

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 SENATE BILL 611

By: Ivester

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5
6 AS INTRODUCED

7 An Act relating to informal probate; establishing
8 requirements for application for certain probate;
9 requiring submission to certain jurisdiction;
10 specifying duties of registrar, stating effect of
11 informal probate; requiring certain determinations
12 and findings for certain probate; authorizing
13 informal probate of wills previously probated under
14 specified circumstances; prohibiting informal probate
15 in certain circumstances; allowing denial of certain
16 application; establishing certain notice
17 requirements; establishing requirements for certain
18 appointment; requiring certain findings in informal
19 appointment proceedings; requiring denial of certain
20 applications; establishing certain notice
21 requirements; prohibiting informal appointment in
22 certain circumstances; providing for universal
23 succession; requiring certain application and
24 petition; establishing requirements for certain
application; requiring certain proof for granting of
specified application; requiring certain statement;
stating effect of statement of universal succession;
stating powers of universal successors; establishing
liabilities of universal successors; requiring
submission to certain jurisdiction; specifying duties
of universal successors to heirs and devisees;
establishing certain remedies; providing for
codification; and providing an effective date.

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

1 SECTION 1. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 36.1 of Title 58, unless there
3 is created a duplication in numbering, reads as follows:

4 A. Applications for informal probate or informal appointment
5 shall be directed to the Registrar, and verified by the applicant to
6 be accurate and complete to the best of his or her knowledge and
7 belief as to the following information:

8 1. Every application for informal probate of a will or for
9 informal appointment of a personal representative, other than a
10 special or successor representative, shall contain the following:

- 11 a. a statement of the interest of the applicant,
- 12 b. the name, and date of death of the decedent, his or
13 her age, and the county and state of his or her
14 domicile at the time of death, and the names and
15 addresses of the spouse, children, heirs and devisees
16 and the ages of any who are minors so far as known or
17 ascertainable with reasonable diligence by the
18 applicant,
- 19 c. a statement showing venue if the decedent was not
20 domiciled in the state at the time of his or her death
- 21 d. a statement identifying and indicating the address of
22 any personal representative of the decedent appointed
23 in this state or elsewhere whose appointment has not
24 been terminated,

- 1 e. a statement indicating whether the applicant has
2 received a demand for notice or is aware of any demand
3 for notice of any probate or appointment proceeding
4 concerning the decedent that may have been filed in
5 this state or elsewhere, and
- 6 f. that the time limit for informal probate or
7 appointment as provided in this Article has not
8 expired either because three (3) years or less have
9 passed since the decedent's death or, if more than
10 three (3) years from death have passed, circumstances
11 authorizing tardy probate or appointment have
12 occurred.

13 2. An application for informal probate of a will shall state
14 the following in addition to the statements required by paragraph 1
15 of this subsection:

- 16 a. that the original of the decedent's last will is in
17 the possession of the court, or accompanies the
18 application, or that an authenticated copy of a will
19 probated in another jurisdiction accompanies the
20 application,
- 21 b. that the applicant, to the best of his or her
22 knowledge, believes the will to have been validly
23 executed,
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1 c. that after the exercise of reasonable diligence, the
2 applicant is unaware of any instrument revoking the
3 will, and that the applicant believes that the
4 instrument which is the subject of the application is
5 the decedent's last will.

6 3. An application for informal appointment of a personal
7 representative to administer an estate under a will shall describe
8 the will by date of execution and state the time and place of
9 probate or the pending application or petition for probate. The
10 application for appointment shall adopt the statements in the
11 application or petition for probate and state the name, address and
12 priority for appointment of the person whose appointment is sought.

13 4. An application for informal appointment of an administrator
14 in intestacy shall state in addition to the statements required by
15 paragraph 1 of this subsection:

16 a. that after the exercise of reasonable diligence, the
17 applicant is unaware of any unrevoked testamentary
18 instrument relating to property having a situs in this
19 state or a statement why any such instrument of which
20 he may be aware is not being probated,

21 b. the priority of the person whose appointment is sought
22 and the names of any other persons having a prior or
23 equal right to the appointment.

1 5. An application for appointment of a personal representative
2 to succeed a personal representative appointed under a different
3 testacy status shall refer to the order in the most recent testacy
4 proceeding, state the name and address of the person whose
5 appointment is sought and of the person whose appointment will be
6 terminated if the application is granted, and describe the priority
7 of the applicant.

