

MAINE STATE LEGISLATURE

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CHAPTER 109

DESCENT, OMITTED ISSUE, DECEASED
DISTRIBUTEES

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§ 1001. Rules of descent

The real estate of a person deceased intestate, being subject to the payment of debts, including a woodlot or other land used with the farm or dwelling house although not cleared and including wild lands of which he dies seized, but excepting wild lands conveyed by him, though afterwards cleared, descends according to the following rules:

1. Widow and issue; no issue. If he leaves a widow and issue, $\frac{1}{3}$ to the widow. If the deceased leaves no issue, $\frac{1}{2}$ to the widow. If the deceased leaves no issue, and if it appears on determination as provided in section 852 that he and the surviving widow were living together at the time of his decease,

A. And the residue of the estate determined as provided in section 852 is \$10,000 or less, all of the real estate to the widow; or

B. If the residue of the estate determined as provided in section 852 is more than \$10,000, of the real estate, $\frac{2}{3}$ to the widow and $\frac{1}{3}$ to the next of kin of equal degree, not beyond kin in the 2nd degree.

If no kindred within the 2nd degree, the whole to the widow; and to the widower shall descend the same shares in his wife's real estate. There shall likewise descend to the widow or widower the same share in all such real estate of which the deceased was seized during coverture, and which has not been barred or released as herein provided. In any event, $\frac{1}{3}$ shall descend to the widow or

widower free from payment of debts, except as provided in section 2059.

1957, c. 290, § 1.

2. Remainder, if no widow or widower. The remainder of which he dies seized, and if no widow or widower, the whole shall descend in equal shares to his children, and to the lawful issue of a deceased child by right of representation. If no child is living at the time of his death, to all his lineal descendants; equally, if all are of the same degree of kindred; if not, according to the right of representation.

3. If no issue. If no such issue, it descends to his father and mother in equal shares.

4. If no issue or father; or no mother; remainder. If no such issue or father, it descends $\frac{1}{2}$ to his mother. If no such issue or mother, it descends $\frac{1}{2}$ to his father. In either case, the remainder, or, if no such issue, father or mother, the whole descends in equal shares to his brothers and sisters, and when a brother or sister has died, to his or her children or grandchildren by right of representation.

5. If no issue, father, brother or sister; or no mother. If no such issue, father, brother or sister, it descends to his mother. If no such issue, mother, brother or sister, it descends to his father. In either case, to the exclusion of the issue of deceased brothers and sisters.

6. If no issue, father, mother, brother or sister. If no such issue, father, mother, brother or sister, it descends to his next of kin in equal degree; when they claim through different ancestors, to those claiming through a nearer ancestor in preference to those claiming through an ancestor more remote.

7. Unmarried minor. When a minor dies unmarried, leaving property inherited from either of his parents, it descends to the other children of the same parent and the issue of those deceased; in equal shares if all are of the same degree of kindred; otherwise, according to the right of representation.

8. Escheat. If the intestate leaves no widower, widow or kindred, it escheats to the State.

R.S.1954, c. 170, § 1; 1957, c. 290, § 1.

§ 1002. Degrees of kindred

The degrees of kindred are computed according to the rules of the civil law. Kindred of the half blood inherit equally with those of the whole blood in the same degree.

R.S.1954, c. 170, § 2.

§ 1003. Heirship of illegitimate child; descent of estate

A child born out of wedlock is the heir and legitimate child of his parents who intermarry. Any such child, born at any time, is the heir of his mother. If the father of a child born out of wedlock adopts him or her into his family or in writing acknowledges before some justice of the peace or notary public that he is the father, such child is the heir and legitimate child of his or her father. In each case such child and its issue shall inherit from its parents respectively, and from their lineal and collateral kindred, and these from such child and its issue the same as if legitimate.

R.S.1954, c. 170, § 3.

§ 1004. Posthumous child takes intestate share

A child of the testator, born after his death and not provided for in his will, takes the same share of his estate as he would if his father had died intestate. Such share shall be assigned by the judge of probate and taken from all the devisees in proportion to the value of what they respectively receive under the will, unless by a specific devise or some other provision thereof a different apportionment is necessary to give effect to the intention of the testator respecting that portion of his estate which passes by the will.

R.S.1954, c. 169, § 8.

§ 1005. Child or issue may have intestate share

A child, or the issue of a deceased child not having any devise in the will, takes the share of the testator's estate which he would have taken if no will had been made, unless it appear that such omission was intentional, or was not occasioned by mistake, or that such child or issue had a due proportion of the estate during the life of the testator.

Upon the hearing on the petition for allowance of such will, or thereafter prior to allowance of the final account, upon special petition alleging the facts and after such reasonable notice as the judge of probate may order, evidence may be offered in the pro-

bate court and the judge of probate may determine as a fact that such omission was intentional or was not occasioned by mistake or that such child or issue had a due proportion of the estate during the life of the testator, from which decree an appeal will be to the supreme court of probate. Upon final judgment being entered, such child or issue shall be thereupon barred from claiming his said share in the testator's estate. A copy of such decree shall be filed in the registry of deeds in each county or district where real estate affected by it is located.

R.S.1954, c. 169, § 9.

§ 1006. Contribution to loss by devisee

When a share of the testator's estate descends as provided in sections 1004 and 1005, the person taking it is liable to contribute, and may claim contribution, as provided in section 1853.

R.S.1954, c. 169, § 11.

§ 1007. When one cannot contribute, loss borne by others

When a person, liable to contribute as provided in section 1853, cannot pay his proportion, the others bear the loss, each in proportion to the value of the property received by him. If anyone liable to contribute dies without having paid his proportion, his executor or administrator is liable therefor as for a debt of the deceased.

R.S.1954, c. 169, § 12.

§ 1008. Rights of heirs of deceased devisees

When a relative of the testator, having a devise of real or personal estate, dies before the testator, leaving lineal descendants, they take such estate as would have been taken by such deceased relative if he had survived.

R.S.1954, c. 169, § 10.