Massachusetts General Laws, Chapters 190B, 191
Uniform Probate Code [excerpts]
(2019)

Section 1-102. [Purposes; Rule of Construction.]

(a) This chapter shall be liberally construed and applied to promote its underlying purposes and policies.

(b) The underlying purposes and policies of this chapter are:

(1) to simplify and clarify the law concerning the affairs of decedents and missing persons;

(2) to discover and make effective the intent of a decedent in distribution of the decedent's property;

(3) to promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to the decedent's successors;

(4) to facilitate use and enforcement of certain trusts; and

(5) to make uniform the law among the various jurisdictions.

Section 2-101. [Intestate Estate.]

(a) Any part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs as prescribed in this part, except as modified by the decedent's will.

(b) A decedent by will may expressly exclude or limit the right of an individual or class to succeed to property of the decedent passing by intestate succession. If that individual or a member of that class survives the decedent, the share of the decedent's intestate estate to which that individual or class would have succeeded passes as if that individual or each member of that class had disclaimed the intestate share.

Section 2-102. [Share of Spouse.]

The intestate share of a decedent's surviving spouse is:

(1) the entire intestate estate if:

(i) no descendant or parent of the decedent survives the decedent; or

(ii) all of the decedent's surviving descendants are also descendants of the surviving spouse and there is no other descendant of the surviving spouse who survives the decedent;

(2) the first $200,000, plus 3/4 of any balance of the intestate estate, if no descendant of the decedent survives the decedent, but a parent of the decedent survives the decedent;

(3) the first $100,000 plus 1/2 of any balance of the intestate estate, if all of the decedent's surviving descendants are also descendants of the surviving spouse and the surviving spouse has 1 or more surviving descendants who are not descendants of the decedent;

(4) the first $100,000 plus 1/2 of any balance of the intestate estate, if 1 or more of the decedent's surviving descendants are not descendants of the surviving spouse.

Section 2-103. [Share of Heirs Other Than Surviving Spouse.]

Any part of the intestate estate not passing to the decedent's surviving spouse under section 2-102, or the entire intestate estate if there is no surviving spouse, passes in the following order to the individuals designated below who survive the decedent:

(1) to the decedent's descendants per capita at each generation;

(2) if there is no surviving descendant, to the decedent's parents equally if both survive, or to the surviving parent;

(3) if there is no surviving descendant or parent, to the descendants of the decedent's parents or either of them per capita at each generation;

(4) if there is no surviving descendant, parent, or descendant of a parent, then equally to the decedent's next of kin in equal degree; but if there are 2 or more descendants of deceased ancestors in equal degree claiming through different ancestors, those claiming through the nearest ancestor shall be preferred to those claiming through an ancestor more remote. Degrees of kindred shall be computed according to the rules of civil law.

Section 2-105. [No Taker.]

If there is no taker under the provisions of this article, the intestate estate passes to the commonwealth; provided, however, if such intestate is a veteran who died while a member of the Soldiers' Home in Massachusetts or the Soldiers' Home in Holyoke, the intestate estate shall inure to the benefit of the legacy fund or legacy account of the soldiers' home of which the intestate was a member.

Section 2-106. (a) [Representation.]

In this section:

(1) "Deceased descendant", "deceased parent", or "deceased ancestor", a descendant, parent, or ancestor who predeceased the decedent.

(2) "Surviving descendant", a descendant who survived the decedent.

(b) If, under section 2-103(1), a decedent's intestate estate or a part thereof passes "per capita at each generation" to the decedent's descendants, the estate or part thereof is divided into as many equal shares as there are (i) surviving descendants in the generation nearest to the decedent that contains 1 or more surviving descendants, and (ii) deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated 1 share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants in the nearest generation and their surviving descendants had predeceased the decedent.