8 6. An application for appointment of a personal representative
9 to succeed a personal representative who has tendered a resignation
10 or whose appointment has been terminated by death or removal, shall
11 adopt the statements in the application or petition which led to the
12 appointment of the person being succeeded except as specifically
13 changed or corrected, state the name and address of the person who
14 seeks appointment as successor, and describe the priority of the
15 applicant.

16 B. By verifying an application for informal probate, or
17 informal appointment, the applicant submits personally to the
18 jurisdiction of the court in any proceeding for relief from fraud
19 relating to the application, or for perjury, that may be instituted
20 against him or her.

21 SECTION 2. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 36.2 of Title 58, unless there
23 is created a duplication in numbering, reads as follows:

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1 Upon receipt of an application requesting informal probate of a
2 will, the Registrar, upon making the findings required by Section 3
3 of this act shall issue a written statement of informal probate if
4 at least one hundred twenty (120) hours have elapsed since the
5 decedent's death. Informal probate is conclusive as to all persons
6 until superseded by an order in a formal testacy proceeding. No
7 defect in the application or procedure relating thereto which leads
8 to informal probate of a will renders the probate void.

9 SECTION 3. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 36.3 of Title 58, unless there
11 is created a duplication in numbering, reads as follows:

12 A. In an informal proceeding for original probate of a will,
13 the Registrar shall determine whether:

14 1. The application is complete;

15 2. The applicant has made oath or affirmation that the
16 statements contained in the application are true to the best of his
17 or her knowledge and belief;

18 3. The applicant appears from the application to be an
19 interested person;

20 4. On the basis of the statements in the application, venue is
21 proper;

22 5. An original, duly executed and apparently unrevoked will is
23 in the Registrar's possession;

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1 6. Any notice required has been given and that the application
2 is not within Section 4 of this act; and

3 7. It appears from the application that the time limit for
4 original probate has not expired.

5 B. The application shall be denied if it indicates that a
6 personal representative has been appointed in another county of this
7 state or except as provided in subsection D of this section, if it
8 appears that this or another will of the decedent has been the
9 subject of a previous probate order.

10 C. A will which appears to have the required signatures and
11 which contains an attestation clause showing that requirements of
12 execution have been met shall be probated without further proof. In
13 other cases, the Registrar may assume execution if the will appears
14 to have been properly executed, or he may accept a sworn statement
15 or affidavit of any person having knowledge of the circumstances of
16 execution, whether or not the person was a witness to the will.

17 D. Informal probate of a will which has been previously
18 probated elsewhere may be granted at any time upon written
19 application by any interested person, together with deposit of an
20 authenticated copy of the will and of the statement probating it
21 from the office or court where it was first probated.

22 E. A will from a place which does not provide for probate of a
23 will after death and which is not eligible for probate under
24 subsection A of this section, may be probated in this state upon

1 receipt by the Registrar of a duly authenticated copy of the will
2 and a duly authenticated certificate of its legal custodian that the
3 copy filed is a true copy and that the will has become operative
4 under the law of the other place.

5 SECTION 4. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 36.4 of Title 58, unless there
7 is created a duplication in numbering, reads as follows:

8 Applications for informal probate which relate to one or more of
9 a known series of testamentary instruments, other than a will and
10 one or more codicils thereto, the latest of which does not expressly
11 revoke the earlier, shall be declined.

12 SECTION 5. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 36.5 of Title 58, unless there
14 is created a duplication in numbering, reads as follows:

15 If the Registrar is not satisfied that a will is entitled to be
16 probated in informal proceedings because of failure to meet the
17 requirements of Sections 3 and 4 of this act or any other reason, he
18 or she may decline the application. A declination of informal
19 probate is not an adjudication and does not preclude formal probate
20 proceedings.

21 SECTION 6. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 36.6 of Title 58, unless there
23 is created a duplication in numbering, reads as follows:

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1 The moving party shall give notice of his or her application for
2 informal probate to any person demanding it, and to any personal
3 representative of the decedent whose appointment has not been
4 terminated. No other notice of informal probate is required.

5 SECTION 7. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 36.7 of Title 58, unless there
7 is created a duplication in numbering, reads as follows:

8 A. Upon receipt of an application for informal appointment of a
9 personal representative other than a special administrator, if at
10 least one hundred twenty (120) hours have elapsed since the
11 decedent's death, the Registrar, after making the findings required
12 by Section 8 of this act, shall appoint the applicant subject to
13 qualification and acceptance; provided, that if the decedent was a
14 non-resident, the Registrar shall delay the order of appointment
15 until thirty (30) days have elapsed since death unless the personal
16 representative appointed at the decedent's domicile is the
17 applicant, or unless the decedent's will directs that his or her
18 estate be subject to the laws of this state.

