

Chapter 02

INTESTATE SUCCESSION

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Reviser's Comment: The law dealing with alienation of land contained in the A.S.C.A. 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.

40.0201 Succession to personal property.

When any person having any title to any personal property dies without disposing of such personal property by will, it shall be succeeded to and must be distributed, subject to the payment of debts, in the following manner:

(a) Subject to dower, the children of the intestate and such persons as legally represent such children as may be deceased shall share equally in the personal property.

(b) If there is no surviving spouse, the personal property shall be distributed equally among all the children and such persons as legally represent such children as may be deceased.

(c) If there are no children and no legal representative of a deceased child or children, the surviving spouse shall be entitled to all of the personal property.

(d) If there is no surviving spouse and no children and no legal representatives of a deceased child or children, the personal property shall be distributed among the next of kin of the intestate.

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

Case Notes:

Process of defining the term "next of kin" within the meaning of inheritance statute can be restated as an inquiry into whether the legislature intended to adopt the "civil law rule" according to which kinship is determined by a series of steps up and down the genealogical ladder and a person is one step away from his parents and two steps away from his siblings, or the competing "common law rule" according to which a person is related to both his siblings and his parents in the first degree. A.S.C.A. § 40.0201. In re Estate of Ah Mai (Mem.), 14 A.S.R.2d 32 (1990).

40.0202 Succession to real property.

When any person having any title to any real property dies without disposing of such real property by will, it shall be succeeded to and must be distributed, subject to the payment of debts and the rights of dower, in the following manner:

(a) All real property shall lineally descend forever, to the issue of the decedent, but shall not lineally ascend, except as set forth in subsection (c).

(b) On failure of lineal descendants, the brothers and sisters of the decedent, or their issue, shall succeed to the real property.

(c) When the decedent has left no issue capable of inheriting, nor brothers, nor sisters, nor

issue of such, the real estate shall vest in the father if living, and if not, in the mother, if living.

(d) When any person dies leaving none who can claim as heir, the surviving spouse shall inherit the estate.

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

40.0203 Escheat.

If there is no one capable of succeeding to either real or personal property under the provisions of 40.0201 and 40.0202, the real and personal property of the decedent shall escheat to the government as the ultimate heir.

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

40.0204 Distribution to per stirpes.

Whenever under the provisions of this chapter, any persons shall succeed to either real or personal property by right of representation, distribution shall be made per stripes and not per capita

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

40.0205 Heirs must be living or born within ten months of decedent's death.

No person may succeed to either real or personal property of a decedent unless such person was in life at the death of the decedent or born within 10 lunar months after the death of the decedent.

History: 1962, PL 7-21; readopted 1980, PL 16-88 § 1; 1982, PL 17-3 1 § 1.

40.0206 Chapter not applicable to communal property.

The provisions of this chapter do 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:

Chapter on intestate succession does not apply to communal land held under Samoan custom. Bums Philip Co. v. AFO, Flame. Faleali'i, 2 A.S.R. 2d 39 (1985).