

CHAPTER 524

UNIFORM PROBATE CODE

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524.2-101 INTESTATE ESTATE.

Except as provided in sections 525.14 and 525.145, and subject to the allowances provided in section 525.15, and the payment of the expenses of administration, funeral expenses, expenses of last illness, taxes, and debts, any part of the estate of a decedent not effectively disposed of by the decedent's will passes to the decedent's heirs as prescribed in sections 524.2-102 to 524.2-114.

History: 1985 c 250 s 1

NOTE: This section is effective for estates of decedents dying after December 31, 1986. See Laws 1985, chapter 250, section 28.

524.2-102 SHARE OF THE SPOUSE.

The intestate share of the surviving spouse is:

- (1) if there is no surviving issue of the decedent, the entire intestate estate;
- (2) if there are surviving issue all of whom are issue of the surviving spouse also, the first \$70,000, plus one-half of the balance of the intestate estate;
- (3) if there are surviving issue one or more of whom are not issue of the surviving spouse, one-half of the intestate estate.

History: 1985 c 250 s 2

NOTE: This section is effective for estates of decedents dying after December 31, 1986. See Laws 1985, chapter 250, section 28.

524.2-103 SHARE OF HEIRS OTHER THAN SURVIVING SPOUSE.

The part of the intestate estate not passing to the surviving spouse under section 524.2-102, or the entire intestate estate if there is no surviving spouse, passes as follows:

- (1) to the issue of the decedent; any who are children of the decedent take equally and others by representation;
- (2) if there is no surviving issue, to the parent or parents equally;
- (3) if there is no surviving issue or parent, to the issue of the parents or either of them by representation;
- (4) if there is no surviving issue, parent, or issue of a parent, to the next of kin in equal degree, except that when there are two or more collateral kindred in equal degree claiming through different ancestors, those who claim through the nearest ancestor shall take to the exclusion of those claiming through an ancestor more remote.

History: 1985 c 250 s 3

NOTE: This section is effective for estates of decedents dying after December 31, 1986. See Laws 1985, chapter 250, section 28.

524.2-104 REQUIREMENT THAT HEIR SURVIVE DECEDENT FOR 120 HOURS.

A person who fails to survive the decedent by 120 hours is deemed to have predeceased the decedent for purposes of descent of the homestead, exempt property and intestate succession, and the decedent's heirs are determined accordingly. If the time of death of the decedent or of the person who would otherwise be an heir, or the times of death of both, cannot be determined, and it cannot be established that the person who would otherwise be an heir has survived the decedent by 120 hours, it is deemed that the person failed to survive for the required period. This section is not to be applied where its application would result in a taking of intestate estate by the state under section 524.2-105.

History: 1985 c 250 s 4

NOTE: This section is effective for estates of decedents dying after December 31, 1986. See Laws 1985, chapter 250, section 28.

524.2-105 NO TAKER.

If there is no taker under the provisions of sections 524.2-102 to 524.2-114, the intestate estate passes to the state.

History: 1985 c 250 s 5

NOTE: This section is effective for estates of decedents dying after December 31, 1986. See Laws 1985, chapter 250, section 28.

524.2-106 REPRESENTATION.

If representation is called for by sections 524.2-102 to 524.2-114:

(1) In the case of issue of the decedent, the estate is divided into as many shares as there are surviving children of the decedent and deceased children who left issue who survive the decedent, each surviving child receiving one share and the share of each deceased child being divided among his or her issue in the same manner.

(2) In the case of issue of the parents of the decedent (other than issue of the decedent) the estate is divided into as many shares as there are surviving heirs in the nearest degree of kinship and deceased persons in the same degree who left issue who survived the decedent, each surviving heir in the nearest degree receiving one share and the share of each deceased person in the same degree being divided among his children, and the descendants of deceased children of him, in the same manner as specified in clause (1).

History: 1985 c 250 s 6

NOTE: This section is effective for estates of decedents dying after December 31, 1986. See Laws 1985, chapter 250, section 28.

524.2-107 DEGREE OF KINDRED AND KINDRED OF HALF BLOOD.

The degree of kindred shall be computed according to the rules of the civil law. Relatives of the half blood inherit the same share they would inherit if they were of the whole blood.

History: 1985 c 250 s 7

NOTE: This section is effective for estates of decedents dying after December 31, 1986. See Laws 1985, chapter 250, section 28.

524.2-108 AFTERBORN HEIRS.

