

Chapter 01

WILLS

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Reviser's Comment: The law dealing with alienation of land contained in the ASCA as recodified by the legislative reference bureau had been questioned as to whether the requirements of Art. I, 3 and Art. II, § 9, American Samoa Constitution, had been fulfilled. Since the records were not available to answer the question, the Legislature passed PL 16-88 and PL 17-31 to ensure that the law dealing with alienation of land complies with the Constitution.

40.0101 Disposal of property by will.

Any person of full age and sound mind may dispose by will of all his property, subject to the right of dower in the surviving spouse, and subject to the provisions of 37.0201 et seq.

History: 1962, PL 7-21; readopted 1980, PL 16-88 § 1; 1982, PL 17-31 § 1.

40.0102 Execution of wills.

All wills, except wills involving personal property with a total value of not more than \$300, must be in writing, signed by the testator or some person in his presence and by his express direction, and the signature of the testator, or the person acting for him must be witnessed by 2 competent persons who shall sign their names thereto as attesting witnesses.

History: 1962, PL 7-21; readopted 1980, PL 16-88 § 1; 1982, PL 17-31 § 1.

Case Notes:

Signed writing executed in the presence of two witnesses, listing author's assets and giving instructions for their disposition after author's death was evidence of testamentary intent and met with statutory criteria for enforcement of a will. A.S.C.A. § 40.0102. *Lokan v. Lokan*, 6 A.S.R.2d 44 (1987).

Statutory requirement that testator's signature must be witnessed is not satisfied when the "witness" has no idea whether the signature appearing on the will is that of the testator or not. A.S.C.A. § 40.0102. *In re Estate of Poiali'i*, 15 A.S.R.2d 111 (1990).

The testator's signature on any will, except one involving personality which has a total value of not more than \$300, must be witnessed. A.S.C.A. § 40.0102. *Estate of Jennings*, 24 A.S.R.2d 3 (1993).

40.0103 Right of dower.

One-third in value of all the legal or equitable estate in real or personal property possessed by a decedent at the time of his death shall be set apart to the surviving spouse in fee simple, subject to the provisions of 37.0201 et seq., regarding alienation of land. This right of the surviving spouse shall be known as dower.

History: 1962, PL 7-2 1; readopted 1980, PL 16-88 § 1; 1982, PL 17-31 § 1.

Case Notes:

Widow of landowner has undivided one-third interest in land by way of dower. RCAS 8.0103. *Puluti v. Muliufi*, 4 ASR 672 (1965).

This section provides a statutory right of dower one-third of a decedent spouse's real or personal property *Burns Philip Co. v. AFO. Fiame, Faleali'i*, 2 A.S.R. 2d 39 (1985)

Widow who was entitled to one-third of deceased husband's interest in individually owned property could not be evicted by husband's relatives from possession of a small part of such property. A.S.C.A. § 40.0103.

Tuiteleapaga v. King, 8 A.S.R.2d 49 (1988).

40.0104 Presumption that devise or legacy to wife is in lieu of dower.

When the surviving spouse is named as a devisee or legatee in a will, it shall be presumed that such devise or legacy is in lieu of dower, but this presumption may be overcome by clear and explicit evidence of a contrary intention on the part of the testator.

History: 1962, PL 7-21; readopted 1980, PL 16-88 § 1; 1982, PL 17-31 § 1.

40.0105 Election against will.

A surviving spouse may elect to take dower instead of property devised or bequeathed to such spouse. The election must be made by filing with the clerk of the High Court a written notice of intention to take dower within 90 days after the admission of the will to probate.

History: 1962, PL 7-21; readopted 1980, PL 16-48 § 1; 1982, PL 17-31 § 1.

40.0106 Chapter not applicable to communal property.

The provisions of this chapter shall not apply to communal property held under the Samoan custom.

History: 1962, PL 7-21; readopted 1980, PL 16-88 § 1; 1982, PL 17-31 § 1.

Case Notes:

Dower rights do not exist in Samoan communal lands. A.S.C.A. § 40.0106. Tufele v. Mose, 7 A.S.R.2d 157 (1988).