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THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 21

WILLS AND SUCCESSION ACT

MR. OLSON

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 21
Mr. Olson

BILL 21

2010

WILLS AND SUCCESSION ACT

(Assented to , 2010)

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HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Interpretation and Application

Interpretation

1(1) In this Act,

- (a) “adult interdependent partner” means an adult interdependent partner within the meaning of the *Adult Interdependent Relationships Act*;

- (b) “beneficiary”, except where expressly provided otherwise, means a person who receives or is entitled to receive a beneficial disposition of property under a will or on an intestacy;
- (c) “beneficiary designation” means a designation made under section 71(2);
- (d) “Court” means the Court of Queen’s Bench of Alberta;
- (e) “descendants” means all lineal descendants of an individual through all generations;
- (f) “guardian”, in respect of a child, means
 - (i) a person who is or is appointed as a guardian of the child under Part 2 of the *Family Law Act*, and
 - (ii) a person who is a guardian of the child under an order or agreement made under the *Child, Youth and Family Enhancement Act*;
- (g) “kin”, in respect of an individual, means a relative of the individual by blood or adoption and does not include a relative by marriage;
- (h) “personal representative” means an executor or an administrator or trustee of the estate of a deceased individual;
- (i) “property” includes
 - (i) real and personal property, as well as rights or interests in them,
 - (ii) anything regarded in law or equity as property or as an interest in property,
 - (iii) any right or interest that can be transferred for value from one person to another, and
 - (iv) any right, including a contingent or future right, to be paid money or receive any other kind of property;
- (j) “testator” means an individual who makes a will;
- (k) “will” includes

- (i) a codicil,
- (ii) a writing that
 - (A) alters or revokes another will,
 - (B) appoints a personal representative, or
 - (C) on the death of the testator, confers or exercises a power of appointment,and
- (iii) any other writing that is a testamentary disposition.

(2) In this Act, a reference to an intestate or to an individual who died intestate is a reference to an individual who dies leaving an intestate estate as defined in section 58(1)(a).

(3) If an individual is a parent of a child within the meaning of Part 1 of the *Family Law Act*, that individual is a parent of the child for all purposes under this Act, including for the purposes of determining, at any generation, whether the child or parent is an ascendant or descendant of another individual.

Paramountcy of Dower Act

2 In the event of a conflict between the *Dower Act* and a provision of Part 2 or 3 respecting a spouse's rights in respect of property after the death of the other spouse, the *Dower Act* prevails.

Applications to the Court

3(1) In this section, “judge” and “master in chambers” have the same meanings as in the *Court of Queen's Bench Act*.

(2) An application to the Court under this Act must be heard by a judge and not by a master in chambers.

(3) For greater certainty, section 11 of the *Alberta Evidence Act* applies in respect of evidence offered or taken in an application to the Court under this Act.

Duty of lawyer

4 Every lawyer who acts on behalf of a party in an application to the Court under this Act has a duty

- (a) to discuss with the party alternative methods of resolving the matters that are the subject of the application, and
- (b) to inform the party of collaborative processes, mediation facilities and other justice services known to the lawyer that might assist the parties in resolving those matters.

Part 1 Survivorship

Survivorship rules

5(1) Subject to sections 599 and 690 of the *Insurance Act*, if 2 or more individuals die at the same time or in circumstances rendering it uncertain which of them survived the other or others, then unless the Court in interpreting a will or other instrument finds a contrary intention, all rights and interests of each of the individuals with respect to property must be determined as if that individual had survived the other or others.

(2) If, during life, 2 or more individuals held property jointly with each other with a right of survivorship and all the joint owners die at the same time or in circumstances rendering it uncertain which of them survived the other or others, then unless the Court in interpreting a will or other instrument finds a contrary intention, the individuals are deemed to have held the property as tenants in common with each other.

Transitional

6 This Part applies only in respect of deaths occurring after this section comes into force.

Part 2 Wills

Interpretation and Application of Part 2

Interpretation

7(1) In this Part,

- (a) “disposition” includes a bequest, a legacy, a devise and the conferral or exercise of a power of appointment;
- (b) “former Act” means the *Wills Act*, RSA 2000 cW-12.

(2) In this Part, except in respect of a will made under section 16, a reference to the signature of a testator is to be interpreted as including the signature of an individual referred to in section 19(1).

Application of this Part

8(1) Unless otherwise expressly provided in this Part or another enactment of Alberta,

- (a) this Part applies to wills made on or after the day this section comes into force,
- (b) the former Act continues in force, as if unrepealed, in respect of wills made under that Act, and
- (c) *The Wills Act*, RSA 1955 c369, continues in force, as if unrepealed, in respect of wills made before July 1, 1960.

(2) Despite subsection (1), sections 26 and 37 to 40 apply to wills or alterations of wills regardless of when the will or alteration was made.

Division 1 General

Legal Effect of a Will

Dispositions of property by will

9(1) An individual may by will dispose of all property to which the individual is entitled at law or in equity at the time of his or her death, including property acquired before, on or after the date the will is made.

(2) A disposition of property by will

- (a) takes effect according to its terms, and
- (b) is a disposition of every legal or equitable interest in the property that the testator had the legal capacity to give

unless the Court, in interpreting the will, finds that the testator had a contrary intention.

Property disposed of before death

10 If

- (a) a testator makes a will disposing of property to a beneficiary, and
- (b) after the making of the will and before his or her death, the testator disposes of an interest in the property,

the beneficiary inherits any remaining interest the testator has in the property at the time of death unless the Court, in interpreting the will, finds that the testator had a contrary intention.

General disposition

11 Unless the Court, in interpreting a will, finds that the testator had a contrary intention, a disposition by will of

- (a) property of the testator,
- (b) property described in a general manner, or
- (c) real property of the testator that is situated in a place mentioned in the will or that is occupied by a person mentioned in the will,

includes any property, or any property to which the description applies, that the testator has power to appoint in any manner that the testator thinks proper, and the disposition operates as an execution of that power.

Powers of appointment

12(1) A power of appointment may be created by will.

(2) A power of appointment by will may be exercised by a will made in accordance with this Act, despite that the instrument that grants the power requires that a will in exercise of the power be made in another form.

Making a Will

Who can make a will

13(1) An individual who is 18 years of age or older may make, alter or revoke a will if the individual has the mental capacity to do so.

(2) An individual who is under 18 years of age may make, alter or revoke a will if the individual has the mental capacity to do so and if the individual

- (a) has or has had a spouse or adult interdependent partner,
 - (b) is a member of
 - (i) a regular force as defined in the *National Defence Act* (Canada), or
 - (ii) another component of the Canadian Forces and is, at the time of making the will, placed on active service under the *National Defence Act* (Canada),
- or
- (c) is authorized by an order of the Court under section 36.

Requirements of a valid will

14 To be valid, a will

- (a) must be made in writing,
- (b) must contain a signature of the testator that makes it apparent on the face of the document that the testator intended, by signing, to give effect to the writing in the document as the testator's will, and
- (c) subject to any order made under section 37, must be made in accordance with section 15, 16 or 17.

Formal will

15 A will may be made by a writing signed by the testator if

- (a) the testator makes or acknowledges his or her signature in the presence of 2 witnesses who are both present at the same time, and

- (b) each of the witnesses signs the will in the presence of the testator.

Holograph will

16 A will may be made by a writing that is wholly in the testator's own handwriting and signed by the testator without the presence or signature of a witness or any other formality.

Military wills

17 A member of the Canadian Forces while placed on active service pursuant to the *National Defence Act* (Canada), or a member of any other naval, land or air force while on active service, may make a will by signing it, without the presence or signature of a witness or any other formality.

Active service

18 For the purposes of sections 13(2)(b) and 17,

- (a) a certificate signed by or on behalf of an officer purporting to have custody of the records of the force in which a member was serving at the time the will was made setting out that the member was on active service at that time is sufficient proof of that fact, and
- (b) if a certificate referred to in clause (a) is not available, a member of a naval, land or air force is deemed to be on active service after the member has taken steps under the orders of a superior officer preparatory to serving with or being attached to or seconded to a component of such a force that has been placed on active service.

Signature

19(1) A testator may sign a will, other than a will made under section 16, by having another individual sign on the testator's behalf, at the testator's direction and in the testator's presence.

(2) A will is not invalid because the testator's signature is not placed at the end of the will if it appears that the testator intended by the signature to give effect to the will.

(3) A testator is presumed not to have intended to give effect to any writing that appears below the testator's signature.

(4) A testator's signature does not give effect to any disposition or direction added to the will after the will is made.

Witnesses to signature

20(1) An individual may be a witness to a signature of the testator if the individual has the mental capacity to do so.

(2) An individual who signs a will on behalf of a testator is not eligible to witness the signature of the testator.

(3) An individual who witnesses a signature of a testator is not disqualified as a witness to prove the making of the will or its validity or invalidity only because the individual is

- (a) an executor of the will,
- (b) a beneficiary under the will, or
- (c) the spouse or adult interdependent partner of an executor or a beneficiary.

(4) A will is not invalid only because

- (a) a witness to the signature of the testator did not know at the time of witnessing the signature that the document being signed was a will,
- (b) a witness to the signature of the testator was at the time of witnessing the signature, or afterwards became, incapable of proving the making of the will, or
- (c) more than 2 individuals witnessed the signature of the testator.

Certain dispositions are void

21(1) Subject to subsection (2) and any order made under section 40, a beneficial disposition or appointment that is made by will to

- (a) an individual who acts as a witness to the signature of the testator,
- (b) an individual who signs the will on behalf of the testator under section 19(1),

- (c) an interpreter who provided translation services in respect of the making of the will, or
- (d) the spouse or adult interdependent partner of an individual described in clause (a), (b) or (c)

is void as against the individual, the spouse or adult interdependent partner of the individual and any individual claiming under any of them.

(2) A disposition referred to in subsection (1) is not void

- (a) if it is a charge or direction for payment of remuneration, including professional fees of a personal representative of the estate or of an interpreter referred to in subsection (1)(c),
- (b) in the case of a disposition to a witness, if the will is made under section 16 or 17 or if the testator's signature is witnessed by at least 2 other individuals under this Part, or
- (c) if the Court validates the disposition by order under section 40.

(3) For the purposes of this section, the time for determining whether an individual is the spouse or adult interdependent partner of another individual is the time at which the will is made.

Alteration, Revocation and Revival

Alteration of a will

22(1) Any writing, marking or obliteration made on a will

- (a) is presumed to be made after the will is made, and
- (b) is valid as an alteration of the will only if
 - (i) in the case of a will made under section 15, the alteration is made in accordance with that section,
 - (ii) in the case of a will made under section 16, the alteration is made in accordance with that section, or
 - (iii) the Court makes an order under section 38 validating the alteration.

(2) If a writing, marking or obliteration renders part of the will illegible, and is not made in accordance with subsection (1)(b)(i) or (ii) or validated by an order referred to in subsection (1)(b)(iii), the Court may allow the original words of the will to be restored or determined by any means the Court considers appropriate.

(3) A will may be altered by another will made by the testator.

Revocation of a will

23(1) A will or part of a will may be revoked only by

- (a) the testator making another will,
- (b) the testator making, in accordance with the provisions of this Part governing the making of a will, a writing that declares an intention to revoke the earlier will,
- (c) the testator burning, tearing or otherwise destroying the will with the intention of revoking it, or
- (d) the testator having another individual burn, tear or otherwise destroy the will in the testator's presence, at the direction of the testator given with the intention of revoking the will.

(2) For greater certainty,

- (a) on and after the coming into force of this section, no will or part of a will is revoked by the marriage of the testator,
- (b) on and after the coming into force of this section, no will or part of a will is revoked by the testator entering into an adult interdependent relationship, and
- (c) no will or part of a will is revoked by a change in circumstances of the testator, except to the extent that section 25(1) applies.

(3) The revocation of a will does not revive any earlier will.

Revival of a will

24(1) A will or part of a will that has been revoked in any manner may only be revived by making a new will, whether by re-execution or otherwise, in accordance with the provisions of this

Part governing the making of a will and in a manner that shows an intention to give effect to the will or part that was earlier revoked.

(2) A will or part of a will that is revived by re-execution is deemed to be made at the time of its re-execution.

Gifts to ex-spouse or former adult interdependent partner

25(1) If, after a testator makes a will and before the testator's death, the testator's marriage is terminated by a divorce judgment or found by a court to be void or the testator ceases to be the adult interdependent partner of an individual, then unless the Court, in interpreting the will, finds that the testator had a contrary intention, any provision in the will that

- (a) gives a beneficial interest in property to the testator's former spouse or to the individual, whether personally or as a member of a class of beneficiaries,
- (b) gives a general or special power of appointment to the testator's former spouse or to the individual, or
- (c) appoints the testator's former spouse or the individual as an executor, a trustee or a guardian of a child under the *Family Law Act*

is deemed to have been revoked and, for the purposes of clauses (a) to (c), the will is to be interpreted as if the former spouse or individual had predeceased the testator.

(2) Subsection (1) does not apply in respect of a former adult interdependent partner who is related to the testator by blood or adoption.

(3) This section applies only in respect of the will of a testator

- (a) whose marriage is terminated by a divorce judgment or found to be void, or
- (b) who becomes a former adult interdependent partner

after this section comes into force.

Interpretation of a Will

Interpretation and evidence

26 A will must be interpreted in a manner that gives effect to the intent of the testator, and in determining the testator's intent the Court may admit the following evidence:

- (a) evidence as to the meaning, in either an ordinary or a specialized sense, of the words or phrases used in the will,
- (b) evidence as to the meaning of the provisions of the will in the context of the testator's circumstances at the time of the making of the will, and
- (c) evidence of the testator's intent with regard to the matters referred to in the will.

Will speaks from time of death

27 A will is to be interpreted as if it had been made immediately before the death of the testator unless the Court, in interpreting the will, finds that the testator had a contrary intention.

References to children, descendants or issue

28 Unless the Court, in interpreting a will, finds that the testator had a contrary intention, references in the will to the children, descendants or issue of any individual, including the testator, must be interpreted as including

- (a) any child for whom that individual is a parent within the meaning of Part 1 of the *Family Law Act*, and
- (b) any child who is in the womb at the time of the testator's death and is later born alive.

References to having no issue

29 Unless the Court, in interpreting a will, finds that the testator had a contrary intention,

- (a) the words "die without issue",
- (b) the words "die without leaving issue",
- (c) the words "have no issue",

- (d) words referring to a complete absence of descendants, or
- (e) any words conveying any similar meaning,

when used in the will in respect of a disposition to an individual, are deemed to refer to the individual having no descendants surviving at the time of the individual's death, and not to a complete absence of descendants.

Disposition to "heir" or "next of kin"

30 Unless the Court, in interpreting a will, finds that the testator had a contrary intention, a disposition of property by will to one or more individuals described in the will as the "heir", "heirs", "next of kin" or "kin" of the testator or of another individual must be distributed as if the testator or other individual had died intestate.

