

OKLAHOMA STATUTES
TITLE 84. WILLS AND SUCCESSION

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§84-1. Legacies classed.

Legacies are distinguished and designated, according to their nature, as follows:

1. A legacy of a particular thing, specified and distinguished from all others of the same kind belonging to the testator is specific; if such legacy fails, resort cannot be had to the other property of the testator.

2. A legacy is demonstrative when the particular fund or personal property is pointed out from which it is to be taken or paid; if such fund or property fails in whole or in part, resort may be had to the general assets as in case of a general legacy.

3. An annuity is a bequest of certain specified sums periodically; if the fund or property out of which they are payable fails, resort may be had to the general assets, as in case of a general legacy.

4. A residuary legacy embraces only that which remains after all the bequests of the will are discharged.

5. All other legacies are general legacies. R.L. 1910, Sec. 8317.

R.L.1910, § 8317.

§84-2. All property of interstate subject to debts.

When a person dies intestate, all his property, real and personal, without any distinction between them, is chargeable with the payment of his debts, except as otherwise provided in this code and under civil procedure. R.L. 1910, Sec. 8318.

R.L.1910, § 8336.

§84-3. Order of resort to property for payment of debts, administration expenses and allowances.

The property of a testator, except as otherwise especially provided in this code and in the chapter on civil procedure must be resorted to for the payment of debts in the following order:

1. The property which is expressly appropriated by the will for the payment of the debts.

2. Property not disposed of by the will.

3. Property which is devised or bequeathed to a residuary legatee.

4. Property which is not specifically devised or bequeathed, and,

5. All other property ratably. Before any debts are paid, the expenses of the administration and the allowance to the family must be paid or provided for.

R.L.1910, § 8319.

§84-4. Order of resort to property for payment of legacies.

The property of a testator, except as otherwise specially provided in this code and under civil procedure, must be resorted to for the payment of legacies in the following order:

1. The property which is expressly appropriated by the will for the payment of the legacies.

2. Property not disposed of by the will.

3. Property which is devised or bequeathed to a residuary legatee.

4. Property which is specifically devised or bequeathed.

R.L.1910, § 8320.

§84-5. Preferred legacies.

Legacies to husband, widow or kindred of any class, are chargeable only after legacies to persons not related to the testator.

R.L.1910, § 8321.

§84-6. Abatement takes effect how.

Abatement takes place in any class only as between legacies of that class, unless a different intention is expressed in the will.

R.L.1910, § 8322.

§84-7. Title and possession - Representative may sell property devised.

In a specific devise or legacy, the title passes by the will, but possession can only be obtained from the personal representative; and he may be authorized by the district court to sell the property devised or bequeathed, in the cases herein provided.

R.L.1910, § 8323.

§84-8. Claim under heir against devisee - Probate proceedings.

The rights of a purchaser or encumbrancer of real property in good faith, and for value, derived from any person claiming the same by succession, are not impaired by any devise made by the decedent

from whom succession is claimed, unless the instrument containing such devise has been duly admitted to probate by a court of this state having jurisdiction to administer upon the estate of the decedent within two (2) years after the death of the decedent, or unless within one (1) year after the death of the decedent a petition to admit said will to probate has been duly filed in the court of this state having jurisdiction to admit said will to probate and the proceedings have been pursued by the petitioner with diligence. R.L.1910, § 8324; Laws 1967, c. 233, § 1, emerg. eff. May 4, 1967.

§84-9. Succession to limited legacies - Inventory of property.

Where specific legacies are for life only, the first legatees must sign and deliver to the second legatee, or, if there is none, to the personal representative, an inventory of the property, expressing that the same is in his custody for life only, and that, on his decease, it is to be delivered and to remain to the use and for the benefit of the second legatee, or to the personal representative as the case may be.

R.L.1910, § 8325.

§84-10. Bequest of interest or income begins at death.

In case of a bequest of the interest or income of a certain sum or fund, the income accrues from the testator's death. R.L.1910, Sec. 8326.

R.L.1910, § 8326.

§84-11. Satisfaction of legacy before death.

A legacy, or a gift in contemplation, fear or peril of death, may be satisfied before death.

R.L.1910, § 8327.

§84-12. Legacies due, when - Annuities.

Legacies are due and deliverable at the expiration of one (1) year after the testator's decease. Annuities commence at the testator's decease.

R.L.1910, § 8328.

§84-13. Interest on legacies.

Legacies bear interest from the time when they are due and payable, except that legacies for maintenance, or to the testator's widow, bear interest from the testator's decease. R.L. 1910, Sec. 8329.

R.L.1910, § 8329.

§84-14. Intention of testator controls.

The four preceding sections are in all cases to be controlled by a testator's express intention. R.L. 1910, Sec. 8330.

R.L.1910, § 8330.

§84-15. Testator's intention as to executor.

Where it appears by the terms of a will that it was the intention of the testator to commit the execution thereof and the administration of his estate to any person as executor, such person although not named executor, is entitled to letters testamentary in like manner as if he had been named executor. R.L. 1910, Sec. 8331. R.L.1910, § 8331.

§84-16. Executor may not appoint executor.

An authority to an executor to appoint an executor, is void. R.L. 1910, Sec. 8332. R.L.1910, § 8332.

§84-17. Executor's power begins, when - Payment of funeral charges, etc.

No person has any power, as an executor, until he qualifies, except that, before letters have been issued, he may pay funeral charges and take necessary measures for the preservation of the estate. R.L. 1910, Sec. 8333. R.L.1910, § 8333.

§84-18. Power of executor of executor.

No executor of an executor, as such, has any power over the estate of the first testator. R.L. 1910, Sec. 8334. R.L.1910, § 8410.

§84-19. Will includes codicils.

The term "will," as used in this chapter, includes all codicils as well as wills. R.L. 1910, Sec. 8335. R.L.1910, § 8335.

§84-20. Law governing validity and interpretation of wills.

Except as otherwise provided, the validity and interpretation of wills is governed, when relating to real property within this state, by the law of this state; when relating to personal property, by the law of the testator's domicile. R.L.1910, § 8336.

§84-21. Liability of beneficiaries.

Those to whom property is given by will are liable for the obligations of the testator in the cases and to the extent prescribed by the chapter on civil procedure, or the statutes in such case made and provided. R.L. 1910, Sec. 8337. R.L.1910, § 8337.

§84-22. Disclaimer of interests passing by will, intestate succession, etc. - Definitions

As used in this act, unless otherwise clearly required by the context:

1. "Beneficiary" means and includes any person entitled, but for his disclaimer, to take an interest, by intestate succession; by devise; by legacy or bequest; by succession of a disclaimed interest by will, intestate succession or through the exercise or nonexercise of a testamentary power of appointment; by virtue of a renunciation and election to take against a will; as beneficiary of a testamentary trust; pursuant to the exercise or nonexercise of a testamentary power of appointment; as donee of a power of appointment created by testamentary instrument; or otherwise under a testamentary instrument;

2. "Interest" means and includes the whole of any property, real or personal, legal or equitable, or any fractional part, share or particular portion or specific assets thereof or any estate in any such property or power to appoint, consume, apply or expend property or any other right, power, privilege or immunity relating thereto; and

3. "Disclaimer" means a written instrument which declines, refuses, releases, renounces or disclaims an interest which would otherwise be succeeded to by a beneficiary, which instrument defines the nature and extent of the interest disclaimed thereby and which must be signed, witnessed and acknowledged by the disclaimant in the manner provided for deeds of real estate.

Added by Laws 1973, c. 158, § 1.

§84-23. Right to file disclaimer - Minor incompetent or deceased beneficiaries.

A beneficiary may disclaim any interest in whole or in part, or with reference to specific parts, shares or assets thereof, by filing a disclaimer in the manner hereinafter provided. A guardian, executor, administrator or other personal representative of the estate of a minor, incompetent or deceased beneficiary, if he deems it in the best interests of those interested in the estate of such beneficiary and of those who take the beneficiary's interest by virtue of the disclaimer and not detrimental to the best interests of the beneficiary, with or without an order of the probate court, may execute and file a disclaimer on behalf of the beneficiary within the time and in the manner in which the beneficiary himself could disclaim if he were living, of legal age and competent. A beneficiary likewise may execute and file a disclaimer by agent or attorney so empowered.

Laws 1973, c. 158, § 2.

§84-24. Time for filing disclaimer

Such disclaimer shall be filed at any time after the creation of the interest, but in all events within nine (9) months after the death of the person by whom the interest was created or from whom it would have been received, or, if the disclaimant is not finally ascertained as a beneficiary or his interest has not become indefeasibly fixed both in quality and quantity as of the death of such person, then such disclaimer shall be filed not later than nine (9) months after the event which would cause him so to become finally ascertained and his interest to become indefeasibly fixed both in quality and quantity.

Laws 1973, c. 158, § 3; Laws 1979, c. 25, § 2.

§84-25. Place of filing disclaimer - Delivery of copies - Interest in real estate.

Such disclaimer shall be effective upon being filed in the district court in which the estate of the person by whom the interest was created or from whom it would have been received is, or has been, administered or, if no probate administration has been commenced, then in the district court of any county provided in Oklahoma Statutes as the place for probate administration of the estate of such person. A copy of the disclaimer shall be delivered or mailed to the representative, trustee or other person having legal title to, or possession of, the property in which the interest disclaimed exists, and no such representative, trustee or person shall be liable for any otherwise proper distribution or other disposition made without actual notice of the disclaimer. If an interest in or relating to real estate is disclaimed the original of the disclaimer, or a copy of the disclaimer certified as true and complete by the clerk of the district court wherein the same has been filed, shall be filed in the office of the county clerk in the county or counties where the real estate is situated and shall constitute notice to all persons only from and after the time of such filing.

Added by Laws 1973, c. 158, § 4.

§84-26. Disposition of interest disclaimed.

Unless the person by whom the interest was created or from whom it would have been received has otherwise provided by will or other appropriate instrument with reference to the possibility of a disclaimer by the beneficiary, the interest disclaimed shall descend, be distributed or otherwise be disposed of in the same manner as if the disclaimant had died immediately preceding the death or other event which causes him to become finally ascertained as a beneficiary and his interest to become indefeasibly fixed both in quality and quantity, and, in any case, the disclaimer shall relate for all purposes to such date, whether filed before or after such death or other event. However, one disclaiming an interest in a nonresiduary gift, devise or bequest shall not be excluded, unless his disclaimer

so provides, from sharing in a gift, devise or bequest of the residue even though, through lapse, such residue includes the assets disclaimed. An interest of any nature in or to the estate of an intestate may be declined, refused or disclaimed as herein provided without ever vesting in the disclaimant.

