

## Title 40

### ESTATES AND FIDUCIARY RELATIONS

#### Chapters:

- 01 Wills**
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#### Chapter 01

#### WILLS

#### Sections:

- 40.0101 Disposal of property by will.**
- 40.0102 Execution of wills.**
- 40.0103 Right of dower.**
- 40.0104 Presumption that devise or legacy to wife is in lieu of dower.**
- 40.0105 Election against will.**
- 40.0106 Chapter not applicable to communal property.**

**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.

#### **40.0101 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 7-21; 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).

### **Chapter 02**

## **INTERSTATE SUCCESSION**

#### **Sections:**

- 40.0201 Succession to personal property.**
- 40.0202 Succession to real property.**
- 40.0203 Escheat.**
- 40.0204 Distribution to be per stirpes.**
- 40.0205 Heirs must be living or born within ten months of decedent's death.**
- 40.0206 Chapter not applicable to communal property.**

**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 17-31 § 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. Burns Philip Co. v. AFO, Flame. Faleali'i, 2 A.S.R. 2d 39 (1985).

## **Chapter 03**

### **ADMINISTRATION OF ESTATES**

**Sections:**

- 40.0301 Jurisdiction.**
- 40.0302 Chapter not applicable to communal property.**
- 40.0305 Priority for granting letters of administration.**
- 40.0306 Qualifications of executors and administrators.**
- 40.0307 Time for executor to show he is qualified.**
- 40.0308 Appointment of administrator with will annexed.**
- 40.0309 Petition for letters.**
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- 40.0320 Notice to creditors.**
- 40.0321 Inventory and account.**
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- 40.0330 Payment of debts of estate.**
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- 40.0332 Distribution of estate.**
- 40.0333 Fees.**
- 40.0334 Petition for transferal of personal property to person entitled to letters of administration.**
- 40.0335 Contents of petition.**
- 40.0336 Order directing transfer of property.**
- 40.0337 Immunity of persons making transfers.**
- 40.0338 Contest of transfer order.**

- 40.0339 Procedure when debts exceed value of property.**
- 40.0340 Responsibility of transferee for property.**
- 40.0341 Action against transferee.**
- 40.0342 Procurement of money without petition.**

**Reviser's Comment:** The law dealing with alienation of land contained in 40.0302, 40.0323 and 40.0333 of 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 17-3 to ensure that the law dealing with alienation of land complies with the Constitution.

#### **40.0301 Jurisdiction.**

(a) The estates of deceased persons shall be administered in the Trial Division of the High Court, which shall have exclusive jurisdiction over such estates.

(b) The Trial Division of the High Court has jurisdiction to take proof of wills and grant letters testamentary, letters of administration, and letters of administration with will annexed, when the decedent at or immediately previous to his death was domiciled in American Samoa or left property or assets in, or to be received in, American Samoa.

**History:** 1962, PL 7-32; amd 1979, PL 16-53 § 10.

**Amendments:** 1979 Substituted "Trial Division" for "Probate Division" in both subsections.

#### **40.0302 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.

#### **40.0305 Priority for granting letters of administration.**

(a) Letters of administration in case of intestacy, and letters of administration with will annexed, shall be granted to the person or persons entitled thereto in the following priority:

- (1) to the surviving spouse or some person designated by the surviving spouse;
- (2) to the next of kin in the order of their degree of relationship to the deceased, and in case of degree of relationship to the deceased, the administrator shall be selected in the discretion of the Trial Division of the High Court;
- (3) to a competent creditor residing in American Samoa.

(b) If no person entitled to administer shall apply for letters of administration within 6 months, the Trial Division of the High Court may deem all prior rights to administer renounced and proceed to appoint some suitable person to administer such estate.

**History:** 1962, PL 7-21; amd 1979, PL 16-53 § 11.

**Amendments:** 1979 Substituted "Trial Division" for "Probate Division".

#### **40.0306 Qualifications of executors and administrators.**

No letters of administration, letters testamentary or letters of administration with will annexed may be issued to any person who has not reached the age of 21 years, any person who is not a resident of American Samoa, or any person who is mentally incompetent to execute the duties of such trust.