Relatives of the decedent conceived before his death but born thereafter inherit as if they had been born in the lifetime of the decedent.

History: 1985 c 250 s 8

NOTE: This section is effective for estates of decedents dying after December 31, 1986. See Laws 1985, chapter 250, section 28.

524.2-109 MEANING OF CHILD AND RELATED TERMS.

If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person:

(1) An adopted person is the child of an adopting parent and not of the natural parents except that adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and that natural parent. If a parent dies and a child is subsequently adopted by a stepparent who is the spouse of a surviving parent, any rights of inheritance of the child or the child's issue from or through the deceased parent of the child which exist at the time of the death of that parent shall not be affected by the adoption.

(2) In cases not covered by clause (1), a person born out of wedlock is a child of the mother. That person is also a child of the father, if:

(i) the natural parents participated in a marriage ceremony before or after the birth of the child, even though the attempted marriage is void; or

(ii) the paternity is established by an adjudication or by acknowledgment, consent, or agreement pursuant to sections 257.51 to 257.74 before the death of the father or is established thereafter by clear and convincing proof, except that the paternity established under this clause is ineffective to qualify the father or his kindred to inherit from or through the child unless the father has openly treated the child as his, and has not refused to support the child.

History: 1985 c 250 s 9

NOTE: This section is effective for estates of decedents dying after December 31, 1986. See Laws 1985, chapter 250, section 28.

524.2-111 DEBTS TO DECEDENT.

A debt owed to the decedent is not charged against the intestate share of any person except the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's issue.

History: 1985 c 250 s 10

NOTE: This section is effective for estates of decedents dying after December 31, 1986. See Laws 1985, chapter 250, section 28.

524.2-112 ALIENAGE.

No person is disqualified to take as an heir because he or a person through whom he claims is or has been an alien.

History: 1985 c 250 s 11

NOTE: This section is effective for estates of decedents dying after December 31, 1986. See Laws 1985, chapter 250, section 28.

524.2-113 PERSONS RELATED TO DECEDENT THROUGH TWO LINES.

A person who is related to the decedent through two lines of relationship is entitled to only a single share based on the relationship which would entitle such person to the larger share.

History: 1985 c 250 s 12

NOTE: This section is effective for estates of decedents dying after December 31, 1986. See Laws 1985, chapter 250, section 28.

524.2-114 INSTRUMENTS REFERENCING INTESTACY LAWS.

If a maker has executed a will or other instrument on or before December 31, 1986, which directs disposition of all or part of the estate pursuant to the intestacy

laws of the state of Minnesota, the laws to be applied shall be in accordance with the laws of intestate succession in effect on or before December 31, 1986, unless the will or instrument directs otherwise.

History: 1985 c 250 s 13

NOTE: This section is effective for estates of decedents dying after December 31, 1986. See Laws 1985, chapter 250, section 28.

524.2-201 RIGHT TO ELECTIVE SHARE.

(a) If a married person domiciled in this state dies, the surviving spouse has a right of election to take an elective share of one-third of the augmented estate under the limitations and conditions hereinafter stated.

(b) If a married person not domiciled in this state dies, the right, if any, of the surviving spouse to take an elective share in property in this state is governed by the law of the decedent's domicile at death.

History: 1985 c 250 s 14

NOTE: This section is effective for estates of decedents dying after December 31, 1986. See Laws 1985, chapter 250, section 28.

524.2-202 AUGMENTED ESTATE.

The augmented estate means the estate reduced by funeral and administration expenses, the homestead, family allowances and exemptions, liens, mortgages, and enforceable claims, to which is added the sum of the following amounts:

(1) The value of property transferred by the decedent at any time during the marriage, to or for the benefit of any person other than the surviving spouse, to the extent that the decedent did not receive adequate and full consideration in money or money's worth for the transfer, if the transfer is of any of the following types:

(i) any transfer under which the decedent retained at the time of death the possession or enjoyment of, or right to income from, the property;

(ii) any transfer to the extent that the decedent retained at the time of death a power, either alone or in conjunction with any other person, to revoke or to consume, invade or dispose of the principal for his or her own benefit;

(iii) any transfer whereby property is held at the time of decedent's death by decedent and another with right of survivorship;

(iv) any transfer made within one year of death of the decedent to the extent that the aggregate transfers to any one donee in the year exceeds \$30,000.