19 B. The status of personal representative and the powers and
20 duties pertaining to the office are fully established by informal
21 appointment. An appointment, and the office of personal
22 representative created thereby, is subject to termination but is not
23 subject to retroactive vacation.

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1 SECTION 8. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 36.8 of Title 58, unless there
3 is created a duplication in numbering, reads as follows:

4 A. In informal appointment proceedings, the Registrar shall
5 determine whether:

6 1. The application for informal appointment of a personal
7 representative is complete;

8 2. The applicant has made oath or affirmation that the
9 statements contained in the application are true to the best of his
10 or her knowledge and belief;

11 3. The applicant appears from the application to be an
12 interested person;

13 4. On the basis of the statements in the application, venue is
14 proper;

15 5. Any will to which the requested appointment relates has been
16 formally or informally probated; but this requirement does not apply
17 to the appointment of a special administrator;

18 6. Any notice required has been given;

19 7. From the statements in the application, the person whose
20 appointment is sought has priority entitling him or her to the
21 appointment.

22 B. The application shall be denied if it indicates that a
23 personal representative who has not filed a written statement of
24 resignation has been appointed in this or another county of this

1 state, that, unless the applicant is the domiciliary personal
2 representative or his or her nominee, the decedent was not domiciled
3 in this state and that a personal representative whose appointment
4 has not been terminated has been appointed by a court in the state
5 of domicile, or that other requirements of this section have not
6 been met.

7 SECTION 9. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 36.9 of Title 58, unless there
9 is created a duplication in numbering, reads as follows:

10 If the Registrar is not satisfied that a requested informal
11 appointment of a personal representative should be made because of
12 failure to meet the requirements of Sections 7 and 8 of this act, or
13 for any other reason, he or she may decline the application. A
14 declination of informal appointment is not an adjudication and does
15 not preclude appointment in formal proceedings.

16 SECTION 10. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 36.10 of Title 58, unless there
18 is created a duplication in numbering, reads as follows:

19 The moving party shall give notice of his or her intention to
20 seek an appointment informally to any person demanding it and to any
21 person having a prior or equal right to appointment not waived in
22 writing and filed with the court. No other notice of an informal
23 appointment proceeding is required.

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1 SECTION 11. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 36.11 of Title 58, unless there
3 is created a duplication in numbering, reads as follows:

4 If an application for informal appointment indicates the
5 existence of a possible unrevoked testamentary instrument which may
6 relate to property subject to the laws of this state, and which is
7 not filed for probate in this court, the Registrar shall decline the
8 application.

9 SECTION 12. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 36.12 of Title 58, unless there
11 is created a duplication in numbering, reads as follows:

12 The heirs of an intestate or the residuary devisees under a
13 will, excluding minors and incapacitated, protected, or
14 unascertained persons, may become universal successors to the
15 decedent's estate by assuming personal liability for:

- 16 1. Taxes;
 - 17 2. Debts of the decedent;
 - 18 3. Claims against the decedent or the estate, and
 - 19 4. Distributions due other heirs, devisees, and persons
- 20 entitled to property of the decedent as provided in Sections 13
21 through 22 of this act.

22 SECTION 13. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 36.13 of Title 58, unless there
24 is created a duplication in numbering, reads as follows:

1 A. An application to become universal successors by the heirs
2 of an intestate or the residuary devisees under a will shall be
3 directed to the Registrar, signed by each applicant, and verified to
4 be accurate and complete to the best of the applicant's knowledge
5 and belief as follows:

6 1. An application by heirs of an intestate shall contain the
7 statements required by Section 1 of this act and state that the
8 applicants constitute all the heirs other than minors and
9 incapacitated, protected, or unascertained persons.

10 2. An application by residuary devisees under a will shall be
11 combined with a petition for informal probate if the will has not
12 been admitted to probate in this state and shall contain the
13 statements required by Section 1 of this act. If the will has been
14 probated in this state, an application by residuary devisees shall
15 contain the statements required by Section 1 of this act. An
16 application by residuary devisees shall state that the applicants
17 constitute the residuary devisees of the decedent other than any
18 minors and incapacitated, protected, or unascertained persons. If
19 the estate is partially intestate, all of the heirs other than
20 minors and incapacitated, protected, or unascertained persons shall
21 join as applicants.

22 B. The application shall state whether letters of
23 administration are outstanding, whether a petition for appointment
24 of a personal representative of the decedent is pending in any court

1 of this state, and that the applicants waive their right to seek
2 appointment of a personal representative.

