

TITLE 25.
WILLS, PROBATE AND GUARDIANSHIP

CHAPTER 1.

WILLS AND PROBATES.

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An Act to provide for probate procedure in the Republic and for matters connected therewith.

Source:	TTC	1966
	13	TTC 1970
	13	TTC 1980
	P.L.	1984-9
	P.L.	1988-26
	P.L.	1994-87
	P.L.	2004-6

PART I - WILLS

- §101. Short title.

This Chapter may be cited as the Probate Code.

§102. Interpretation.

As used in this Chapter the following definitions apply:

(a) “person” includes either man or woman, single or married; and each masculine pronoun includes the corresponding feminine pronoun;

(b) “will” includes codicil. [TTC 1966, §345; 13 TTC 1970, §3; 13 TTC 1980, §3, modified.]

§103. Capacity to make will; limitation on disposition of property.

Any person of sound mind eighteen (18) years of age or older may make a will in accordance with the provisions of this Part, but such will may only dispose of property which at the time of his death the testator has a right to dispose of without the consent of any other person or any official. [TTC 1966, §344; 13 TTC 1970, §1; 13 TTC 1980, §1, modified.]

§104. Wills made under customary or prior written law.

Nothing in this Chapter shall prevent the making of a will in accordance with the customary or written law of the Republic, nor shall anything in this Chapter affect the validity of a will made in accordance with such customary or written law. [TTC 1966, §344; 13 TTC 1970, §2; 13 TTC 1980, §2, modified.]

§105. Witnesses.

(1) Any person competent to be a witness generally in the Republic may act as attesting witness to a will.

(2) No will is invalidated because attested by an interested witness, but any interested witness shall, unless the will is also attested by two (2) disinterested witnesses, forfeit so much of the provisions made for him therein as in the aggregate exceeds in value, as of the date of the testator’s death, what he would have received had the testator died intestate.

(3) No attesting witness is interested unless the will gives to him some personal and beneficial interest. [TTC 1966, §346; 13 TTC 1970, §4; 13 TTC 1980, §4, modified.]

§106. Execution.

The execution of a will under this Chapter, other than a holographic or nuncupative will, must be by the signature of the testator and of at least two (2) witnesses as follows:

(a) the testator shall signify to the attesting witness that the instrument is his will and either himself sign, or acknowledge his signature already made, or, at his direction and in his presence, have someone else sign his name for him. In any of the above cases the act must be done in the presence of two (2) or more attesting witnesses; and

(b) the attesting witnesses must sign in the presence of the testator, and in the presence of each other. [TTC 1966, §347; 13 TTC 1970, §5; 13 TTC 1980, §5, modified.]

§107. Holographic will.

A holographic will is a will in the handwriting of the testator. A holographic will may be made under this Chapter without any witness, but the signature and all its material provisions must

be in the handwriting of the testator and his handwriting must be proved by two (2) witnesses. [TTC 1966, §348; 13 TTC 1970, §6; 13 TTC 1980, §6, modified.]

§108. Nuncupative will.

(1) A nuncupative will is an oral will. A nuncupative will may be made under this Chapter only by a person in imminent peril of death, whether from illness or otherwise, and shall be valid only if the testator dies as a result of the impending peril. A nuncupative will must be:

- (a) declared to be his will by the testator before two (2) disinterested witnesses; and
- (b) submitted for probate within six (6) months after the death of the testator unless the court, for good cause, permits it to be submitted later.

(2) A nuncupative will made under this Chapter may dispose of personal property only and to an aggregate value not exceeding \$1,000.

(3) A nuncupative will made under this Part neither revokes nor changes an existing written will. [TTC 1966, §349; 13 TTC 1970, §7; 13 TTC 1980, §7, modified.]

§109. Wills executed outside the Republic or under foreign law.

A will executed outside the Republic in a manner prescribed by the law of the place of its execution, or by the law of the testator's domicile at the time of its execution, shall have the same force and effect in the Republic as if executed in the Republic in compliance with the provisions of this Part. [TTC 1966, §350; 13 TTC 1970, §8; 13 TTC 1980, §8, modified.]

§110. Application.

This Chapter shall not apply to wills executed in the Republic before the date this Chapter takes effect. [TTC 1966, §351; 13 TTC 1970, §9; 13 TTC 1980, §9, modified.]

PART II- SETTLEMENT OF ESTATES

§111. Complaints for transfer of decedent's personalty to beneficiaries and creditors; when authorized.

When a decedent leaves personal property, including but not limited to cash, bank or other accounts, wages or salary due, shares of stock or other interest in any business enterprise, and goods and chattels of any nature, and the person or persons entitled to the personal property left by the decedent cannot readily obtain possession thereof, the surviving spouse, any adult child, including an adopted child, or if none of the above persons survived the decedent, the nearest surviving relative may file a sworn complaint in the High Court asking for the issuance of an order that such personal property be transferred to the complainant. If none of the persons named in this Section files such a complaint within ninety (90) days of the death of the decedent, then any creditor of the decedent may file a sworn complaint as set forth herein. [TTC 1966, §343(a); 13 TTC 1970, §51; 13 TTC 1980, §51, modified; amended by P.L. 1984-9, §1, increasing minimum value of estate to \$20,000.][amended by P.L. 2004-6]

§112. Same; contents.

Such sworn complaint shall set forth the name, residence and date of death of the decedent, and the names and addresses of the surviving spouse, and children or if none of the above persons

survived the decedent, the name, address, and relationship of the nearest surviving relative. The complaint shall also state the total value of the personal property, and the property, if any, that passed or is to pass under either intestate or under a will, and to whom it went or is to go, and shall contain the promise of the complainant to pay, as far as the assets of the estate permit, the debts of the decedent, and to distribute the balance, if any, to the person or persons entitled thereto. [TTC 1966, §343(b); 13 TTC 1970, §52; 13 TTC 1980, §52, modified][amended by P.L. 2004-6]

§113. Order of transfer; procedure if transfer withheld.