Any transfer is excluded if made with the written consent or joinder of the surviving spouse. Property is valued as of the decedent's death except that property given irrevocably to a donee during lifetime of the decedent is valued as of the date the donee came into possession or enjoyment if that occurs first. Nothing in this section shall cause any life insurance, accident insurance, joint annuity, or pension or profit-sharing plan payable to a person other than the surviving spouse to be included in the augmented estate.

(2) The value of property owned by the surviving spouse at the decedent's death, plus the value of property transferred by the spouse at any time during marriage to any person other than the decedent which would have been includable in the spouse's augmented estate if the surviving spouse had predeceased the decedent, to the extent the owned or transferred property is derived from the decedent by any means other than testate or intestate succession or as an obligation of support without a full consideration in money or money's worth. For purposes of this clause:

(i) Property derived from the decedent includes, but is not limited to, any beneficial interest of the surviving spouse in a trust created by the decedent during

the decedent's lifetime, any property appointed to the spouse by the decedent's exercise of a general or special power of appointment also exercisable in favor of others than the spouse, any property held at the time of decedent's death by decedent and the surviving spouse with right of survivorship, any property held by decedent and transferred by contract to the surviving spouse by reason of the decedent's death, and the value of the share of the surviving spouse resulting from rights in community property in this or any other state formerly owned with the decedent. The augmented estate does not include the proceeds of life insurance payable upon the death of the decedent, in lump sum or in the form of an annuity, accident insurance, joint annuity or pension or profit-sharing plan, nor does it include premiums paid therefor by the decedent or any other person.

(ii) Property owned by the spouse at the decedent's death is valued as of the date of death. Property transferred by the spouse is valued at the time the transfer became irrevocable, or at the decedent's death, whichever occurred first. Income earned by included property prior to the decedent's death is not treated as property derived from the decedent.

(iii) Property owned by the surviving spouse as of the decedent's death of the kind described in clause (2)(i) is presumed to have been derived from the decedent except to the extent that the surviving spouse establishes that it was derived from another source. All other property owned by the surviving spouse as of the decedent's death, or previously transferred by the surviving spouse, is presumed not to have been derived from the decedent except to the extent that an interested party establishes that it was derived from the decedent.

History: 1985 c 250 s 15

NOTE: This section is effective for estates of decedents dying after December 31, 1986. See Laws 1985, chapter 250, section 28.

524.2-203 RIGHT OF ELECTION PERSONAL TO SURVIVING SPOUSE.

The right of election of the surviving spouse may be exercised only during his lifetime by him. In the case of a protected person, the right of election may be exercised only by order of the court in which protective proceedings as to his property are pending, after finding (1) that exercise is necessary to provide adequate support for the protected person during his probable life expectancy and (2) that the election will be consistent with the best interests of the natural bounty of the protected person's affection.

History: 1985 c 250 s 16

NOTE: This section is effective for estates of decedents dying after December 31, 1986. See Laws 1985, chapter 250, section 28.

524.2-204 WAIVER OF RIGHT TO ELECT AND OF OTHER RIGHTS.

The right of election of a surviving spouse and the rights of the surviving spouse to the homestead, exempt property and family allowance, or any of them, may be waived, wholly or partially, after marriage, by a written contract, agreement or waiver signed by the party waiving after fair disclosure. Unless it provides to the contrary, a waiver of "all rights," or equivalent language, in the property or estate of a spouse is a waiver only of the right to elective share. Any waiver prior to marriage must be made pursuant to section 519.11.

History: 1985 c 250 s 17

524.2-205 PROCEEDING FOR ELECTIVE SHARE; TIME LIMIT.

(a) The surviving spouse may elect to take an elective share in the augmented net estate by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within nine months after the date of death, or within six months after the probate of the decedent's will, whichever limitation last expires. However, nonprobate transfers, described in section 524.2-202, clauses (1) and (3), shall not be included within the augmented estate for the purpose of computing the elective share, if the petition is filed later than nine months after death. The court may extend the time for election as it sees fit for cause shown by the surviving spouse before the time for election has expired.

(b) The surviving spouse shall give notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the augmented net estate whose interests will be affected by the taking of the elective share.

(c) The surviving spouse may withdraw his demand for an elective share at any time before entry of an order by the court determining the elective share.

(d) After notice and hearing, the court shall determine the amount of the elective share and shall order its payment from the assets of the augmented net estate or by contribution as appears appropriate under section 524.2-207. If it appears that a fund or property included in the augmented net estate has not come into the possession of the personal representative, or has been distributed by the personal representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than he would have been if relief had been secured against all persons subject to contribution.

