

SHORT TITLE: Wills and succession; descent and distribution;  
clarifying language; effective date.

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

SENATE BILL NO. 370

By: Taylor

AS INTRODUCED

An Act relating to wills and succession; amending 84 O.S. 1991, Section 213, as amended by Section 1, Chapter 8, O.S.L. 1994 (84 O.S. Supp. 1996, Section 213), which relates to descent and distribution; clarifying statutory language; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 84 O.S. 1991, Section 213, as amended by Section 1, Chapter 8, O.S.L. 1994 (84 O.S. Supp. 1996, Section 213), is amended to read as follows:

Section 213. A. Prior to July 1, 1985, if any person having title to any estate not otherwise limited by marriage contract, dies without disposing of the estate by will, it descends and must be distributed in the following manner:

~~First.~~ 1. If the decedent ~~leave~~ leaves a surviving ~~husband or wife~~ spouse, and only one child, or the lawful issue of one child, the estate shall be distributed in equal shares to the surviving ~~husband, or wife~~ spouse and child, or issue of such child. If the decedent ~~leave~~ leaves a surviving ~~husband or wife~~ spouse, and more than one child living, or one child living and the lawful issue of one or more deceased children, one-third (1/3) shall go to the surviving ~~husband or wife~~ spouse, and the remainder in equal shares to ~~his~~ the children, and to the lawful issue of any deceased child, by right of representation; but if there ~~be~~ is no child of the decedent living at his or her death, the remainder goes to all ~~of~~

~~his~~ lineal descendants; and if all the descendants are in the same degree of kindred to the decedent, they share equally; otherwise they take according to the right of representation:—~~Provided;~~ provided, that if the decedent shall have been married more than once, the spouse at the time of death shall inherit ~~of~~ the property not acquired during coverture with such spouse only an equal part with each of the living children of decedent, and the lawful issue of any deceased child by right of representation. If the decedent leave no surviving husband or wife, but leaves issue, the whole estate goes to such issue, and if such issue consists of more than one child living, or one child living, and the lawful issue of one or more deceased children, then the estate goes in equal shares to the children living, or to the child living, and the issue of the deceased child or children by right of representation.

~~Second.~~ 2. If the decedent ~~leave~~ leaves no issue, the estate goes one-half (1/2) to the surviving husband or wife, and the remaining one-half (1/2) to the decedent's father or mother, or, if he ~~leave~~ leaves both father and mother, to them in equal shares; but if there be no father or mother, then ~~said~~ the remaining one-half (1/2) goes, in equal shares, to the brothers and sisters of the decedent, and to the children of any deceased brother or sister, by right of representation. If the decedent ~~leave~~ leaves no issue, nor husband nor wife, the estate must go to the father or the mother, or if he ~~leave~~ or she leaves both father and mother, to them in equal shares:—~~Provided;~~ provided, that in all cases where the property is acquired by the joint industry of husband and wife during coverture, and there is no issue, the whole estate shall go to the survivor, at whose death, if any of the said property ~~remain~~ remains, one-half (1/2) of such property shall go to the heirs of the husband and one-half (1/2) to the heirs of the wife, according to the right of representation.

~~Third.~~ 3. If there ~~be~~ is no issue, nor husband nor wife, nor father, nor mother, then in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister, by right of representation; if the deceased, being a minor, ~~leave~~ leaves no issue, the estate must go to the parents equally, if living together, or if not living together, to the parent having had the care of ~~said~~ the deceased minor.

~~Fourth.~~ 4. If the decedent ~~leave~~ leaves no issue nor husband, nor wife, nor father and no brother or sister is living at the time of his or her death, the estate goes to ~~his~~ the decedent's mother to the exclusion of the issue, if any, of deceased brothers or sisters.

~~Fifth.~~ 5. If the decedent ~~leave~~ leaves a surviving husband or wife, and no issue, and no father, nor mother, nor brother, nor sister, the whole estate goes to the surviving husband or wife.