Upon the filing of such complaint if it appears to the court that the ends of justice will be served, the court may issue an order, either without notice or after such notice as it deems proper, directing the transfer of the personal property to the complainant, or to such other person as the court deems proper, directing that the transferee pay, as far as the assets of the estate permit, the debts of the decedent, or see that they are paid, and then distribute the balance, if any, to the person or persons entitled thereto. Whoever transfers money or other property to the complainant, or to any other person appointed by the court as set forth above, shall incur no liability thereby, nor shall such person thereafter be held to account for the same to any person. Any person upon whom demand is made to transfer money or other property under the terms of such order who denies the right of the complainant or other transferee to receive the same shall, within ten (10) days of the demand being made upon him to transfer such money or other property, file his answer in the same court that issued the order, setting forth the grounds that entitle him to retain possession thereto. Upon the filing of such answer, the court shall, after notice to the complainant or other transferee, set the matter down for hearing and make such finding and enter such further order as the ends of justice require. [TTC 1966, §343(c); 13 TTC 1970, §53; 13 TTC 1980, §53 modified.]

§114. Procedure if debts exceed value of assets.

If the transferee finds, after the receipt of the personal property under such order of transfer, that the debts of decedent do in fact exceed the value of the property received, he shall make no further distribution of the same, but shall at once report the facts to the court that issued the order, setting forth the money and other personal property received, the disbursements he has already made, the names and addresses of the recipients of the property already disbursed and reason therefor, and shall list all known debts of decedent, including those that have recently come to the transferee's attention. The transferee shall take no further action save by order of the court. [TTC 1966, §343(d); 13 TTC 1970, §54; 13 TTC 1980, §54, modified.]

§115. Responsibility of transferee.

The transferee shall be personally responsible for any property by him under any order issued pursuant to this Part, and any party claiming an interest in such property may, after demand, maintain an action against the transferee; provided, that no such action shall be brought against the transferee after two (2) years from the date of the order under which the property was transferred to him. [TTC 1966, §34(e); 13 TTC 1970, §55; 13 TTC 1980, §55, modified.]

§116. Settling small estates.

When decedent leaves an estate of personal property valued at less than two thousand and five hundred dollars (\$2,500), the next closest surviving relative, as defined in Section 118, may

obtain possession of any such award or awards by affidavit, duly notarized, stating his or her authority. [P.L. 1988-26, §2, introducing Section 116][amended by P.L. 2004-6]

§117. Contents of the affidavit.

The affidavit referred to in Section 116 shall state:

- (a) the name, last residence, and date of death of the decedent;
- (b) the relationship claimed by the affiant and, if not the closest surviving relative, the authority under which the affiant claims;
- (c) the names and addresses of any surviving spouse, children, and any survivor of the decedent who is more closely related to the decedent than the affiant;
- (d) nature and the value of the assets of the estate;
- (e) whether or not the decedent left a will and, if so, to whom the decedent gave the assets of the estate;
- (f) an undertaking of the affiant to pay any debts of the decedent to the extent of the assets; and
- (g) the names of persons entitled to a distribution of the assets and the share to which each is entitled. [P.L. 1988-26, §2, introducing Section 117.][amended by P.L. 2004-6]

§118. Determining the next closest relative.

(1) For the purpose of Section 116, the following shall be considered the next closest surviving relative of the decedent, in order of preference;

- (a) surviving spouse;
- (b) eldest surviving child;
- (c) any surviving parent;
- (d) eldest surviving brother or sister;
- (e) any surviving grandparent;
- (f) eldest surviving grandchild;
- (g) eldest surviving aunt or uncle;
- (h) eldest surviving cousin;

(2) A person of lower kinship may tender the affidavit required in Section 116 as the next closest relative only with the written consent of all persons with higher kinship. [P.L. 1988-26, §2, introducing Section 118.]

§119. Liability of affiant.

The affiant shall be personally liable for any war claim proceeds received by him or her by virtue of any affidavit made pursuant to Section 116, and any party claiming an interest in such proceeds may, after demand, maintain an action against the affiant; provided, that no such actions shall be brought against the affiant after one year from the date of the receipt of the proceeds. [P.L. 1988-26, §2, introducing Section 119.]

§120. Settling estates consisting of nuclear claim proceeds.

When a decedent leaves an estate consisting in whole or majority part (over fifty percent of the total value of such estate) of a right to proceeds of an award or awards made by the Marshall

Islands Nuclear Claims Tribunal the claimant or petitioner may use the services of the Office of the Public Defender or the Micronesian Legal Services Corporation. [P.L. 1994-87, §4.][amended by P.L. 2004-6.]

PART III - EFFECTIVE DATE; TRANSITION

§121. Effective date; Transition.

(1) Any probate matters filed with the Nuclear Claims Tribunal on or after October 8, 1993 in accordance with the Marshall Islands Nuclear Claims Tribunal (Amendment No. 1) Act of 1993, P.L. 1993-56, shall, as of the effective date of this Act [March 3, 1994] be dismissed without prejudice by the Tribunal and transferred to the High Court for disposition in accordance with this Chapter; and

(2) Any probate matters filed with the High Court on or after October 8, 1993, and subsequently dismissed by the High Court for lack of subject matter jurisdiction consistent with the Marshall Islands Nuclear Claims Tribunal (Amendment No. 1) Act of 1993, P.L. 1993-56, shall, as of the effective date of this Chapter [March 3, 1994], be re-filed with the High Court for disposition in accordance with this Chapter. [P.L. 1994-87, §5; references to effective date of amending act inserted by Reviser]