

## Title 13.

### Probate Law and Procedure.

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#### CHAPTER 1.

##### WILLS.

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**§ 1. Capacity to make will; limitation on disposition of property.** — Any person of sound mind eighteen years of age or older may make a will in accordance with the provisions of this chapter, but such will may only dispose of property which at the time of his death the testator has a right to dispose of without the consent of any other person or any official. (Code 1966, § 344; Code 1970, tit. 13, § 1.)

**§ 2. Wills made under customary or prior written law.** — Nothing in this chapter shall prevent the making of a will in accordance with the customary or written law of the part of the Trust Territory in which it is made or in which property covered by it is located, nor shall anything in this chapter affect the validity of a will made in accordance with such customary or written law. (Code 1966, § 344; Code 1970, tit. 13, § 2.)

**§ 3. Definitions.** — As used in this chapter the following definitions apply:  
(1) "*Person*" includes either man or woman, single or married; and each masculine pronoun includes the corresponding feminine pronoun.  
(2) "*Will*" includes codicil. (Code 1966, § 345; Code 1970, tit. 13, § 3.)

**§ 4. Witnesses.** — (1) Any person competent to be a witness generally in the Trust Territory may act as attesting witness to a will.

(2) No will is invalidated because attested by an interested witness, but any interested witness shall, unless the will is also attested by two disinterested witnesses, forfeit so much of the provisions made for him therein as in the aggregate exceeds in value, as of the date of the testator's death, what he would have received had the testator died intestate.

(3) No attesting witness is interested unless the will gives to him some personal and beneficial interest. (Code 1966, § 346; Code 1970, tit. 13, § 4.)

**§ 5. Execution.** — The execution of a will under this chapter, other than a holographic or nuncupative will, must be by the signature of the testator and of at least two witnesses as follows:

(1) *Testator.* The testator shall signify to the attesting witness that the instrument is his will and either himself sign, or acknowledge his signature already made, or, at his direction and in his presence, have someone else sign

his name for him. In any of the above cases the act must be done in the presence of two or more attesting witnesses.

(2) *Witnesses.* The attesting witnesses must sign in the presence of the testator, and in the presence of each other. (Code 1966, § 347; Code 1970, tit. 13, § 5.)

**§ 6. Holographic will.** — A holographic will is a will in the handwriting of the testator. A holographic will may be made under this chapter without any witness, but the signature and all its material provisions must be in the handwriting of the testator and his handwriting must be proved by two witnesses. (Code 1966, § 348; Code 1970, tit. 13, § 6.)

**Nuncupative will may supersede holograph.** — Where holographic will makes no mention of disputed lands and is filed seven years before death of testator, nuncupative will may supersede it. *Ngiruhelbad v. Merii*, 2 TTR 631 (App. Div. 1961).

**§ 7. Nuncupative will.** — (1) A nuncupative will is an oral will. A nuncupative will may be made under this chapter only by a person in imminent peril of death, whether from illness or otherwise, and shall be valid only if the testator dies as a result of the impending peril. A nuncupative will must be:

(a) Declared to be his will by the testator before two disinterested witnesses; and

(b) Submitted for probate within six months after the death of the testator unless the court, for good cause, permits it to be submitted later.

(2) A nuncupative will made under this chapter may dispose of personal property only and to an aggregate value not exceeding one thousand dollars.

(3) A nuncupative will made under this chapter neither revokes nor changes an existing written will. (Code 1966, § 349; Code 1970, tit. 13, § 7.)

**Liability to revoke prior written instrument.** — An attempted oral testamentary disposition, in the form of a nuncupative or oral will, cannot revoke a prior written instrument. *Souwelian v. Kadarina*, 5 TTR 14 (1970).

**Impending death required.** — Under this Code, an oral testamentary gift is only effective when made in the presence of impending death. *Souwelian v. Kadarina*, 5 TTR 14 (1970)

**Transfer of land by oral will.** — The Code provision relating to oral testamentary gifts does not permit transfer of land by oral will unless authorized by local custom or written statute. *Souwelian v. Kadarina*, 5 TTR 14 (1970).

**§ 8. Wills executed outside the Trust Territory or under foreign law.** — A will executed outside the Trust Territory in a manner prescribed by this chapter or a written will executed in a manner prescribed by the law of the place of its execution, or by the law of the testator's domicile at the time of its execution, shall have the same force and effect in the Trust Territory as if executed in the Trust Territory in compliance with the provisions of this chapter. (Code 1966, § 350; Code 1970, tit. 13, § 8.)

**§ 9. Application.** — This chapter shall not apply to wills executed in the Trust Territory before the date this chapter takes effect. (Code 1966, § 351; Code 1970, tit. 13, § 9.)

