

ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)

Act 386 of 1998

Part 3

SPOUSE OR CHILD NOT PROVIDED FOR IN THE WILL

700.2301 Entitlement of spouse; premarital will.

Sec. 2301.

(1) Except as provided in subsection (2), if a testator's surviving spouse marries the testator after the testator executes his or her will, the surviving spouse is entitled to receive, as an intestate share, not less than the value of the share of the estate the surviving spouse would have received if the testator had died intestate as to that portion of the testator's estate, if any, that is not any of the following:

(a) Property devised to or in trust for the benefit of a child of the testator who was born before the testator married the surviving spouse and who is not the surviving spouse's child.

(b) Property devised to or in trust for the benefit of a descendant of a child described in subdivision (a).

(c) Property that passes under section 2603 or 2604 to a child described in subdivision (a) or to a descendant of such a child.

(2) Subsection (1) does not apply if any of the following are true:

(a) From the will or other evidence, it appears that the will was made in contemplation of the testator's marriage to the surviving spouse.

(b) The will expresses the intention that it is to be effective notwithstanding a subsequent marriage.

(c) The testator provided for the spouse by transfer outside the will, and the intent that the transfer be a substitute for a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

(3) In satisfying the share provided by this section, devises made by the will to the testator's surviving spouse, if any, are applied first, and other devises, other than a devise to or in trust for the benefit of a child of the testator who was born before the testator married the surviving spouse and who is not the surviving spouse's child or a devise or substitute gift under section 2603 or 2604 to a descendant of such a child, abate as provided in section 3902.

(4) A spouse who receives an intestate share under this section may also exercise the right of election under section 2202, but the intestate share received by the spouse under this section reduces the sum available to the spouse under section 2202(2)(b).

History: 1998, Act 386, Eff. Apr. 1, 2000 ;-- Am. 2004, Act 314, Eff. Sept. 1, 2004 ;-- Am. 2005, Act 204, Imd. Eff. Nov. 10, 2005

Popular Name: EPIC

700.2302 Omitted children.

Sec. 2302.

(1) Except as provided in subsection (2), if a testator fails to provide in his or her will for a child of the testator born or adopted after the execution of the will, the omitted after-born or after-adopted child receives a share in the estate as provided in 1 of the following:

(a) If the testator had no child living when he or she executed the will, an omitted after-born or after-adopted child receives a share in the estate equal in value to that which the child would have received had the testator died intestate, unless the will devised all or substantially all of the estate to the other parent of the omitted child and that other parent survives the testator and is entitled to take under the will.

(b) If the testator had 1 or more children living when he or she executed the will, and the will devised property or an interest in property to 1 or more of the then-living children, an omitted after-born or after-adopted child is entitled to share in the testator's estate subject to all of the following:

(i) The portion of the testator's estate in which the omitted after-born or after-adopted child is entitled to share is limited to devises made to the testator's then-living children under the will.

(ii) The omitted after-born or after-adopted child is entitled to receive the share of the testator's estate, as limited in subparagraph (i), that the child would have received had the testator included all omitted after-born and after-adopted children with the children to whom devises were made under the will and had given an equal share of the estate to each child.

(iii) To the extent feasible, the interest granted an omitted after-born or after-adopted child under this section must be of the same character, whether equitable or legal, present or future, as that devised to the testator's then-living children under the will.

(iv) In satisfying a share provided by this subdivision, devises to the testator's children who were living when the will was executed abate ratably. In abating the devises of the then-living children, the court shall preserve to the maximum extent possible the character of the testamentary plan adopted by the testator.

(2) Subsection (1) does not apply if either of the following applies:

(a) It appears from the will that the omission was intentional.

(b) The testator provided for the omitted after-born or after-adopted child by transfer outside the will and the intent that the transfer be a substitute for a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

(3) If at the time of execution of the will the testator fails to provide in his or her will for a living child solely because he or she believes the child to be dead, the child is entitled to share in the estate as if the child were an omitted after-born or after-adopted child.

(4) In satisfying a share provided by subsection (1)(a), devises made by the will abate under section 3902.

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