**History:** 1972, PL 7-21.

**40.0307 Time for executor to show he is qualified.**

(a) If any person appointed as executor neither shows that he is qualified, or renounces his appointment within 60 days after his appointment, the Trial Division of the High Court shall, on application of an interested party, issue a citation to such party to show cause within 10 days after service of the citation why he should not be deemed to have renounced.

(b) If, upon service of the citation, he does not qualify himself or renounce within the time specified, the Trial Division of the High Court shall enter a decree that such person has renounced his appointment as executor.

**History:** 1962, PL 7-21; amd 1979, PL 16-53 § 12.

**Amendments:** 1979 Substituted "Trial Division" for "Probate Division".

**40.0308 Appointment of administrator with will annexed.**

(a) If no executor is appointed in a will offered for probate, or if at any time by reason of death, removal or any reason there is no executor qualified to act, the Trial Division of the High Court may issue letters of administration with will annexed to some suitable person or persons.

(b) An administrator with will annexed shall have the same powers and duties, give the same bond, meet the same qualifications, and shall be appointed in the same priority as an administrator.

**History:** 1962, PL 7-21; amd 1979, 16-53 § 13.

**Amendments:** 1979 Substituted "Trial Division" for "Probate Division".

**Case Notes:**

Makes no provision for attorney's fees, absent which the court will not permit executor to compensate himself for legal services rendered. In re Laisene estate, ASR (1978).

Position of executor is one personal to the estate and is not inheritable, or assignable, upon the death of an executor; new application must be made. Tolmie v. Hunkin, ASR (1976).

**40.0309 Petition for letters.**

Petitions for letters of administration, letters testamentary or letters of administration with will annexed must be sworn to, and must set forth the following:

- (1) the date of the death of the decedent and whether he died testate or intestate;
- (2) that he was domiciled in American Samoa when he died, or that he left property in American Samoa;
- (3) that the applicant is the person entitled to be appointed administrator, administrator with will annexed, or executor;
- (4) the approximate value and nature of the decedent's estate;
- (5) the names and residences of all parties entitled as heirs, distributees, devisees or legatees of the estate if known, which of the parties are minors or under a legal disability, whether with or without guardian, and the names and residences of the guardians if any.

**History:** 1962, PL 7-21.

**40.0310 Oath and bond.**

Before any person shall assume the duties of administrator, administrator with will annexed or executor, he shall take an oath before the Trial Division of the High Court that he will faithfully and honestly discharge the duties of his trust, and shall give a bond in such amount as shall be required by the Trial Division of the High Court, which shall

in no case exceed 2 times the estimated value of the property which shall come into his hands during administration. The Development Bank of American Samoa, when acting as legal representative of an estate, is not required to give bond.

**History:** 1962, PL 7-21; amd 1979, PL 16-53 § 14.

**Amendments:** 1979 Substituted “Trial Division” for “Probate Division”.

#### **40.0311 Forms of letters.**

All letters shall be issued in the name of the Government, attested to in the name of the Trial Division of the High Court, signed by the Chief Justice, or the Associate Justice, and sealed with the seal of the High Court.

**History:** 1962, PL 7-21; amd 1979, PL 16-53 § 15.

**Amendments:** 1979 Substituted “Trial Division” for “Probate Division”.

#### **40.0320 Notice to creditors.**

Every executor, administrator and administrator with will annexed shall, within 20 days after the granting of his letters, notify all persons having claims against the estate to exhibit them within 60 days from the date of the first publication of such notice. Notice shall be published once in some newspaper published in American Samoa if any, and shall be posted at the government offices.

**History:** 1962, PL 7-21.

#### **40.0321 Inventory and account.**

(a) Every executor, administrator and administrator with will annexed shall, within 3 months after he qualifies, return to the Trial Division of the High Court, under oath, a true, full and complete inventory of all property, real and personal, that has come into his hands during administration, and such inventory shall be signed by him and recorded by the Trial Division of the High Court.