Disposition to "issue" or "descendants"

31(1) Unless the Court, in interpreting a will, finds that the testator had a contrary intention, a disposition of property by will to a class of individuals that

- (a) is described in the will as the "issue" or "descendants" of the testator or of another individual, or by any similar term, and
- (b) includes more than one generation of individuals,

must be distributed in accordance with Part 3 to the descendants of the testator or other individual in the same manner as if the testator or other individual had died intestate leaving only descendants and no spouse or adult interdependent partner.

(2) For greater certainty, an individual who is both a descendant of the deceased beneficiary and the adult interdependent partner of the deceased beneficiary may receive a share under subsection (1) as a descendant.

Where beneficiary dies before testator

32(1) If a beneficial disposition in a will cannot take effect because the intended beneficiary has predeceased the testator, whether before or after the will is made, then unless the Court, in interpreting the will, finds that the testator had a contrary intention,

the property that is the subject of the disposition must be distributed

- (a) to the alternate beneficiary, if any, of the disposition, regardless of whether the will provides for the alternate beneficiary to take in the specific circumstances,
- (b) if clause (a) does not apply and the deceased beneficiary was a descendant of the testator, to the deceased beneficiary's descendants who survive the testator, in the same manner as if the deceased beneficiary had died intestate without leaving a surviving spouse or adult interdependent partner,
- (c) if neither clause (a) nor (b) applies, to the surviving residuary beneficiaries of the testator, if any, named in the will, in proportion to their interests, or
- (d) if none of clauses (a), (b) or (c) applies, in accordance with Part 3 as if the testator had died intestate.

(2) For greater certainty, an individual who is both a descendant of the deceased beneficiary and the adult interdependent partner of the deceased beneficiary may receive a share under subsection (1)(b) as a descendant.

(3) Despite subsections (1) and (2), no share of the property that is the subject of the disposition shall be distributed to an individual described in section 21(1) unless section 21(2) applies.

Where gift is void or contrary to law

33(1) If a beneficial disposition in a will cannot take effect by reason of the disposition to the intended beneficiary being void, contrary to law or disclaimed, or for any other reason, then unless the Court, in interpreting the will, finds that the testator had a contrary intention, the property that is the subject of the disposition must be distributed

- (a) to the alternate beneficiary, if any, of the disposition, regardless of whether the will provides for the alternate beneficiary to take in the specific circumstances,
- (b) if clause (a) does not apply and the intended beneficiary was a descendant of the testator, to the intended beneficiary's descendants who survive the testator, in the

same manner as if the intended beneficiary had died intestate without leaving a surviving spouse or adult interdependent partner,

- (c) if neither clause (a) nor clause (b) applies, to the surviving residuary beneficiaries of the testator, if any, named in the will, in proportion to their interests, or
- (d) if none of clauses (a), (b) or (c) applies, in accordance with Part 3 as if the testator had died intestate.

(2) For the purposes of subsection (1)(a) to (d), the intended beneficiary is deemed to have predeceased the testator.

(3) Despite subsection (1), no share of the property that is the subject of the disposition shall be distributed to an individual described in section 21(1) unless section 21(2) applies.

Portion of estate not disposed of by will

34 Unless the Court, in interpreting the will, finds that the testator had a contrary intention, an executor appointed by the will

- (a) is a trustee of any property not disposed of by the will, and
- (b) holds that property in trust for the person or persons, if any, who would be entitled to receive it under Part 3 if the testator had died intestate.

Gift for charitable purpose

35 If a testator disposes of property, whether by way of a trust or by outright gift, for a charitable purpose that is linked conjunctively or disjunctively in the will with a non-charitable purpose, the trust or gift

- (a) is not rendered void only because the non-charitable purpose is void for uncertainty or for some other reason, but in that case the gift is effective only for the benefit of the charitable purpose, and
- (b) is effective for the benefit of both purposes if the non-charitable purpose is not void, and must be divided among the charitable and non-charitable purposes

according to the trustee's or executor's discretion unless the will directs otherwise.

Court Orders

Court may authorize minor to make a will

36(1) The Court may, on application by or on behalf of an individual who is under 18 years of age but is not an individual described in section 13(2)(a) or (b), make an order authorizing the individual

- (a) to make or alter a will in specific terms approved by the Court, or
- (b) to revoke the whole or any part of a will made by the individual.

(2) Before making an order under this section, the Court must be satisfied that

- (a) the individual understands the nature and effect of the proposed will, alteration or revocation and the extent of the property disposed of by it,
- (b) the proposed will, alteration or revocation accurately reflects the individual's intentions, and
- (c) it is reasonable in all the circumstances that the order should be made.

(3) An order under this section may be granted on any conditions that the Court considers appropriate.

(4) A will, or a writing altering or revoking the whole or any part of a will, made pursuant to an order under this section

- (a) must be made in accordance with section 15 or as the Court may direct, and
- (b) is invalid if it does not conform to the order authorizing the will to be made.

Court may validate non-compliant will

37 The Court may, on application, order that a writing is valid as a will or a revocation of a will, despite that the writing was not

made in accordance with section 15, 16 or 17, if the Court is satisfied on clear and convincing evidence that the writing sets out the testamentary intentions of the testator and was intended by the testator to be his or her will or a revocation of his or her will.

Court may validate non-compliant alteration

38 The Court may, on application, order that a writing, marking or obliteration is valid as an alteration of a will, despite that the writing, marking or obliteration was not made in accordance with section 22(1)(b)(i) or (ii), if the Court is satisfied on clear and convincing evidence that it reflects the testamentary intentions of the testator and was intended by the testator to be an alteration of his or her will.

Rectification

39(1) The Court may, on application, order that a will be rectified by adding or deleting characters, words or provisions specified by the Court if the Court is satisfied, on clear and convincing evidence, that the will does not reflect the testator's intentions because of

- (a) an accidental slip, omission or misdescription, or
- (b) a misunderstanding of, or a failure to give effect to, the testator's instructions by a person who prepared the will.

(2) Subsection (1) applies to the omission of the testator's signature only if the Court is satisfied on clear and convincing evidence that the testator

- (a) intended to sign the will but omitted to do so by pure mistake or inadvertence, and
- (b) intended to give effect to the writing in the document as the testator's will.

(3) An application under this section may not be made more than 6 months after the date the grant of probate or administration is issued, unless the Court orders an extension of that period.

(4) The Court may order an extension of the period on any terms the Court considers just.

Validation of gift to witness

40(1) The Court may, on application, order that a disposition or appointment referred to in section 21(1) is not void if the Court is satisfied that

- (a) the testator intended to make the disposition to the individual or to appoint the individual despite knowing that the individual was an individual described in section 21(1), and
- (b) neither the individual nor the individual's spouse or adult interdependent partner exercised any improper or undue influence over the testator.

(2) An application under subsection (1) may be made only within 6 months after the date the grant of probate or administration is issued.

Division 2 Conflict of Laws

Land and movables

41(1) In this Division,

- (a) an interest in land includes a leasehold estate as well as a freehold estate in land and any other estate or interest in land, whether the estate or interest is real property or personal property;
- (b) an interest in movables includes an interest in a tangible or intangible thing other than land, and includes personal property other than an estate or interest in land.

(2) Subject to this Division, the manner and formalities of making a will and its intrinsic validity and effect, so far as it relates to an interest in land, are governed by the law of the place where the land is situated.

(3) Subject to this Division, the manner and formalities of making a will and its intrinsic validity and effect, so far as it relates to an interest in movables, are governed by the law of the place where the testator was domiciled at the time of the testator's death.

Law in force governs

42 As regards the manner and formalities of making a will, so far as it relates to an interest in movables, a will made either within or outside Alberta is valid and admissible to probate if it is made in accordance with the law in force at the time of its making in the place where

- (a) the will was made,
- (b) the testator was domiciled when the will was made, or
- (c) the testator had his or her domicile of origin.

Change of domicile

43 A change of domicile of the testator occurring after a will is made does not render it invalid as regards the manner and formalities of its making or alter its construction.

Law of domicile

44 Nothing in this Division precludes resort to the law of the place where the testator was domiciled at the time of making a will in aid of its construction as regards an interest in land or an interest in movables.

Law where land situated governs

45 When the value of a thing that is movable consists mainly or entirely in its use in connection with a particular parcel of land by the owner or occupier of the land, succession to an interest in the thing under a will or on an intestacy is governed by the law of the place where the land is situated.

Division 3 International Wills

Definitions

46 In this Division,

- (a) “Convention” means the Convention Providing a Uniform Law on the Form of an International Will, a copy of which is set out in the Schedule to this Act;

- (b) “international will” means a will that has been made in accordance with the rules regarding an international will set out in the Annex to the Convention;
- (c) “registrar” means the person responsible for the operation and management of the registration system;
- (d) “registration system” means a system established under section 51 or pursuant to an agreement entered into under section 52 for the registration, or the registration and safekeeping, of international wills.

Application of Convention

47 On and after December 1, 1978, the Convention is in force in Alberta and applies to wills as the law of Alberta.

Uniform law in effect

48 On and after December 1, 1978, the uniform law on the form of an international will set out in the Annex to the Convention is law in Alberta.

Validity under other laws

49 Nothing in this Division detracts from or affects the validity of a will that is valid under the laws in force in Alberta other than this Division.

Authorized persons

50 All active members of The Law Society of Alberta are designated as persons authorized to act in connection with international wills.

Registration system

51 The Minister of Justice and Attorney General shall, in accordance with the regulations, establish a system of

- (a) registration, or
- (b) registration and safekeeping,

of international wills.

Agreements respecting registration system

52 With the approval of the Lieutenant Governor in Council, the Minister of Justice and Attorney General for and on behalf of Her Majesty in right of Alberta may enter into an agreement with the government of another province or territory or a Minister or official of the government of another province or territory relating to the establishment of a system of registration or registration and safekeeping of international wills for Alberta and that other province or territory, and for the joint operation of that system, or relating to the exchange of information contained in a system established under section 51 and a similar system established for that other province or territory.

Joint registration system

53 If a registration system is established pursuant to an agreement entered into under section 52, the Minister of Justice and Attorney General is relieved of the Minister's obligation under section 51.

Disclosure of information, etc.

54(1) Information contained in the registration system concerning the international will of a testator must not be released from the system except in accordance with an agreement made under section 52 or except to a person who satisfies the registrar that

- (a) the person is the testator,
- (b) the person is a person who is authorized by the testator to obtain that information, or
- (c) the testator is dead and the person is a proper person to have access to the information.

(2) When the registration system provides for the safekeeping of international wills, an international will of a testator deposited in the system must not be released except to a person who satisfies the registrar that

- (a) the person is the testator,
- (b) the person is a person who is authorized by the testator to obtain the will, or
- (c) the testator is dead and the person is a proper person to have custody of the will for the purposes of the

administration of the estate of the testator or is the agent of such a person.

(3) This section applies notwithstanding the *Freedom of Information and Protection of Privacy Act*.

Use of registration system

55(1) If a member of The Law Society of Alberta has acted during any month in respect of one or more international wills in the member's capacity as a person authorized to act in connection with international wills, the member shall, on or before the 10th day of the next month, file with the registrar, in a sealed envelope, a list on a form prescribed under the regulations, certified by the member or the member's agent, setting out the name, address and description of the testator and the date of execution of each international will in respect of which the member so acted, and the registrar shall enter the information in the registration system.

(2) The failure of a member of The Law Society of Alberta to comply with subsection (1) in respect of an international will does not affect the validity of the international will.

Regulations

56 The Lieutenant Governor in Council may make regulations respecting the operation, maintenance and use of the registration system, and without limiting the generality of the foregoing, may make regulations

- (a) prescribing forms for use in the system, and
- (b) prescribing fees for searches of the registration system.

Transitional — registration systems

57 The registration system established under section 49 of the former Act is continued and is deemed to have been established under section 51 of this Act.

Part 3 Distribution of Intestate Estates

Definitions

58(1) In this Part,

- (a) “intestate estate” means an estate, or any part of an estate, that is not disposed of by will;
- (b) “net value of the intestate estate” means the value of the intestate estate wherever situated, both within and outside Alberta, after deducting any debts, including debts arising from an order or agreement under the *Matrimonial Property Act*, and any charges and funeral and administration expenses payable from the estate.

(2) A reference in this Part to a “child”, to a “descendant” or to “kindred” includes any child who is in the womb at the time of the deceased’s death and is later born alive.

Distribution of intestate estates

59 An intestate estate shall be distributed in accordance with this Part.

Share of spouse or adult interdependent partner if no descendants

60 If an individual dies leaving a surviving spouse or adult interdependent partner but no descendants, the entirety of the intestate estate goes to the surviving spouse or adult interdependent partner.

Spouse’s or adult interdependent partner’s share if there are descendants

61(1) Subject to section 63, if an individual dies leaving a surviving spouse and one or more descendants, or leaving a surviving adult interdependent partner and one or more descendants,

- (a) the entirety of the intestate estate goes to the surviving spouse or adult interdependent partner, if all of the intestate’s descendants are also descendants of the surviving spouse or adult interdependent partner, or

- (b) if any of the intestate's descendants are not descendants of the surviving spouse or adult interdependent partner,
 - (i) the surviving spouse or adult interdependent partner is entitled to the greater of the prescribed amount or 50% of the net value of the intestate estate, and
 - (ii) the residue of the intestate estate shall be distributed among the intestate's descendants in accordance with this Part.

(2) The Minister may make regulations prescribing an amount for the purpose of subsection (1)(b)(i).

Both spouse and adult interdependent partner

62 Subject to section 63, if an individual dies intestate leaving both a surviving spouse and a surviving adult interdependent partner,

- (a) 1/2 of the share provided by section 61(1)(b)(i) goes to the surviving spouse and the other 1/2 of the share goes to the surviving adult interdependent partner, if the intestate left one or more descendants, or
- (b) 1/2 of the intestate estate goes to the surviving spouse and the other 1/2 of the intestate estate goes to the surviving adult interdependent partner, if the intestate left no descendants.

Separated spouse deemed predeceased

63(1) For the purposes of this Part, the surviving spouse of an intestate is deemed to have predeceased the intestate if the intestate and the surviving spouse

- (a) had been living separate and apart for more than 2 years at the time of the intestate's death,
- (b) are parties to a declaration of irreconcilability under the *Family Law Act*, or
- (c) are parties to an agreement or order in respect of their property or other marital or family issues which appears to have been intended by one or both of them to separate and

finalize their affairs in recognition of their marital break-up.

(2) Subsection (1) does not apply to a surviving spouse who reconciled with the intestate if the reconciliation was subsisting at the time of the intestate's death.

Adult interdependent partner also related to the intestate

64 An individual who is entitled to a share of the intestate estate as an adult interdependent partner under this Part is not entitled to any further share of the intestate estate in another capacity.

If no surviving spouse or adult interdependent partner

65 If an individual dies leaving no surviving spouse or adult interdependent partner, the intestate estate shall be distributed

- (a) to the descendants of the intestate in accordance with section 66, or
- (b) if the intestate has no descendants, in accordance with sections 66 and 67.

Per stirpes distribution to descendants

66(1) When a distribution is to be made under this Part to the descendants of any individual, the intestate estate or the portion of it being distributed shall be divided into as many shares as there are

- (a) children of that individual who survived the intestate, and
- (b) deceased children of that individual who left descendants surviving the intestate.

