

IC 29-1-6

Chapter 6. Construction of Wills, Renunciation of Interests, and Determination of Heirship

IC 29-1-6-0.1

Application of certain amendments to chapter

Sec. 0.1. The amendments made to section 1 of this chapter by P.L.118-1997 do not apply to an individual whose death occurs before July 1, 1997.

As added by P.L.220-2011, SEC.469.

IC 29-1-6-1

Construction of wills; rules

Sec. 1. In the absence of a contrary intent appearing in the will, wills shall be construed as to real and personal estate in accordance with the rules in this section.

(a) Any estate, right, or interest in land or other things acquired by the testator after the making of the testator's will shall pass as if title was vested in the testator at the time of making of the will.

(b) All devises of real estate shall pass the whole estate of the testator in the premises devised, although there are no words of inheritance or of perpetuity, whether or not at the time of the execution of the will the decedent was the owner of that particular interest in the real estate devised. Such devise shall also pass any interest which the testator may have at the time of the testator's death as vendor under a contract for the sale of such real estate.

(c) A devise of real or personal estate, whether directly or in trust, to the testator's or another designated person's "heirs", "next of kin", "relatives", or "family", or to "the persons thereunto entitled under the intestate laws" or to persons described by words of similar import, shall mean those persons (including the spouse) who would take under the intestate laws if the testator or other designated person were to die intestate at the time when such class is to be ascertained, domiciled in this state, and owning the estate so devised. With respect to a devise which does not take effect at the testator's death, the time when such class is to be ascertained shall be the time when the devise is to take effect in enjoyment.

(d) In construing a will making a devise to a person or persons described by relationship to the testator or to another, any person adopted prior to the person's twenty-first birthday before the death of the testator shall be considered the child of the adopting parent or parents and not the child of the natural or previous adopting parents. However, if a natural parent or previous adopting parent marries the adopting parent before the testator's death, the adopted person shall also be considered the child of such natural or previous adopting parent. Any person adopted after the person's twenty-first birthday by the testator shall be considered the child of the testator, but no other person shall be entitled to establish relationship to the testator through such child.

(e) In construing a will making a devise to a person described by

relationship to the testator or to another, a person born out of wedlock shall be considered the child of the child's mother, and also of the child's father, if, but only if, the child's right to inherit from the child's father is, or has been, established in the manner provided in IC 29-1-2-7.

(f) A will shall not operate as the exercise of a power of appointment which the testator may have with respect to any real or personal estate, unless by its terms the will specifically indicates that the testator intended to exercise the power.

(g) If a devise of real or personal property, not included in the residuary clause of the will, is void, is revoked, or lapses, it shall become a part of the residue, and shall pass to the residuary devisee. Whenever any estate, real or personal, shall be devised to any descendant of the testator, and such devisee shall die during the lifetime of the testator, whether before or after the execution of the will, leaving a descendant who shall survive such testator, such devise shall not lapse, but the property so devised shall vest in the surviving descendant of the devisee as if such devisee had survived the testator and died intestate. The word "descendant", as used in this section, includes children adopted during minority by the testator and by the testator's descendants and includes descendants of such adopted children. "Descendant" also includes children of the mother who are born out of wedlock, and children of the father who are born out of wedlock, if, but only if, such child's right to inherit from such father is, or has been, established in the manner provided in IC 29-1-2-7. This rule applies where the parent is a descendant of the testator as well as where the parent is the testator. Descendants of such children shall also be included.

(h) Except as provided in subsection (m), if a testator in the testator's will refers to a writing of any kind, such writing, whether subsequently amended or revoked, as it existed at the time of execution of the will, shall be given the same effect as if set forth at length in the will, if such writing is clearly identified in the will and is in existence both at the time of the execution of the will and at the testator's death.

(i) If a testator devises real or personal property upon such terms that the testator's intentions with respect to such devise can be determined at the testator's death only by reference to a fact or an event independent of the will, such devise shall be valid and effective if the testator's intention can be clearly ascertained by taking into consideration such fact or event even though occurring after the execution of the will.