(b) The administrator, executor or administrator with will annexed shall also file an annual inventory and account, under oath, of the amount of property received by him and his receipts and disbursements for the past year.

**History:** 1962, PL 7-21, amd 1979, PL 16-53 § 16.

**Amendments:** 1979 Subsection (a): substituted “Trial Division” for “Probate Division”.

#### **40.0322 Sale of personal estate.**

Every executor, administrator and administrator with will annexed shall have power to sell the personal estate which has come into his hands, under such terms and conditions as may be imposed by the Trial Division of the High Court.

**History:** 1962, PL 7-21; amd 1979, PL 16-53 § 17.

**Amendments:** 1979 Substituted “Trial Division” for “Probate Division”.

#### **40.0323 Sale of real property.**

(a) Real property in an estate may be sold only upon an order signed by the Trial Division of the High Court.

(b) The court may not grant an application to sell real estate until all the personal

property has been exhausted and the proceeds thereof found insufficient to pay the estate debts.

(c) Sales of real property shall be conducted in accordance with the order of the Court, and subject to the provisions of 37.0201 et seq. regarding the alienation of land.

**History:**1962, PL 7-2 1; amd 1979 PL 16-53 § 18; readopted 1980, PL 16-88 § 1; 1982, PL 17-3 1 § 1.

**Amendments:** 1979 Subsection (a): substituted “Trial Division” for “Probate Division”.

#### **40.0330 Payment of debts of estate.**

Debts of a decedent must be paid in the following order:

- (1) debts which by law have a specific lien on the property of the estate;
- (2) funeral expenses and expenses of last illness;
- (3) taxes;
- (4) debts due the Government of the United States and the Government of American Samoa;
- (5) judgments of any Court in American Samoa,
- (6) all other debts and demands.

**History:**1962, PL 7-21.

#### **40.0331 Final accounting.**

An executor, administrator or administrator with will annexed may be required to file his final account after two years from his qualification, at the instance of any interested party, but such account may be filed voluntarily at any time after the time within which claims may be filed against the estate has expired. Such account shall be audited and recorded by the Trial Division of the High Court.

**History:**1962, PL7-21; amd 1979, PL 16-53 § 19.

**Amendments** 1979 Substituted “Trial Division” for “Probate Division”.

#### **40.0332 Distribution of estate.**

After the final account has been audited and recorded, the Trial Division of the High Court shall make and file a decree of distribution, which shall name the persons entitled to the estate and the proportions or parts to which, each is entitled. Such decree shall be conclusive as to the rights of heirs, legatees, devisees and creditors, and upon the filing of the decree the administrator, executor or administrator with will annexed shall immediately distribute the assets of the estate in accordance therewith.

**History:**1962, PL7-21; amd 1979, PL 16-53 § 20.

**Amendments:** 1979 Substituted “Trial Division” for “Probate Division”.

#### **40.0333 Fees.**

The Trial Division of the High Court shall allow every executor, administrator or administrator with will annexed a commission upon all receipts and disbursements which shall appear to be fairly made in the courts of administration and in the proper discharge of the duties of the trust. Such commission shall not exceed 2½ percent upon receipts and 2½ percent upon disbursements, with a minimum fee of \$40.

**History:**1962, PL7-21; amd 1979, PL 16-53 § 21.

**Amendments:** 1979 Substituted "Trial Division" for "Probate Division".

**40.0334 Petition for transferal of personal property to person entitled to letters of administration.**

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, of a total value not exceeding \$10,000, and known debts if any, of less than that amount, and the person or persons entitled to the personal property left by the decedent cannot readily obtain possession thereof, those persons entitled to letters of administration in the priorities listed in 40.0305, may file a sworn petition in the Trial Division of the High Court, asking the issuance of an order that such personal property be transferred to the petitioner. If none of the persons named in 40.0305 file such petition within 90 days of the death of the decedent, then any creditor of the decedent may file a sworn petition as set forth above.