(2) Each surviving child shall receive one share, and the share of each deceased child shall be divided among the deceased child's descendants in the same manner as provided in this section.

Parentelic distribution if intestate has no descendants

67(1) If an individual dies leaving no surviving spouse, adult interdependent partner or descendants, then subject to subsection (2),

- (a) the intestate estate goes to the parents of the intestate in equal shares if both survive the intestate, or to the survivor if one of them has predeceased the intestate,
- (b) if there is no surviving parent, the intestate estate goes to the descendants of the parents or of either of them,
- (c) if there is no surviving parent or descendant of a parent, but the intestate is survived by one or more grandparents or descendants of grandparents,
 - (i) 1/2 of the intestate estate goes to the surviving grandparents on one parent's side, in equal shares, or if there is no surviving grandparent on that side, to the descendants of those grandparents, and
 - (ii) 1/2 of the intestate estate goes to the surviving grandparents on the other parent's side or to their descendants in the same manner as provided in subclause (i),

but if there is only a surviving grandparent or descendant of a grandparent on one parent's side, the entire intestate estate goes to the kindred on that side in the same manner as provided in subclause (i), or

- (d) if there is no surviving parent, descendant of a parent, grandparent or descendant of a grandparent, but the intestate is survived by one or more great-grandparents or descendants of great-grandparents,
 - (i) 1/2 of the intestate estate goes to the surviving great-grandparents on one parent's side, in equal shares, or if there is no surviving great-grandparent on that side, to the descendants of those great-grandparents, and
 - (ii) 1/2 of the intestate estate goes to the surviving great-grandparents on the other parent's side or to their descendants in the same manner as provided in subclause (i),

but if there is only a surviving great-grandparent or descendant of a great-grandparent on one parent's side, the entire intestate estate goes to the kindred on that side in the same manner as provided in subclause (i).

(2) For the purposes of subsection (1), individuals of the 5th or greater degree of relationship to the intestate are deemed to have predeceased the intestate, and any part of the intestate estate to which those individuals would otherwise be entitled under subsection (1) must be distributed to the individuals of a closer degree of relationship to the intestate, if any, who are entitled to the intestate estate.

Degrees of relationship

68 For the purposes of this Part,

- (a) degrees of relationship between an individual and the intestate are to be determined by counting upward from the intestate to the nearest common ancestor of the intestate and the individual, and then downward to the individual, and
- (b) descendants of the half-kinship inherit equally with those of the whole kinship in the same degree of relationship to the intestate.

No heirs

69 Subject to section 11 of the *Public Trustee Act*, if there is no individual entitled to receive an intestate estate under this Part,

- (a) the *Unclaimed Personal Property and Vested Property Act* applies to the intestate estate, and
- (b) for greater certainty, section 67(2) does not affect the right of an individual to make a claim under Part 6 of the *Unclaimed Personal Property and Vested Property Act*.

Transitional

70(1) This Part applies only in cases of death occurring after this section comes into force.

(2) The *Intestate Succession Act*, RSA 2000 cI-10, as it read immediately before the coming into force of this section, continues to apply in cases of death occurring on or after June 1, 2003 but before this section comes into force.

(3) The *Intestate Succession Act*, RSA 2000 cI-10, as it read immediately before June 1, 2003, continues to apply in cases of death occurring before that date.

Part 4 Designation of Beneficiaries Under Plans

Designation of person to receive a benefit under a plan

71(1) In this section,

- (a) “annuity” includes an amount payable on a periodic basis, whether payable at intervals longer or shorter than a year;
- (b) “beneficiary”, except in subsection (17), means a person designated under subsection (2);
- (c) “participant” means an individual who is entitled to designate a person to receive a benefit payable under a plan on the individual’s death;
- (d) “plan” means
 - (i) a pension, retirement, welfare or profit-sharing fund, trust, scheme, contract or arrangement for the benefit of employees, former employees, agents or former agents of an employer or their dependants or beneficiaries, whether created by or pursuant to a statute or otherwise,
 - (ii) a fund, trust, scheme, contract or arrangement for the payment of an annuity for life or for a fixed or variable term or under which money is paid for the purpose of providing, on the happening of a specified event, for the purchase of, or the payment of, an annuity for life or for a fixed or variable term, whether created before or after this section comes into force,
 - (iii) a registered retirement savings plan or registered retirement income fund as defined in the *Income Tax Act* (Canada),

- (iv) a TFSA within the meaning of section 146.2 of the *Income Tax Act* (Canada), or
- (v) a fund, trust, scheme, contract or arrangement prescribed in the regulations.

(2) A participant may designate a person to receive a benefit payable under a plan on the participant's death

- (a) by an instrument signed by the participant or signed by another individual on the participant's behalf, at the participant's direction and in the participant's presence, or
- (b) by will,

and may revoke the designation by one of those methods.

(3) A designation under subsection (2) that relates to a plan referred to in subsection (1)(d)(iii) has effect whether it is made, or the participant making it dies, before or after subsection (1)(d)(iii) comes into force.

(4) Subsection (3) does not apply if its application would

- (a) alter the result in any proceedings in which a judgment or final order was granted before subsection (3) came into force, regardless of whether the judgment or order is appealable, or
- (b) impose on a person the obligation to repay or account for proceeds of a plan referred to in subsection (1)(d)(iii) received or paid out by that person before subsection (1)(d)(iii) came into force.

(5) A designation in a will is effective only if it refers to the plan either generally or specifically.

(6) A revocation in a will of a designation made by an instrument is effective to revoke the designation made by the instrument only if the revocation refers to the plan either generally or specifically.

(7) Despite Part 2, a later designation revokes an earlier designation to the extent of any inconsistency.

(8) Revocation of a will is effective to revoke a designation in the will.

(9) A designation or revocation contained in an instrument purporting to be a will is not invalid by reason only of the fact that the instrument is invalid as a will.

(10) A designation in an instrument that purports to be but is not a valid will is revoked by an event that would have the effect of revoking the instrument if it had been a valid will.

(11) Revocation of a designation does not revive an earlier designation.

(12) Despite Part 2, a designation or revocation in a will is effective from the time when the will is signed.

(13) After the death of a participant who has made a designation that is in effect at the time of the participant's death, the beneficiary may enforce payment of the benefit payable under the plan to the beneficiary, but the person against whom the payment is sought to be enforced may set up any defence that the person could have set up against the participant or the participant's personal representative.

(14) If this section is inconsistent with a plan, this section applies unless

- (a) the inconsistency relates to a designation made or proposed to be made after the making of a benefit payment, and
- (b) the benefit payment so made would have been different if the designation had been made before the benefit payment was made,

in which case the plan applies.

(15) If a plan requires or permits a designation or revocation of it to be filed with a specified person or body and any benefit is paid under the plan to a beneficiary on the basis of the latest designation so filed, the payment is deemed to be validly made, as against the person required by the plan to make the payment, despite that

- (a) a later designation or revocation of a designation is filed under the plan after the payment was made, or
- (b) the person or body is notified, after the payment was made, of an event that had the effect of revoking a designation so filed.

(16) If a plan requires or permits a designation or a revocation of it to be filed with a specified person or body, then, in the case of a designation or revocation made by a will, the filing of a copy of the will with that person or body, authenticated in the manner, if any, required by the plan, is sufficient compliance with the requirement under the plan.

(17) This section does not apply to a contract or to a designation of a beneficiary to which the *Insurance Act* applies.

(18) The Crown is bound by this section.

(19) The Lieutenant Governor in Council may make regulations prescribing funds, trusts, schemes, contracts and arrangements as plans for the purposes of this section.

Part 5 Family Maintenance and Support

Definitions

72 In this Part,

- (a) “family home” means
 - (i) a house or part of a house that is a self-contained dwelling unit,
 - (ii) a part of business premises used as living accommodation,
 - (iii) a mobile home,
 - (iv) a residential unit as defined in the *Condominium Property Act*, or
 - (v) a suite

that, at the time of a deceased’s death, was ordinarily occupied by the deceased and the deceased’s spouse or adult interdependent partner as their home and was owned, whether wholly or in part, or leased by the deceased but not by the deceased’s surviving spouse or partner;

- (b) “family member” means, in respect of a deceased,

- (i) a spouse of the deceased,
- (ii) the adult interdependent partner of the deceased,
- (iii) a child of the deceased who is under the age of 18 years at the time of the deceased's death, including a child who is in the womb at that time and is later born alive,
- (iv) a child of the deceased who is at least 18 years of age at the time of the deceased's death and unable to earn a livelihood by reason of mental or physical disability,
- (v) a child of the deceased who, at the time of the deceased's death,
 - (A) is at least 18 but under 22 years of age, and
 - (B) is unable to withdraw from his or her parents' charge because he or she is a full-time student as determined in accordance with the *Family Law Act* and its regulations, and
- (vi) a grandchild or great-grandchild of the deceased
 - (A) who is under 18 years of age, and
 - (B) in respect of whom the deceased stood in the place of a parent

at the time of the deceased's death;
- (c) "household goods" means personal property that,
 - (i) at the time of a deceased's death, was owned by the deceased or both the deceased and the deceased's spouse or adult interdependent partner, and
 - (ii) at the time of a deceased's death, was needed or being ordinarily used for transportation, household, educational, recreational or health purposes by the deceased's spouse or adult interdependent partner or by any child described in clause (b)(iii) or (iv) who is residing in the family home;
- (d) "spouse" includes a party to a void or voidable marriage.

Grandchildren and great-grandchildren

73(1) In this section, “grandparent” includes a great-grandparent and “grandchild” includes a great-grandchild.

(2) For the purposes of section 72(b)(vi)(B), a deceased grandparent stood in the place of a parent to his or her grandchild if, during life, the grandparent demonstrated a settled intention to treat the grandchild as his or her own child and if, since the grandchild’s birth or for at least 2 years immediately before the grandparent’s death,

- (a) the grandchild’s primary home was with the grandparent, and
- (b) the grandparent provided the primary financial support for the grandchild.

(3) The Court may, in an application to determine whether the criteria set out in subsection (2) are met, take any or all of the following factors into account:

- (a) the grandchild’s age;
- (b) the duration of the relationship between the grandchild and grandparent;
- (c) the nature of the relationship between the grandchild and grandparent, including
 - (i) the grandchild’s perception of the grandparent as a parental figure, and
 - (ii) whether, as between the parents and grandparent, the grandparent was the primary decision maker with respect to the grandchild’s care, discipline, education and recreational activities;
- (d) whether the grandparent considered applying for guardianship of the grandchild;
- (e) the nature of the grandchild’s relationship with his or her parents;
- (f) any other factor the Court considers relevant.

Division 1
Temporary Possession of Family Home

Definitions for Division 1

74 In this Division,

- (a) “co-owner” means, in respect of any property of a deceased, a person who is an owner of the property together with the deceased at the time of the deceased’s death, other than the deceased’s surviving spouse or partner;
- (b) “landlord” means,
 - (i) in respect of a unit as defined in the *Condominium Property Act*, a landlord as defined in section 1(1)(m) of that Act,
 - (ii) in respect of a mobile home site as defined in the *Mobile Home Sites Tenancies Act*, a landlord as defined in section 2(1) or (2) of that Act, whichever is applicable, or
 - (iii) in any other case, a landlord as defined in the *Residential Tenancies Act*;
- (c) “period of temporary possession” means a period during which a surviving spouse or partner is entitled to possession of a family home under section 75(1) or under an order made under section 82(1)(a);
- (d) “residential tenancy agreement” means
 - (i) a residential tenancy agreement as defined in the *Residential Tenancies Act*, or
 - (ii) any assignment or sublease of a residential tenancy agreement to which the landlord has consented or is deemed to have consented under that Act;
- (e) “surviving spouse or partner” means the surviving spouse or surviving adult interdependent partner of a deceased;
- (f) “tenancy agreement” means,

- (i) in respect of a mobile home site, a tenancy agreement as defined in the *Mobile Home Sites Tenancies Act*, and
- (ii) in any other case, a residential tenancy agreement.

Right to temporary possession of family home

75(1) A surviving spouse or partner who is not registered on the certificate of title as an owner of the family home but who is ordinarily occupying it, whether under a court order or otherwise, at the time of the death of the other spouse or adult interdependent partner is entitled to possession of the family home for a period of 90 days commencing on the date of the death, as against

- (a) the deceased's estate or any person inheriting from the estate, other than a child described in section 72(b)(iv) who is ordinarily occupying the family home at the time of the deceased's death,
- (b) any person who is an owner of the family home by right of survivorship on the deceased's death,
- (c) any person who, at the time of the deceased's death, held an interest in the family home as a co-owner with the deceased, other than a child referred to in clause (a), and
- (d) any person who, during the period of temporary possession, enters into a contract to purchase the family home.

(2) Subsection (1) does not apply to a surviving spouse in whom a life estate in the family home is vested by section 18 of the *Dower Act*.

(3) If at the time of the deceased's death the family home, or a mobile home site on which the family home is located, is rented under a written tenancy agreement in the name of the deceased but not in the name of the surviving spouse or partner, then during the period of temporary possession

- (a) the deceased's estate or a person referred to in section 79(2)(a) or (b) is deemed to be the tenant for all matters relating to rent and security deposits,

- (b) the surviving spouse or partner is deemed to be the tenant for all other matters,
- (c) the landlord continues to have the rights of a landlord under the *Mobile Home Sites Tenancies Act*, the *Residential Tenancies Act* or the *Condominium Property Act*, whichever applies, and
- (d) a corporation as defined in the *Condominium Property Act* continues to have the rights of a corporation under sections 53 to 56 of that Act,

in respect of the tenancy agreement.

(4) An estate or other person responsible to pay the rent during a period of temporary possession under this Division, other than the surviving spouse or partner, shall not terminate or give the landlord a notice of termination of the tenancy without first obtaining the consent of the surviving spouse or partner or an order of the Court approving the termination of the tenancy.

(5) Before making an order under subsection (4), the Court shall consider whether the termination would shorten the period of temporary possession or prevent it from being extended by order under section 82(1)(a) and, if so, shall consider

- (a) the availability of other accommodation within the means of the surviving spouse or partner, and
- (b) any other factor the Court considers relevant.

(6) The Crown is bound by this section.

Right to use of household goods

76 A surviving spouse or partner who takes temporary possession of a family home under this Division is entitled to the use and enjoyment of the household goods during the period of temporary possession unless the Court orders otherwise under section 82(1).

Limits on rights under this Division

77(1) A right under this Division to a period of temporary possession of the family home or to the use and enjoyment of household goods

- (a) gives a surviving spouse or partner no greater interest in that property than he or she had at the time of the deceased's death, and
- (b) does not, subject to any order of the Court under this Part, affect the terms of any agreements, charges, obligations, transfers or liabilities that existed in respect of that property at the time of the deceased's death.

(2) A surviving spouse or partner does not, by virtue only of exercising a right under this Division in respect of a family home or household goods, become a party to or liable under any security or similar agreement.

(3) A right provided by or under this Division is personal to the surviving spouse or partner, and the surviving spouse or partner shall not rent the property or assign, sell or otherwise transfer the right, whether for value or otherwise.