## CHAPTER 2.

## SETTLEMENT OF ESTATES OF LIMITED VALUE.

Sec.

51. Complaints for transfer of decedent's personalty to beneficiaries and creditors; when authorized.

52. Same; contents.

Sec.

53. Order of transfer; procedure if transfer withheld.

54. Procedure if debts exceed value of assets.

55. Responsibility of transferee.

**§ 51. Complaints for transfer of decedent's personalty to beneficiaries and creditors; when authorized.** — When a decedent leaves personal property, including but not limited to cash, bank or other accounts, wages or salary due, shares of stock or other interest in any business enterprise, and goods and chattels of any nature, of a total value not exceeding one thousand dollars, and known debts, if any, of less than that amount, and the person or persons entitled to the personal property left by the decedent cannot readily obtain possession thereof, the surviving spouse, any adult child, including an adopted child, either parent, any brother or sister, the eldest brother of decedent's mother, or the head of the lineage of the decedent may file a sworn complaint in the trial division of the high court or the district court or, if the total value of the personal property does not exceed one hundred dollars, in the community court, within whose jurisdiction the decedent resided at the time of his death if he was a resident of the Trust Territory, or within whose jurisdiction all or part of the personal property is located if decedent was not a resident of the Trust Territory, asking the issuance of an order that such personal property be transferred to the complainant. If none of the persons named in this section file such complaint within ninety days of the death of the decedent, then any creditor of the decedent may file a sworn complaint as set forth herein. (Code 1966, § 343(a); Code 1970, tit. 13, § 51.)

**Distribution of small estate upon agreement by possible heirs.** — In a proper case a small estate can be distributed under this section or the general powers of the high court

if it is clearly shown that all debts have been paid and it has been agreed between the possible heirs as to how the estate should be distributed. *Nenjir v. Rilán*, 4 TTR 277 (1969).

**§ 52. Same; contents.** — Such sworn complaint shall set forth the name, residence and date of death of the decedent, and the names and addresses of the surviving spouse, children, brothers and sisters of the decedent, and the eldest living brother of decedent's mother or, if none of the above persons survived the decedent, the name, address, and relationship of the nearest surviving relative. The complaint shall also state the total value of the personal property, and the property, if any, that passed or is to pass under such will, and to whom it went or is to go, and shall contain the promise of the complainant to pay, as far as the assets of the estate permit, the debts of the decedent, or to see that the said debts are paid by someone authorized by local custom, and to distribute the balance, if any, to the person or persons entitled thereto. (Code 1966, § 343(b); Code 1970, tit. 13, § 52.)

**§ 53. Order of transfer; procedure if transfer withheld.** — Upon the filing of such complaint, if it appears to the court that the ends of justice will be served, the court may issue an order, either without notice or after such notice as it deems proper, directing the transfer of the personal property to the complainant, or to such other person as the court deems proper, directing that the transferee pay, as far as the assets of the estate permit, the debts of the decedent, or see that they are paid, and then distribute the balance, if any, to

the person or persons entitled thereto. Whoever transfers money or other property to the complainant, or to any other person appointed by the court as set forth above, shall incur no liability thereby, nor shall such person thereafter be held to account for the same to any person. Any person upon whom demand is made to transfer money or other property under the terms or such order who denies the right of the complainant or other transferee to receive the same shall, within ten days of the demand being made upon him to transfer such money or other property, file his answer in the same court that issued the order, setting forth the grounds that entitle him to retain possession thereof. Upon the filing of such answer, the court shall, after notice to the complainant or other transferee, set the matter down for hearing and make such finding and enter such further order as the ends of justice require. (Code 1966, § 343(c); Code 1970, tit. 13, § 53.)

**§ 54. Procedure if debts exceed value of assets.** — If the transferee finds, after the receipt of the personal property under such order of transfer that the debts of decedent do in fact exceed the value of the property received he shall make no further distribution of the same, but shall at once report the facts to the court that issued the order, setting forth the money and other personal property received, the disbursements he has already made, the names and addresses of the recipients of the property already disbursed and the reason therefor, and shall list all known debts of decedent, including those that have recently come to the transferee's attention. The transferee shall take no further action save by order of the court. (Code 1966, § 343(d); Code 1970, tit. 13, § 54.)

**§ 55. Responsibility of transferee.** — The transferee shall be personally responsible for any property received by him under any order issued pursuant to this chapter, and any party claiming an interest in such property may, after demand, maintain an action against the transferee; provided, that no such action shall be brought against the transferee after two years from the date of the order under which the property was transferred to him. (Code 1966, § 343(e); Code 1970, tit. 13, § 55.)