

SENATE BILL REPORT

HB 2236

As Reported By Senate Committee On:
Judiciary, March 30, 2007

Title: An act relating to the disposition of certain assets.

Brief Description: Disposing of certain assets.

Sponsors: Representatives Goodman and Lantz.

Brief History: Passed House: 3/10/07, 97-0.

Committee Activity: Judiciary: 3/28/07, 3/30/07 [DP].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators Kline, Chair; Tom, Vice Chair; McCaslin, Ranking Minority Member; Carrell, Hargrove, Murray, Roach and Weinstein.

Staff: Dawn Noel (786-7472)

Background: The probate and trust law affects the distribution of property through intestate succession (i.e., default distribution of one's assets without a will) or under various legal instruments, such as wills or trusts.

Uniform Simultaneous Death Act: The operation of various laws or legal instruments may depend on the order in which two or more people die. If the death of two or more such persons appears simultaneous, such as in an automobile accident, the Uniform Simultaneous Death Act (USDA) may apply. The USDA provides generally that if there is insufficient evidence that the persons died other than simultaneously, each person will be deemed to have survived the others for purposes of determining property title or distribution. The effect of the USDA can be to avoid having property go through two or more estates. The USDA does not override express provisions in an instrument that provide for some other rule in determining order of death.

Representation, Posthumous Children, and Surviving Spouses: Various terms are used throughout the probate and trust laws. Some are defined and some are not.

"Representation" is a method of distributing property to persons based on their degree of kinship to the "intestate." An intestate is a person who has died without a will.

A "posthumous child" is one born after the death of a parent. The law provides that such a child is among those entitled to share in the parent's estate. At the time the definition of a

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posthumous child was enacted, the possibility of a child being conceived, as well as born, after the death of a parent was probably not considered. Medical science has now made it possible for a child to be conceived long after a child's parent has died.

There is currently no statutory definition of a "surviving spouse" that applies to the probate and trust laws. However, the term is used in a number of statutes that control the distribution of assets, impose responsibilities, and confer rights under those laws.

Nonprobate Assets on Dissolution or Invalidation of Marriage: Certain assets may pass to a beneficiary under a written instrument other than a will and outside of the probate process. Examples of nonprobate assets under this section are payable-on-death life insurance policies, employee benefit plans, annuities, certain trusts, certain accounts and securities. If a married couple is divorced, the law operates to revoke a designation of a spouse as the beneficiary of a nonprobate asset unless a contrary intent has been expressed, or a court has ordered otherwise. This revocation provision applies only to marriage dissolutions obtained in this state.

Tangible Personal Property Lists for Gifts under a Will: A will may reference and incorporate a separate list of gifts of tangible personal property. As long as the list is not inconsistent with the will and identifies the gifts and their recipients with reasonable certainty, the list is given effect as though it were part of the will. The list may be changed by the testator at any time without having to redo the will. In case of inconsistencies between versions of a list, the latest list controls.

Commencing a Will Contest: A person wishing to contest a will must appear and petition the court within four months of the probate of the will. Court rules and statutes provide that a lawsuit may be commenced either by filing a petition with the court or by service of summons on another party. Any applicable statute of limitations is tolled by the earlier of the filing of the petition or the service of summons.

Award of Attorneys' Fees in Dispute Resolution Actions: Under the Trust and Estate Dispute Resolution Act (TEDRA), the court has discretion to award costs and reasonable attorneys' fees to any party from another party, or from the assets of the trust or estate, or from a nonprobate asset that is subject to the action.

Bar Section Recommendations: The Real Property, Probate and Trust Section of the Washington State Bar Association is recommending several changes to the probate and trust law in the areas discussed above.

Summary of Bill: Uniform Simultaneous Death Act: The 1940 version of the USDA is replaced with the 1991 version.

The general rule in a simultaneous death situation is that a person is deemed to have died first if it is not established by clear and convincing evidence that he or she survived the other relevant person or persons by 120 hours. The general rule is applicable if any of the following depend on one person surviving another:

- the devolution of property;
- the right to elect an interest in property; or
- the right to exempt property, a homestead, or a family allowance.

The rule is not to be used if it would result in the state taking intestate property.

A 120-hour rule is also specifically applied to any governing instrument that relates to an individual surviving an event, and to the survivorship rights of a co-owner.

For purposes of the USDA, death occurs as determined by an attending physician, or a county coroner or medical officer. Death certificates or government records or reports are prima facie evidence that a person is dead or missing. If a person is missing for seven years without explanation after diligent search or inquiry, the person is presumed to have died at the end of the seven-year period.

The 120-hour rule does not apply if there is a contradictory governing instrument, if application would invalidate a non-vested interest or a power of appointment under the rule against perpetuities, or if application would cause failure or duplication of a disposition.

A payor is given immunity from liability for a good faith payment to a person not entitled under the USDA if the payment is made before notice of a challenge under the USDA.

Likewise, a person who buys property for value and without notice is not liable and need not return the property.

Representation, Posthumous Children, and Surviving Spouses: The definition of "representation" is changed to cover distributions based on degrees of kinship to any "decedent," not just decedents who die intestate.

A "posthumous child" is defined as one conceived before, but born after, the death of a parent.

A "surviving spouse" is defined to exclude a decedent's spouse if the marriage has been dissolved or invalidated, unless there has been a subsequent remarriage. A decree of separation is not a dissolution or invalidation unless the decree has terminated the husband and wife status.

Nonprobate Assets on Dissolution or Invalidation of Marriage: The termination of a spousal beneficiary designation in a nonprobate asset instrument upon a marriage dissolution is no longer restricted to dissolution decrees from courts of "this state."

The definition of "nonprobate asset" under this section is extended to include certain brokerage accounts, contracts, and other written instruments that may provide for the nonprobate transfer of property, such as insurance policies, employment contracts, mortgages, bonds, promissory notes, and retirement plans.

Tangible Personal Property Lists for Gifts Under a Will: Separate lists designating recipients of tangible personal property may be used in conjunction with irrevocable trusts, as well as with wills.

Commencing a Will Contest: The four-month period for contesting a will is tolled by the filing of a petition with the court. However, the action is deemed not to have been commenced, and the period of limitation not tolled, if the petitioner does not personally serve the personal representative of the estate within 90 days of the filing.

Award of Attorneys' Fees in Dispute Resolution Actions: In order to award costs and attorneys' fees under the TEDRA, a court need not find that the litigation has benefitted the trust or estate involved.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill updates, clarifies, and makes more usable probate law. Lawyers working in the field need this. The Washington State Bar Association worked very carefully on this bill for more than a year.

Persons Testifying: PRO: Representative Goodman, prime sponsor; Timothy Burkart, Real Property, Probate and Trust Section, Washington State Bar Association.