(4) Any tenancy or assignment, sale or other transfer entered into in contravention of subsection (3) is of no effect.

(5) Subsection (4) applies despite the *Mobile Home Sites Tenancies Act*, the *Residential Tenancies Act* and the *Condominium Property Act*.

(6) The right to possession of the family home is terminated if the surviving spouse or partner ceases to occupy the family home as his or her ordinary residence during the period of temporary possession.

(7) The right to possession of the family home or to the use and enjoyment of household goods is terminated if the surviving spouse or partner fails to maintain or repair the home or goods as required by section 80.

Waiver

78(1) Spouses or adult interdependent partners may enter into a written agreement in which either or both of them agree to waive a right that section 75 or 76 would provide to one of them on the death of the other.

(2) An agreement under subsection (1) survives the death of a spouse or adult interdependent partner and binds his or her estate.

Obligation to pay rent, etc.

79(1) The estate of the deceased spouse or adult interdependent partner is responsible for paying the following during a period of temporary possession:

- (a) rent or any similar charges that fall due in respect of the occupation of the family home;
- (b) payments that fall due under any mortgage on the family home;
- (c) payments that fall due under any lease or loan in respect of the household goods;
- (d) the costs of insuring the family home and household goods against damage, destruction and public liability;
- (e) applicable taxes assessed against the family home;
- (f) reasonable charges for electricity, gas, water and other utilities used at the family home;
- (g) the costs of reasonable maintenance and repair of the family home and household goods.

(2) Subsection (1) does not apply to the extent that

- (a) a will of the deceased provides that a person other than the estate and other than the surviving spouse or partner, or
- (b) an order of the Court, an insurance policy or an agreement provides that a person other than the estate

is responsible for paying a charge, payment, cost or tax referred to in subsection (1).

(3) Except as may be provided otherwise in or by a will of the deceased or an agreement made between the spouses or adult interdependent partners, costs paid by the estate under subsection (1) are an advance of the surviving spouse's or partner's share of the estate and, subject to any order under this Act, may be deducted from the share.

Obligation to maintain and repair

80 A surviving spouse or partner who is occupying a family home under this Division shall, during the period of temporary possession, ensure that the family home and household goods are maintained and kept in a state of reasonable repair, taking into account the state of repair of that property at the time of the deceased's death.

Right of entry

81(1) A surviving spouse or partner who is occupying a family home under this Division must permit the personal representative of the deceased's estate to enter the home at any reasonable time for the purposes of

- (a) inspecting the estate property,
- (b) conducting an inventory,
- (c) performing repairs, or
- (d) removing items of estate property that are not household goods,

if a written notice of the request for entry is delivered to the family home or to the surviving spouse or partner at least 24 hours before the time of entry.

(2) A surviving spouse or partner who is occupying a family home under this Division must permit a person who is the owner or a co-owner of property located at the family home to enter the home at any reasonable time for the purpose of

- (a) inspecting the property, or
- (b) if the property is not household goods, removing it from the family home.

Orders

82(1) On application by a surviving spouse or partner, the personal representative of the deceased's estate or a person who has an interest, including as a purchaser, in the family home or an item of household goods or any other property located at the home, the Court may make one or more of the following orders:

- (a) terminating or shortening the period provided by section 75(1), or extending it for a specified period, after considering
 - (i) the availability of other accommodation within the means of the surviving spouse or partner and other family members,
 - (ii) the interests of owners of the property, including any owner who is the landlord, and
 - (iii) in the case of a person described in section 75(1)(d),
 - (A) whether the person is a bona fide purchaser for value, and
 - (B) whether the consideration to be paid by the person for the property is adequate,and
 - (iv) any other factor the Court considers relevant;
- (b) directing a surviving spouse or partner or the estate to pay any cost in respect of the family home or a specified item of household goods, including a charge, payment, cost or tax referred to in section 79(1);
- (c) providing that, despite section 79(1), another person who has or may have an interest in the property, including the surviving spouse or partner, is responsible, whether wholly or in part, for paying any charge, payment, cost or tax respecting the family home or a specified item of household goods;
- (d) directing the estate or a surviving spouse or partner to take specified steps to maintain or otherwise preserve the family home or a specified item of household goods;
- (e) despite section 81(1), directing a surviving spouse or partner who is occupying a family home under this Division to allow the personal representative of the estate to enter the home on any notice and for any purpose specified by the Court;
- (f) despite section 81(2), directing a surviving spouse or partner who is occupying a family home under this

Division to allow a person described in section 81(2) to enter the family home for any purpose specified by the Court;

- (g) determining whether an item is or is not an item of household goods, or exempting a specified item of household goods from the application of one or more provisions of this Division;
- (h) limiting the period for which a surviving spouse or partner is to have the use and enjoyment of specified household goods;
- (i) imposing terms and conditions on the use of some or all of the household goods.

(2) Despite subsection (1)(a), a period of temporary possession must not be ordered to exceed 6 months if the family home is owned by a person who acquired the home by right of survivorship on the deceased's death.

(3) An order under subsection (1) may include any terms and conditions the Court considers appropriate.

Land titles registration

83(1) An order under section 82(1)(a) that extends a period of temporary possession to exceed the 90 days provided for by section 75(1) may be registered with the Registrar of Land Titles if the family home that is the subject of the order is real property that, at the time of the deceased's death,

- (a) is owned, whether wholly or in part, by the deceased but not by the deceased's surviving spouse or partner,
- (b) is leased for a term of more than 3 years by the deceased but not by the deceased's surviving spouse or partner, or
- (c) is the subject of a life estate in favour of the deceased but not in favour of the deceased's surviving spouse or partner.

(2) An order registered under this section binds any interest that the deceased's estate, a co-owner or any person who is the owner of the real property by right of survivorship on the deceased's death has in the property.

(3) If an order is registered under this section, the personal representative, a co-owner or an owner by right of survivorship may dispose of or encumber the property only under an order of the Court or with the written consent of the surviving spouse or partner who registered the order.

Registration in Personal Property Registry

84(1) If an order under section 82(1)(a) extends a period of temporary possession to exceed the 90 days provided for by section 75(1) and the family home that is the subject of the order is a mobile home that was, at the time of the death of the deceased spouse or adult interdependent partner, owned wholly or in part or leased by the deceased but not by the surviving spouse or partner, a financing statement may be registered in the Personal Property Registry under the *Personal Property Security Act*.

(2) If an order under section 82(1)(a) extends a period of temporary possession to exceed the 90 days provided for by section 75(1), then, subject to the terms of the order, a financing statement respecting any or all household goods may be registered in the Personal Property Registry under the *Personal Property Security Act*.

(3) A financing statement registered under subsection (1) or (2) expires on the expiry of the extended period of temporary possession ordered by the Court.

(4) A financing statement that is registered under subsection (1) or (2)

(a) is notice of the interest of the surviving spouse or partner in the property described in the financing statement during the time that the registration is effective, and

(b) takes effect, as against subsequent creditors, purchasers and mortgagees, only from the date of registration of the financing statement.

(5) If a financing statement is registered under subsection (1) or (2), the person against whose property it is registered or, in the case of property owned by the deceased's estate, the personal representative of the estate, may dispose of or encumber the property only under an order of the Court or with the written consent of the surviving spouse or partner who registered the financing statement.

Order for cancellation of registration

85(1) If an order is registered under section 83(1), the personal representative of the deceased's estate, a co-owner or any person who is the owner of the real property by right of survivorship on the deceased's death may apply to the Court for an order directing the Registrar of Land Titles to cancel the registration.

(2) If a financing statement is registered under section 84(1) or (2), the person against whose property it is registered or, in the case of property owned by the deceased's estate, the personal representative of the estate, may apply to the Court for an order cancelling the registration.

(3) The Court may make an order under this section on any terms and conditions the Court considers appropriate.

Application of Division 1

86 This Division applies only to surviving spouses and partners of individuals who die after this section comes into force.

Division 2 Maintenance and Support

Definitions

87 In this Division,

- (a) "incapacitated person" has the same meaning as in the *Public Trustee Act*;
- (b) "interested person" means a person referred to in section 91(1)(b);
- (c) "Public Trustee" means the person appointed as the Public Trustee under the *Public Trustee Act*;
- (d) "represented adult" means an adult who has a trustee under the *Adult Guardianship and Trusteeship Act*.

Order for maintenance and support of family member

88(1) If a person

- (a) dies testate without making adequate provision in the person's will for the proper maintenance and support of a family member, or

- (b) dies either wholly or partly intestate and the share to which a family member is entitled under a will or Part 3 or both is inadequate for the proper maintenance and support of the family member,

the Court may, on application, order that any provision the Court considers adequate be made out of the deceased's estate for the proper maintenance and support of the family member.

(2) The order may be made in respect of one or more family members.

(3) The order may be made in respect of all or any part of the estate, and regardless of whether there is a will or intestacy.

(4) The order may limit or terminate any period of temporary possession or any right of a surviving spouse or adult interdependent partner under Division 1 if, and to the extent that, the Court considers the limitation or termination necessary to provide for the proper maintenance and support of another family member.

Time for making an application

89(1) Subject to subsection (2), an application must be commenced within 6 months after the grant of probate or administration is issued.

(2) The Court may allow an application to be made at any time respecting any part of the estate that is not distributed at the date of the application.

Who may make an application

90 An application under this Division may be made by a family member on his or her own behalf or

- (a) in the case of a family member who is under 18 years of age, on behalf of that family member by
 - (i) the family member's parent or guardian,
 - (ii) the Public Trustee, or

- (iii) any other person in accordance with the *Alberta Rules of Court* or the *Surrogate Rules* made under the *Judicature Act*, or
- (b) in the case of a family member who is a represented adult or an incapacitated person, on behalf of that family member by
 - (i) the family member's trustee, or
 - (ii) any other person in accordance with the *Alberta Rules of Court* or the *Surrogate Rules* made under the *Judicature Act*.

Who must be served

91(1) Notice of an application under this Division must be served

- (a) on the personal representative of the estate and all family members,
- (b) on any other persons who may be interested in or affected by an order under this Division, and
- (c) on the Public Trustee if a person who is, or who at the date of the deceased's death was, under 18 years of age, is interested in the estate.

(2) For the purpose of subsection (1)(a) and (b),

- (a) a child who is under 18 years of age is to be served by serving
 - (i) the parents or guardians of the child, unless subclause (ii) applies, or
 - (ii) the Public Trustee, if the child is subject to a permanent guardianship order under the *Child, Youth and Family Enhancement Act*,
- (b) a represented adult is to be served by serving his or her trustee, and
- (c) an incapacitated person is to be served by serving the Public Trustee.

(3) Where the Public Trustee is required to be served under subsection (1)(c), the Public Trustee may make representations on the application but is under no duty to do so, and the application must not proceed until the Public Trustee is represented on the application or has expressed the intention of not being represented.

(4) It is unnecessary to serve the Public Trustee under subsection (1)(c) in respect of a child on whose behalf the Public Trustee is served under subsection (2)(a)(ii).

Representative action

92(1) An application is deemed to be made on behalf of all family members who have been served unless the Court orders otherwise.

(2) Nothing in this Division deprives a family member who has not received notice of the application of any rights the family member has under this Division.

Matters to be considered by the Court

93 In considering an application for the maintenance and support of a family member, the Court shall consider, as applicable,

- (a) the nature and duration of the relationship between the family member and the deceased,
- (b) the age and health of the family member,
- (c) the family member's capacity to contribute to his or her own support, including any entitlement to support from another person,
- (d) any legal obligation of the deceased or the deceased's estate to support any family member,
- (e) the deceased's reasons for making or not making dispositions of property to the family member, including any written statement signed by the deceased in regard to the matter,
- (f) any relevant agreement or waiver made between the deceased and the family member,
- (g) the size, nature and distribution of

- (i) the deceased's estate, and
 - (ii) any property or benefit that a family member or other person is entitled to receive by reason of the deceased's death,
- (h) any property that the deceased, during life, placed in trust in favour of a person or transferred to a person, whether under an agreement or order or as a gift or otherwise, and
 - (i) any property or benefit that an individual is entitled to receive under the *Matrimonial Property Act*, the *Dower Act* or Division 1 of this Part by reason of the deceased's death,

and may consider any other matter the Court considers relevant.

Interim order

94 The Court may make any interim order or direction it considers appropriate providing for

- (a) the protection or preservation of the assets of the estate, or
- (b) the administration of the estate, including the suspension of administration.

Disclosure of financial information

95(1) In this section, "party" means a family member or a personal representative of the deceased's estate.

(2) A party to an application under this Division shall, on the written request of another party, provide that other party with financial information as provided for by the regulations that is necessary for the determination of maintenance and support.

(3) This section applies in addition to any applicable disclosure, questioning or other processes under any other Act or regulation.

(4) The Court may, on application, order that information provided under this section must not be disclosed to others except as may be provided for in the order.

(5) If a party fails to comply with a request under subsection (2), the Court may, on application, do one or more of the following:

- (a) order the party to provide some or all of the required information to one or more other parties or to the Court;
- (b) dismiss any application made by or on behalf of that party, but proceed to hear the application in respect of the other parties;
- (c) proceed to hear the application and, in the course of doing so, may draw an adverse inference against the party who failed to comply with the request and impute income or assets to that party in an amount the Court considers appropriate;
- (d) award costs in favour of one or more other parties.

(6) Financial information provided by an employer, partner or principal of a party or by any other person pursuant to an order under subsection (5)(a) may be received in evidence as prima facie proof of its contents.

Orders respecting quantum, duration and payment

96(1) The Court may, in making an order for maintenance and support, impose any conditions and restrictions that the Court considers appropriate and may

- (a) direct that provision for maintenance and support be made out of and charged against the estate in the proportion and in the manner that the Court considers appropriate,
- (b) direct that provision for maintenance and support be made out of income or capital, or both, in one or more of the following ways:
 - (i) by an amount payable annually or otherwise;
 - (ii) by a lump sum to be paid or held in trust;
 - (iii) by transfer or assignment of a specified property, whether absolutely or in trust and whether for life or for a term of years, to or for the benefit of the family member.

(2) If a transfer or assignment of property is ordered, the Court may

- (a) give all necessary directions for the execution of the transfer or assignment by the personal representative or by any other person as the Court may direct, or
- (b) grant a vesting order.

Order for immediate distribution

97 If distribution of the deceased's estate is, under a will of the deceased, postponed until after the death of any family member and an order is made under this Division for the maintenance and support of that family member, the Court may, in making an order for maintenance and support, direct immediate distribution of the estate after providing for the payment, or for the securing of the payment, of the ordered maintenance and support.

Effect of order

98 Unless the Court orders otherwise, an order for maintenance and support under this Division charges the whole of the deceased's estate or, if the Court does not have jurisdiction over the whole estate, the whole of that portion of the estate over which the Court has jurisdiction.

Further orders

99(1) The Court may, at any time after an order for maintenance and support is made,

- (a) give any directions that the Court considers necessary to give effect to the order,
- (b) discharge, vary or suspend any provision of the order respecting periodic payments, or
- (c) fix a periodic payment or lump sum to be paid by a beneficiary under a will or intestacy, in substitution for an amount originally ordered to be paid out of the portion of the estate in which the beneficiary is interested.