~~Sixth.~~ 6. If the decedent ~~leave~~ leaves no issue, nor husband, nor wife, and no father or mother, or brother, or sister, the estate must go to the next of kin in equal degree, excepting that when there are two or more collateral kindred, in equal degree, but claiming through different ancestors, those who claimed through the nearest ancestors must be preferred to those claiming through an ancestor more remote.

~~Seventh.~~ 7. If the decedent ~~leave~~ leaves several children, or one child and the issue of one or more children, and any such surviving child dies under age, ~~and~~ not having been married, all the estate that came to the deceased child by inheritance from such decedent, descends in equal shares to the other children of the same parent, and to the issue of any such other children who are dead, by right of representation.

~~Eighth.~~ 8. If, at the death of such child who dies under age, not having been married, all the other children of his or her parents are also dead, and any of them have left issue, the estate that came to such child by inheritance from his or her parent

descends to the issue of all other children of the same parent; and if all the issue are in the same degree of kindred to the child, they share the estate equally<sup>7</sup>; otherwise, they take according to the right of representation.

~~Ninth.~~ 9. If the decedent ~~leave~~ leaves no husband, wife, or kindred, the estate escheats to the state for the support of common schools.

B. Beginning July 1, 1985, if any person having title to any estate not otherwise limited by any antenuptial marriage contract dies without disposing of the estate by will, such estate descends and shall be distributed in the following manner:

1. If the decedent leaves a surviving spouse, the share of the estate passing to ~~said~~ the spouse is:

a. if there is no surviving issue, parent, brother or sister, the entire estate, or

b. if there is no surviving issue but the decedent is survived by a parent or parents, brother or sister:

(1) all the property acquired by the joint industry of the husband and wife during coverture, and

(2) an undivided one-third (1/3) interest in the remaining estate, or

c. if there are surviving issue, all of whom are also issue of the surviving spouse:

an undivided one-half (1/2) interest in all the property of the estate whether acquired by the joint industry of the husband and wife during coverture or otherwise, or

d. if there are surviving issue, one or more of whom are not also issue of the surviving spouse:

(1) an undivided one-half (1/2) interest in the property acquired by the joint industry of the husband and wife during coverture, and

(2) an undivided equal part in the property of the decedent not acquired by the joint industry of the husband and wife during coverture with each of the living children of the decedent and the lawful issue of any deceased child by right of representation;

2. The share of the estate not passing to the surviving spouse, or if there is no surviving spouse, the estate is to be distributed as follows:

- a. in undivided equal shares to the surviving children of the decedent and issue of any deceased child of the decedent by right of representation, or
- b. if there is no surviving issue, to the surviving parent or parents of the decedent in undivided equal shares, or
- c. if there is no surviving issue nor parent, in undivided equal shares to the issue of parents by right of representation, or
- d. if there is no surviving issue, parent, nor issue of parents, but the decedent is survived by one or more grandparents or issue of any grandparent, half of the estate passes equally to the paternal grandparents if both survive, or to the surviving paternal grandparent, or to the issue of any paternal grandparent if both paternal grandparents are deceased, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree, those of more remote degree take by representation and the other half passes to the maternal relatives in the same manner; but if the decedent is survived by one or more grandparents or issue of grandparents on only one side of the family,

paternal or maternal, the entire estate shall pass to such survivors in the manner set forth in this subsection, or

- e. if there is no surviving issue, parent, issue of parents, grandparent, nor issue of a grandparent, the estate passes to the next of kin in equal degree;

3. If the decedent leaves no spouse, issue, parent, issue of parents, grandparent, issue of a grandparent, nor kindred, then the estate shall escheat to the state for the support of the common schools; and

4. For the purpose of this section, the phrase "by right of representation" means the estate is to be divided into as many equal shares as there are surviving heirs in the nearest degree of kinship and deceased persons in the same degree who left issue who survive the decedent, each surviving heir in the nearest degree receiving one equal share and the equal share of each deceased person in the same degree being divided among his or her issue in the same manner. The word "issue" means lineal descendants.

SECTION 2. This act shall become effective November 1, 1997.

46-1-0006

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