Added by Laws 1973, c. 158, § 5.

§84-27. Uniform Fraudulent Conveyance Act not abrogated - Bar on right to disclaim in certain cases.

Nothing included in this act shall be deemed to amend, repeal or abrogate in any manner Title 24 O.S. 1971, Sections 101 through 111, inclusive. Any voluntary assignment or transfer of, or contract to assign or transfer, an interest in real or personal property, or written waiver of the right to disclaim the succession to an interest in real or personal property, by any beneficiary, or any sale or other disposition of an interest in real or personal property pursuant to judicial process, made before he has filed a disclaimer, as herein provided, bars the right otherwise hereby conferred on such beneficiary to disclaim as to such interest.

Added by Laws 1973, c. 158, § 6.

§84-28. Spendthrift provisions - Binding effect of disclaimer - Spouse of disclaimant.

The right to disclaim granted by this act shall exist irrespective of any limitation imposed on the interest of the disclaimant in the nature of an express or implied spendthrift provision or similar restriction. A disclaimer, when filed as provided in this act, or a written waiver of the right to disclaim, shall be binding upon the disclaimant or beneficiary so waiving and all parties thereafter claiming by, through or under him, except that a beneficiary so waiving may thereafter transfer, assign or release his interest if such is not prohibited by an express or implied spendthrift provision. If an interest in real estate is disclaimed and the disclaimer is duly filed in accordance with the provisions of Section 4 of this act, the spouse of the disclaimant, if such spouse has consented to the disclaimer in writing, shall thereupon be automatically debarred from any claim, right or interest in such real estate to which such spouse, except for such disclaimer, would have been entitled.

Added by Laws 1973, c. 158, § 7.

§84-29. Other rights not abridged.

This act shall not abridge the right of any person, apart from this act, under any existing or future statute or rule of law, to disclaim any interest or to assign, convey, release, renounce or otherwise dispose of any interest.

Added by Laws 1973, c. 158, § 8.

§84-30. Interest not fixed or finally ascertained - Right to disclaim.

Any interest which exists on the effective date of this act but which has not then become indefeasibly fixed both in quality and quantity, or the taker of which has not then become finally ascertained, may be thereafter disclaimed in the manner provided herein.

Added by Laws 1973, c. 158, § 9.

§84-31. Disclaimer of interest in trust - Conditions.

An interest in trust may be disclaimed by written instrument signed by the trustee and income beneficiary of the trust, without judicial approval and without liability of the trustee to persons having interest becoming effective after the death of the income beneficiary, but only if the interest disclaimed passes to the descendants of grantor. This provision shall not abridge or limit the right presently existing of a trustee or beneficiary to disclaim interest in trust.

Added by Laws 1982, c. 368, § 3, operative July 1, 1982.

§84-41. Persons who may make a will - Persons subject to guardianship or conservatorship.

A. Every person over the age of eighteen (18) years of sound mind may, by last will, dispose of all his estate, real and personal, and such estate not disposed of by will is succeeded to as provided in this title, being chargeable in both cases with the payment of all the decedent's debts, as provided in Title 12 of the Oklahoma Statutes.

B. The appointment of a guardian or a conservator does not prohibit a person from disposing of his estate, real and personal, by will; provided, that when any person subject to a guardianship or conservatorship shall dispose of such estate by will, such will must be subscribed and acknowledged in the presence of a judge of the district court. The judge before whom the will is subscribed and acknowledged shall attest to the execution of the will but shall have neither the duty nor the authority to approve or disapprove the contents of the will. Subscribing and acknowledging such will before a judge shall not render such will valid if it would otherwise be invalid.

R.L. 1910, § 8338; Laws 1982, c. 131, § 1, operative Oct. 1, 1982; Laws 1992, c. 395, § 13, eff. Sept. 1, 1992.

§84-42. Right of married woman.

A married woman may dispose of all her separate estate by will, without the consent of her husband, and may alter or revoke the will

in like manner as if she were single. Her will must be executed and proved in like manner as other wills.

R.L.1910, § 8339.

§84-43. Duress, menace, fraud, or undue influence - Revocation.

A will or part of a will procured to be made by duress, menace, fraud or undue influence, may be denied probate; and a revocation procured by the same means, may be declared void.

R.L.1910, § 8340.

§84-44. Property which may be disposed of - Election by surviving spouse - Homestead.

A. Every estate in property may be disposed of by will; provided however, that a will shall be subservient to any antenuptial marriage contract in writing; but no spouse shall bequeath or devise away from the other so much of the estate of the testator that the other spouse would receive less in value than would be obtained through succession by law; provided, however, that of the property not acquired by joint industry during coverture the testator be not required to devise or bequeath more than one-half (1/2) thereof in value to the surviving spouse; provided further, that no person shall by will dispose of property which could not be by the testator alienated, encumbered or conveyed while living, except that the homestead may be devised by one spouse to the other. This subsection shall not apply to the estate of a decedent who dies on or after July 1, 1985.

B. This subsection shall apply to the estate of a decedent who dies on or after July 1, 1985.

1. Every estate in property may be disposed of by will except that a will shall be subservient to any antenuptial marriage contract in writing. In addition, no spouse shall bequeath or devise away from the other so much of the estate of the testator that the other spouse would receive less in value than an undivided one-half (1/2) interest in the property acquired by the joint industry of the husband and wife during coverture. No person shall by will dispose of property which could not be by the testator alienated, encumbered or conveyed while living, except that the homestead may be devised by one spouse to the other.

2. The spouse of a decedent has a right of election to take the one-half (1/2) interest in the property as provided in paragraph 1 of this subsection in lieu of all devises, legacies and bequests for the benefit of the spouse contained in the last will and testament of the decedent.

3. If the surviving spouse desires to make the election provided in paragraph 2 of this subsection to take the property specified therein in lieu of all devises, legacies and bequests for the benefit of the surviving spouse contained in the last will and

testament of a decedent, then the surviving spouse shall make such election affirmatively in writing, which writing shall be filed in the district court in which the estate of the decedent is being administered on or before the final date for hearing of the petition for final distribution of the estate. The court clerk shall immediately mail a copy of such election to the personal representative of the estate and to all attorneys of record of the estate. Such written election of the surviving spouse shall be in the form of a writing separate from all other pleadings and documents filed in the district court in which the estate is being administered. Failure of the surviving spouse to substantially comply with the provisions of this subsection shall render the attempted election by the surviving spouse void and of no force or effect; provided that such failure shall not prohibit the surviving spouse from making a subsequent election within the allotted time period, which substantially complies with this subsection.

4. The right of election of the surviving spouse provided for in paragraph 2 of this subsection is personal to the surviving spouse and may be exercised only during the lifetime of the surviving spouse. However, if there has been a guardian or conservator duly appointed by a court of competent jurisdiction, and such court has judicially determined the surviving spouse to be incompetent, then such guardian or conservator may make the election on behalf of the surviving spouse, but only if the same is approved by the court having jurisdiction over such guardian or conservator. Further, a certified copy of the document or documents evidencing the appointment of such guardian or conservator for the surviving spouse, and a certified copy of the order of the applicable court approving such guardian's or conservator's making such election on behalf of the surviving spouse, shall be attached to the election, which shall also be in substantial compliance with the provisions of paragraph 3 of this subsection, or such election shall be void and of no force or effect. The guardian or conservator may be appointed in any state, and may have been appointed at any time prior to the expiration of the time permitted for the election to be made as provided in paragraph 3 of this subsection.

Amended by Laws 1984, c. 233, § 2, eff. July 1, 1985.

§84-45. Persons who may take under will - Exception as to corporation.

A testamentary disposition may be made to any person capable by law of taking the property so disposed of, except that no corporation can take under a will, unless expressly authorized by its charter or by statute so to take.

R.L.1910, § 8342.

§84-46. Nuncupative wills - Requisites.

To make a nuncupative will valid, and to entitle it to be admitted to probate, the following requisites must be observed:

1. The estate bequeathed must not exceed in value the sum of One Thousand Dollars (\$1,000.00).

2. It must be proved by two witnesses who were present at the making thereof, one of whom was asked by the testator at the time to bear witness that such was his will, or to that effect.

3. The decedent must at the time, have been in actual military service in the field, or doing duty on shipboard at sea, and in either case in actual contemplation, fear or peril of death, or the decedent must have been at the time in expectation of immediate death from an injury received the same day.

R.L.1910, § 8343.

§84-51. Nuncupative will need not be in writing.

A nuncupative will is not required to be in writing, nor to be declared or attested with any formalities.

R.L.1910, § 8344.

§84-52. Mutual will - Revocation.

A conjoint or mutual will is valid, but it may be revoked by any of the testators in like manner with any other will.

R.L.1910, § 8345.

§84-53. Probate of conditional will.

A will, the validity of which is made by its own terms conditional, may be denied probate, according to the event, with reference to the condition.

R.L.1910, § 8346.

§84-54. Holographic wills - Requisites.

A holographic will is one that is entirely written, dated and signed by the hand of the testator himself. It is subject to no other form, and may be made in or out of this State, and need not be witnessed.

R.L.1910, § 8347.

§84-55. Formal requisites in execution - Self-proved wills.

Every will, other than a nuncupative will, must be in writing; and every will, other than a holographic will and a nuncupative will, must be executed and attested as follows:

1. It must be subscribed at the end thereof by the testator himself, or some person, in his presence and by his direction, must subscribe his name thereto.

2. The subscription must be made in the presence of the attesting witnesses, or be acknowledged by the testator to them, to have been made by him or by his authority.

3. The testator must, at the time of subscribing or acknowledging the same, declare to the attesting witnesses that the instrument is his will.

4. There must be two attesting witnesses, each of whom must sign his name as a witness at the end of the will at the testator's request and in his presence.