(c) If, under section 2-103(3), a decedent's intestate estate or a part thereof passes "per capita at each generation" to the descendants of the decedent's deceased parents or either of them, the estate or part thereof is divided into as many equal shares as there are (i) surviving descendants in the generation nearest the deceased parents or either of them that contains 1 or more surviving descendants, and (ii) deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated 1 share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants in the nearest generation and their surviving descendants had predeceased the decedent.

Section 2-107. [Kindred of Half Blood.]

Relatives of the half blood inherit the same share they would inherit if they were of the whole blood.

Section 2-108. [Afterborn Heirs.]

An individual in gestation at a particular time is treated as living at that time if the individual lives 120 hours or more after birth.

Section 2-109. [Advancements.]

(a) If an individual dies intestate as to all or a portion of the estate, property the decedent gave during the decedent's lifetime to an individual who, at the decedent's death, is an heir is treated as an advancement against the heir's intestate share only if (i) the decedent declared in a contemporaneous writing or the heir acknowledged in writing that the gift is an advancement or (ii) the decedent's contemporaneous writing or the heir's written acknowledgment otherwise indicates that the gift is to be taken into account in computing the division and distribution of the decedent's intestate estate.

(b) If the value of an advancement is expressed in the conveyance, in the contemporaneous writing, or in the acknowledgment, such value shall be adopted in the division and distribution of the intestate estate; otherwise it shall be determined according to the value when the property was given.

(c) Property which is advanced by an intestate shall be considered as part of the intestate's estate in the division and distribution of such estate, and shall be taken by the heir who received the advance toward the heir's share of the intestate estate; but the heir shall not be required to restore any part thereof, although it exceeds the intestate share. A surviving spouse shall be entitled only to a share in the residue after deducting the value of the advancement.

(d) If a child or other lineal descendant of the intestate who has received an advancement dies before the intestate, leaving descendants who receive a share of the intestate's estate, the advancement shall be considered as part of the intestate's estate in the division and distribution of such estate, and the value thereof shall be taken in equal shares by the representatives of the person who received the advancement toward their share of the intestate estate, as if the advancement had been made directly to them.

(e) The probate court in which the estate of a decedent is settled may hear and determine all questions of advancements arising relative to such estate.

Section 2-114. [Parent and Child Relationship.]

(a) Except as provided in subsection (b), for purposes of intestate succession by, through, or from a person, an individual is the child of his natural parents, regardless of their marital status. The parent and child relationship may be established under applicable state law.

(b) An adopted individual is the child of his adopting parent or parents and not of his natural parents, but adoption of a child by the spouse of either natural parent has no effect on the right of the child or a descendant of the child to inherit from or through either natural parent. The court may decree that the rights of succession to property under this section, or under former section 7 of chapter 210, shall vest in an adopted individual as of the date of the filing of the petition for adoption.

Section 2-301. [Entitlement of Spouse; Premarital Will.]

(a) If a testator's surviving spouse married the testator after the testator executed a will, the surviving spouse is entitled to receive, as an intestate share, no less than the value of the share of the estate the spouse would have received if the testator had died intestate as to that portion of the testator's estate, if any, that neither is devised to a child of the testator who is born before the testator married the surviving spouse and who is not a child of the surviving spouse nor is devised to a descendant of such a child or passes under section 2-603 or 2-604 to such a child or to a descendant of such a child, unless:

(1) it appears from the will that the will was made in contemplation of the testator's marriage to the surviving spouse;

(2) the will expresses the intention that it is to be effective notwithstanding any subsequent marriage; or

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

(b) 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 a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse or a devise or substitute gift under section 2-603 or 2-604 to a descendant of such a child, abate as provided in section 3-902.

Section 2-302. [Omitted Children.]

(a) Except as provided in subsection (b), if a testator fails to provide in a will for any children born or adopted after the execution of the will, the omitted after-born or after-adopted child receives a share in the estate as follows:

(1) If the testator had no child living when the will was executed, 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 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.

(2) If the testator had 1 or more children living when the will was executed, 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 as follows:

(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 shall 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 paragraph, 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.