**History:** 1962, PL 7-21; 1967, PL 10-16; amd 1979, PL 16-8 § 1.

**Amendments:** 1979 Raised dollar amount from \$1,000 to \$10,000.

**Case Notes:**

Territorial statute providing for transfer of small estates to persons entitled thereto without letters of administration was inapplicable to estate with assets in excess of \$10,000. A.S.C.A. § 40.0334. In re Estate of Fuimaono, 7 A.S.R.2d 142 (1988).

When petitioner had secured the transfer of contents of a safe deposit box belonging to decedent by attesting that the assets in decedent's estate had a total value of less than \$10,000, the assets could not be distributed or retained by the petitioner without the issuance of letters of administration for decedent's estate. A.S.C.A. § 40.0334. In re Estate of Fuimaono, 7 A.S.R.2d 142 (1988).

Surviving spouse who received funds belonging to deceased husband, under statute providing for the simplified administration of small estates, was required to pay his debts and funeral expenses and to distribute the remainder of the funds to his legal heirs. A.S.C.A. §§ 40.0334 et seq. In re Estate of Salanoa, 8 A.S.R.2d 26 (1988).

Surviving spouse who received funds belonging to deceased husband under statute providing for the simplified administration of small estates, and who used the funds to purchase a pickup truck rather than distributing them to legal heirs, would be required to restore the funds. A.S.C.A. §§ 40.0334 et seq. In re Estate of Salanoa, 8 A.S.R.2d 26 (1988).

Adult heir were competent to decide whether to seek recovery of their share of decedent's estate from surviving spouse who had spent the funds in the estate, but minor heirs could not waive their share of the estate; accordingly, surviving spouse would be required to restore funds to minors' trust accounts. A.S.C.A. §§ 40.0334 et seq. In re Estate of Salanoa, 8 A.S.R.2d 26 (1988).

**40.0335 Contents of petition.**

(a) Such sworn petition shall set forth the name, residence, and date of death of the decedent, and the names and addresses of the surviving spouse, children, brothers, and sisters of the decedent or, if none survived the decedent, the name, address and relationship of the nearest surviving relative.

(b) The petition shall also state the total value of the personal property, the total of all known debts of the decedent; shall contain a brief statement as to any will made by decedent concerning his personal property, and the property, if any, that passed or is to pass under such will and to whom it went or is to go; and shall contain the promise of the petitioner 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.

**History:** 1962, PL 7-21; 1967, PL 10-16.

**40.0336 Order directing transfer of property.**

Upon the filing of such petition, 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 petitioner, 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, and then distribute the balance, if any, to the person or persons entitled thereto.

**History:** 1962, PL 7-21; 1967, PL 10-16.

**40.0337 Immunity of persons making transfers.**

Any person transferring property or money to petitioner under Court order may not incur liability thereby, or be held to account for the same by any person.

**History:** 1962, PL 7-21; 1967, PL 10-16.

**40.0338 Contest of transfer order.**

Any person upon whom demand is made to transfer money or other property under a court order, who denies the right of the petitioner or other transferee to receive the same shall, within 10 days of the demand to transfer being made upon him, file his answer in the Court that issued the order, setting forth the grounds that entitle him to retain possession thereof. Upon the filing of such answer, the Court shall, after notice to petitioner or other transferee, set the matter down for hearing and make such finding and enter such further order as the ends of justice require.

**History:** 1962, PL 7-21; 1967, PL 10-16.

**40.0339 Procedure when debts exceed value of property.**

If the transferee finds, after receipt of the personal property, that the debts of the decedent 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 transfer 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 the reason therefor; and shall list all known debts of decedent, including those that have recently come to transferees attention; and he shall take no further action save by order of the Court.

**History:** 1962, PL 7-21; 1967, PL 10-16.

**40.0340 Responsibility of transferee for property.**

A transferee shall be personally responsible for property received by him pursuant to a transfer order.