5. Every will, other than a holographic and a nuncupative will, and every codicil to such will or to a holographic will may, at the time of execution or at any subsequent date during the lifetimes of the testator and the witnesses, be made self-proved, and the testimony of the witnesses in the probate thereof may be made unnecessary by:

- a. the acknowledgment thereof by the testator and the affidavits of the attesting witnesses, each made before an officer authorized to take acknowledgments to deeds of conveyance and to administer oaths under the laws of this state, such acknowledgments and affidavits being evidenced by the certificate, with official seal affixed, of such officer attached or annexed to such testamentary instrument in form and contents substantially as follows:

THE STATE OF OKLAHOMA

COUNTY OF _____

Before me, the undersigned authority, on this day personally appeared _____, _____, and _____, known to me to be the testator and the witnesses, respectively, whose names are subscribed to the annexed or foregoing instrument in their respective capacities, and, all of said persons being by me first duly sworn, said _____, testator, declared to me and to the said witnesses in my presence that said instrument is his last will and testament or a codicil to his last will and testament, and that he had willingly made and executed it as his free and voluntary act and deed for the purposes therein expressed; and the said witnesses, each on his oath stated to me, in the presence and hearing of the said testator, that the said testator had declared to them that said instrument is his last will and testament or codicil to his last will and testament, and that he executed same as such and wanted each of them to sign it as a witness; and upon their oaths each witness stated further that they did sign the same as witnesses in the presence of the said testator and at his request and that said testator was at that time eighteen (18) years of age or over and was of sound mind.

Testator

Witness (signature)

Name and Residence (printed)

Witness (signature)

Name and Residence (printed)

Subscribed and acknowledged before me by the said _____,
testator, and subscribed and sworn before me by the said _____,
and _____ witnesses, this _____ day of _____, A.D., _____.
(SEAL) (SIGNED) _____

(OFFICIAL CAPACITY
OF OFFICER); or

- b. the written declaration of the testator and the written
declarations of the attesting witnesses made in
substantially the following form:

We the undersigned are the testator and the witnesses,
respectively, whose names are subscribed to the annexed or foregoing
instrument in their respective capacities, and we do hereby declare
that said _____, testator, declared to said witnesses that said
instrument is his last will and testament or a codicil to his last
will and testament, and that he willingly made and executed it as his
free and voluntary act and deed for the purposes therein expressed;
and said witnesses further declare that the said testator declared to
them that said instrument is his last will and testament or codicil
to his last will and testament, and that he executed same as such and
wanted each of us to sign it as a witness; and that we did sign the
same as witnesses in the presence of the said testator and at his
request and that said testator was at that time eighteen (18) years
of age or over and was of sound mind, all of which we declare and
sign under penalty of perjury this _____ day of _____.

Testator _____

Witness (signature)

Name and Residence (printed)

Witness (signature)

Name and Residence (printed)

6. Any person falsely executing a written declaration as a
witness or misrepresenting his or her identity with the intent to
defraud another person pursuant to subparagraph b of paragraph 5 of
this subsection shall, upon conviction, be deemed guilty of the
felony of perjury and shall be subject to the penalties prescribed by
law.

7. A self-proved testamentary instrument shall be admitted to
probate without the testimony of any subscribing witness, unless

contested, but otherwise it shall be treated no differently than a will or codicil not self-proved. Furthermore, a self-proved testamentary instrument may be revoked or amended by a codicil in exactly the same fashion as a will or codicil not self-proved and such a testamentary instrument may be contested as a will not self-proved.

R.L. 1910, § 8348. Amended by Laws 1961, p. 636, § 1; Laws 1965, c. 11, § 1, emerg. eff. Feb. 10, 1965; Laws 1976, c. 46, § 1; Laws 1977, c. 58, § 1; Laws 1996, c. 107, § 1, eff. Nov. 1, 1996; Laws 1997, c. 133, § 597, eff. July 1, 1998.

§84-56. Method of witnessing a will.

A witness to a written will must write, with his name, his place of residence; and a person who subscribed the testator's name, by his direction, must write his own name as a witness to the will. But a violation of this section does not affect the validity of the will.
R.L.1910, § 8349.

§84-57. Codicil, effect of.

The execution of a codicil referring to a previous will has the effect to republish the will as modified by the codicil.
R.L.1910, § 8350.

§84-71. Law of place governs execution or revocation.

A will, or a revocation thereof, made out of this state by a person not having his domicile in this state; is as valid when executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, as if it were made in this state, and according to the provisions of this article.
R.L.1910, § 8351.

§84-72. Law must be followed in execution or revocation.

No will or revocation is valid unless executed either according to the provisions of this article, or according to the law of the place in which it was made, or in which the testator was at the time domiciled.
R.L.1910, § 8352.

§84-73. Change of domicile does not affect will.

Whenever a will or a revocation thereof is duly executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, the same is regulated as to the validity of its execution, by the law of such place, notwithstanding that the testator subsequently changed his domicile to a place, by the law of which such will would be void.
R.L.1910, § 8353.

§84-81. Wills deposited with judge of the district court.

Every judge of the district court must deposit in his office any will delivered to him for that purpose, and give a written receipt to the depositor; and must enclose such will in a sealed wrapper, so that it cannot be read, and endorse thereon the name of the testator, his residence, and the date of the deposit; and such wrapper must not be opened until its delivery under the provisions of the next section.

R.L.1910, § 8354.

§84-82. Delivery of deposited will.

A will deposited under the provisions of the last section must be delivered only:

1. To the testator in person.

2. Upon his written order, duly proved by the oath of a subscribing witness.

3. After his death, to the person, if any, name in the endorsement on the wrapper of the will; or,

4. If there is no such endorsement, and if the will was not deposited with the judge of the district court having jurisdiction of its probate, then to the judge of the district court who has jurisdiction.

R.L.1910, § 8355.

§84-83. Duty of judge having will on deposit after testator's death.

The judge of the district court with whom a will is deposited, or to whom it is delivered, must, after the death of the testator, publicly open and examine the will and file in his office, there to remain until duly proved, or to deliver it to the judge of the district court having jurisdiction of its probate.

R.L.1910, § 8356.

§84-91. Proof of lost or destroyed will

A lost or destroyed will of real or personal property, or both, may be established in the cases provided by law.

R.L.1910, § 8357.

§84-101. Revocation of wills.

Except in the cases in this article mentioned no written will, nor any part thereof, can be revoked or altered otherwise than:

1. By a written will or other writing of the testator, declaring such revocation or alteration, and executed with the same formalities with which a will should be executed by such testator; or,

2. By being burnt, torn, canceled, obliterated or destroyed, with intent and for the purpose of revoking the same, by the testator himself, or by some person in his presence and by his direction.

R.L.1910, § 8358.

§84-102. Proof of destruction.

When a will is canceled or destroyed by any other person than the testator, the direction of the testator, and the fact of such injury or destruction, must be proved by two witnesses. R.L. 1910, Sec. 8359.

R.L.1910, § 8359.

§84-103. Effect of alteration or partial erasure

A revocation by obliteration on the face of the will may be partial or total, and is complete if the material part is so obliterated as to show an intention to revoke; but where, in order to effect a new disposition the testator attempts to revoke a provision of the will by altering or obliterating it on the face thereof, such revocation is not valid unless the new disposition is legally effected. R.L. 1910, Sec. 8360.

R.L.1910, § 8361.

§84-104. Revocation of duplicate will.

The revocation of a will, executed in duplicate, may be made by revoking one of the duplicates.

R.L.1910, § 8361.

§84-105. Revocation by subsequent will.

A prior will is not revoked by a subsequent will, unless the latter contains an express revocation, or provisions wholly inconsistent with the terms of the former will; but in other cases the prior will remains effectual so far as consistent with the provisions of the subsequent will. R.L. 1910, Sec. 8362.

R.L.1910, § 8362.

§84-106. Revocation of subsequent will.

If, after making a will, the testator duly makes and executes a subsequent will, the destruction, canceling or revocation of the latter does not revive the former, unless it appears by the terms of such revocation that it was his intention to renew the former will, or unless after such destruction, canceling or revocation, he republishes the prior will. R.L. 1910, Sec. 8363.

R.L.1910, § 8363.

§84-109. Effect of sale of devised property.

An agreement made by a testator, for the sale or transfer of property disposed of by will previously made, does not revoke such disposal; but the property passes by the will, subject to the same remedies on the testator's agreement, for a specific performance or otherwise, against the devisees or legatees, as might be had against

the testator's successors, if the same had passed by succession. R.L. 1910, Sec. 8366.
R.L.1910, § 8366.

§84-110. Encumbrance not a revocation.

A charge or encumbrance upon any estate, for the purpose of securing the payment of money or the performance of any covenant or agreement, is not a revocation of any will relating to the same estate which was previously executed, but the devise and legacies therein contained must pass subject to such charge or encumbrance. R.L.1910, § 8367.

§84-111. Partial disposal not a revocation.

A conveyance, settlement, or other act of a testator, by which his interest in a thing previously disposed of by his will is altered, but not wholly divested, is not a revocation; but the will passes the property which would otherwise devolve by succession. R.L. 1910, Sec. 8368.
R.L.1910, § 8368.

§84-112. When intent to revoke expressed.

If the instrument by which an alteration is made in the testator's interest in a thing previously disposed of by his will, expresses his intent that it shall be a revocation, or if it contains provisions wholly inconsistent with the terms and nature of the testamentary disposition, it operates as a revocation thereof, unless such inconsistent provisions depend on a condition or contingency, by reason of which they do not take effect. R.L. 1910, Sec. 8369.
R.L.1910, § 8369.

§84-113. Codicils revoked with will.

The revocation of a will revokes all its codicils. R.L. 1910, Sec. 8370.
R.L.1910, § 8370.

§84-114. Divorce or annulment as revoking will.

A. If, after making a will, the testator is divorced, all provisions in such will in favor of the testator's spouse so divorced are thereby revoked. Annulment of the testator's marriage shall have the same effect as a divorce. In the event of either divorce or annulment, the testator's former spouse shall be treated for all purposes under the will as having predeceased the testator. Provided, however, this section shall not apply if the decree of divorce or of annulment is vacated or if the testator remarries his former spouse, or following said divorce or annulment, executes a new will or codicil which is not revoked or held invalid.

B. This section shall apply to any will of a decedent dying on or after November 1, 1987.

Amended by Laws 1987, c. 201, § 1, eff. Nov. 1, 1987.

§84-131. After-born children not provided for in will.

Whenever a testator has a child born after the making of his will, either in his lifetime or after his death, and dies leaving such child unprovided for by any settlement, and neither provided for nor in any way mentioned in his will, the child succeeds to the same portion of the testator's real and personal property that he would have succeeded to if the testator had died intestate. R.L. 1910, Sec. 8371.

R.L.1910, § 8371.

§84-132. Provision for children unintentionally omitted.

When any testator omits to provide in his will for any of his children, or for the issue of any deceased child unless it appears that such omission was intentional, such child, or the issue of such child, must have the same share in the estate of the testator, as if he had died intestate, and succeeds thereto as provided in the preceding section. R.L. 1910, Sec. 8372.

