

CHAPTER 144
EQUITABLE ACTIONS—APPEAL

S. F. 36

AN ACT correcting an erroneous correlating amendment contained in chapter twelve hundred forty-one (1241) of the Acts of the Sixty-sixth General Assembly.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section six hundred twenty-four point four (624.4), Code 1977, is amended to read as follows:

624.4 EQUITABLE ACTIONS--EVIDENCE ON APPEAL. The evidence in actions cognizable in equity shall be presented on appeal to the appellate court, which shall try such causes anew. However, upon ~~certiorari~~ to further review by the supreme court of equity actions heard by the court of appeals the review may be limited in scope as provided in the rules of appellate procedure.

Approved April 15, 1977

CHAPTER 145
DECEDENT'S PROPERTY DISPOSITION

S. F. 280

AN ACT relating to the disposition of a decedent's property.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section six hundred thirty-three point one hundred eighteen (633.118), Code 1977, is amended to read as follows:

633.118 ATTORNEY APPOINTED FOR PERSONS NOT REPRESENTED. At or before the hearing in any proceedings under this Code, where all the parties interested in the estate are required to be notified thereof, the court, in its discretion, may appoint some competent attorney to represent any interested person who has been served with notice and who is otherwise unrepresented. The appointment of an attorney under the provisions of this section, shall be in lieu of appointment of a guardian ad litem provided for in the rules of civil procedure.

Sec. 2. Section six hundred thirty-three point two hundred seventy-nine (633.279), Code 1977, is amended by strik-

ing subsection two (2) and inserting in lieu thereof the following:

2. SELF-PROVED WILL. An attested will may be made self-proved at the time of its execution, or at any subsequent date, by the acknowledgement thereof by the testator and the affidavits of the witnesses, each made before a person authorized to administer oaths and take acknowledgments under the laws of this state, and evidenced by such person's certificate, under seal, attached or annexed to the will, in form and content substantially as follows:

Affidavit

State of _____ ss

County of _____

We, the undersigned, _____, _____ and _____, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, declare to the undersigned authority that said instrument is the testator's will and that the testator willingly signed and executed such instrument, or expressly directed another to sign the same in the presence of the witnesses, as a free and voluntary act for the purposes therein expressed; that said witnesses, and each of them, declare to the undersigned authority that such will was executed and acknowledged by the testator as the testator's will in their presence and that they, in the testator's presence, at the testator's request, and in the presence of each other, did subscribe their names thereto as attesting witnesses on the date of the date of such will; and that the testator, at the time of the execution of such instrument, was of full age and of sound mind and that the witnesses were sixteen years of age or older and otherwise competent to be witnesses.

Testator

Witness

Witness

Subscribed, sworn and acknowledged before me by _____, the testator; and subscribed and sworn before me by _____ and _____, witnesses, this _____ day of _____, 19__.

(Seal)

Notary Public, or other officer
authorized to take and certify
acknowledgements and administer
oaths

A self-proved will shall constitute proof of due execution of such instrument as required by section six hundred thirty-three point two hundred ninety-three (633.293) of the Code and may be admitted to probate without testimony of witnesses.

Sec. 3. Section six hundred thirty-three point four hundred thirty-seven (633.437), Code 1977, is amended by striking the section and inserting in lieu thereof the following:

633.437 CONTRARY PROVISION AS TO ABATEMENT.

1. When provisions of the will, trust or other testamentary instrument of the decedent provide explicitly for an order of abatement contrary to the provisions of section six hundred thirty-three point four hundred thirty-six (633.436) of the Code, the provisions of the will or other testamentary instrument shall determine the order of abatement.

2. Except as provided in subsection one (1) of this section, if the provisions of the will, the testamentary plan, or the express or the implied purpose of the devise would be defeated by the order of abatement as provided in section six hundred thirty-three point four hundred thirty-six (633.436) of the Code, then upon application to the court by a fiduciary or a distributee, and after notice to all interested parties, the court shall determine the order for abatement of the shares of distributees in such other manner as may be found necessary to give effect to the intention of the testator. In order to change the order of abatement as provided in section six hundred thirty-three point four hundred thirty-six (633.436) of the Code, it will be necessary for the court to find it clear and convincing that the provisions of the will, the testamentary plan, or the express or implied purpose of the devise would be defeated by the order of abatement stated in section six hundred thirty-three point four hundred thirty-six (633.436) of the Code.

Sec. 4. Section six hundred thirty-three point four hundred seventy-nine (633.479), Code 1977, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. An order approving the final report and discharging the personal representative shall not be required if all distributees otherwise entitled to notice are adults, under no legal disability, have signed waivers

of notice as provided in section six hundred thirty-three point four hundred seventy-eight (633.478) of the Code, have signed statements of consent agreeing that the prayer of the final report shall constitute an order approving the final report and discharging the personal representative, and if such statements of consent are dated not more than thirty days prior to the date of the final report, and if compliance with the provisions of sections four hundred twenty-two point twenty-seven (422.27), four hundred fifty point fifty-eight (450.58), and six hundred thirty-three point four hundred seventy-four (633.474), of the Code, have been fulfilled and receipts and certificates are on file. In such instances final order shall not be required and the prayer of the final report shall be considered as granted and shall have the same force and effect as an order of discharge of the personal representative and an order approving the final report. The clerk shall comply with section six hundred thirty-three point four hundred eighty (633.480) of the Code with respect to issuing a change of title.

Sec. 5. Section six hundred thirty-three point seven hundred four (633.704), subsection two (2), paragraph a, Code 1977, is amended to read as follows:

a. TIME OF FILING. The disclaimer instrument shall be filed within ~~six~~ nine months after the date of ~~the second publication of the notice to creditors~~ death of the decedent or prior to the approval of the final report, whichever occurs first, or within ~~six~~ nine months after the death of the donee of the power, as the case may be, or if the taker of the property or interest is not then finally ascertained or ~~his~~ the taker's interest has not become indefeasibly fixed both in quality and in quantity, then not later than two months after the event when the taker has become finally ascertained and ~~his~~ the taker's interest has become indefeasibly fixed both in quality and in quantity.

Sec. 6. This Act is effective January 1, 1978.

Approved July 9, 1977