(2) If the Court fixes a periodic payment or lump sum under subsection (1)(c), the Court may further direct that

- (a) the periodic payment be secured in any manner the Court considers appropriate, or

- (b) the lump sum be paid to a specified person and be dealt with in any manner the Court considers appropriate for the benefit of the person to whom the substitute payment is payable.

Effect of order on will

100(1) An order under this Division for maintenance and support has effect as if it were made immediately on the death of the deceased, and the deceased's will, if any, has effect from that time as if it had been executed with any variations that are necessary to give effect to the order.

(2) The Crown is bound by this section.

Assignment of claims

101 A mortgage, assignment or similar charge given by a family member

- (a) in anticipation of any entitlement under a maintenance and support order, and
- (b) before the order is entered

is void.

Contracts respecting estate property

102 If a testator has, by will, disposed of property in accordance with a contract that the testator, during life, entered into in good faith and for valuable consideration, the property is not subject to an order under this Division for maintenance and support except to any extent that the value of the property, in the opinion of the Court, exceeds the consideration received by the testator under the contract.

Rights not affected by contract

103 An order may be made under this Division despite any waiver or agreement to the contrary by a family member.

Application by Public Trustee

104(1) Where the Public Trustee is trustee for a family member who

- (a) is subject to a permanent guardianship order under the *Child, Youth and Family Enhancement Act*, or
- (b) is a represented adult or an incapacitated person,

the Public Trustee is under no duty to make an application under this Division on behalf of the family member if the Public Trustee is satisfied that the family member is receiving adequate support.

(2) The Public Trustee may make, but is under no duty to make, an application under this Division on behalf of a family member not referred to in subsection (1)(a) who is under 18 years of age.

No liability for decisions made in good faith

105 No action lies against the Public Trustee or any person for anything done or omitted to be done in good faith under this Division, including a decision to make or not to make an application on behalf of a family member.

No early distribution without consent or Court order

106(1) The personal representative of an estate shall not distribute any portion of the estate to any beneficiary until the expiration of 6 months from the grant of probate of the will or of administration without the consent of all the family members unless authorized to do so by an order of the Court.

(2) A personal representative that distributes any portion of an estate in contravention of subsection (1) is personally liable to pay an amount equal to any maintenance and support that is payable under an order under this Division and that ought to be paid out of the portion of the estate distributed.

(3) Nothing in this section prevents a personal representative from making reasonable advances for the maintenance of any family members who are beneficiaries.

Estate subject to order

107(1) On notice of an application under section 88 being given to the personal representative, the estate is subject to the provisions of any order that may be made and the personal representative shall not distribute or dispose of the estate except in accordance with that order.

(2) A personal representative that distributes or disposes of any portion of an estate in any manner in contravention of subsection (1) is personally liable to pay the amount distributed or disposed of to the extent that any provision, or part of a provision, for maintenance and support under an order under this Division ought to be made out of the portion of the estate distributed or disposed of.

(3) In addition to being personally liable as provided in subsection (2), a personal representative that wilfully contravenes subsection (1) is guilty of an offence and liable,

- (a) in the case of an individual, to a fine of not more than \$5000 and in default of payment to a term of imprisonment of not more than 60 days, and
- (b) in the case of a corporation, to a fine of not more than \$25 000.

Transitional

108(1) This Division applies only in respect of deaths occurring after the coming into force of this section.

(2) The *Family Relief Act*, as it read immediately before it was amended by the *Adult Interdependent Relationships Act*, continues to apply in cases of death occurring on or before June 1, 2003.

(3) The *Dependants Relief Act*, RSA 2000 cD-10.5, continues to apply in cases of death occurring after June 1, 2003 but before the coming into force of this section.

Part 6 General

Court application respecting alleged advance

109(1) In this section,

- (a) “applicant” means
 - (i) a personal representative of the deceased’s estate, or
 - (ii) a person having an interest as a beneficiary in the deceased’s estate;

(b) “prospective beneficiary” means a spouse, adult interdependent partner or descendant of the deceased.

(2) If a deceased, during life, has transferred property to a prospective beneficiary, a person who alleges that the transfer was intended by the deceased to be an advance against, or otherwise repayable from, the prospective beneficiary’s share of the estate may make an application to the Court under this section.

(3) In considering the application, the Court may consider the deceased’s intention respecting the transfer

- (a) as determined in the course of interpreting the will, if any, or
- (b) as evidenced by
 - (i) any oral statement made by the deceased respecting the transfer at the time the transfer was made,
 - (ii) any written statement made by the deceased respecting the transfer, or
 - (iii) any oral or written statement made by the prospective beneficiary.

(4) Subject to subsection (5), the Court may, on hearing the application

- (a) determine the nature of the transfer,
- (b) determine the value of the transferred property,
- (c) order that the value of the transferred property be deducted from the prospective beneficiary’s share of the estate,
- (d) order that the prospective beneficiary’s share of the estate be held on trust for the estate, and
- (e) make any other order or give any other direction the Court considers appropriate.

(5) If the Court determines that the transfer was intended by the deceased to be an advance against, or otherwise repayable from, the prospective beneficiary’s share of the estate, then unless the Court determines that the deceased had a contrary intention,

- (a) the shares of all the beneficiaries shall be determined as if the transferred property were part of the estate available for distribution,
- (b) if the value of the transferred property equals or exceeds the prospective beneficiary's share of the estate, the prospective beneficiary is to be excluded from any share of the estate, and
- (c) if the value of the transferred property is less than the share of the estate of the prospective beneficiary, the prospective beneficiary is to receive only so much of the estate as is required, when added to the value of the transferred property, to make up the prospective beneficiary's share of the estate.

(6) Where the application is made in respect of an intestate estate and the prospective beneficiary has predeceased the intestate, it is presumed that the intestate did not intend the transfer to be an advance repayable by the descendants of the prospective beneficiary.

(7) For the purposes of this section, the value of the transferred property is its value at the time of the transfer, unless the Court determines that the deceased had a contrary intention.

(8) An application under this section may be made only within 6 months after a grant of probate or administration is issued in respect of the deceased's estate.

Abolition of common law rules

110(1) There is no longer any presumption at law that if a testator makes a substantial transfer to the testator's child during the life of the testator but after making a will that provides for a beneficial disposition to that child, the testator intends the transfer as an advance or portion of the child's share of the testator's estate.

(2) There is no longer any requirement at law that if a deceased makes a substantial transfer to the deceased's child during the life of the deceased and then dies intestate, the value of the transfer must be deducted from the child's share of the deceased's estate.

(3) There is no longer any presumption at law that if a testator, by will, makes a disposition of money to a creditor in an amount equal

to or greater than the debt, the testator intends the disposition to satisfy the debt.

(4) There is no longer any presumption at law that if a testator, during his or her life and after making a will that provides for a disposition of money to a person, makes a transfer to that person in an amount equal to or greater than the disposition, the testator intends the transfer to revoke the disposition in the will.

Dispositions respecting unowned property

111(1) Where a testator purports, by will, to give a gift of property that the testator does not own,

- (a) the gift is void, and
- (b) any rights that the owner of the property has as a beneficiary under the will are not affected by the testator's purported gift.

(2) Nothing in subsection (1) affects the right of a testator to make a gift of property that is conditional on a disposition by the beneficiary of property that is owned by the beneficiary.

Regulations

112 The Lieutenant Governor in Council may make regulations for carrying out the purposes and provisions of this Act and, without limiting the generality of the foregoing, may make regulations

- (a) respecting applications to the Court under this Act, including, without limitation, regulations
 - (i) respecting the documents required to be filed with an application under Division 2 of Part 5, and
 - (ii) respecting the persons required to be served with notice of an application under Division 2 of Part 5, the documents required to be served, the manner of service and the time within which service must be effected;
- (b) respecting financial information required to be provided under section 95(2).

Part 7
Consequential and Related
Amendments, Repeals and
Coming into Force

Amends RSA 2000 cA-2

113(1) The *Administration of Estates Act* is amended by this section.

(2) Section 1(k) is repealed and the following is substituted:

- (k) “will” includes
 - (i) a codicil, and
 - (ii) a writing that
 - (A) alters or revokes another will,
 - (B) appoints a personal representative, or
 - (C) on the death of the testator, confers or exercises a power of appointment,and
 - (iii) any other writing that is a testamentary disposition.

(3) Section 7 is amended

(a) in subsection (1)

- (i) **by striking out** “dependants under the *Dependants Relief Act*” **and substituting** “family members under Part 5 of the *Wills and Succession Act*”;
- (ii) **by striking out** “the *Intestate Succession Act*” **wherever it occurs and substituting** “Part 3 of the *Wills and Succession Act*”;
- (iii) **by striking out “and” at the end of clause (b), adding “and” at the end of clause (c) and adding the following after clause (c):**
 - (d) a child of the deceased who, at the time of the deceased’s death,

Explanatory Notes

113(1) Amends chapter A-2 of the Revised Statutes of Alberta 2000.

(2) Section 1(k) presently reads:

1 In this Act,

(k) “will” includes a testament, a codicil, an appointment by will or by writing in the nature of a will in the exercise of a power, and any other testamentary disposition.

(3) Section 7 presently reads in part:

7(1) When an application is made for a grant of probate or administration, the applicant shall send a copy of the application and a notice pertaining to the rights of dependants under the Dependants Relief Act to

(a) the spouse of the deceased, if the spouse is not the sole beneficiary under the will of the deceased or under the Intestate Succession Act and if the spouse resided in Canada at the date of the death of the deceased,

(b) the adult interdependent partner of the deceased, if the adult interdependent partner is not the sole beneficiary under the will of the deceased or under the Intestate Succession Act and if the adult interdependent partner resided in Canada at the date of the death of the deceased, and

- (i) is at least 18 but under 22 years of age, and
- (ii) is unable to withdraw from his or her parents' charge because he or she is a full-time student as determined in accordance with the *Family Law Act* and its regulations.

(b) by repealing subsection (2) and substituting the following:

(2) When an application is made for a grant of probate or administration, the applicant shall send a copy of the application and a notice pertaining to the rights of a spouse under the *Matrimonial Property Act* to any spouse, as defined in that Act, of the deceased, if the spouse is not the sole beneficiary under the will of the deceased or under Part 3 of the *Wills and Succession Act*.

(c) by repealing subsection (4)(a) and substituting the following:

- (a) the Public Trustee, if the deceased is survived by
 - (i) a child who was a minor at the time of the deceased's death, or
 - (ii) a minor grandchild or great-grandchild in respect of whom the deceased stood in the place of a parent at the time of the deceased's death,
- (a.1) the guardian of a child, grandchild or great-grandchild referred to in clause (a), and

(d) in subsection (5) by striking out "the *Dependants Relief Act*" and substituting "Division 2 of Part 5 of the *Wills and Succession Act*".

- (c) *each child of the deceased who was an adult at the date of the death of the deceased and is unable by reason of physical disability to earn a livelihood and who resided in Canada at the date of the death of the deceased.*

- (2) *When an application is made for a grant of probate or administration, the applicant shall send a copy of the application and a notice pertaining to the rights of a spouse under the Matrimonial Property Act to the spouse of the deceased, if the spouse of the deceased is not the sole beneficiary under the will of the deceased or under the Intestate Succession Act.*

- (3) *A judge may by order dispense with the requirement that a copy of the application and notice be sent to a spouse under subsection (2) if the judge is satisfied that the spouse does not have a right to make a claim under the Matrimonial Property Act against the estate of the deceased.*

- (4) *When an application is made for a grant of probate or administration, the applicant shall send a copy of the application to*
 - (a) *the Public Trustee, if the deceased is survived by a child who was a minor at the time of the deceased's death, and*
 - (b) *the committee of the estate of a child of the deceased who was an adult at the time of the deceased's death and is unable by reason of mental disability to earn a livelihood.*

- (5) *If the deceased is survived by a child who was an adult at the time of the deceased's death and is unable by reason of mental disability to earn a livelihood but for whom a trustee has not been appointed, the judge may, having regard to the value of the estate, the circumstances of the child and the likelihood of success of an application made on the child's behalf under the Dependants Relief Act,*
 - (a) *direct that a grant for probate or administration in the deceased's estate not be issued until a committee of the child's estate has been appointed, and*
 - (b) *direct that the applicant or some other person apply to have a trustee appointed for the child under the Adult Guardianship and Trusteeship Act.*

(4) The following is added after section 20:

Substitute personal representative

20.1 If a will contains a provision for a substitute personal representative that is operative if an executor designated in the will

- (a) dies before the testator,
- (b) dies at the same time as the testator, or
- (c) dies in circumstances rendering it uncertain which of them survived the other,

and the designated executor dies at the same time as the testator or in circumstances rendering it uncertain which of them survived the other, then, for the purpose of probate, the case for which the will provides is deemed to have occurred.

(5) The following is added after section 54:

Option to purchase

54.1(1) When there is in a will of a deceased person a power to sell real property, then unless the Court, in interpreting the will, finds that the testator had a contrary intention, that power is deemed to include the power to grant an option to purchase the property, if the period within which the option may be exercised is not longer than one year from the date on which the instrument granting the option is executed.

(2) Notwithstanding section 8(1) of the *Wills and Succession Act*, this section applies to a will regardless of when the will was made.

Amends RSA 2000 cE-8

114 The *Employment Pension Plans Act* is amended in section 1(1)(l.1) by striking out “section 47 of the *Trustee Act*” and substituting “section 71 of the *Wills and Succession Act*”.

(4) Substitute personal representative.

(5) Option to purchase.

114 Amends chapter E-8 of the Revised Statutes of Alberta 2000.
Section 1(1)(1.1) presently reads:

1(1) In this Act,

(1.1) “designation of beneficiary” means a designation pursuant to section 47 of the Trustee Act of a person to receive a benefit payable under a pension scheme on the death of a participant, within the meaning of that section, of that

Amends RSA 2000 cl-3

115(1) The *Insurance Act* is amended by this section.

(2) If this section comes into force before the coming into force of section 29 of the *Insurance Amendment Act, 2008*,

- (a) sections 576(2) and 583(1) of the *Insurance Act* are amended by striking out “the *Wills Act*” and substituting “the *Wills and Succession Act*”;**
- (b) the *Insurance Amendment Act, 2008*, is amended in section 29 in the new sections 662(2), 669(1), 726(2) and 734(1) by striking out “*Wills Act*” and substituting “*Wills and Succession Act*”.**

(3) If section 29 of the *Insurance Amendment Act, 2008* comes into force before the coming into force of this section, the following sections of the *Insurance Act* are amended by striking out “the *Wills Act*” and substituting “the *Wills and Succession Act*”:

section 662(2);
section 669(1);
section 726(2);
section 734(1).

Amends RSA 2000 cl-8

116 The *Interpretation Act* is amended in section 28(1)(ggg) by striking out “the *Wills Act*” and substituting “the *Wills and Succession Act*”.

scheme, and “designated beneficiary” shall be construed accordingly;

115(1) Amends chapter I-3 of the Revised Statutes of Alberta 2000.