§84-133. How provision made as to child born after or omitted from will.

When any share of the estate of a testator is assigned to a child born after the making of a will, or to a child, or the issue of a child, omitted in a will as hereinbefore mentioned, the same must first be taken from the estate not disposed of by the will, if any; if that is not sufficient, so much as may be necessary must be taken from all the devisees, or legatees, in proportion to the value they may respectively receive under the will, unless the obvious intention of the testator in relation to some specific devise or bequest or other provision in the will, would thereby be defeated; in such case such specific devise, legacy or provision may be exempted from such apportionment, and a different apportionment, consistent with the intention of the testator, may be adopted.

R.L.1910, § 8373.

§84-134. Advancements cover rights.

If such children, or their descendants, so unprovided for, had an equal proportion of the testator's estate bestowed on them in the testator's lifetime, by way of advancement, they take nothing in virtue of the provisions of the three preceding sections. R.L. 1910, Sec. 8374.

R.L.1910, § 8374.

§84-141. Devise of land gives all estator's estate.

Every devise of land in any will conveys all the estate of the devisor therein, which he could lawfully devise, unless it clearly appears by the will that he intended to convey a less estate. R.L. 1910, Sec. 8375.
R.L.1910, § 8375.

§84-142. Death of devisee or legatee before testator - Rights of descendants.

When any estate is devised or bequeathed to any child or other relation of the testator, and the devisee or legatee dies before the testator, leaving lineal descendants, such descendants take the estate so given by the will, in the same manner as the devisee or legatee would have done had he survived the testator. R.L. 1910, Sec. 8376; Laws 1945, p. 414, Sec. 1.
R.L.1910, § 8376; Laws 1945, p. 414, § 1.

§84-143. Gift to witness void - Exception.

All beneficial devises, legacies or gifts whatever, made or given in any will to a subscribing witness thereto, are void unless there are two other competent subscribing witnesses to the same; but a mere charge on the estate of the testator for the payment of debts does not prevent his creditors from being competent witnesses to the will. R.L.1910, § 8377.

§84-144. Witness entitled without will.

If a witness to whom any beneficial devise, legacy or gift, void by the preceding section, is made, would have been entitled to any share of the estate of the testator, in case the will should not be established, he succeeds to so much of the share as would be distributed to him, not exceeding the devise or bequest made to him in the will, and he may recover the same of the other devisees or legatees name in the will, in proportion to and out of the parts devised or bequeathed to them. R.L. 1910, Sec. 8378.
R.L.1910, § 8378.

§84-145. Subsequent incompetency of witnesses immaterial.

If the subscribing witnesses to a will are competent at the time of attesting its execution, their subsequent incompetency, from whatever cause it may arise, does not prevent the probate and allowance of the will, if it is otherwise satisfactorily proved. R.L. 1910, Sec. 8379.
R.L.1910, § 8379.

§84-146. Property acquired after will.

Any estate, right or interest in lands acquired by the testator after the making of his will, passes thereby and in like manner as if title thereto was vested in him at the time of making the will,

unless the contrary manifestly appears by the will to have been the intention of the testator. Every will made in express terms, devising, or in any other terms denoting the intent of the testator to devise all the real estate of such testator, passes all the real estate which such testator was entitled to devise at the time of his decease. R.L. 1910, Sec. 8380.
R.L.1910, § 8380.

§84-151. Intention of testator governs.

A will is to be construed according to the intention of the testator. Where his intention cannot have effect to its full extent, it must have effect as far as possible. R.L. 1910, Sec. 8381.

§84-152. Ascertaining intention.

In case of uncertainty, arising upon the face of a will, as to the application of any of its provisions, the testator's intention is to be ascertained from the words of the will, taking into view the circumstances under which it was made, exclusive of his oral declarations. R.L. 1910, Sec. 8382.
R.L.1910, § 8382.

§84-153. Rules of this article govern interpretation.

In interpreting a will, subject to the laws of this state, the rules prescribed by the following sections of this article are to be observed, unless an intention to the contrary clearly appears.
R.L.1910, § 8383.

§84-154. Several instruments construed as one.

Several testamentary instruments, executed by the same testator, are to be taken and construed together as one instrument. R.L. 1910, Sec. 8384.
R.L.1910, § 8384.

§84-155. Irreconcilable parts.

All the parts of a will are to be construed in relation to each other, and so as to form one consistent whole, if possible but where several parts are absolutely irreconcilable, the latter as to position must prevail. R.L. 1910, Sec. 8385.
R.L.1910, § 8385.

§84-156. Plain devise not affected by other parts of will.

A clear and distinct devise or bequest cannot be affected by any reasons assigned therefor, or by any other words not equally clear and distinct, or by inference or argument from other parts of the will, or by an inaccurate recital of or reference to its contents in another part of the will. R.L. 1910, Sec. 8386.
R.L.1910, § 8386.

§84-157. Ambiguities.

Where the meaning of any part of a will is ambiguous or doubtful it may be explained by any reference thereto, or recital thereof, in another part of the will. R.L. 1910, Sec. 8387.
R.L.1910, § 8387.

§84-158. Words taken in ordinary sense.

The words of a will are to be taken in their ordinary and grammatical sense unless a clear intention to use them in another sense can be collected, and that other can be ascertained. R.L. 1910, Sec. 8388.
R.L.1910, § 8388.

§84-159. Words to be given effect if possible.

The words of a will are to receive an interpretation which will give to every expression some effect rather than one which shall render any of the expressions inoperative. R.L. 1910, Sec. 8389.
R.L.1910, § 8389. x

§84-160. Interpretation against total intestacy.

Of two modes of interpreting a will, that is to be preferred which will prevent a total intestacy. R.L. 1910, Sec. 8390.
R.L.1910, § 8390.

§84-161. Technical words.

Technical words in a will are to be taken in their technical sense unless the context clearly indicates a contrary intention. R.L. 1910, Sec. 8391.
R.L.1910, § 8391.

§84-162. Technical expression not required.

Technical words are not necessary to give effect to any species of disposition by a will. R.L. 1910, Sec. 8392.
R.L.1910, § 8392.

§84-163. Words of inheritance not necessary.

The term "heirs," or other words of inheritance, are not requisite to devise a fee, and a devise of real property passes all the estate of the testator, unless otherwise limited. R.L. 1910, Sec. 8393.
R.L.1910, § 8393.

§84-164. Execution of power to devise.

Real or personal property embraced in a power to devise passes by a will purporting to devise all the real or personal property of the testator. R.L. 1910, Sec. 8394.

R.L.1910, § 8394.

§84-165. General disposition includes what.

A devise or bequest of all the testator's real or personal property, in express terms, or in any other terms denoting his intent to dispose of all his real or personal property, passes all the real or personal property which he was entitled to dispose of by will at the time of his death. R.L. 1910, Sec. 8395.

R.L.1910, § 8395.

§84-166. Devise of residue of real estate.

A devise of the residue of the testator's real property passes all the real property which he was entitled to devise at the time of his death, not otherwise effectually devised by his will. R.L. 1910, Sec. 8396.

R.L.1910, § 8396.

§84-167. Devise of residue of personalty.

A bequest of the residue of the testator's personal property passes all the personal property which he was entitled to bequeath at the time of his death not otherwise effectually bequeathed by his will. R.L. 1910, Sec. 8397.

R.L.1910, § 8397.

§84-168. Effect of certain terms as "heirs," "relations," etc.

A testamentary disposition to "heirs," "relations," "nearest relations," "representatives," "legal representatives," or "personal representatives," or "family," "issue," "descendants," "nearest," or "next of kin," of any person, without other words of qualification, and when the terms are used as words of donation, and not of limitation, vests the property in those who would be entitled to succeed to the property of such person according to the provisions of this article on succession in this chapter. R.L. 1910, Sec. 8398.

R.L.1910, § 8398.

§84-169. When terms "heirs," "relations," etc. construed as words of donation.

The terms mentioned in the last section are used as words of donation, and not limitation, when the property is given to the person so designated, directly, and not as a qualification of an estate given to the ancestor of such person. R.L. 1910, Sec. 8399.

R.L.1910, § 8399.

§84-170. Words referring to survivorship.

Words in a will referring to death or survivorship, simply, relate to the time of the testator's death, unless possession is

actually postponed, when they must be referred to the time of possession. R.L. 1910, Sec. 8400.
R.L.1910, § 8400.

§84-171. Disposition to class includes all.

A testamentary disposition to a class includes every person answering the description at the testator's death; but when the possession is postponed to a future period, it includes also all the persons coming within the description before the time to which the possession is postponed. R.L. 1910, Sec. 8401.
R.L.1910, § 8401.

§84-172. Conversion of realty into money.

When a will directs the conversion of real property into money, such property and all its proceeds must be deemed personal property, from the time of the testator's death. R.L. 1910, Sec. 8402.
R.L.1910, § 8402.

§84-173. Unborn child included in class, when.

A child conceived before, but not born until after a testator's death, or any other period when a disposition to a class vests in right or in possession, takes, if answering to the description of the class. R.L. 1910, Sec. 8403.
R.L.1910, § 8403.

§84-174. Errors corrected, how.

If, when applying a will, it is found that there is an imperfect description, or that no person or property exactly answers the description, mistakes and omissions must be corrected, if the error appears from the context of the will or from extrinsic evidence; but evidence of the declarations of the testator as to his intention cannot be received. R.L. 1910, Sec. 8404.
R.L.1910, § 8404.

§84-175. Rights presumed to vest on testator's death.

Testamentary dispositions, including devises and bequests to a person on attaining majority, are presumed to vest at the testator's death. R.L. 1910, Sec. 8405.
R.L.1910, § 8405.

§84-176. Rights divested, when.

A testamentary disposition, when vested, cannot be divested unless upon the occurrence of the precise contingency prescribed by the testator for that purpose. R.L. 1910, Sec. 8406.
R.L.1910, § 8406.

§84-177. Death of devisee or legatee causes failure.

If a devisee or legatee dies during the lifetime of the testator, the testamentary disposition to him fails, unless an intention appears to substitute some other in his place, except as provided in Section 8922. R.L. 1901, Sec. 8407.
R.L.1910, § 8407. R.L.1910, § 8407.

§84-178. Remaindermen not affected by death of devisee or legatee.
The death of a devisee or legatee of a limited interest, before the testator's death, does not defeat the interests of persons in remainder, who survive the testator. R.L. 1910, Sec. 8408.
R.L.1910, § 8334.

