

SENATE BILL REPORT

SB 6541

As Reported By Senate Committee On:
Judiciary, February 5, 2004

Title: An act relating to property that has been specifically devised.

Brief Description: Clarifying the distribution of specifically devised property.

Sponsors: Senator Haugen.

Brief History:

Committee Activity: Judiciary: 2/4/04, 2/5/04 [DPS].

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 6541 be substituted therefor, and the substitute bill do pass.

Signed by Senators McCaslin, Chair; Esser, Vice Chair; Brandland, Hargrove, Haugen, Johnson, Kline and Roach.

Staff: Aldo Melchiori (786-7439)

Background: Specific property may be devised by a will. Whether a legacy is specific depends upon the language of the will itself. For example, the testator may devise "my house at 555 457th Street" (specific devise), "a house on 457th Street" (directing an executor to purchase a house if one is not owned by the testator), or "my house" (the testator's house at the time of death). There is a presumption against specific gifts unless it is clearly indicated by the testator.

If a specific asset has been given in a will and it is not in existence or owned by the testator at the time of death, it is said to have been adeemed by extinction. If the specific asset has been adeemed, the beneficiary does not receive anything under that provision of the will.

The 1978 Uniform Probate Code eliminates ademption by extinction in certain cases. The uniform code provisions allow the specific devisee to trace the proceeds of certain assets and secure them even though the asset given is no longer in existence or owned. The Uniform Probate Code has been adopted, in whole or in part, by 18 states.

Summary of Substitute Bill: A devisee has a right to specifically devised property and to: (1) any balance in the purchase price and any security agreement resulting from the sale of the specifically devised property; (2) any unpaid amount of a condemnation award for the taking of the specifically devised property; (3) any unpaid fire or casualty insurance proceeds or other recovery for injury to the specifically devised property; or (4) property owned by the testator acquired as a result of foreclosure or in lieu of foreclosure of the security interest in specifically devised property.

If a guardian or agent with a durable power of attorney for an incapacitated person receives funds or property from these sources or sells or encumbers specifically devised property, the devisee has the right to a general pecuniary devise equal to the lesser of the net sale price, amount of unpaid loan, condemnation award, or insurance proceeds. This provision does not apply if, after sale, mortgage, condemnation, casualty, or recovery, it was adjudicated that the testator's incapacity ceased and the testator survived at least one year.

Substitute Bill Compared to Original Bill: It is clarified that if a guardian sells a specifically devised asset, the devisee is entitled to the lesser of the net proceeds or what is left of them. The gift does not lose its status as a demonstrative gift.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: This is an issue of fairness and respect for the intent of the devisee.

Testimony Against: None

Testified: PRO: Senator Haugen, prime sponsor.