

CHAPTER 524

UNIFORM PROBATE CODE

524.2-202 Augmented estate.
524.3-805 Classification of claims.

524.3-1201 Collection of personal property by affidavit.

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, other than the homestead, 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 personal 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.

Notwithstanding the provisions of (i) to (iv), the augmented estate includes the proceeds of property described in clause (3) only to the extent provided in clause (3).

(2) The value of property, other than the homestead, 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 proceeds of insurance, including accidental death benefits, on the life of the decedent attributable to premiums paid by the decedent; any lump sum immediately payable and the commuted value of the proceeds of annuity contracts under which the decedent was the primary annuitant attributable to premiums paid by the decedent; the commuted value of amounts payable after the decedent's death under any public or private pension, disability compensation, benefit, or retirement plan or account, excluding federal social security and tier 1 railroad retirement benefits, by reason of service performed, disabilities incurred, or deposits made by the decedent; 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.

(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.

(3) The value of property paid to, or for the benefit of, a person other than the surviving spouse as a result of the decedent's death if the property is any of the following types:

(i) proceeds of insurance, including accidental death benefits attributable to premiums paid by the decedent during the marriage except that: (a) if an enforceable claim satisfied with proceeds of insurance on the decedent's life is not deducted in computing the augmented estate, the proceeds must not be included separately; (b) if the value of a business interest is included in the augmented estate, the proceeds of insurance on the decedent's life that are paid to the business or are applied in performance of a purchase agreement relating to the business interest must not be included separately; (c) if the decedent was required by a decree or order dissolving a prior marriage to pay premiums on insurance on the decedent's life for the benefit of specified persons, the proceeds of that insurance must not be included separately; and (d) in other similar cases the proceeds of insurance must not be included separately;

(ii) a lump sum immediately payable, or the commuted value of the proceeds of annuity contracts under which the decedent was the primary annuitant attributable to premiums paid by the decedent during the marriage; or

(iii) the commuted value of amounts payable after the decedent's death under any public or private pension, disability compensation, benefit, or retirement plan or account, excluding federal social security and tier 1 railroad retirement benefits, by reason of service performed, disabilities incurred, or deposits made by the decedent, attributable to premiums or contributions paid by the decedent during the marriage.

For purposes of this clause, premiums or contributions paid by the decedent's employer, the decedent's partner, a partnership of which the decedent was a member, or the decedent's creditors, are deemed to have been paid by the decedent, and any amounts otherwise includable in the augmented estate are excluded if made with the written consent or joinder of the surviving spouse.

Unless the payer of the property has received written notice of intention to file a petition for the elective share, the property may be paid, upon request and satisfactory proof of the decedent's death, to the designated beneficiary of the property. Payment made discharges the payer from all claims for the amounts paid. This does not extend to payments made after the payer has received written notice of intention to file a petition for the elective share. Unless the notice is withdrawn by the surviving spouse, the surviving spouse must concur in any demand for withdrawal.

For an insurer, the written notice of intention to file a petition for the elective share must be mailed to its home office by registered mail, return receipt requested, or served upon the insurer in the same manner as a summons in a civil action. Upon receipt of written notice of intention to file a petition for the elective share, an insurer may pay any amounts owed by it specified in clause (3) to the court in which the probate proceedings relating to the estate of the decedent are venued, or if no proceedings have been commenced, to the court having jurisdiction of decedents' estates located in the county of the insured's residence. The court shall hold the funds and, upon its determination under section 524.2-205, subsection (d), shall order its disbursement in accordance with the determination. If no petition is filed in the court within the

specified time under section 524.2-205, subsection (a), or if filed, the demand for an elective share is withdrawn under section 524.2-205, subsection (c), the court shall order disbursement to the designated beneficiary. Payment made to the court discharges the insurer from all claims for the amounts paid.

Upon petition to the probate court by the designated beneficiary, the court may order that all or part of the property be paid to the designated beneficiary in an amount and subject to conditions consistent with this section.

History: 1987 c 210 s 4

524.3-805 CLASSIFICATION OF CLAIMS.

(a) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

- (1) costs and expenses of administration;
- (2) reasonable funeral expenses;
- (3) debts and taxes with preference under federal law;
- (4) reasonable and necessary medical, hospital, or nursing home expenses of the last illness of the decedent, including compensation of persons attending the decedent and including a claim filed pursuant to section 256B.15;
- (5) reasonable and necessary medical, hospital, and nursing home expenses for the care of the decedent during the year immediately preceding death;
- (6) debts with preference under other laws of this state, and state taxes;
- (7) all other claims.

(b) No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due, except that if claims for expenses of the last illness involve only claims filed under section 246.53 for costs of state hospital care and claims filed under section 256B.15, claims filed under section 246.53 have preference over claims filed under section 256B.15.

History: 1987 c 325 s 2

524.3-1201 COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT.

(a) Thirty days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the successor of the decedent, or a county agency with a claim authorized by section 256B.15, upon being presented a certified death certificate of the decedent and an affidavit, in duplicate, made by or on behalf of the successor stating that:

- (1) the value of the entire probate estate, wherever located, less liens and encumbrances, does not exceed \$5,000;
- (2) 30 days have elapsed since the death of the decedent;
- (3) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and
- (4) the claiming successor is entitled to payment or delivery of the property.

(b) A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subsection (a).

(c) The claiming successor or county agency shall disburse the proceeds collected under this section to any person with a superior claim under section 524.3-805.

History: 1987 c 403 art 2 s 151