(2) Sections 576(2) and 583(1) presently read:

576(2) Despite the Wills Act, a designation in a will is of no effect against a designation made later than the making of the will.

583(1) Despite the Wills Act, if in a contract or in an agreement in writing between an insurer and an insured it is provided that a person named in the contract or in the agreement has, on the death of the insured, the rights and interests of the insured in the contract,

(a) the rights and interests of the insured in the contract do not, on the death of the insured, form part of the insured’s estate, and

(b) on the death of the insured, the person named in the contract or in the agreement has the rights and interests given to the insured by the contract and by this Subpart and is deemed to be the insured.

(3) Title of Act changed in provisions of the Insurance Act enacted by SA 2008 c19.

116 Amends chapter I-8 of the Revised Statutes of Alberta 2000. Section 28(1)(ggg) presently reads:

28(1) In an enactment,

(ggg) “will” means a will as defined in the Wills Act;

Amends RSA 2000 cM-8

117(1) The *Matrimonial Property Act* is amended by this section.

(2) Section 1 is amended

(a) by adding the following after clause (a):

(a.1) “declaration of irreconcilability” means a declaration of irreconcilability under the *Family Law Act*;

(b) by adding the following after clause (d):

(d.1) “personal representative” has the same meaning as in the *Wills and Succession Act*;

(3) The following is added after section 1:

Interpretation — deceased spouse

1.1(1) For the purposes of an application to which section 5(1)(f) applies,

- (a) a reference in section 2 or Part 1 or 3 to a spouse is to be interpreted as including the deceased spouse or the deceased spouse’s estate, as the context requires, and
- (b) a reference in Part 1 or 3 to a distribution of matrimonial property between spouses is to be interpreted as including a distribution between the surviving spouse and the deceased’s spouse’s estate.

(2) Subsection (1) does not apply to section 33 or 37.

(4) Section 4 is repealed and the following is substituted:

Form of application

4 Subject to any regulations under section 32(a.1), an application for a matrimonial property order shall be made by statement of claim.

(5) Section 5 is amended

(a) in subsection (1)

(i) by repealing clause (b);

117(1) Amends chapter M-8 of the Revised Statutes of Alberta 2000.

(2) Adds definitions.

(3) Interpretation — deceased spouse.

(4) Section 4 presently reads:

4 An application for a matrimonial property order shall be made by statement of claim.

(5) Section 5 presently reads:

5(1) A matrimonial property order may only be made

(a) if

(ii) **in clause (b.1) by striking out** “under the *Family Law Act*”;

(iii) **by striking out “or” at the end of clause (d), adding “or” at the end of clause (e) and adding the following after clause (e):**

(f) if one of the spouses is deceased and the surviving spouse makes an application under section 5.1.

(b) **in subsection (2) by striking out** “subsection (1)(b), (c), (d) or (e)” **and substituting** “subsection (1)(b.1), (c), (d) or (e)”;

(c) **by adding the following after subsection (2):**

(2.1) Notwithstanding that a matrimonial property order has been made under circumstances to which subsection (1)(b.1), (c), (d) or (e) applies, the Court may make a further matrimonial property order under circumstances to which subsection (1)(f) applies with respect to the property of the same spouses if, before the death of the deceased spouse, there was a subsequent resumption of cohabitation by the spouses during a period of more than 90 days with reconciliation as its primary purpose.

- (i) *a judgment of divorce has been granted, or*
 - (ii) *a declaration of nullity of marriage has been made*
- with respect to the marriage,*
- (b) *if one of the spouses has been granted a judgment of judicial separation,*
 - (b.1) *if one or both of the spouses have obtained a declaration of irreconcilability under the Family Law Act,*
 - (c) *if the Court is satisfied that the spouses have been living separate and apart for a continuous period of at least one year immediately prior to the commencement of the application,*
 - (d) *if the Court is satisfied that the spouses are living separate and apart at the time the application is commenced and the defendant spouse*
 - (i) *has transferred or intends to transfer substantial property to a third party who is not a bona fide purchaser for value, or*
 - (ii) *has made or intends to make a substantial gift of property to a third party,*

with the intention of defeating a claim to property a spouse may have under this Part, or
 - (e) *if the Court is satisfied that the spouses are living separate and apart and one spouse is dissipating property to the detriment of the other spouse.*

(2) Notwithstanding that a matrimonial property order has been made under circumstances to which subsection (1)(b),(c),(d) or (e) applies, the Court may make a further matrimonial property order under circumstances to which subsection (1)(a) applies with respect to the property of the same spouses if there has been a subsequent resumption of cohabitation by the spouses during a period of more than 90 days with reconciliation as its primary purpose.

(3) Spouses may be held to be living separate and apart notwithstanding that they have continued to reside in the same residence or that either spouse has rendered some household service to the other during the period of separation.

(6) The following is added after section 5:

Application by spouse of deceased

5.1(1) An application for a matrimonial property order may be made or continued by a surviving spouse after the death of the other spouse.

(2) Notwithstanding section 1.1(1)(a) and the *Survival of Actions Act*, no application for a matrimonial property order may be made by the estate of a deceased person.

(3) Subsection (1) applies only where the death of the deceased spouse occurs on or after the day this section comes into force.

(7) Section 6 is amended

(a) in subsection (1)

(i) by striking out “or (b)” and substituting “or (b.1)”;

(ii) in clause (a) by striking out “decree of divorce, a declaration of nullity, a judgment of judicial separation or a declaration of irreconcilability under the *Family Law Act*” and substituting “divorce, a declaration of nullity or a declaration of irreconcilability”;

(iii) in clause (b) by striking out “of the decree nisi, declaration or judgment” and substituting “the divorce takes effect or the declaration is made”;

(b) in subsection (3)(a) by striking out “two” and substituting “2”;

(c) by adding the following after subsection (4):

(5) An application for a matrimonial property order to which section 5(1)(f) applies may be commenced within 6 months

(4) For the purposes of subsection (1)(c), the period during which spouses have been living separate and apart shall not be considered to have been interrupted by reason only that there has been a resumption of cohabitation by the spouses during a single period of not more than 90 days with reconciliation as its primary purpose, and that period shall not be included in computing the period during which the spouses are living separate and apart.

(6) Application by spouse of deceased.

(7) Section 6 presently reads:

6(1) An application for a matrimonial property order to which section 5(1)(a) or (b) applies

(a) may, notwithstanding subsection (2), be commenced at or after the date proceedings are commenced for a decree of divorce, a declaration of nullity, a judgment of judicial separation or a declaration of irreconcilability under the Family Law Act, but

(b) may be commenced not later than 2 years after the date of the decree nisi, declaration or judgment.

(2) An application for a matrimonial property order to which section 5(1)(c) or (e) applies may be commenced within 2 years after the date the spouses separated.

(3) An application for a matrimonial property order to which section 5(1)(d) applies may be commenced within

(a) two years after the date the spouses separated, or

after the date of issuance of a grant of probate or administration of the estate of the deceased spouse,

- (a) if at the time of the death the spouses were married and not subject to a declaration of irreconcilability, or
- (b) if
 - (i) at the time of the death the spouses were divorced or subject to a declaration of nullity or a declaration of irreconcilability, and
 - (ii) the death occurred within 2 years after the date the divorce or declaration took effect.

(8) The following is added after section 6:

Estate may continue or defend action

6.1(1) Where a person dies after commencing an action under this Part, the action may be continued by the estate of the deceased person.

(2) Where a person dies before filing a defence in an action under this Part,

- (a) the person's estate may file a defence in the action, and
- (b) the person who commenced the action shall not discontinue it without the consent of the estate or leave of the Court.

(3) The rights conferred under this Part on a person referred to in subsection (1) or (2) before the death of the person survive the person's death for the benefit of the person's estate.

(9) Section 7 is amended

(a) in subsection (2)

(i) by repealing clause (b) and substituting the following:

- (b) property acquired by a spouse by inheritance, other than from the estate of the deceased spouse,

*(b) one year after the date the property is transferred or given,
whichever occurs first.*

(4) Any single period of not more than 90 days during which the spouses resumed cohabitation with reconciliation as its primary purpose shall not be included in computing the 2-year period under subsection (2) or (3).

(8) Estate may continue or defend action.

(9) Section 7 presently reads:

7(1) The Court may, in accordance with this section, make a distribution between the spouses of all the property owned by both spouses and by each of them.

(2) If the property is

(a) property acquired by a spouse by gift from a third party,

(ii) by repealing clause (e) and substituting the following:

(e) the proceeds of an insurance policy paid to one spouse while both spouses are alive, unless the insurance is in respect of property or the proceeds are compensation for a loss to both spouses,

(b) in subsection (3)

(i) in clause (c) by striking out “decree nisi of divorce, a declaration of nullity of marriage, a judgment of judicial separation or a declaration of irreconcilability under the *Family Law Act*” **and substituting** “divorce takes effect, a declaration of nullity of marriage is made or a declaration of irreconcilability”;

(ii) in clause (d) by adding “while both spouses are alive” **after** “other spouse”;

(c) in subsection (4) by striking out “subsections (2) and (3)” **and substituting** “subsection (2) or (3) or section 7.1(2)”.

- (b) *property acquired by a spouse by inheritance,*
- (c) *property acquired by a spouse before the marriage,*
- (d) *an award or settlement for damages in tort in favour of a spouse, unless the award or settlement is compensation for a loss to both spouses, or*
- (e) *the proceeds of an insurance policy that is not insurance in respect of property, unless the proceeds are compensation for a loss to both spouses,*

the market value of that property at the time of marriage or on the date on which the property was acquired by the spouse, whichever is later, is exempted from a distribution under this section.

(3) The Court shall, after taking the matters in section 8 into consideration, distribute the following in a manner that it considers just and equitable:

- (a) *the difference between the exempted value of property described in subsection (2), referred to in this subsection as the “original property”, and the market value at the time of the trial of the original property or property acquired*
 - (i) *as a result of an exchange for the original property, or*
 - (ii) *from the proceeds, whether direct or indirect, of a disposition of the original property;*
- (b) *property acquired by a spouse with income received during the marriage from the original property or property acquired in a manner described in clause (a)(i) or (ii);*
- (c) *property acquired by a spouse after a decree nisi of divorce, a declaration of nullity of marriage, a judgment of judicial separation or a declaration of irreconcilability under the Family Law Act is made in respect of the spouses;*
- (d) *property acquired by a spouse by gift from the other spouse.*

(4) If the property being distributed is property acquired by a spouse during the marriage and is not property referred to in subsections (2) and (3), the Court shall distribute that property equally between the spouses unless it appears to the Court that it would not be just and equitable to do so, taking into consideration the matters in section 8.

(10) The following is added after section 7:

Distribution of property if spouse deceased

7.1(1) In an application to which section 5(1)(f) applies, the following property is deemed to be property of the deceased spouse for the purposes of a distribution under this Part, but for no other purpose:

- (a) the market value of any gift mortis causa given by the deceased spouse to a person other than the surviving spouse;
- (b) property that, immediately before the deceased spouse's death, was held jointly with a right of survivorship by the deceased spouse and a person other than the surviving spouse, to the extent of the deceased spouse's beneficial interest in the property at the time of the death;
- (c) any property that a person other than the surviving spouse or the estate received or is entitled to receive under a plan as defined in, or prescribed in regulations under, section 71 of the *Wills and Succession Act* on the death of the deceased spouse, unless the surviving spouse waived any entitlement under the plan;
- (d) proceeds of a life insurance policy
 - (i) that is owned by the deceased spouse or under which the deceased is a member of a group of insured persons, and
 - (ii) that is paid or payable to a person other than the surviving spouse or to the estate on the death of the deceased spouse;
- (e) property disposed of by the deceased spouse in trust or otherwise, to the extent that the deceased spouse had, during life, either alone or in conjunction with others, a power to revoke the disposition or to consume or dispose of the property;
- (f) property of a type prescribed in the regulations.

(2) In an application to which section 5(1)(f) applies, in addition to any property that is exempted under section 7(2), the

(10) Distribution of property if spouse deceased.

following property is exempted from a distribution under this Part:

- (a) the proceeds of a life insurance policy that is owned by the deceased spouse and paid or payable to any person on the death of the deceased spouse, if the purpose of the policy is
 - (i) to satisfy an order or agreement to pay maintenance or support, or any other debt, liability or obligation that the deceased spouse had during life, or
 - (ii) to provide funds that the beneficiary of the policy will likely require, or compensation for loss that the beneficiary is likely to suffer, in respect of a business undertaking in the event of and as a result of the death, injury, illness, disability or incapacity of the deceased spouse;
- (b) property used to pay funeral and testamentary expenses in respect of the death of the deceased spouse.

(3) Notwithstanding any other provision of this Act, where in an application to which section 5(1)(f) applies the Court determines that

- (a) the property owned by the surviving spouse, and
- (b) any property the surviving spouse has received or is entitled to receive
 - (i) by right of survivorship on the death of the deceased spouse,
 - (ii) as a beneficiary under a life insurance policy owned by the deceased spouse or under a plan as defined in, or prescribed in regulations under, section 71 of the *Wills and Succession Act*, on the deceased spouse's death, or
 - (iii) otherwise by reason of the death of the deceased spouse, but not including any property received under a will or on an intestacy of the deceased spouse,

together exceed the share of property that the Court would have distributed to that spouse, the Court shall nevertheless make no order to effect a distribution of matrimonial property.

(11) Section 8 is amended

(a) by renumbering it as section 8(1);

(b) in subsection (1) by adding the following after clause (h):

(h.1) that any person received or is entitled to receive a benefit under a plan as defined in, or prescribed in regulations under, section 71 of the *Wills and Succession Act* on the death of the deceased spouse;

(c) by adding the following after subsection (1):

(2) In an application to which section 5(1)(f) applies, the fact that the surviving spouse received or is entitled to receive any property, payment or other benefit

(a) under a will or on an intestacy of the deceased spouse,

(b) by right of survivorship on the death of the deceased spouse,

(c) as a beneficiary under a life insurance policy owned by the deceased spouse or under a plan as defined in, or prescribed in regulations under, section 71 of the *Wills and Succession Act*, on the deceased spouse's death, or

(d) otherwise by reason of the death of the deceased spouse,

is not a relevant fact or circumstance for the purposes of subsection (1)(m).

(11) Section 8 presently reads:

8 The matters to be taken into consideration in making a distribution under section 7 are the following:

- (a) the contribution made by each spouse to the marriage and to the welfare of the family, including any contribution made as a homemaker or parent;*
- (b) the contribution, whether financial or in some other form, made by a spouse directly or indirectly to the acquisition, conservation, improvement, operation or management of a business, farm, enterprise or undertaking owned or operated by one or both spouses or by one or both spouses and any other person;*
- (c) the contribution, whether financial or in some other form, made directly or indirectly by or on behalf of a spouse to the acquisition, conservation or improvement of the property;*
- (d) the income, earning capacity, liabilities, obligations, property and other financial resources*
 - (i) that each spouse had at the time of marriage, and*
 - (ii) that each spouse has at the time of the trial;*
- (e) the duration of the marriage;*
- (f) whether the property was acquired when the spouses were living separate and apart;*
- (g) the terms of an oral or written agreement between the spouses;*
- (h) that a spouse has made*
 - (i) a substantial gift of property to a third party, or*
 - (ii) a transfer of property to a third party other than a bona fide purchaser for value;*

(12) Section 9 is amended by adding the following after subsection (3):

- (4)** Except where section 10(1) applies,
 - (a) this section does not apply to property referred to in section 7.1(1), and
 - (b) no order under subsection (3)(j) may bind a person referred to in section 7.1(1), other than the surviving spouse and the estate of the deceased spouse.

