and allowed at any time unless due notice is given to all persons interested specifying that the will to be proved is a nuncupative will.

R.S.1954, c. 154, § 18.