**History:** 1962, PL 7-21; 1961, PL 10-16.

**40.0341 Action against transferee.**

Any party claiming an interest in transferred property may, after demand, maintain an action against the transferee, but no action shall be brought after 2 years from the date of the order under which the property was transferred.

**History:**1962, PL7-21;1967, PL 10-16.

**40.0342 Procurement of money without petition.**

(a) If the value of the estate of decedent does not exceed \$1,000, the surviving spouse, or the children of the decedent if there is no surviving spouse, if entitled by inheritance or by the last will and testament of the decedent to any money of the decedent on deposit in the Development Bank of American Samoa, or to any money owing to the decedent by the government, may collect such money, not to exceed \$300, without first procuring letters or filing a petition under this section, upon furnishing the Development Bank of American Samoa or the Treasurer of American Samoa, as the case may be, with an affidavit showing the right of the affiant or affiants to receive such money.

(b) The receipt of the affiant of affiants shall constitute sufficient acquittance for any payment by the Development Bank of American Samoa or the Government made pursuant to this section, and shall fully discharge the Development Bank of American Samoa or the government from any further liability to any person with reference thereto, without the necessity of the Development Bank of American Samoa or the Government making any further inquiry into the truth of the facts stated in the affidavit.

(c) Such payment shall not preclude administration when necessary to enforce payment of the debts of a decedent.

**History:**1962, PL7-21;1967, PL 10-16.

## Chapter 04

### GUARDIANSHIPS

**Sections:**

- 40.0401 Power to appoint guardians.**
- 40.0402 Jurisdiction.**
- 40.0403 Qualifications of guardians.**
- 40.0404 Oath and bond.**
- 40.0405 Forms of letters.**
- 40.0406 Annual inventory and account.**
- 40.0407 Sale of personal property.**
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- 40.0409 Fees.**
- 40.0410 Chapter not applicable to communal property.**

**40.0401 Power to appoint guardians.**

The age of majority of males and females in American Samoa is 18 years. The Trial Division of the High Court, when it appears necessary or convenient, may appoint a guardian of the person and estate, or either, of a minor or of a person who is for any cause mentally or physically incompetent to manage his own property.

**History:** 1962, PL 1-21; 1968, PL 10-71; amd 1979, PL 16-53 § 22.

**Amendments:** 1979 Substituted "Trial Division" for "Probate Division".

**40.0402 Jurisdiction.**

(a) Guardianship proceedings shall be administered in the Trial Division of the High

Court, which shall have exclusive jurisdiction over guardianships.

(b) The Trial Division of the High Court shall have jurisdiction over guardianships when the ward is domiciled in or owns property in American Samoa.

**History:**1962, PL7-21; amd 1979, PL 16-53 § 23.

**Amendments:** 1979 Substituted "Trial Division" for "Probate Division".

#### **40.0403 Qualifications of guardians.**

No letters of guardianship may be issued to any person who has not reached the age of 21 years, any person who is not a resident of American Samoa, or any person who is mentally incompetent to execute the duties of such trust.

**History:**1962, PL 7-21.

#### **40.0404 Oath and bond.**

Before any person shall assume the duties of guardian, he shall take an oath before the Trial Division of the High Court that he will faithfully and honestly discharge the duties of his trust, and shall give a bond in such amount as shall be required by the Trial Division of the High Court, which shall in no case exceed 2 times the estimated value of the property which shall come into his hands during administration. The Development Bank of American Samoa when acting as legal representative of an estate shall not be required to give bond.

**History:**1962, PL 7-21; amd 1979, PL 16-53 § 24.

**Amendments:** 1979 Substituted "Trial Division" for "Probate Division".

#### **40.0405 Forms of letters.**

All letters shall be issued in the name of the government, shall be attested to in the name of the Trial Division of the High Court, shall be signed by the Chief Justice, or the Associate Justice, and sealed with the seal of the High Court.