§84-179. Conditional disposition defined.
A conditional disposition is one which depends upon the occurrence of some uncertain event, by which it is either to take effect or be defeated. R.L. 1910, Sec. 8409.
R.L.1910, § 8409.

§84-180. Condition precedent defined.
A condition precedent in a will is one which is required to be fulfilled before a particular disposition takes effect.
R.L.1910, § 8410.

§84-181. Condition precedent must be fulfilled - Exception.
Where a testamentary disposition is made upon a condition precedent, nothing vests until the condition is fulfilled except where such fulfillment is impossible, in which case the disposition vests, unless the condition was the sole motive thereof, and the impossibility was unknown to the testator, or arose from an unavoidable event subsequent to the execution of the will. R.L. 1910, Sec. 8411.
R.L.1910, § 8334.

§84-182. Substantial compliance as performance of condition precedent.
A condition precedent in a will is to be deemed performed when the testator's intention has been substantially, though not literally complied with.
R.L.1910, § 8412.

§84-183. Condition subsequent defined.
A condition subsequent is where an estate or interest is so given as to vest immediately, subject only to be divested by some subsequent act or event. R.L. 1910, Sec. 8413.
R.L.1910, § 8414.

§84-184. Owners in common created, when.

A devise or legacy given to more than one person vests in them as owners in common. R.L. 1910, Sec. 8414.
R.L.1910, § 8414.

§84-185. Gifts do not reduce legacies.

Advancements or gifts are not to be taken as adoptions of general legacies, unless such intention is expressed by the testator in writing. R.L. 1910, Sec. 8415.
R.L.1910, § 8415.

§84-186. Unlimited marital deduction - Interpretation of will.

Any will of a decedent dying after December 31, 1981, which contains a marital deduction formula expressly providing that the spouse of the testator is to receive the maximum amount of property qualifying for the marital deduction allowable by federal law shall be construed as referring to the unlimited marital deduction provided by the Economic Recovery Tax Act of 1981, Public Law 97-34. This provision shall apply retroactively to wills of decedents dying after December 31, 1981.

Added by Laws 1982, c. 368, § 1, emerg. eff. July 14, 1982. Amended by Laws 1983, c. 123, § 2, emerg. eff. May 17, 1983.

§84-211. Succession defined.

Succession is the coming in of another to take the property of one who dies without disposing of it by will. R.L. 1910, Sec. 8416.
R.L.1910, § 8416.

§84-212. Property of intestate passes to heirs subject to control of court and possession of administrator.

The property, both real and personal, of one who dies without disposing of it by will, passes to the heirs of the intestate, subject to the control of the district court, and to the possession of any administrator appointed by that court for the purpose of administration.

R.L.1910, § 8417.

§84-213. Descent and distribution.

A. Prior to July 1, 1985, if any person having title to any estate not otherwise limited by marriage contract, dies without disposing of the estate by will, it descends and must be distributed in the following manner:

First. If the decedent leave a surviving husband or wife, and only one child, or the lawful issue of one child, in equal shares to the surviving husband, or wife and child, or issue of such child. If the decedent leave a surviving husband or wife, and more than one child living, or one child living and the lawful issue of one or more deceased children, one-third (1/3) to the surviving husband or wife,

and the remainder in equal shares to his children, and to the lawful issue of any deceased child, by right of representation; but if there be no child of the decedent living at his death, the remainder goes to all of his lineal descendants; and if all the descendants are in the same degree of kindred to the decedent they share equally, otherwise they take according to the right of representation: Provided, that if the decedent shall have been married more than once, the spouse at the time of death shall inherit of the property not acquired during coverture with such spouse only an equal part with each of the living children of decedent, and the lawful issue of any deceased child by right of representation. If the decedent leave no surviving husband or wife, but leaves issue, the whole estate goes to such issue, and if such issue consists of more than one child living or one child living, and the lawful issue of one or more deceased children, then the estate goes in equal shares to the children living, or to the child living, and the issue of the deceased child or children by right of representation.

Second. If the decedent leave no issue, the estate goes one-half (1/2) to the surviving husband or wife, and the remaining one-half (1/2) to the decedent's father or mother, or, if he leave both father and mother, to them in equal shares; but if there be no father or mother, then said remaining one-half (1/2) goes, in equal shares, to the brothers and sisters of the decedent, and to the children of any deceased brother or sister, by right of representation. If decedent leave no issue, nor husband nor wife, the estate must go to the father or mother, or if he leave both father and mother, to them in equal shares: Provided, that in all cases where the property is acquired by the joint industry of husband and wife during coverture, and there is no issue, the whole estate shall go to the survivor, at whose death, if any of the said property remain, one-half (1/2) of such property shall go to the heirs of the husband and one-half (1/2) to the heirs of the wife, according to the right of representation.

Third. If there be no issue, nor husband nor wife, nor father, nor mother, then in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister, by right of representation; if the deceased, being a minor, leave no issue, the estate must go to the parents equally, if living together, if not living together, to the parent having had the care of said deceased minor.

Fourth. If the decedent leave no issue nor husband, nor wife, nor father and no brother or sister is living at the time of his death, the estate goes to his mother to the exclusion of the issue, if any, of deceased brothers or sisters.

Fifth. If the decedent leave a surviving husband or wife, and no issue, and no father, nor mother, nor brother, nor sister, the whole estate goes to the surviving husband or wife.

Sixth. If the decedent leave no issue, nor husband, nor wife, and no father or mother, or brother, or sister, the estate must go to the next of kin in equal degree, excepting that when there are two or more collateral kindred, in equal degree, but claiming through different ancestors, those who claimed through the nearest ancestors must be preferred to those claiming through an ancestor more remote.

Seventh. If the decedent leave several children, or one child and the issue of one or more children, and any such surviving child dies under age, and not having been married, all the estate that came to the deceased child by inheritance from such decedent, descends in equal shares to the other children of the same parent, and to the issue of any such other children who are dead, by right of representation.

Eighth. If, at the death of such child who dies under age, not having been married, all the other children of his parents are also dead, and any of them have left issue, the estate that came to such child by inheritance from his parent descends to the issue of all other children of the same parent; and if all the issue are in the same degree of kindred to the child, they share the estate equally, otherwise, they take according to the right of representation.

Ninth. If the decedent leave no husband, wife, or kindred, the estate escheats to the state for the support of common schools.

B. Beginning July 1, 1985, if any person having title to any estate not otherwise limited by any antenuptial marriage contract dies without disposing of the estate by will, such estate descends and shall be distributed in the following manner:

1. If the decedent leaves a surviving spouse, the share of the estate passing to said spouse is:
 - a. if there is no surviving issue, parent, brother or sister, the entire estate, or
 - b. if there is no surviving issue but the decedent is survived by a parent or parents, brother or sister:
 - (1) all the property acquired by the joint industry of the husband and wife during coverture, and
 - (2) an undivided one-third (1/3) interest in the remaining estate, or
 - c. if there are surviving issue, all of whom are also issue of the surviving spouse:

an undivided one-half (1/2) interest in all the property of the estate whether acquired by the joint industry of the husband and wife during coverture or otherwise, or
 - d. if there are surviving issue, one or more of whom are not also issue of the surviving spouse:
 - (1) an undivided one-half (1/2) interest in the property acquired by the joint industry of the husband and wife during coverture, and

- (2) an undivided equal part in the property of the decedent not acquired by the joint industry of the husband and wife during coverture with each of the living children of the decedent and the lawful issue of any deceased child by right of representation;

2. The share of the estate not passing to the surviving spouse or if there is no surviving spouse, the estate is to be distributed as follows:

- a. in undivided equal shares to the surviving children of the decedent and issue of any deceased child of the decedent by right of representation, or
- b. if there is no surviving issue, to the surviving parent or parents of the decedent in undivided equal shares, or
- c. if there is no surviving issue nor parent, in undivided equal shares to the issue of parents by right of representation, or
- d. if there is no surviving issue, parent, nor issue of parents, but the decedent is survived by one or more grandparents or issue of any grandparent, half of the estate passes equally to the paternal grandparents if both survive, or to the surviving paternal grandparent, or to the issue of any paternal grandparent if both paternal grandparents are deceased, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take by representation and the other half passes to the maternal relatives in the same manner; but if the decedent is survived by one or more grandparents or issue of grandparents on only one side of the family, paternal or maternal, the entire estate shall pass to such survivors in the manner set forth in this subsection, or
- e. if there is no surviving issue, parent, issue of parents, grandparent, nor issue of a grandparent, the estate passes to the next of kin in equal degree;

3. If the decedent leaves no spouse, issue, parent, issue of parents, grandparent, issue of a grandparent, nor kindred, then the estate shall escheat to the state for the support of the common schools; and

4. For the purpose of this section, the phrase "by right of representation" means the estate is to be divided into as many equal shares as there are surviving heirs in the nearest degree of kinship and deceased persons in the same degree who left issue who survive the decedent, each surviving heir in the nearest degree receiving one equal share and the equal share of each deceased person in the same

degree being divided among his issue in the same manner. The word "issue" means lineal descendants.

R.L. 1910, § 8418; Laws 1984, c. 233, § 3, eff. July 1, 1985; Laws 1994, c. 8, § 1, eff. Sept. 1, 1994.

§84-214. Dower and courtesy abolished.

Dower and courtesy are abolished. R.L. 1910, Sec. 8419.
R.L.1910, § 8419.

§84-215. Inheritance by and from illegitimate child.

For inheritance purposes, a child born out of wedlock stands in the same relation to his mother and her kindred, and she and her kindred to the child, as if that child had been born in wedlock. For like purposes, every such child stands in identical relation to his father and his kindred, and the latter and his kindred to the child, whenever: (a) the father, in writing, signed in the presence of a competent witness acknowledges himself to be the father of the child, (b) the father and mother intermarried subsequent to the child's birth, and the father, after such marriage, acknowledged the child as his own or adopted him into his family, (c) the father publicly acknowledged such child as his own, receiving it as such, with the consent of his wife, if he is married, into his family and otherwise treating it as if it were a child born in wedlock, or (d) the father was judicially determined to be such in a paternity proceeding before a court of competent jurisdiction.

For all purposes, the issue of all marriages null in law, or dissolved by divorce, are deemed to have been born in wedlock.

R.L.1910, § 8420; Laws 1977, c. 36, § 1, eff. Oct. 1, 1977.

§84-216. Inheritance from illegitimate child.

If an illegitimate child, who has not been acknowledged or adopted by his father, dies intestate, without lawful issue, his estate goes to his mother, or, in case of her decease, to her heirs at law. R.L. 1910, Sec. 8421.