(e) The order or judgment of the court may be enforced as necessary in suit for contribution or payment in other courts of this state or other jurisdictions.

History: 1985 c 250 s 18

NOTE: This section is effective for estates of decedents dying after December 31, 1986. See Laws 1985, chapter 250, section 28.

524.2-206 EFFECT OF ELECTION ON BENEFITS BY WILL OR STATUTE.

A surviving spouse is entitled to the allowances provided in section 525.15 whether or not he or she elects to take an elective share.

History: 1985 c 250 s 19

NOTE: This section is effective for estates of decedents dying after December 31, 1986. See Laws 1985, chapter 250, section 28.

524.2-207 CHARGING SPOUSE WITH GIFTS RECEIVED; LIABILITY OF OTHERS FOR BALANCE OF ELECTIVE SHARE.

(a) In the proceeding for an elective share, values included in the augmented estate which pass or have passed to the surviving spouse, or which would have passed to the surviving spouse but were renounced, are applied first to satisfy the elective share and to reduce any contributions due from other recipients of transfers included in the augmented estate. For purposes of this paragraph, the electing spouse's beneficial interest in any life estate or in any trust shall be computed as if

worth one-half of the total value of the property subject to the life estate, or of the trust estate, unless higher or lower values for these interests are established by proof.

(b) Remaining property of the augmented estate is so applied that liability for the balance of the elective share of the surviving spouse is equitably apportioned among the recipients of the augmented estate in proportion to the value of their interests therein.

(c) Only original transferees from, or appointees of, the decedent and their donees, to the extent the donees have the property or its proceeds, are subject to the contribution to make up the elective share of the surviving spouse. A person liable to contribution may choose to give up the property transferred to him or to pay its value as of the time it is considered in computing the augmented estate.

History: 1985 c 250 s 20

NOTE: This section is effective for estates of decedents dying after December 31, 1986. See Laws 1985, chapter 250, section 28.

524.2-301 OMITTED SPOUSE.

(a) If a testator fails to provide by will for his surviving spouse who married the testator after the execution of the will, the omitted spouse shall receive the same share of the estate he would have received if the decedent left no will unless it appears from the will that the omission was intentional or the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

(b) In satisfying a share provided by this section, the devises made by the will abate as provided in section 524.3-902.

History: 1985 c 250 s 21

NOTE: This section is effective for estates of decedents dying after December 31, 1986. See Laws 1985, chapter 250, section 28.

524.2-302 PRETERMITTED CHILDREN.

(a) If a testator fails to provide in his will for any of his children born or adopted after the execution of his will, the omitted child receives a share in the estate equal in value to that which he would have received if the testator had died intestate unless:

(1) it appears from the will that the omission was intentional;

(2) when the will was executed the testator had one or more children and devised substantially all his estate to the other parent of the omitted child; or

(3) the testator provided for the child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

(b) If at the time of execution of the will the testator fails to provide in his will for a living child solely because he believes the child to be dead, the child receives a share in the estate equal in value to that which he would have received if the testator had died intestate.

(c) In satisfying a share provided by this section, the devises made by the will abate as provided in section 524.3-902.

History: 1985 c 250 s 22

NOTE: This section is effective for estates of decedents dying after December 31, 1986. See Laws 1985, chapter 250, section 28.

524.3-913 DISTRIBUTIONS TO TRUSTEE.

Qualification by a court of a testamentary trustee is not required before distributions can be made by a personal representative to the trustee, unless

qualification is expressly requested by will or demanded by an interested person as follows:

- (1) by written demand delivered or mailed to the personal representative, or
- (2) by petition to the court having jurisdiction over the probate estate.

If demand is made, the personal representative shall require proof of qualification of the trustee in a court of competent jurisdiction and the personal representative shall not make distributions to the trustee until the trustee is qualified by the court.

History: 1985 c 10 s 1

524.3-1202 EFFECT OF AFFIDAVIT.

The person paying, delivering, transferring, or issuing personal property or the evidence thereof pursuant to affidavit is discharged and released to the same extent as if he dealt with a personal representative of the decedent. He is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit. If any person to whom an affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled thereto. Any person to whom payment, delivery, transfer or issuance is made is answerable and accountable therefor to any personal representative of the estate or to any other person having a superior right.

History: 1Sp1985 c 14 art 13 s 13