- (i) *a previous distribution of property between the spouses by gift, agreement or matrimonial property order;*
- (j) *a prior order made by a court;*
- (k) *a tax liability that may be incurred by a spouse as a result of the transfer or sale of property;*
- (l) *that a spouse has dissipated property to the detriment of the other spouse;*
- (m) *any fact or circumstance that is relevant.*

(12) Section 9 presently reads:

9(1) If part of the property of the spouses is situated in Alberta and part elsewhere, the Court may distribute the property situated in Alberta in such a way as to give effect to the distribution under section 7 of all the property wherever it is situated.

(2) The Court, in order to effect a distribution under section 7, may do any one or more of the following:

- (a) *order a spouse to pay money or transfer an interest in property to the other spouse;*
- (b) *order that property be sold and that the proceeds be divided between the spouses as the Court directs;*
- (c) *by order declare that a spouse has an interest in property notwithstanding that the spouse in whose favour the order is made has no legal or equitable interest in the property.*

(3) To give effect to an order under this section the Court may do any one or more of the following:

- (a) *order a spouse to pay money over a period of time with or without interest;*
- (b) *order a spouse to give security for all or part of any payment;*
- (c) *charge property with all or part of a payment to be made under the order and provide for the enforcement of that charge;*
- (d) *prescribe the terms and conditions of a sale ordered under subsection (2);*

(13) Section 11 is repealed.

(14) Section 12 is repealed and the following is substituted:

Suspension of administration of deceased's estate

12 Where an application to which section 5(1)(f) applies is made or continued, the Court may suspend, in whole or in part,

- (e) *require a spouse, as a condition of an order, to surrender all claims to property in the name of the other spouse;*
- (f) *require a spouse, as a condition of an order, to execute a release of dower rights under the Dower Act with respect to all or any property owned by the other spouse or transferred to the other spouse;*
- (g) *impose a trust in favour of a spouse with respect to an interest in property;*
- (h) *vary the terms of an order made under subsection (2) in accordance with this subsection;*
- (i) *if property is owned by spouses as joint tenants, sever the joint tenancy;*
- (j) *make any other order that in the opinion of the Court is necessary.*

(13) Section 11 presently reads:

11(1) Subject to this section, an application for a matrimonial property order may be made or continued by the surviving spouse after the death of the other spouse.

(2) A matrimonial property order may be made on the application of a surviving spouse only if an application for a matrimonial property order could have been commenced immediately before the death of the other spouse.

(3) When a matrimonial property order is made in favour of a surviving spouse, the Court, in addition to the matters in section 8, shall take into consideration any benefit received by the surviving spouse as a result of the death of the deceased spouse.

(4) An application by a surviving spouse for a matrimonial property order may not be commenced more than 6 months after the date of issue of a grant of probate or administration of the estate of the deceased spouse.

(14) Section 12 presently reads:

12 The Court may make an order suspending in whole or in part the administration of the estate of the deceased spouse until an application for a matrimonial property order has been determined.

the administration of the estate of the deceased spouse until the application has been determined.

(15) Section 13 is amended

(a) **in subsection (1) by striking out** “executor, administrator or trustee shall not distribute any portion of the estate to a beneficiary without the consent of the living” **and substituting** “personal representative of the estate shall not distribute any portion of the estate to a beneficiary without the consent of the surviving”;

(b) **in subsection (2)**

(i) **in clause (a) by striking out** “an executor, administrator or trustee” **and substituting** “a personal representative”;

(ii) **by striking out** “executor, administrator or trustee is personally liable to the living” **and substituting** “personal representative is personally liable to the surviving”.

(16) Section 14 is repealed and the following is substituted:

Distribution in accordance with Court order

14(1) If an application for a matrimonial property order is made or continued by a surviving spouse, the personal representative of the estate of the deceased spouse shall hold the estate subject to any matrimonial property order that may be made, and the personal representative shall not proceed with the distribution of the estate other than in accordance with the matrimonial property order.

(2) If the personal representative distributes a portion of the estate contrary to subsection (1), the personal representative is personally liable to the surviving spouse for any loss to the spouse as a result of the distribution.

(17) Section 15 is amended

(a) **by striking out** “living” **wherever it occurs and substituting** “surviving”;

(b) **in clause (b) by striking out** “the *Intestate Succession Act*” **and substituting** “Part 3 of the *Wills and Succession Act*”;

(15) Section 13 presently reads:

13(1) Until the expiration of 6 months from the date of issue of the grant of probate or administration of the estate of a deceased spouse, the executor, administrator or trustee shall not distribute any portion of the estate to a beneficiary without the consent of the living spouse or an order of the Court.

(2) If

(a) an executor, administrator or trustee distributes a portion of the estate contrary to subsection (1), and

(b) the Court makes a matrimonial property order with respect to property in the estate of the deceased spouse,

the executor, administrator or trustee is personally liable to the living spouse for any loss to that spouse as a result of the distribution.

(16) Section 14 presently reads:

14(1) If an application for a matrimonial property order is made or continued by a spouse, the executor, administrator or trustee of the deceased spouse shall hold the estate subject to any matrimonial property order that may be made, and the executor, administrator or trustee shall not proceed with the distribution of the estate other than in accordance with the matrimonial property order.

(2) If an executor, administrator or trustee distributes a portion of the estate contrary to subsection (1), the executor, administrator or trustee is personally liable to the living spouse for any loss to that spouse as a result of the distribution.

(17) Section 15 presently reads:

15 Money paid to a living spouse or property transferred to a living spouse under a matrimonial property order is deemed never to have been part of the estate of the deceased spouse with respect to a claim against the estate

(c) by repealing clause (c) and substituting the following:

(c) by a family member under Division 2 of Part 5 of the *Wills and Succession Act*.

(18) Section 16 is repealed and the following is substituted:

Priority of debt owed to surviving spouse

16 Where, in order to give effect to an order for a distribution of property under this Part, a surviving spouse is entitled to a payment from the estate of the deceased spouse, the entitlement to the payment is deemed to be an unsecured debt of the deceased spouse owed to the surviving spouse.

(19) Section 18 is repealed and the following is substituted:

Effect on Part 5 of the Wills and Succession Act

18(1) Nothing in this Act affects the right of a surviving spouse to make an application under Division 2 of Part 5 of the *Wills and Succession Act*.

(2) An application referred to in subsection (1) may be joined with an application under this Part.

(20) Section 32 is amended

(a) by adding the following after clause (a):

(a.1) respecting the form by which an application to which section 5(1)(f) applies may be made;

(b) by adding the following after clause (c):

(d) prescribing types of property that are deemed to be property of the deceased spouse for the purposes of section 7.1(1)(f).

(21) Section 33(1) is amended by adding “or a personal representative of a deceased spouse’s estate” after “a spouse”.

- (a) *by a beneficiary under a will,*
- (b) *by a beneficiary under the Intestate Succession Act, or*
- (c) *by a dependant under the Dependants Relief Act.*

(18) Section 16 presently reads:

16 Where a person dies after commencing an action under this Part,

- (a) *the action may be continued by the estate of the deceased person, and*
- (b) *the rights conferred on that person under this Part prior to that person's death survive that person's death for the benefit of that person's estate.*

(19) Section 18 presently reads:

18(1) Nothing in this Act affects the right of a surviving spouse to make an application under the Dependants Relief Act.

(2) An application by a surviving spouse under the Dependants Relief Act may be joined with an application under this Part.

(20) Section 32 presently reads:

32 The Lieutenant Governor in Council may make regulations

- (a) *as to the procedure to be followed and the forms to be used under this Act;*
- (b) *prescribing the time within which documents are to be filed and served under this Act;*
- (c) *prescribing the information to be contained in a statement made under section 31.*

(21) Section 33(1) presently reads:

33(1) If proceedings have been commenced under this Act, a spouse who knows or has reason to believe that the proceedings have been commenced shall not

(22) Section 37 is amended

(a) in section (3)(a) by striking out “or the dissolution of the marriage” **and substituting** “, the time of the dissolution of the marriage or the time of a spouse’s death”;

(b) by adding the following after subsection (4):

(5) Subsection (1) applies only in respect of agreements entered into by living spouses.

(23) Section 38 is amended by striking out “referred to in section 37” **and substituting** “under section 37(1)”.

- (a) *dispose of or encumber any household goods, or*
- (b) *except in an emergency, remove from the matrimonial home any household goods that are household appliances or household effects or that form part of the household furnishings of that matrimonial home,*

without an order of the Court or the consent of the other spouse.

(22) Section 37 presently reads in part:

- (3) *An agreement under subsection (1)*
 - (a) *may provide for the distribution of property between the spouses at any time including, but not limited to, the time of separation of the spouses or the dissolution of the marriage, and*
 - (b) *may apply to property owned by both spouses and by each of them at or after the time the agreement is made.*

(4) An agreement under subsection (1) is unenforceable by a spouse if that spouse, at the time the agreement was made, knew or had reason to believe that the marriage was void.

(23) Section 38 presently reads:

38(1) An agreement referred to in section 37 is enforceable if each spouse or each person, in the case of persons referred to in section 37(2), has acknowledged, in writing, apart from the other spouse or person

- (a) *that the spouse or person is aware of the nature and the effect of the agreement,*
- (b) *that the spouse or person is aware of the possible future claims to property the spouse or person may have under this Act and that the spouse or person intends to give up these claims to the extent necessary to give effect to the agreement, and*
- (c) *that the spouse or person is executing the agreement freely and voluntarily without any compulsion on the part of the other spouse or person.*

Amends RSA 2000 cM-12

118 The *Members of the Legislative Assembly Pension Plan Act* is amended in section 31(1) and (8) of Schedule 1 by striking out “section 47 of the *Trustee Act*” and substituting “section 71 of the *Wills and Succession Act*”.

Amends RSA 2000 cM-14

119 The *Metis Settlements Act* is amended in section 222(1)(v) by striking out “the *Intestate Succession Act*, the *Unclaimed Personal Property and Vested Property Act* and the *Wills Act*” and substituting “the *Unclaimed Personal Property and Vested Property Act* and Parts 2 and 3 of the *Wills and Succession Act*”.

Amends RSA 2000 cM-20

120 The *Mobile Home Sites Tenancies Act* is amended by adding the following after section 32:

Where site is occupied by surviving spouse or partner

32.1 If a mobile home site is occupied by a surviving spouse or adult interdependent partner pursuant to Division 1 of Part 5 of the *Wills and Succession Act*, any application under section 30 or 32 must be made to the Court of Queen’s Bench.

Amends RSA 2000 cP-6

121 The *Personal Directives Act* is amended in section 29

(2) The acknowledgement referred to in subsection (1) shall be made before a lawyer other than the lawyer acting for the other spouse or person or before whom the acknowledgement is made by the other spouse or person.

118 Amends chapter M-12 of the Revised Statutes of Alberta 2000. Schedule 1, section 31(1) and (8) presently read:

31(1) Any person on whose death a benefit is payable is a participant for the purposes of section 47 of the Trustee Act.

(8) The right of any person under section 47 of the Trustee Act or this section to a benefit is subject to any rights given by Division 1 or 2 to any other person.

119 Amends chapter M-14 of the Revised Statutes of Alberta 2000. Section 222(1)(v) presently reads:

222(1) The General Council, after consultation with the Minister, may make, amend or repeal General Council Policies

(v) providing that one or more of the Administration of Estates Act, the Devolution of Real Property Act, the Dower Act, the Intestate Succession Act, the Unclaimed Personal Property and Vested Property Act and the Wills Act do not apply to specified interests in patented land that are held by settlement members;

120 Amends chapter M-20 of the Revised Statutes of Alberta 2000. Where site is occupied by surviving spouse or partner.

121 Amends chapter P-6 of the Revised Statutes of Alberta 2000. Section 29 presently reads:

- (a) **in clause (c) by striking out** “the *Intestate Succession Act*” **and substituting** “Part 3 of the *Wills and Succession Act*”;
- (b) **by repealing clause (d) and substituting the following:**
 - (d) an order under Division 2 of Part 5 of the *Wills and Succession Act*.

Amends SA 2004 cR-17.1

122 The Residential Tenancies Act is amended by adding the following after section 29:

Where premises are occupied by surviving spouse or partner

29.1 If residential premises are occupied by a surviving spouse or adult interdependent partner pursuant to Division 1 of Part 5 of the *Wills and Succession Act*, any application under section 26, 28 or 29 must be made to the Court of Queen’s Bench.

Amends RSA 2000 cT-8

123 The Trustee Act is amended by repealing section 47.

29 *If an agent has acted in good faith, a personal decision made by the agent does not affect the entitlement of the agent or the agent's spouse or adult interdependent partner, or anyone claiming through either of them, to the following:*

- (a) *a disposition under the will of the maker;*
- (b) *the proceeds of an insurance policy on the life of the maker;*
- (c) *a share of the estate of the maker under the Intestate Succession Act;*
- (d) *an order under the Dependents Relief Act.*

122 Amends chapter R-17.1 of the Statutes of Alberta, 2004.
Where premises are occupied by surviving spouse or partner.

123 Amends chapter T-8 of the Revised Statutes of Alberta 2000.
Section 47 presently reads:

47(1) *In this section,*

- (a) *“annuity” includes an amount payable on a periodic basis, whether payable at intervals longer or shorter than a year;*
- (b) *“participant” means a person who is entitled to designate another person to receive a benefit payable under a plan on the participant's death;*
- (c) *“plan” means*
 - (i) *a pension, retirement, welfare or profit-sharing fund, trust, scheme, contract or arrangement for the benefit of employees, former employees, agents or former agents of an employer or their dependants or beneficiaries, whether created by or pursuant to a statute or otherwise,*

- (ii) *a fund, trust, scheme, contract or arrangement for the payment of an annuity for life or for a fixed or variable term or under which money is paid for the purpose of providing, on the happening of a specified event, for the purchase of, or the payment of, an annuity for life or for a fixed or variable term, created before or after the commencement of this section,*
- (iii) *a registered retirement savings plan or registered retirement income fund as defined in the Income Tax Act (Canada), or*
- (iv) *a fund, trust, scheme, contract or arrangement prescribed in regulations made by the Lieutenant Governor in Council;*

(d) *“will” has the same meaning as in the Wills Act.*

(2) *A participant may designate a person to receive a benefit payable under a plan on the participant’s death*

- (a) *by an instrument signed by the participant or signed on the participant’s behalf by another person in the participant’s presence and by the participant’s direction, or*
- (b) *by will,*

and may revoke the designation by either of those methods.