§84-217. Degrees of kindred.

The degree of kindred is established by the number of generations, and each generation is called a degree. R.L. 1910, Sec. 8422.

R.L.1910, § 8422.

§84-218. Lineal and collateral.

The series of degrees from the line; the series of degrees between persons who descend one from the other is called direct or lineal consanguinity; and the series of degrees between persons who do not descend from one another, but spring from a common ancestor,

is called the collateral line or collateral consanguinity. R.L. 1910, Sec. 8423.
R.L.1910, § 8423.

§84-219. Ascending and descending lines.

The direct line is divided into a direct line descending and the direct line ascending. The first is that which connects the ancestor with those who descend from him. The second is that which connects a person with those from whom he descends. R.L. 1910, Sec. 8424.
R.L.1910, § 8424.

§84-220. Degrees in direct line.

In the direct line there are as many degrees as there are generations. Thus the son is, with regard to the father, in the first degree; the grandson in the second; and vice versa with regard to the father and grandfather toward the sons and grandsons. R.L. 1910, Sec. 8425.
R.L.1910, § 8425.

§84-221. Collateral degrees, how reckoned.

In the collateral line the degrees are counted by generations, from one of the relations up to the common ancestor, and from the common ancestor to the other relations. In such computation the decedent is excluded, the relative included, and the ancestor counted but once. Thus brothers are related in the second degree, uncle and nephew in the third degree, cousins german in the fourth degree, and so on. R.L. 1910, Sec. 8426.
R.L.1910, § 8426.

§84-222. Kindred of the half-blood.

Kindred of the half-blood inherit equally with those of the whole blood in the same degree, unless the inheritance come to the intestate by descent, devise or gift of some one of his ancestors, in which case all those who are not of the blood of such ancestors must be excluded from such inheritance. R.L. 1910, Sec. 8427.

§84-223. Advancements.

Any estate, real or personal, given by the decedent in his lifetime, as an advancement to any child or other lineal descendant, is a part of the estate of the decedent for the purposes of division and distribution thereof among his issue, and must be taken by such child, or other lineal descendant, toward his share of the estate of the decedent. R.L. 1910, Sec. 8428.
R.L.1910, § 8428.

§84-224. Excess not refunded.

If the amount of such advancement exceeds the share of the heir receiving the same, he must be excluded from any further portion in the division and distribution of the estate, but he must not be required to refund any part of such advancement; and if the amount so received is less than his share, he is entitled to so much more as will give him his full share of the estate of the decedent.
R.L.1910, § 8429.

§84-225. Advancements defined.

All gifts and grants are made as advancements, if expressed in the gift or grant to be so made, or if charged in writing by the decedent as an advancement, or acknowledged in writing as such, by the child or other successor or heir.
R.L.1910, § 8430.

§84-226. Expressed value of advancement governs.

If the value of the estate so advanced is expressed in the conveyance, or in the charge thereof made by the decedent, or in the acknowledgment of the party receiving it, it must be held as of that value in the division and distribution of the estate; otherwise it must be estimated according to its value when given, as nearly as the same can be ascertained.
R.L.1910, § 8431.

§84-227. Representation in advancements.

If any child or other lineal descendant receiving advancement, dies before the decedent, leaving issue, the advancement must be taken into consideration in the division and distribution of the estate, and the amount thereof must be allowed accordingly by the representatives of the heirs receiving the advancement, in like manner as if the advancement had been made directly to them.
R.L.1910, § 8432. R.L.1910, § 8432.

§84-228. Representation defined - Posthumous children.

Inheritance or succession by right of representation takes place when the descendants of any deceased heir take the same share or right in the estate of another person that their parents would have taken if living. Posthumous children are considered as living at the death of their parents.
R.L.1910, § 8433.

§84-229. Aliens may take.

Aliens may take in all cases, by succession, as well as citizens; and no person, capable of succeeding under the provisions of this article, is precluded from such succession by reason of the alienage of any relative.
R.L.1910, § 8434.

§84-230. Liabilities of heirs.

Those who succeed to the property of a decedent are liable for his obligations in the cases and to the extent prescribed by the Probate Code.

R.L.1910, § 8435.

§84-231. Offenses precluding a person from inheriting or benefiting by insurance of victim.

No person who is convicted of murder in the first degree, murder in the second degree, manslaughter in the first degree, as defined by the laws of this state, or the laws of any other state or foreign country, of having taken, caused, or procured another to take, the life of an individual, or who has been convicted of abuse, neglect or exploitation of a vulnerable adult pursuant to Section 843.3 of Title 21 of the Oklahoma Statutes, shall inherit from the victim of the offense, or receive any interest in the estate of the victim, or take by devise or legacy, or as a designated beneficiary of an account or security which is a POD or TOD designation, or as a surviving joint tenant, or by descent or distribution, from the victim, any portion of the victim's estate; and no beneficiary of any policy of insurance or certificate of membership issued by any benevolent association or organization, payable upon the death or disability of any person, who in like manner takes, causes, or procures to be taken, the life upon which such policy or certificate is issued, or who causes or procures a disability of such person, or who has been convicted of abuse, neglect or exploitation of a vulnerable adult pursuant to Section 843.3 of Title 21 of the Oklahoma Statutes, where such deceased or disabled person was the victim, shall take the proceeds of such policy or certificate; but in every instance mentioned in this section all benefits that would accrue to any such person upon the death or disability of the person whose life is thus taken, or who is thus disabled, shall become subject to distribution among the other heirs of such deceased person according to the laws of descent and distribution, in the case of death, and in case of disability, the benefits thereunder shall be paid to the disabled person; provided, however, that an insurance company shall be discharged of all liability under a policy issued by it upon payment of the proceeds in accordance with the terms thereof, unless before such payment the company shall have written notice by or in behalf of some claimant other than the beneficiary named in the policy that a claim to the proceeds of such policy will be made by heirs of such deceased under the provisions of this section.

Added by Laws 1915, c. 136, § 1. Amended by Laws 1963, c. 309, § 1, emerg. eff. June 19, 1963; Laws 1975, c. 356, § 1, emerg. eff. June 12, 1975; Laws 1994, c. 313, § 9, eff. Sept. 1, 1994; Laws 2015, c. 27, § 1, eff. Nov. 1, 2015.

§84-232. Automobiles - Surviving spouse's rights.

Whenever any person dies intestate leaving a surviving spouse, and there is among the assets of decedent's estate an automobile owned by said deceased, said automobile shall be and become the sole and exclusive property of said surviving spouse. If the deceased held title to more than one automobile at the time of death of said deceased, the surviving spouse shall have the right to choose one of said automobiles to be his or her exclusive property and the remaining automobiles shall be distributed according to the laws of descent and distribution. Provided that this section shall in no way release the automobile chosen by the surviving spouse from liability for the debts of the deceased.

Added by Laws 1953, p. 253, § 1.

§84-251. Proceedings authorized - Jurisdiction - Final determination - Appeal.

The District Court having jurisdiction to settle the estate of any deceased person is hereby granted original jurisdiction to hear and determine the question of fact as to the heirship of such person, and a determination of such fact by said court shall be conclusive evidence of said question in all the courts of this state. Provided, that appeals may be taken from said district court within the time and in the manner provided by law as in other probate matters. If no appeal is taken the judgment of the district court shall be final, and in all cases appealed from the district court when a final determination thereof is had, same shall be a final determination of such fact of heirship. Provided, that where the time limited by the law of this state for the institution of administration proceedings has elapsed without their institution, as well as in cases where there exists no lawful ground for the institution of administration proceedings in said court, a petition may be filed therein having for its object a determination of such heirship and the case shall proceed in all respects as if administration proceedings upon other proper grounds had been regularly begun, but this provision shall not be construed to reopen the question of the determination of an heirship already ascertained by competent legal authority under existing laws.

Laws 1919, c. 25, p. 41, § 1.

§84-252. Petition - Contents.

In all proceedings under this act to determine the question of heirship of any deceased person it shall be necessary for an heir of the decedent, or a record claimant of some interest in the estate of such decedent to file in the proper district court a verified petition, setting out the name of the deceased, a description of the estate of which the decedent died seized, respecting which the

question of heirship is sought to be determined, the names and addresses of all known heirs and record claimants, and the extent of the interest claimed by such heir or heirs of record claimant, if known.

Laws 1919, c. 25, p. 41, § 2.

§84-253. Hearing, process and service.

Upon the filing of such petition the judge of the district court shall make an order fixing a day for the hearing of said petition, not less than six nor more than ten (10) weeks from the time of making such order, and directing all the heirs of such deceased person and record claimant to lands or any part thereof of which said decedent died seized to appear before the court at the time and place specified, and to submit to the court evidence that is competent to establish heirship of such deceased person. The court shall cause notice of such hearing to be given by serving a copy of said notice on the known heirs and record claimants of said decedent's estate in the manner and within the time as provided for service of summons in civil actions in the district court. The service on unknown heirs and unknown claimants shall be had in the same manner as is now provided for the service of summons in civil actions in the district court for nonresident defendants. The hearing shall be had on the date fixed by the court, except continuances may be had for good cause shown, as in civil actions.

Laws 1919, c. 25, p. 41, Sec. 3.

§84-254. Trial and judgment - Rehearings.

Upon the date set for the hearing of said petition the district court shall hear evidence offered, and shall render judgment according to said evidence, as in other probate cases, and the court shall determine the heirs of the said decedent as of the date of the death of the said decedent. The judgment of the court shall be final and conclusive on all persons appearing or who have been personally served with summons, and shall be final as to all those served by publication, unless any person so served by publication may file in said district court, within twelve months from the rendition of said judgment, a verified petition setting forth that he or she did not have actual notice of the hearing in time to be present at the hearing, and that he or she, in good faith, believes himself to be an heir of the decedent and the facts on which such belief is based, and in that event he shall be heard thereon. The judge of the district court shall, upon the date of filing said petition, set a date for the hearing of such petition and shall cause all parties of record in said cause to be given reasonable notice thereof of not less than ten nor more than thirty days. Upon such hearing the court shall determine the heirship of said decedent and shall render a decision thereon in accord with the facts shown on said hearings; such

judgment so rendered shall vacate the original judgment and shall have the same force and effect as in the original hearing thereon, and any party aggrieved may appeal as from the judgment on the original hearing.

Laws 1919, c. 25, p. 42, § 4.

§84-255. Appeals.

In all cases appealed from any judgment rendered under the provisions of this act, the law applicable to appeals in probate matters shall apply, and appeals may be taken from all final orders, as provided for appeals in probate matters.