(j) If a testator devises or bequeaths property to be added to a trust or trust fund which is clearly identified in the testator's will and which trust is in existence at the time of the death of the testator, such devise or bequest shall be valid and effective. Unless the will provides otherwise, the property so devised or bequeathed shall be subject to the terms and provisions of the instrument or instruments creating or governing the trust or trust fund, including any amendments or modifications in writing made at any time before or

after the execution of the will and before or after the death of the testator.

(k) If a testator devises securities in a will and the testator then owned securities that meet the description in the will, the devise includes additional securities owned by the testator at death to the extent the additional securities were acquired by the testator after the will was executed as a result of the testator's ownership of the described securities and are securities of any of the following types:

- (1) Securities of the same organization acquired because of an action initiated by the organization or any successor, related, or acquiring organization, excluding any security acquired by exercise of purchase options.
- (2) Securities of another organization acquired as a result of a merger, consolidation, reorganization, or other distribution by the organization or any successor, related, or acquiring organization.
- (3) Securities of the same organization acquired as a result of a plan of reinvestment.

Distributions in cash before death with respect to a described security are not part of the devise.

(l) For purposes of this subsection, "incapacitated principal" means a principal who is an incapacitated person. An adjudication of incapacity before death is not necessary. The acts of an agent within the authority of a durable power of attorney are presumed to be for an incapacitated principal. If:

- (1) specifically devised property is sold or mortgaged by; or
- (2) a condemnation award, insurance proceeds, or recovery for injury to specifically devised property are paid to;

a guardian or an agent acting within the authority of a durable power of attorney for an incapacitated principal, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the amount of the unpaid loan, the condemnation award, the insurance proceeds, or the recovery.

(m) A written statement or list that:

- (1) complies with this subsection; and
- (2) is referred to in a will;

may be used to dispose of items of tangible personal property, other than property used in a trade or business, not otherwise specifically disposed of by the will. To be admissible under this subsection as evidence of the intended disposition, the writing must be signed by the testator and must describe the items and the beneficiaries with reasonable certainty. The writing may be prepared before or after the execution of the will. The writing may be altered by the testator after the writing is prepared. The writing may have no significance apart from the writing's effect on the dispositions made by the will. If more than one (1) otherwise effective writing exists, then, to the extent of a conflict among the writings, the provisions of the most recent writing revoke the inconsistent provisions of each earlier writing.

(n) A will of a decedent who dies after December 31, 2009, and before January 1, 2011, that contains a formula referring to:

- (1) the unified credit;
 - (2) the estate tax exemption;
 - (3) the applicable credit amount;
 - (4) the applicable exclusion amount;
 - (5) the generation-skipping transfer tax exemption;
 - (6) the GST exemption;
 - (7) the marital deduction;
 - (8) the maximum marital deduction;
 - (9) the unlimited marital deduction;
 - (10) the inclusion ratio;
 - (11) the applicable fraction;
 - (12) any section of the Internal Revenue Code:
 - (A) relating to the:
 - (i) federal estate tax; or
 - (ii) generation-skipping transfer tax; and
 - (B) that measures a share of:
 - (i) an estate; or
 - (ii) a trust;based on the amount that can pass free of federal estate taxes or the amount that can pass free of federal generation-skipping transfer tax law; or
 - (13) a provision of federal estate tax or generation-skipping transfer tax law that is similar to subdivisions (1) through (12);
- refers to the federal estate tax and generation-skipping transfer tax laws as they applied with respect to estates of decedents on December 31, 2009.

(o) Subsection (n) does not apply to a will:

- (1) that is executed or amended after December 31, 2009; or
- (2) that manifests an intent that a contrary rule apply if the decedent dies on a date on which there is no then applicable federal estate or generation-skipping transfer tax.

(p) If the federal estate or generation-skipping transfer tax becomes effective before January 1, 2011, the reference to January 1, 2011, in subsection (n) shall refer instead to the first date on which the tax becomes legally effective.