(b) Neither subsection (a)(1) nor subsection (a)(2) applies if:

(1) It appears from the will that the omission was intentional; or

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

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

(d) In satisfying a share provided by subsection (a)(1), devises made by the will abate under section 3-902.

(e) No such omitted child shall take any share in real property unless a claim is filed in the registry of probate by or on behalf of such child within 1 year after the death of the decedent.

Section 2-403. [Exempt Property.]

(a) The decedent's surviving spouse is entitled from the estate to a value at date of death, not exceeding $10,000 in excess of any security interests therein, in household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse, the decedent's children are entitled jointly to the same value. If encumbered chattels are selected and the value in excess of security interests, plus that of other exempt property, is less than $10,000, or if there is not $10,000 worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the $10,000 value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all unsecured claims against the estate, but the right to any assets to make up a deficiency of exempt property abates as necessary to permit earlier payment of the discretionary family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or children by the decedent's will, unless otherwise provided, by intestate succession, or by way of elective share.

(b) The decedent's surviving spouse may remain in the house of the decedent for not more than 6 months next succeeding the date of death without being chargeable for rent.

Section 2-404. [Discretionary Family Allowance.]

(a) In addition to the right to exempt property, the decedent's surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by the decedent are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than 1 year if the estate is inadequate to discharge allowed claims. This discretionary family allowance may be paid as a lump sum or in periodic installments. It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children; otherwise to the children, or persons having their care and custody. If a minor child or dependent child is not living with the surviving spouse, the discretionary family allowance may be made partially to the child or the child's guardian or other person having the child's care and custody, and partially to the spouse, as their needs may appear. The discretionary family allowance is exempt from and has priority over all unsecured claims.

(b) The discretionary family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the decedent, unless otherwise provided, by intestate succession or by way of elective share. The death of any person entitled to a discretionary family allowance terminates the right to allowances not yet paid.

Section 2-502. [Execution of Wills.]

(a) Except as provided in subsection (b) and in sections 2-506 and 2-513, a will shall be:

(1) in writing;

(2) signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction; and

(3) signed by at least 2 individuals, each of whom witnessed either the signing of the will as described in paragraph (2) or the testator's acknowledgment of that signature or acknowledgment of the will.

(b) Intent that the document constitute the testator's will can be established by extrinsic evidence.

Section 2-505. [Who May Witness.]

(a) An individual generally competent to be a witness may act as a witness to a will.

(b) The signing of a will by an interested witness shall not invalidate the will or any provision of it except that a devise to a witness or a spouse of such witness shall be void unless there are 2 other subscribing witnesses to the will who are not similarly benefited thereunder or the interested witness establishes that the bequest was not inserted, and the will was not signed, as a result of fraud or undue influence by the witness.

Section 2-507. [Revocation by Writing or by Act.]

(a) A will or any part thereof is revoked:

(1) by executing a subsequent will that revokes the previous will or part expressly or by inconsistency; or

(2) by performing a revocatory act on the will, if the testator performed the act with the intent and for the purpose of revoking the will or part or if another individual performed the act in the testator's conscious presence and by the testator's direction. For purposes of this paragraph, "revocatory act on the will" includes burning, tearing, canceling, obliterating, or destroying the will or any part of it.

(b) If a subsequent will does not expressly revoke a previous will, the execution of the subsequent will wholly revokes the previous will by inconsistency if the testator intended the subsequent will to replace rather than supplement the previous will.

(c) The testator is presumed to have intended a subsequent will to replace rather than supplement a previous will if the subsequent will makes a complete disposition of the testator's estate. If this presumption arises and is not rebutted, the previous will is revoked; only the subsequent will is operative on the testator's death.

(d) The testator is presumed to have intended a subsequent will to supplement rather than replace a previous will if the subsequent will does not make a complete disposition of the testator's estate. If this presumption arises and is not rebutted, the subsequent will revokes the previous will only to the extent the subsequent will is inconsistent with the previous will; each will is fully operative on the testator's death to the extent they are not inconsistent.