Laws 1919, c. 25, p. 42, § 5.

§84-256. Remedies cumulative.

The method herein provided for the determination of the heirs of a deceased person shall not be exclusive, but shall be in addition to the method already provided by law, except that the method provided in Section 6488 of the Revised Laws of Oklahoma, 1910, shall be no longer in force and said Section 6488 is hereby repealed.

Laws 1919, c. 25, p. 42, § 6.

§84-257. Actions to determine persons entitled to real property - Description of parties - Publication of notice.

Where any person dies intestate possessed of real property in this state, or dies having devised pursuant to the law of this state any real property in this state, in terms to "heirs," "relations," "nearest relations," "representatives," "legal representatives," "personal representatives," "family," "issues," "descendants," "nearest of kin," or to persons by any other description or designation which leaves at large the names or individual identity of the particular person embraced therein, and the period of one (1) or more years since the death of such intestate or testator has elapsed without their having been a decree by the district court of the county having jurisdiction to administer upon his estate, wherein it was judicially determined who, by name, are or were all the particular persons entitled to participate in the distribution of such real property under such devise or the law of succession, or where the grantees in any deed, or deed of patent made and issued or designated as "the devisees," of "the heirs at law" or "the legal representatives" of a named deceased person, without naming them, or by any other description or designation which leaves at large the names or individual identity of the particular persons embraced therein, the name and individual identity of each and all the persons who take or were entitled to take such real property and the proportion or part thereof which each takes or was entitled to take, immediately under such testamentary devise, or grant, or the law of succession, may be judicially determined and jurisdiction thereto

invoked in the manner following: In any action which relates to or the subject matter of which is such real property, or for the determination in any form of any interest, right, title or estate therein, or in which the relief demanded consists wholly or partly in excluding the defendants or any of them from any interest, right, title or estate therein, the plaintiff may allege, among other things, in his petition, the facts showing such testamentary devise, or grant of, or intestate succession to, such real property, and (regardless of whether they or any of them be living or dead) the names as he is informed and believes, all of the devisees, or grantees, or heirs at law, as the case may be, who take or were entitled to take such real property and the proportion or part which each takes or was entitled to take therein, immediately under such devise, or grant, or intestate succession; and he may make all such devisees, or grantees, or heirs at law, their heirs, executors, administrators, devisees, trustees and assigns, parties defendant in such action under the description, and have service of notice by publication upon them under such description, to-wit: "The heirs, executors, administrators, devisees, trustees and assigns, of _____ deceased." (Naming such testator, or intestate, or the person stated in such deed or patent to be deceased, as the case may be.

Added by Laws 1919, c. 261, p. 371, § 1. Amended by Laws 1965, c. 27, § 1.

§84-258. Judgment.

Upon the trial of hearing, and accordingly as the proof or the state of the pleadings warrant, the court shall find and adjudge the name and individual identity of each and all the persons who take or were entitled to take such real property and the proportion or part thereof which each takes or was entitled to take, immediately under such testamentary devise, or grant, or the law of succession, as the case may be, describing such testamentary devise, or grant, or naming such intestate.

Added by Laws 1919, c. 261, p. 372, § 2.

§84-259. Conclusiveness of judgment.

Such decree or judgment shall be conclusive as to the rights of such devisees, or heirs at law of such deceased person, or grantees in such deed or patent, and of their heirs, executors, administrators, devisees, trustees, and assigns, immediate and remote, in and to such real property and every part thereof, subject only to be reversed, or set aside, or modified, on appeal, or to be opened and they or any of them let in to defend upon the same terms and with like effect, as provided in section 4728, article 6, chapter 60, of the Revised Laws of Oklahoma 1910, Laws 1919, c. 261, p. 372, Sec. 3.

Laws 1919, c. 261, p. 372, § 3.

§84-260. Service by publication - Mailing notice to persons named in petition.

When such petition is filed, the party may proceed to make service by publication upon such defendants, in the manner following: The publication notice must, in such case, be addressed in terms, to "the heirs, executors, administrators, devisees, trustees and assigns, of _____ deceased" (naming such deceased person). It shall be issued over the official signature of the clerk of the court; shall state the court in which the petition is filed, the name of the plaintiff, the above description of such defendants, and must notify the defendants thus described that they have been sued and must answer the petition filed by the plaintiff, on or before a time to be stated (which shall not be less than forty-one (41) days from the date of the first publication), or the petition will be taken as true, and judgment, the nature of which shall be stated, will be rendered accordingly. The publication must be made three (3) consecutive weeks in some newspaper authorized by law to publish notices in legal proceedings, printed in the county where the petition is filed, if there be any printed in such county, and if there be not, then in some newspaper printed in this state of general circulation in that county. A copy of the publication notice, with a copy of the petition (without exhibits), shall, within six (6) days after the first publication of the notice is made, be enclosed in an envelope and addressed to each of such devisees, grantees, or heirs at law, as are named in the petition, or his place of residence, postage prepaid, and deposited in the nearest post office, unless such place of residence is unknown to the plaintiff.

Laws 1919, c. 261, p. 372, § 4; Laws 1945, p. 414, § 1; Laws 1965, c. 26, § 1, emerg. eff. Feb. 26, 1965.

§84-261. Proof of service.

Service by publication in such cases shall be deemed complete when it shall have been made in the manner and for the times prescribed in this section. Proof of the publication of the notice shall be made by the affidavit of the printer, or his foreman, or principal clerk, or other person knowing the same, and proof of mailing the said copy, or that the place of residence of such defendants or any of them is unknown to the plaintiff, shall be entered by the affidavit of the plaintiff, his agent or attorney. But no judgment by default shall be entered against the defendants so described on such service until proof thereof be made, and approved by the court and filed.

Laws 1919, c. 261, p. 373, § 5.

§84-271. Conditions of escheat.

Subject to the provisions of Sections 271.1 through 277 of this title, the estate or property of any person shall escheat to and vest in the state if:

1. Such person die seized of any real property, including minerals or mineral interests, or possessed of any personal estate, without any devise thereof, and having no heirs; or

2. Such person is the owner of any real or personal estate (except mineral interests subject to sale under Section 271.1 of this title), and shall be absent for the term of seven (7) years, and is not known to exist. Provided, that where no will is recorded or probated in the county where such property is situate within seven (7) years after the death of such owner, it shall be prima facie evidence that there was no will, and where no lawful claim is asserted to, or lawful acts of ownership exercised in such property for the period of seven (7) years, and this has been proved to the satisfaction of the court, it shall be deemed prima facie evidence of the death of the owner and of the failure of heirs; and the court trying the cause, may, if such evidence is not rebutted, find therefrom in favor of the state; provided, further, that the state may, without waiting the limit of seven (7) years, bring proceedings and escheat any such property by making proof of the death of the owner and the failure of heirs, and nonexistence of will.

R.L.1910, § 8436; Laws 2005, c. 421, § 2, emerg. eff. June 6, 2005.

§84-271.1. Abandoned mineral interests.

If the proceeds or other intangible property interest from any mineral interests are abandoned for a period of fifteen (15) years, as provided for in the Uniform Unclaimed Property Act, then the mineral interest which generates the intangible property interest shall not be subject to escheat, but shall be subject to judicial sale by the state as provided for in Sections 273 through 277 of this title.

If a judgment is rendered in favor of the state in such proceedings, a sale of the mineral interest shall be ordered, then:

1. All abandoned mineral interests within a single production unit shall be grouped together as far as practicable for purposes of sale; and

2. Any interest sold by the state shall remain subject to all prior valid pooling and drilling orders, rules, or regulations of the Corporation Commission; and

3. The record owner or owners of the surface from which abandoned mineral interests have been severed shall be mailed at the last-known address as shown by the records of the county treasurer a notice of the sale of such abandoned mineral interest at least thirty (30) days prior to said sale; and

4. The successful bidder at said sale shall pay the costs and expenses of bringing the action as determined by the court.

Added by Laws 1978, c. 229, § 2, eff. Jan. 1, 1979. Amended by Laws 1983, c. 184, § 1, eff. June 9, 1983; Laws 1984, c. 7, § 1, eff. Nov. 1, 1984; Laws 2005, c. 421, § 3, emerg. eff. June 6, 2005.

§84-273. Petition in escheat by Attorney General or district attorney.

Where the Attorney General of this state or the district attorney of any county shall be informed, or have reason to believe that the title to any real or personal property has vested in this state, or is subject to sale, under Section 271 or 271.1 of this title, the Attorney General or district attorney shall forthwith file a petition in the name of the State of Oklahoma, in the district court of the county where such property, or any part thereof is situate, which petition shall set forth a description of the said property, the name of the person, or corporation, last lawfully seized or possessed of the same, the names of the tenants or persons in actual possession of same, if any; the names of the persons claiming such property, if any such are known to claim; and the facts or circumstances in consequence of which such property is claimed to be subject to escheat or sale, praying writ of possession in behalf of the state. R.L.1910, § 8438; Laws 2005, c. 421, § 4, emerg. eff. June 6, 2005.

§84-274. Summons - Notification to Attorney General.

Upon the filing of the petition in an action authorized to be brought pursuant to Section 271.1 or 273 of this title, the clerk of the court shall issue summons as in other civil cases, requiring the persons named to appear and answer as in other civil cases, and in like manner the clerk shall also issue a summons for publication, setting forth briefly the contents of the petition, for all persons interested in the property to appear and answer within thirty (30) days from the date of first publication, which summons shall be published as required in other civil suits except that it shall not be required to be published exceeding thirty (30) days before answer required. If the petition has been filed by the district attorney for the county where the property is located, a summons and a copy of the petition shall be sent by certified mail, return receipt requested, to the Attorney General of this state. R.L.1910, § 8439; Laws 2003, c. 29, § 1, eff. Nov. 1, 2003; Laws 2005, c. 421, § 5, emerg. eff. June 6, 2005.

§84-275. Parties - Trial and judgment - Costs.