**History:**1962, PL 7-21; amd 1979, PL 16-53 § 25.

**Amendments:** 1979 Substituted "Trial Division" for "Probate Division," and provided that the Associate Justice may sign letters.

#### **40.0406 Annual inventory and account.**

Every guardian shall file an annual inventory and account, under oath, of the amount of property received by him and his receipts and disbursements for the past year.

**History:**1962, PL 7-21.

#### **40.0407 Sale of personal property.**

Every guardian shall have power to sell the personal estate which has come into his hands, under such terms and conditions as may be imposed by the Trial Division of the High Court.

**History:**1962, PL7-21; amd 1979, PL 16-53 § 26.

**Amendments:** 1979 Substituted "Trial Division" for "Probate Division".

#### **40.0408 Sale of real property.**

Real estate may be sold only upon an order signed by the Trial Division of the High Court. The Court may not grant an application to sell real estate until all the personal property has been exhausted and the proceeds thereof found insufficient to pay the estate debts. Sales of real property shall be conducted in accordance with the order of the Court, and subject to 37.0201 through 37.0230 regarding the alienation of land.

**History:** 1962, PL 7-21, amd 1979, PL 16-53 § 27; readopted 1980, PL 16-88 § 1; 1982 PL 17-31 § 1.

**Amendments:** 1979 Substituted "Trial Division" for "Probate Division".

**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.

#### **40.0409 Fees.**

The Trial Division of the High Court shall allow every guardian a commission upon all receipts and disbursements which shall appear to be fairly made in the courts of administration and in the proper discharge of the duties of the trust. Such commission shall not exceed 2½ percent upon receipts and 2½ percent upon disbursements, with a minimum fee of \$40.

**History:** 1962, PL 7-21; amd 1979, PL 16-53 § 28.

**Amendments:** 1979 Substituted "Trial Division" for "Probate Division".

#### **40.0410 Chapter not applicable to communal property.**

The provisions of this title 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.

**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.

## **Chapter 05**

### **ESCHEAT OF PERSONAL PROPERTY**

#### **Sections:**

- 40.0501 Definitions.**
- 40.0502 Intestate estates to escheat-Notice to attorney.**
- 40.0503 Unknown owner's property to escheat-Exemptions.**
- 40.0504 Jurisdiction of the High Court.**
- 40.0505 Appointment of escheator.**
- 40.0506 Information obtained by escheator.**
- 40.0507 Action in High Court-Parties.**
- 40.0508 Notice.**
- 40.0509 Judgment of escheat.**

- 40.0510**      **Delivery of escheated property-Proceeds deposited.**
- 40.0511**      **Operation of judgment.**
- 40.0512**      **Proceedings without cost.**
- 40.0513**      **Joinder of properties and actions.**
- 40.0514**      **Title absolute.**
- 40.0515**      **Access to all reports.**
- 40.0516**      **Certified judgments.**
- 40.0517**      **Reopening judgment.**

**40.0501**            **Definitions.**

As used in this chapter, unless the context clearly requires otherwise.

(1) "Personal property" means money, negotiable instruments, choses in action, interest, debts or demands due to the escheated estate, stocks, bonds, deposits, machinery, farm crops, live stock, fixtures, and every other kind of tangible or intangible property and the assertions thereon, up until the time of the commencement of the action for escheat. It does not mean real property or the property in the custody of any court in this Territory, nor any property covered by sections 28.1601 to 28.1615.

(2) The terms "owners", "beneficial owner", "person", "person having custody or possession", "person having any interest", "person entitled to", or any word, term phrase of similar import, mean and includes corporations, companies, associations, societies, firms, partnerships, joint stock companies, fiduciaries of any nature, as well as individuals.

(3) "Treasurer" means the Treasurer of American Samoa.

**History:** 1988, PL 20-64.

**40.0502**            **Intestate estates to escheat--Notice to Attorney General.**

(a) If any person, who, at the time of his death, is the owner of any personal property in this Territory, and died, intestate, without heirs or known kindred, capable of inheriting the same, and without leaving a surviving spouse, such personal property, shall escheat to the Territory.