(3) *A designation under subsection (2) that relates to a plan referred to in subsection (1)(c)(iii) has effect whether it is made, or the participant making it dies, before or after subsection (1)(c)(iii) comes into force.*

(4) *Subsection (3) does not apply if its application would*

- (a) *alter the result in any proceedings in which a judgment or final order was granted before subsection (3) came into force, regardless of whether the judgment or order is appealable, or*
- (b) *impose on a person the obligation to repay or account for proceeds of a plan referred to in subsection (1)(c)(iii) received or paid out by that person before subsection (1)(c)(iii) came into force.*

(5) A designation in a will is effective only if it refers to the plan either generally or specifically.

(6) A revocation in a will of a designation made by an instrument is effective to revoke the designation made by the instrument only if the revocation refers to the plan either generally or specifically.

(7) Notwithstanding the Wills Act, a later designation revokes an earlier designation, to the extent of any inconsistency.

(8) Revocation of a will is effective to revoke a designation in the will.

(9) A designation or revocation contained in an instrument purporting to be a will is not invalid by reason only of the fact that the instrument is invalid as a will.

(10) A designation in an instrument that purports to be but is not a valid will is revoked by an event that would have the effect of revoking the instrument if it had been a valid will.

(11) Revocation of a designation does not revive an earlier designation.

(12) Notwithstanding the Wills Act, a designation or revocation in a will is effective from the time when the will is signed.

(13) After the death of a participant who has made a designation that is in effect at the time of the participant's death, the person designated may enforce payment of the benefit payable under the plan to the person designated, but the person against whom the payment is sought to be enforced may set up any defence that that person could have set up against the participant or the participant's personal representative.

(14) If this section is inconsistent with a plan, this section applies unless

- (a) the inconsistency relates to a designation made or proposed to be made after the making of a benefit payment, and*
- (b) the benefit payment so made would have been different if the designation had been made before the benefit payment was made,*

in which case the plan applies.

Amends SA 2007 cU-1.5

124 The Unclaimed Personal Property and Vested Property Act is amended

(a) in section 32

(i) by repealing subsection (1) and substituting the following:

Application and interpretation

32(1) In this Part, “intestate estate” has the same meaning as in Part 3 of the *Wills and Succession Act*.

(ii) in subsection (2)

(A) by striking out “estate of an intestate” and substituting “intestate estate of an individual”;

(B) in clause (b) by striking out “intestate’s estate” and substituting “intestate estate”;

(15) When a plan requires or permits a designation or revocation of it to be filed with a specified person or body and any benefit is paid under the plan to a beneficiary on the basis of the latest designation so filed, the payment is deemed to be validly made, as against the person required by the plan to make the payment, notwithstanding that

- (a) a later designation or revocation of a designation is filed under the plan after the payment was made, or*
- (b) the person or body is notified, after the payment was made, of an event that had the effect of revoking a designation so filed.*

(16) When a plan requires or permits a designation or revocation of it to be filed with a specified person or body, then, in the case of a designation or revocation made by a will, the filing of a copy of the will with that person or body, authenticated in the manner, if any, prescribed by the plan, is a sufficient compliance with the requirement under the plan.

(17) This section does not apply to a contract or to a designation of a beneficiary to which the Insurance Act applies.

(18) The Crown is bound by this section.

124 Amends chapter U-1.5 of the Statutes of Alberta, 2007.
Sections 32 and 48(1) and (2) presently read:

32(1) In this Part, “estate” has the meaning assigned to it in the Intestate Succession Act.

(2) This Part applies to the estate of an intestate

- (a) who dies after this Act comes into force, or*
- (b) who died before this Act came into force, to the extent that the administration of the intestate’s estate has not been completed before this Act comes into force.*

48(1) Subject to subsection (8), if under this Act or another enactment unclaimed personal property or vested property has been paid, transferred or delivered to the Minister, or an amount has been paid to the Minister as equivalent value for unclaimed personal property or vested property, a person, governmental organization or other entity who asserts a claim to that unclaimed personal property

(b) by repealing section 48(2)(b) and substituting the following:

- (b) may allow the claim,
 - (i) if the Minister is satisfied that the claimant has a valid entitlement to the property or amount but is prevented from asserting full rights as owner to that property or amount because of a procedural impediment to the claimant assuming those ownership rights, including, without limitation, in the case of an entitlement arising under an estate, the fact that probate or administration has not yet been granted in respect of the estate, or
 - (ii) subject to the regulations, if the Minister is satisfied that the claimant is an individual of the 5th or greater degree of relationship to an individual who died intestate and is prevented by section 67(2) of the *Wills and Succession Act* from sharing in the intestate estate,

and

Repeals

125 The following Acts are repealed:

- (a) the *Dependants Relief Act*, RSA 2000 cD-10.5;
- (b) the *Intestate Succession Act*, RSA 2000 cI-10;
- (c) the *Survivorship Act*, RSA 2000 cS-28;
- (d) the *Wills Act*, RSA 2000 cW-12.

Coming into force

126 This Act comes into force on Proclamation.

or vested property or amount may claim that unclaimed personal property or vested property or amount by filing with the Minister a claim in the form required by the Minister that includes

- (a) the full name and address of the claimant,*
- (b) the basis on which the claim is made, and*
- (c) any other information required by the Minister in support of the claim.*

(2) The Minister must, within 120 days after a claim is filed under subsection (1), consider the claim and

- (a) must allow the claim if the Minister is satisfied that the claimant is the owner of the property or amount,*
- (b) may allow the claim if the Minister is satisfied that the claimant has a valid entitlement to the property or amount but is prevented from asserting full rights as owner to that property or amount because of a procedural impediment to the claimant assuming those ownership rights, including, without limitation, in the case of an entitlement arising under an estate, the fact that probate or administration has not yet been granted in respect of the estate, and*
- (c) may deny the claim if the Minister is not satisfied under clause (a) or (b).*

125 Repeals chapters D-10.5, I-10, S-28 and W-12 of the Revised Statutes of Alberta 2000.

126 Coming into force.

Schedule

Convention Providing a Uniform Law on the Form of an International Will

The States signatory to the present Convention,

DESIRING to provide to a greater extent for the respecting of last wills by establishing an additional form of will hereinafter to be called an “international will” which, if employed, would dispense to some extent with the search for the applicable law;

HAVE RESOLVED to conclude a Convention for this purpose and have agreed upon the following provisions:

Article I

- 1** Each Contracting Party undertakes that not later than 6 months after the date of entry into force of this Convention in respect of that Party it shall introduce into its law the rules regarding an international will set out in the Annex to this Convention.
- 2** Each Contracting Party may introduce the provisions of the Annex into its law either by reproducing the actual text, or by translating it into its official language or languages.
- 3** Each Contracting Party may introduce into its law such further provisions as are necessary to give the provisions of the Annex full effect in its territory.
- 4** Each Contracting Party shall submit to the Depositary Government the text of the rules introduced into its national law in order to implement the provisions of this Convention.

Article II

- 1** Each Contracting Party shall implement the provisions of the Annex in its law, within the period provided for in the preceding article, by designating the persons who, in its territory, shall be authorized to act in connection with international wills. It may also designate as a person authorized to act with regard to its nationals its diplomatic or consular agents abroad insofar as the local law does not prohibit it.

2 The Party shall notify such designation, as well as any modifications thereof, to the Depositary Government.

Article III

The capacity of the authorized person to act in connection with an international will, if conferred in accordance with the law of a Contracting Party, shall be recognized in the territory of the other Contracting Parties.

Article IV

The effectiveness of the certificate provided for in Article 10 of the Annex shall be recognized in the territories of all Contracting Parties.

Article V

1 The conditions requisite to acting as a witness of an international will shall be governed by the law under which the authorized person was designated. The same rule shall apply as regards an interpreter who is called upon to act.

2 Nonetheless no one shall be disqualified to act as a witness of an international will solely because he is an alien.

Article VI

1 The signature of the testator, of the authorized person, and of the witnesses to an international will, whether on the will or on the certificate, shall be exempt from any legalization or like formality.

2 Nonetheless, the competent authorities of any Contracting Party may, if necessary, satisfy themselves as to the authenticity of the signature of the authorized person.

Article VII

The safekeeping of an international will shall be governed by the law under which the authorized person was designated.

Article VIII

No reservation shall be admitted to this Convention or to its Annex.

Article IX

- 1** The present Convention shall be open for signature at Washington from October 26, 1973, until December 31, 1974.
- 2** The Convention shall be subject to ratification.
- 3** Instruments of ratification shall be deposited with the Government of the United States of America, which shall be the Depositary Government.

Article X

- 1** The Convention shall be open indefinitely for accession.
- 2** Instruments of accession shall be deposited with the Depositary Government.

Article XI

- 1** The present Convention shall enter into force 6 months after the date of deposit of the 5th instrument of ratification or accession with the Depositary Government.
- 2** In the case of each State which ratifies this Convention or accedes to it after the 5th instrument of ratification or accession has been deposited, this Convention shall enter into force 6 months after the deposit of its own instrument of ratification or accession.

Article XII

- 1** Any Contracting Party may denounce this Convention by written notification to the Depositary Government.
- 2** Such denunciation shall take effect 12 months from the date on which the Depositary Government has received the notification, but such denunciation shall not affect the validity of any will made during the period that the Convention was in effect for the denouncing State.

Article XIII

- 1** Any State may, when it deposits its instrument of ratification or accession or at any time thereafter, declare, by a notice addressed to the Depositary Government, that this Convention shall apply to

all or part of the territories for the international relations of which it is responsible.

2 Such declaration shall have effect 6 months after the date on which the Depositary Government shall have received notice thereof or, if at the end of such period the Convention has not yet come into force, from the date of its entry into force.

3 Each Contracting Party which has made a declaration in accordance with paragraph 1 of this Article may, in accordance with Article XII, denounce this Convention in relation to all or part of the territories concerned.

Article XIV

1 If a State has 2 or more territorial units in which different systems of law apply in relation to matters respecting the form of wills, it may at the time of signature, ratification, or accession, declare that this Convention shall extend to all its territorial units or only to one or more of them, and may modify its declaration by submitting another declaration at any time.

2 These declarations shall be notified to the Depositary Government and shall state expressly the territorial units to which the Convention applies.

Article XV

If a Contracting Party has 2 or more territorial units in which different systems of law apply in relation to matters respecting the form of wills, any reference to the internal law of the place where the will is made or to the law under which the authorized person has been appointed to act in connection with international wills shall be construed in accordance with the constitutional system of the Party concerned.

Article XVI

1 The original of the present Convention, in the English, French, Russian and Spanish languages, each version being equally authentic, shall be deposited with the Government of the United States of America, which shall transmit certified copies thereof to each of the signatory and acceding States and to the International Institute for the Unification of Private Law.

2 The Depositary Government shall give notice to the signatory and acceding States, and to the International Institute for the Unification of Private Law, of:

- (a) any signature;
- (b) the deposit of any instrument of ratification or accession;
- (c) any date on which this Convention enters into force in accordance with Article XI;
- (d) any communication received in accordance with Article I, paragraph 4;
- (e) any notice received in accordance with Article II, paragraph 2;
- (f) any declaration received in accordance with Article XIII, paragraph 2, and the date on which such declaration takes effect;
- (g) any denunciation received in accordance with Article XII, paragraph 1, or Article XIII, paragraph 3, and the date on which the denunciation takes effect;
- (h) any declaration received in accordance with Article XIV, paragraph 2, and the date on which the declaration takes effect.

Annex

Uniform Law on the Form of an International Will

Article 1

1 A will shall be valid as regards form, irrespective particularly of the place where it is made, of the location of the assets and of the nationality, domicile or residence of the testator, if it is made in the form of an international will complying with the provisions set out in Articles 2 to 5 hereinafter.

2 The invalidity of the will as an international will shall not affect its formal validity as a will of another kind.

Article 2

This law shall not apply to the form of testamentary dispositions made by 2 or more persons in one instrument.

Article 3

- 1** The will shall be made in writing.
- 2** It need not be written by the testator himself.
- 3** It may be written in any language, by hand or by any other means.

Article 4

- 1** The testator shall declare in the presence of 2 witnesses and of a person authorized to act in connection with international wills that the document is his will and that he knows the contents thereof.
- 2** The testator need not inform the witnesses, or the authorized person, of the contents of the will.

Article 5

- 1** In the presence of the witnesses and of the authorized person, the testator shall sign the will or, if he has previously signed it, shall acknowledge his signature.
- 2** When the testator is unable to sign, he shall indicate the reason therefore to the authorized person who shall make note of this on the will. Moreover, the testator may be authorized by the law under which the authorized person was designated to direct another person to sign on his behalf.
- 3** The witnesses and the authorized person shall there and then attest the will by signing in the presence of the testator.

Article 6

- 1** The signatures shall be placed at the end of the will.
- 2** If the will consists of several sheets, each sheet shall be signed by the testator or, if he is unable to sign, by the person signing on

his behalf or, if there is no such person, by the authorized person. In addition, each sheet shall be numbered.

Article 7

- 1** The date of the will shall be the date of its signature by the authorized person.
- 2** This date shall be noted at the end of the will by the authorized person.

Article 8

In the absence of any mandatory rule pertaining to the safekeeping of the will, the authorized person shall ask the testator whether he wishes to make a declaration concerning the safekeeping of his will. If so and at the express request of the testator the place where he intends to have his will kept shall be mentioned in the certificate provided for in Article 9.

Article 9

The authorized person shall attach to the will a certificate in the form prescribed in Article 10 establishing that the obligations of this law have been complied with.

Article 10

The certificate drawn up by the authorized person shall be in the following form or in a substantially similar form:

Certificate

(Convention of October 26, 1973)

1. I, _____
_____ (name, address and capacity)
_____ a person authorized to act in connection with international wills
2. certify that on _____ (date)
_____ at _____ (place),

3. (name, address, date and place of birth of testator)
in my presence and that of the witnesses

4. (a) (name, address, date and place of birth)

(b) (name, address, date and place of birth)

has declared that the attached document is his will and that he knows the contents thereof.

5. I furthermore certify that:

6. (a) in my presence and in that of the witnesses

(1) the testator has signed the will or has acknowledged his signature previously affixed;

* (2) following a declaration of the testator stating that he was unable to sign his will for the following reason

I have mentioned this declaration on the will

* the signature has been affixed by

(name, address)

7. (b) the witnesses and I have signed the will;

8. *(c) each page of the will has been signed by

_____ and numbered;

9. (d) I have satisfied myself as to the identity of the testator and of the witnesses as designated above;

10. (e) the witnesses met the conditions requisite to act as such according to the law under which I am acting;

11. *(f) the testator has requested me to include the following statement concerning the safekeeping of his will:

12. PLACE

13. DATE
14. SIGNATURE and, if necessary, SEAL

*To be completed if appropriate.

Article 11

The authorized person shall keep a copy of the certificate and deliver another to the testator.

Article 12

In the absence of evidence to the contrary, the certificate of the authorized person shall be conclusive of the formal validity of the instrument as a will under this Law.

Article 13

The absence or irregularity of a certificate shall not affect the formal validity of a will under this Law.

Article 14

The international will shall be subject to the ordinary rules of revocation of wills.

Article 15

In interpreting and applying the provisions of this Law, regard shall be had to its international origin and to the need for uniformity in its interpretation.