All persons named in such petition as tenants or persons in actual possession, or claimants of the property, or any part of the same, may appear and plead to such proceeding, and therein may traverse the facts stated in the petition, the title of the state to the lands and property therein mentioned as in other civil cases, and any person claiming an interest in such estate may appear and be made

a defendant, and plead as in other cases, except such appearance must be made within or at the expiration of thirty (30) days from the first publication of the notice hereinabove mentioned, except on order of the court. If no person after notice as aforesaid shall appear and plead within the time prescribed by law, which shall not be less than thirty days after the first publication of notice, judgment shall be rendered by default in behalf of the state; if any person appear and deny the title set up by the state, or traverse any material fact in the petition, issue shall be made up and tried as other issue of fact; and if after the issues and trial it appears from the facts found or admitted that the state has good title to the property, real or personal in the petition mentioned, or good right thereto, or any part thereof, judgment shall be rendered that the state shall be seized and possessed thereof, and a writ for the possession shall be awarded and executed as in other cases, and at the discretion of the court the state may recover costs against the defendants, which costs shall include a reasonable amount for attorney's fees. If it appears that the state has no title to such property the defendant or defendants shall recover their costs, to be taxed and certified by the clerk, to the State Treasurer, upon which such certificate such State Treasurer is authorized to cash the same out of any monies in his hand not otherwise appropriated.

R.L.1910, § 8440; Laws 2005, c. 421, § 6, emerg. eff. June 6, 2005.

§84-276. Sale of property.

In case a judgment is rendered in favor of the state in such proceedings, a writ shall be issued to the sheriff, or any constable, of the proper county commanding the seizure of such property, and if the same be personal property, it shall be sold at public auction in the manner provided by law for the sale of property of like kind under execution; if the property be real estate, minerals or mineral interests, it shall be sold under the order of the court by the sheriff or a constable of the county, and the proceeds, less the costs and attorney's fees taxed by the court, shall be paid to the Treasurer of the state; provided, however, that any proceeds paid to the Treasurer resulting from a sale of minerals deemed abandoned pursuant to Sections 658.1 and 658.1A of Title 60 of the Oklahoma Statutes and Section 271.1 of this title shall be treated as proceeds subject to the Uniform Unclaimed Property Act. No real estate or mineral interest shall be sold by the sheriff (or constable) at less than the minimum price to be fixed by the judge before whom the case was tried, such minimum valuation to be stated in the notice of sale. Should there be on the day of sale, no bona fide bid for as high an amount as the valuation fixed by the judge before whom the case is tried, there shall be no sale, and the writ or order of sale shall be immediately returned to the court issuing the same, and thereafter a

new writ procured, and if necessary, a new order of appraisement value fixed by the judge of the court.
R.L.1910, § 8441; Laws 2005, c. 421, § 7, emerg. eff. June 6, 2005.

§84-277. Appeals.

Any person who shall have appeared in any such proceedings in the district court, or the Attorney-General of the state or district attorney on behalf of the state, shall have the right to prosecute an appeal to the Supreme Court of the state from any judgment rendered under this article.
R.L.1910, § 8442.

§84-301. Devises or bequests by will to trustee of trust established by written instrument independently of will - Permissible terms and conditions.

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 or to be 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 (a) 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 (b) shall be administered and disposed of in accordance with the provisions of 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.
Laws 1961, p. 637, § 1.

§84-302. Devises or bequests executed prior to effective date.

This act shall have no effect upon any devise or bequest made by a will executed prior to the effective date of this act.
Added by Laws 1961, p. 637, § 2.

§84-303. Construction.

This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it. Laws 1961, p. 637, § 3.

§84-304. Citation.

This act may be cited as the Uniform Testamentary Additions to Trusts Act.

Added by Laws 1961, p. 637, § 4.

§84-305. Life insurance policies - Trustee named by will as beneficiary.

A policy of life insurance may designate as beneficiary a trustee or trustees named by will, if the designation is made in accordance with the provisions of the policy and the requirements of the insurance company. The trustee or trustees may be appointed immediately after the proving of the will, and, upon appointment and qualification, proceeds of such insurance shall be paid to the trustee or trustees to be held and disposed of under the terms of the will as they exist as of the date of the death of the testator and in the same manner as other testamentary trusts are administered; but if no qualified trustee makes claim to the proceeds from the insurance company within twelve (12) months after the death of the insured, or if satisfactory evidence is furnished to the insurance company within such twelve-month period showing that there is or will be no trustee to receive the proceeds, payment shall be made by the insurance company to the executors, administrators or assigns of the insured, unless otherwise provided by agreement with the insurance company during the lifetime of the insured.

Added by Laws 1967, c. 79, § 1.

§84-306. Liability for debts and taxes.

The proceeds of the insurance as received by the trustee or trustees shall not be subject to debts of the insured nor to transfer or estate tax to any greater extent than if such proceeds were payable to the beneficiary or beneficiaries named in the trust and not to the estate of the insured.

Added by Laws 1967, c. 79, § 2, emerg. eff. April 18, 1967.

§84-307. Commingling of proceeds.

Such insurance proceeds so held in trust may be commingled with any other assets which may properly come into such trust.

Laws 1967, c. 79, § 3, emerg. eff. April 18, 1967.

§84-308. Prior beneficiary designations not affected.

Nothing in this act shall affect the validity of any life insurance policy beneficiary designation heretofore made naming trustees of trust established by will.

Laws 1967, c. 79, § 4, emerg. eff. April 18, 1967.

§84-350. Short title.

This act shall be known and may be cited as the "Uniform International Wills Act".

Added by Laws 2010, c. 383, § 1, eff. Nov. 1, 2010.

§84-351. Definitions.

As used in the Uniform International Wills Act:

1. "International will" means a will executed in conformity with the Uniform International Wills Act; and

2. "Authorized person" and "person authorized to act in connection with international wills" mean a person who by Section 10 of this act, or by the laws of the United States including members of the diplomatic and consular service of the United States designated by Foreign Service Regulations, is empowered to supervise the execution of international wills.

Added by Laws 2010, c. 383, § 2, eff. Nov. 1, 2010.

§84-852. Validity of a will.

A. A will is valid as regards form, irrespective particularly of the place where it is made, of the location of the assets and of the nationality, domicile, or residence of the testator, if it is made in the form of an international will complying with the requirements of the Uniform International Wills Act.

B. The invalidity of the will as an international will does not affect its formal validity as a will of another kind.

C. The Uniform International Wills Act does not apply to the form of testamentary dispositions made by two or more persons in one instrument.

Added by Laws 2010, c. 383, § 3, eff. Nov. 1, 2010.

§84-853. Requirements of a will.

A. The will must be made in writing. It need not be written by the testator him or herself. It may be written in any language, by hand or by any other means.

B. The testator shall declare in the presence of two witnesses and of a person authorized to act in connection with international wills that the document is the will of the testator and that the testator knows the contents of the will. The testator need not inform the witnesses, or the authorized person, of the contents of the will.

C. In the presence of the witnesses, and of the authorized person, the testator shall sign the will or, if the testator has previously signed it, shall acknowledge the signature.

D. If the testator is unable to sign, the absence of the signature of the testator does not affect the validity of the international will if the testator indicates the reason for the inability to sign and the authorized person makes note thereof on the will. In that case, it is permissible for any other person present, including the authorized person or one of the witnesses, at the direction of the testator, to sign the name of the testator for the testator, if the authorized person makes note of this on the will, but it is not required that any person sign the name of the testator for the testator.

E. The witnesses and the authorized person shall there and then attest the will by signing in the presence of the testator.

Added by Laws 2010, c. 383, § 4, eff. Nov. 1, 2010.

§84-854. Signature, date, and declaration.

A. The signatures must be placed at the end of the will. If the will consists of several sheets, each sheet must be signed by the testator or, if the testator is unable to sign, by the person signing on behalf of the testator or, if there is no such person, by the authorized person. In addition, each sheet must be numbered.

B. The date of the will must be the date of its signature by the authorized person. The date must be noted at the end of the will by the authorized person.

C. The authorized person shall ask the testator whether the testator wishes to make a declaration concerning the safekeeping of the will. If so and at the express request of the testator, the place where the testator intends to have the will kept must be mentioned in the certificate provided for in Section 6 of this act.

D. A will executed in compliance with Section 4 of this act is not invalid merely because it does not comply with this section.

Added by Laws 2010, c. 383, § 5, eff. Nov. 1, 2010.

§84-855. Signature establishing execution of valid international will.

The authorized person shall attach to the will a certificate to be signed by the authorized person establishing that the requirements of the Uniform International Wills Act for valid execution of an international will have been fulfilled. The authorized person shall keep a copy of the certificate and deliver another to the testator. The certificate must be substantially in the following form:

CERTIFICATE

I, _____ (name, address and capacity), a person authorized to act in connection with international wills

Certify that on _____ (date) at _____ (place)

(testator) _____ (name, address, date and place of birth) in my presence and in that of witnesses

1. _____ (name, address, date and place of birth)
2. _____ (name, address, date and place of birth)

has declared that the attached document is the will of the testator and that the testator knows the contents thereof.

I furthermore certify that:

1. In my presence and in that of the witnesses
 - a. the testator has signed the will or has acknowledged the signature of the testator previously affixed.
 - b. following a declaration of the testator stating that the testator was unable to sign the will for the following reason _____, I have mentioned this declaration on the will
*and the signature has been affixed by _____ (name and address);

2. The witnesses and I have signed the will;

3. Each page of the will has been signed by _____ and numbered;

4. I have satisfied myself as to the identity of the testator and of the witnesses as designated above;

5. The witnesses met the conditions requisite to act as such according to the law under which I am acting;

6. The testator has requested me to include the following statement concerning the safekeeping of the will of the testator:

Place of Execution _____

Date _____

Signature _____

and, if necessary, SEAL

*to be completed if appropriate

Added by Laws 2010, c. 383, § 6, eff. Nov. 1, 2010.

§84-856. Certificate - Formal validity.

In the absence of evidence to the contrary, the certificate of the authorized person is conclusive of the formal validity of the instrument as a will under the Uniform International Wills Act. The absence or irregularity of a certificate does not affect the formal validity of a will under the Uniform International Wills Act.

Added by Laws 2010, c. 383, § 7, eff. Nov. 1, 2010.

§84-857. International will - Rules of revocation of wills.

An international will is subject to the ordinary rules of revocation of wills.

Added by Laws 2010, c. 383, § 8, eff. Nov. 1, 2010.

§84-858. Interpretation of Uniform International Wills Act.

The Uniform International Wills Act derives from Annex to Convention of October 26, 1973, Providing a Uniform Law on the Form of an International Will. In interpreting and applying the Uniform International Wills Act, regard shall be had to its international origin and to the need for uniformity in its interpretation. Added by Laws 2010, c. 383, § 9, eff. Nov. 1, 2010.

§84-859. Authorized persons.

Individuals who have been admitted to practice law before the courts of this state and are currently licensed to do so are authorized persons in relation to international wills.

Added by Laws 2010, c. 383, § 10, eff. Nov. 1, 2010.