(b) Whenever application is made to the High Court for the appointment of an administrator of the estate of an intestate decedent and such application discloses that the decedent died without known heirs, next of kindred or surviving spouse, before any action is taken thereon reasonable notice of such application shall be given to the Attorney General.

(c) Whenever any person shall have knowledge or information concerning and property which may be subject to escheat under the provisions of this section, it is his duty to notify the Attorney General of this Territory within a reasonable time of the existence of such property.

**History:** 1988, PL 20-64.

**40.0503**            **Unknown owner's property to escheat-Exemptions.**

Whenever the owner, beneficial owner, or person entitled to any personal property within this Territory, has remained unknown for the period of 14 successive years, or whenever the whereabouts of such owner, beneficial owner or person, has remained unknown for the period of 14 successive years, or whenever any personal property wherever situated has remained unclaimed for the period of 14 successive years, then, in

any such event, such personal property shall escheat to the Territory. The provisions of this section are not applicable to sums payable on a money order or travelers check issued or sold in this Territory.

**History:** 1988, PL 20-64.

#### **40.0504 Jurisdiction of the High Court.**

The High Court, Trial Division, has jurisdiction in all escheat cases.

**History:** 1988, PL 20-64.

#### **40.0505 Appointment of escheator.**

Whenever, by reason of any information filed with the Attorney General, or which comes to his notice so that he shall become aware of the fact that any personal property has escheated or is supposed to have escheated to the Territory under the provisions of this chapter, he shall appoint some suitable person or persons to act as a escheator of such property.

**History:** 1988, PL 20-64.

#### **40.0506 Information obtained by escheator.**

Such escheator, when so appointed, must proceed and furnish to the Attorney General all the facts, information and evidence necessary to prosecute successfully the escheat in the High Court.

**History:** 1988, PL 20-64.

#### **40.0507 Action in High Court-Parties.**

The action in the High Court for escheat is brought in the name of the Territory of American Samoa by the Attorney General and against the person having custody or possession of the personal property alleged to have escheated to the Territory.

**History:** 1988, PL 20-64.

#### **40.0508 Notice.**

(a) The Court provides for notice of the action by directing that a notice as stated below be posted in the place specified by the Court where other notices required to be posted are customarily posted, and that the name be published once a week for 2 successive weeks in a newspaper of general circulation in the Territory. The posting and last publication must be made not less than 20 days before the date fixed for the hearing.

(b) Such notice shall be directed to the person or persons having custody or possession of such personal property, to the owners or beneficial owners of, or persons entitled to, the personal property and all other persons whatsoever claiming an interest therein. The notice must be in the form approved by the Court and shall declare substantially the following matters:

- (1) the filing of the complaint in escheat;
- (2) the ground of grounds of escheat specified in sections 40.0502 and 40.0503, which are applicable to the action;
- (3) the names and last known addresses of the owners or beneficial owners of, or

persons entitled to, such personal property;

- (4) the nature and value of such personal property;
- (5) the place, time and date of the hearing in the action; and
- (6) a direction that at a specified time before the hearing anyone who claims an

interest in the property must file with the Clerk of the Court his claim and at the time and place fixed for the hearing appear in person or by his attorney to substantiate his claim.

(c) Where the name of the owner is not known or there is no information as to the last known address of the owner, the notice must state that fact. The notice may contain such other information as the Court deems proper and which, as a practical matter under the circumstances, might result in notice to the owner.

**History:** 1988, PL 20-64.

#### **40.0509 Judgment of escheat.**

(a) The High Court, by its judgment, may determine the title to such personal property, and where the Court finds that such personal property, in whole or in part, has escheated to the Territory, the judgment must so declare, and such personal property shall thereupon escheat to the Territory.