Section 2-517. [Penalty Clause for Contest.]

A provision in a will purporting to penalize an interested person for contesting the will or instituting other proceedings relating to the estate is enforceable.

Section 2-603. [Anti-Lapse; Deceased Devisee; Class Gifts.]

If a devisee who is a grandparent or a lineal descendant of a grandparent is dead at the time of execution of the will, fails to survive the testator, or is treated as if he predeceased the testator, the issue of the deceased devisee who survive the testator take in place of the deceased devisee and if they are all of the same degree of kinship to the devisee they take equally, but if of unequal degree than those of more remote degree take per capita at each generation. A person who would have been a devisee under a class gift if he had survived the testator is treated as a devisee for purposes of this section whether his death occurred before or after the execution of the will.

Section 2-705. [Class Gifts Construed to Accord with Intestate Succession.]

(a) Adopted individuals and individuals born out of wedlock, and their respective descendants if appropriate to the class, are included in class gifts and other terms of relationship in accordance with the rules for intestate succession. Terms of relationship that do not differentiate relationships by blood from those by affinity, such as "uncles", "aunts", "nieces", or "nephews", are construed to exclude relatives by affinity. Terms of relationship that do not differentiate relationships by the half blood from those by the whole blood, such as "brothers", "sisters", "nieces", or "nephews", are construed to include both types of relationships.

(b) In addition to the requirements of subsection (a), in construing a donative disposition by a transferor who is not the adopting parent, an adopted individual is not considered the child of the adopting parent unless the adoption took place while the person adopted was a minor.

Section 2-709. [Representation; Per Capita at Each Generation; Per Stirpes.]

(a) In this section:

(1) "Deceased child" or "deceased descendant", a child or a descendant who predeceased the distribution date.

(2) "Distribution date", with respect to an interest, is the time when the interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day, but can occur at a time during the course of a day.

(3) "Surviving ancestor", "surviving child", or "surviving descendant", an ancestor, a child, or a descendant who did not predecease the distribution date.

(b) If an applicable statute or a governing instrument calls for property to be distributed "per capita at each generation", the property is divided into as many equal shares as there are (i) surviving descendants in the generation nearest to the designated ancestor which contains 1 or more surviving descendants (ii) and deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated 1 share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the distribution date.

(c) If a governing instrument calls for property to be distributed "by representation" or "per stirpes", the property is divided into as many equal shares as there are (i) surviving children of the designated ancestor and (ii) deceased children who left surviving descendants. Each surviving child is allocated 1 share. The share of each deceased child with surviving descendants is divided in the same manner, with subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

(d) For the purposes of subsections (b) and (c), an individual who is deceased and left no surviving descendant is disregarded, and an individual who leaves a surviving ancestor who is a descendant of the designated ancestor is not entitled to a share.

Section 2-901. [Statutory Rule Against Perpetuities.]

(a) A nonvested property interest is invalid unless:

(1) when the interest is created, it is certain to vest or terminate no later than 21 years after the death of an individual then alive; or

(2) the interest either vests or terminates within 90 years after its creation.

(b) A general power of appointment not presently exercisable because of a condition precedent is invalid unless:

(1) when the power is created, the condition precedent is certain to be satisfied or becomes impossible to satisfy no later than 21 years after the death of an individual then alive; or

(2) the condition precedent either is satisfied or becomes impossible to satisfy within 90 years after its creation.

(c) A nongeneral power of appointment or a general testamentary power of appointment is invalid unless:

(1) when the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than 21 years after the death of an individual then alive; or

(2) the power is irrevocably exercised or otherwise terminates within 90 years after its creation.

(d) In determining whether a nonvested property interest or a power of appointment is valid under subsection (a)(1), (b)(1), or (c)(1), the possibility that a child will be born to an individual after the individual's death is disregarded.