(q) Within three (3) months following the latest to occur of the:

- (1) decedent's death;
- (2) fiduciary's appointment; or
- (3) enactment of this subsection;

the personal representative under a will to which subsection (n) applies shall give written notice to the affected beneficiary of the right to commence a proceeding under subsection (r) and to the present income beneficiary of any trust created under the will of the existence of this section and the beneficiary's right to commence a proceeding under subsection (r).

(r) The personal representative or an affected beneficiary under a will described in subsection (n) may initiate a proceeding to determine whether the decedent intended that a formula described in subsection (n) be construed with respect to the law as it existed after December 31, 2009. A proceeding under this subsection must be

commenced within nine (9) months after the death of the testator or grantor.

(Formerly: Acts 1953, c.112, s.601; Acts 1967, c.77, s.1; Acts 1973, P.L.287, SEC.4.) As amended by P.L.152-1987, SEC.10; P.L.118-1997, SEC.12; P.L.238-2005, SEC.8; P.L.6-2010, SEC.6; P.L.36-2011, SEC.3.

IC 29-1-6-2

Contest of wills; admission prevented; forfeiture of benefits

Sec. 2. If, in any will admitted to probate in any of the courts of this state, there is a provision or provisions providing that if any beneficiary thereunder shall take any proceeding to contest such will or to prevent the admission thereof to probate, or provisions to that effect, such beneficiary shall thereby forfeit any benefit which said will made for said beneficiary, such provision or provisions shall be void and of no force or effect.

(Formerly: Acts 1953, c.112, s.602.)

IC 29-1-6-3

Restraint of marriage

Sec. 3. A devise to a spouse with a condition in restraint of marriage shall stand, but the condition shall be void.

(Formerly: Acts 1953, c.112, s.603.)

IC 29-1-6-4

Repealed

(Repealed by P.L.293-1983, SEC.2.)

IC 29-1-6-5

Construction of wills; petition

Sec. 5. The court in which a will is probated shall have jurisdiction to construe it. Such construction may be made on a petition of the personal representative or of any other person interested in the will; or, if a construction of the will is necessary to the determination of an issue properly before the court, the court may construe the will in connection with the determination of such issue. When a petition for the construction of a will is filed during administration of the estate, notice of the hearing thereon shall be given to interested persons. If the estate has been closed prior to the filing of such petition, notice shall be given as in civil actions.

(Formerly: Acts 1953, c.112, s.605.)

IC 29-1-6-6

Determination of heirship; good faith purchasers

Sec. 6. (a) At any time during the administration of a decedent's estate, the personal representative or any interested person may petition the court to determine the heirs of said decedent and their respective interests in the estate or any part thereof. Upon the filing of the petition the court shall fix the time for the hearing thereof, notice of which shall be given to all persons known or believed to

claim or have any interest in the estate or any part thereof as heir or through an heir of the decedent. In addition, notice by publication shall be given to all unknown heirs of the decedent.

(b) Upon the hearing of the petition, heirship may be determined by competent evidence or, if there be no objection, by affidavit. A record shall be made of all oral evidence, and such record and all affidavits shall remain as part of the files in the estate proceeding.

(c) Upon satisfactory proof the court shall make a decree determining the heirs of the decedent and their respective interests in the estate or any part thereof.

(d) The decree of court as provided in subsection (c) shall be conclusive of the facts determined therein on any interested person who has been notified personally or by mail in accordance with the provisions of this article, subject to the right of appeal.

(e) All acts of the personal representative which were lawful when performed according to the facts determined by the decree as provided in subsection (c) shall be valid insofar as concerns the rights and liability of a purchaser, lessee or other person dealing with the personal representative for value and in good faith and insofar as concerns a personal representative who has acted in good faith.

(Formerly: Acts 1953, c.112, s.606.) As amended by Acts 1982, P.L.171, SEC.18.

IC 29-1-6-7

Repealed

(Repealed by P.L.1-1989, SEC.75.)