(b) Upon timely application in the cause by the person having such property in his possession, the High Court, by said judgment, may further provide that such items of personal property without substance or value that otherwise would escheat to the Territory, but which are not taken by the Territory in such escheat proceedings by reason of the worthless nature of such items may, after the 2 years from the date of filing of such judgment, be abandoned or destroyed by the person having possession of the same.

**History:** 1988, PL 20-64.

#### **40.0510 Delivery of escheated property-Proceeds deposited.**

(a) Upon the filing of a final judgment escheating personal property, the person having such property in his possession shall forthwith deliver the same to the Treasurer. If such personal property be in the form of money, the Treasurer shall deposit the same into the general fund of the Territory; if in the form of negotiable securities or personal property, he must give public notice thereof and sell the property at public or private sales, as he may deem to be in the best interest of the Territory, and must deposit the proceeds thereof in the general fund.

(b) Before depositing the escheated property or the proceeds in the general fund, the Treasurer must deduct 5% of the money received and pay it to the escheator as a reward for having supplied the information and evidence upon which the escheat was successfully prosecuted and must pay such other fees and costs as the judgment directs.

**History:** 1988, PL 20-64.

#### **40.0511 Operation of judgment**

Any judgment entered pursuant to this chapter, and the provisions contained therein, automatically operates as a full, absolute and unconditional release and discharge of the person having the escheated property in possession or custody from any and all claims, demands, or liability to any person, other than the Treasurer, with respect to such property, and such judgment may be pleaded as an absolute bar to any action brought against such person with respect to such property by any person other than the Treasurer.

**History:** 1988, PL 20-64.

**40.0512 Proceedings without cost.**

All proceedings in escheat in the High Court shall be without costs to the Territory or to the parties defendant except that the Court may impose such costs or counsel fees against a defendant where such defendant is found by the Court to have defended the escheat proceedings without reasonable cause or justification.

**History:** 1988, PL 20-64.

**40.0513 Joinder of properties and actions.**

It is lawful to join more than one escheatable property or estate and more than one action where it appears that the amount of escheatable property in each case does not exceed \$1,000.

**History:** 1988, PL 20-64.

**40.0514 Title absolute.**

The title to property acquired by purchasers sold under and by the provisions of this chapter shall be absolute.

**History:** 1988, PL 20-64.

**40.0515 Access to all reports.**

The Attorney General in handling cases under this chapter, shall at all reasonable times have access to and be entitled to certified copies of all public papers and reports filed with any department of the American Samoa Government, free from any cost, charge or fee, except for personal medical records at the medical center which may be secured by discovery or with patient or family permission.

**History:** 1988, PL 20-64.

**40.0516 Certified judgments.**

Upon the final determination or adjudication in any escheat action provided herein, the Attorney General must transmit a duly certified copy of the judgment to the Treasurer.

**History:** 1988, PL 20-64.

**40.0517 Reopening judgement.**

Any person whose property may have escheated to the Territory as provided herein, or any rightful heir, spouse or next of kin entitled to such property by descent or succession may within 2 years after the filing of the final judgment in the High Court, apply to that Court to reopen the judgment upon proof that the applicant was without actual knowledge of such escheat action, and upon proof of ownership of such property or the right to possession thereof, the Court may in its discretion reopen the judgment. In the event that the aforesaid judgment in part or in whole be revised or amended, the Court may direct the Treasurer to repay such part of the money received by the Treasurer by reason of such judgment, to the party who is entitled to it. Upon the entry of the amended judgment, the

Treasurer must repay the said money as provided in such judgment; provided, however, that there shall first be deducted all expenses and charges that may have accrued or been paid out by reason of the entry of the original judgment.

(c) Whenever it appears to the satisfaction of the Attorney General that a person is the lawful owner of any money that has heretofore been received by the Treasurer under the provisions of this chapter, and that such money is less than \$1,000, the Attorney General is authorized to request payment by the Treasurer to repay to the lawful owner the money so received less appropriate deductions, without the necessity of reopening the original judgment entered.

**History:** 1988, PL 20-64.