(e) If, in measuring a period from the creation of a trust or other property arrangement, language in a governing instrument (i) seeks to disallow the vesting or termination of any interest or trust beyond, (ii) seeks to postpone the vesting or termination of any interest or trust until, or (iii) seeks to operate in effect in any similar fashion upon, the later of (A) the expiration of a period of time not exceeding 21 years after the death of the survivor of specified lives in being at the creation of the trust or other property arrangement or (B) the expiration of a period of time that exceeds or might exceed 21 years after the death of the survivor of lives in being at the creation of the trust or other property arrangement, that language is inoperative to the extent it produces a period of time that exceeds 21 years after the death of the survivor of the specified lives.

Section 2-904. [Exclusions from Statutory Rule Against Perpetuities.]

Section 2-901 shall not apply to:

(1) a nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of (i) a premarital or postmarital agreement, (ii) a separation or divorce settlement, (iii) a spouse's election, (iv) a similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties, (v) a contract to make or not to revoke a will or trust, (vi) a contract to exercise or not to exercise a power of appointment, (vii) a transfer in satisfaction of a duty of support, or (viii) a reciprocal transfer;

(2) a fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease, or mortgage property, and the power of a fiduciary to determine principal and income;

(3) a power to appoint a fiduciary;

(4) a discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal;

(5) a nonvested property interest held by a charity, government, or governmental agency or subdivision, if the nonvested property interest is preceded by an interest held by another charity, government, or governmental agency or subdivision;

(6) a nonvested property interest in or a power of appointment with respect to a trust or other property arrangement forming part of a pension, profit-sharing, stock bonus, health, disability, death benefit, income deferral, or other current or deferred benefit plan for 1 or more employees, independent contractors, or their beneficiaries or spouses, to which contributions are made for the purpose of distributing to or for the benefit of the participants or their beneficiaries or spouses the property, income, or principal in the trust or other property arrangement, except a nonvested property interest or a power of appointment that is created by an election of a participant or a beneficiary or spouse; or

(7) a property interest, power of appointment, or arrangement that was not subject to the common-law rule against perpetuities or is excluded by another statute of the commonwealth.

Chapter 191, Section 15. [Filing of Waiver; Rights upon Waiver.]

The surviving husband or wife of a deceased person, except as provided in section thirty-six of chapter two hundred and nine, within six months after the probate of the will of such deceased, may file in the registry of probate a writing signed by him or by her, waiving any provisions that may have been made in it for him or for her, or claiming such portion of the estate of the deceased as he or she is given the right to claim under this section, and if the deceased left issue, he or she shall thereupon take one third of the personal and one third of the real property; and if the deceased left kindred but no issue, he or she shall take twenty-five thousand dollars and one half of the remaining personal and one half of the remaining real property; except that in either case if he or she would thus take real and personal property to an amount exceeding twenty-five thousand

dollars in value, he or she shall receive, in addition to that amount, only the income during his or her life of the excess of his or her share of such estate above that amount, the personal property to be held in trust and the real property vested in him or her for life, from the death of the deceased. If the deceased left no issue or kindred, the surviving husband or wife shall take twenty-five thousand dollars and one half of the remaining personal and one half of the remaining real property absolutely. If the real and personal property of the deceased which the surviving husband or wife takes under the foregoing provisions exceeds twenty-five thousand dollars in value, and the surviving husband or wife is to take only twenty-five thousand dollars absolutely, the twenty-five thousand dollars, above given absolutely shall be paid out of that part of the personal property in which the husband or wife is interested; and if such part is insufficient the deficiency shall, upon the petition of any person interested, be paid from the sale or mortgage in fee, in the manner provided for the payment of debts or legacies, of that part of the real property in which he or she is interested. Such sale or mortgage may be made either before or after such part is set off from the other real property of the deceased for the life of the husband or widow. If, after probate of such will, legal proceedings have been instituted wherein its validity or effect is drawn in question, the probate court may, within said six months, on petition and after such notice as it orders, extend the time for filing the aforesaid claim and waiver until the expiration of six months from the termination of such proceedings.