3 C. The application may describe in general terms the assets of
4 the estate and shall state that the applicants accept responsibility
5 for the estate and assume personal liability for:

- 6 1. Taxes;
 - 7 2. Debts of the decedent;
 - 8 3. Claims against the decedent or the estate, and
 - 9 4. Distributions due other heirs, devisees, and persons
- 10 entitled to property of the decedent as provided in Sections 16
11 through 22 of this act.

12 SECTION 14. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 36.14 of Title 58, unless there
14 is created a duplication in numbering, reads as follows:

15 A. The Registrar shall grant the application if:

- 16 1. The application is complete in accordance with Section 13 of
17 this act;
- 18 2. All necessary persons have joined and have verified that the
19 statements contained therein are true, to the best knowledge and
20 belief of each;
- 21 3. Venue is proper;
- 22 4. Any notice required has been given or waived;
- 23 5. The time limit for original probate or appointment
24 proceedings has not expired and the applicants claim under a will;

1 6. The application requests informal probate of a will, the
2 application and findings conform with Sections 1 and 3 of this act
3 so the will is admitted to probate; and

4 7. None of the applicants is a minor or an incapacitated or
5 protected person.

6 B. The Registrar shall deny the application if letters of
7 administration are outstanding.

8 C. Except as provided in Section 22 of this act, the Registrar
9 shall deny the application if any creditor, heir, or devisee who is
10 qualified to demand bond files an objection.

11 SECTION 15. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 36.15 of Title 58, unless there
13 is created a duplication in numbering, reads as follows:

14 A. Upon receipt of an application under Section 13 of this act,
15 if at least one hundred twenty (120) hours have elapsed since the
16 decedent's death, the Registrar, upon granting the application,
17 shall issue a written statement of universal succession describing
18 the estate as set forth in the application and stating that the
19 applicants:

20 1. Are the universal successors to the assets of the estate as
21 provided in Section 12 of this act;

22 2. Have assumed liability for the obligations of the decedent,
23 and

24

1 3. Have acquired the powers and liabilities of universal
2 successors.

3 B. The statement of universal succession is evidence of the
4 universal successors' title to the assets of the estate. Upon its
5 issuance, the powers and liabilities of universal successors
6 provided in Sections 16 through 22 of this act attach and are
7 assumed by the applicants.

8 SECTION 16. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 36.16 of Title 58, unless there
10 is created a duplication in numbering, reads as follows:

11 Upon the Registrar's issuance of a statement of universal
12 succession:

13 1. Universal successors have full power of ownership to deal
14 with the assets of the estate subject to the limitations and
15 liabilities in this act. The universal successors shall proceed
16 expeditiously to settle and distribute the estate without
17 adjudication, but if necessary may invoke the jurisdiction of the
18 court to resolve questions concerning the estate.

19 2. Universal successors have the same powers as distributees
20 from a personal representative and third persons with whom they deal
21 are protected.

22 3. For purposes of collecting assets in another state whose law
23 does not provide for universal succession, universal successors have
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1 the same standing and power as personal representatives or
2 distributees in this state.

3 SECTION 17. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 36.17 of Title 58, unless there
5 is created a duplication in numbering, reads as follows:

6 A. In the proportions and subject to limits expressed in
7 Section 21 of this act, universal successors assume all liabilities
8 of the decedent that were not discharged by reason of death and
9 liability for all taxes, claims against the decedent or the estate,
10 and charges properly incurred after death for the preservation of
11 the estate, to the extent those items, if duly presented, would be
12 valid claims against the decedent's estate.

13 B. In the proportions and subject to the limits expressed in
14 Section 21 of this act, universal successors are personally liable
15 to other heirs, devisees, and persons entitled to property of the
16 decedent for the assets or amounts that would be due those heirs,
17 were the estate administered, but no allowance having priority over
18 devisees may be claimed for attorney fees or charges for
19 preservation of the estate in excess of reasonable amounts properly
20 incurred.

21 C. Universal successors are entitled to their interests in the
22 estate as heirs or devisees subject to priority and abatement and to
23 agreement.

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1 D. Other heirs, devisees, and persons to whom assets have been
2 distributed have the same powers and liabilities as distributees.

3 E. Absent breach of fiduciary obligations or express
4 undertaking, a fiduciary's liability is limited to the assets
5 received by the fiduciary.

6 SECTION 18. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 36.18 of Title 58, unless there
8 is created a duplication in numbering, reads as follows:

9 A. Upon issuance of the statement of universal succession, the
10 universal successors become subject to the personal jurisdiction of
11 the courts of this state in any proceeding that may be instituted
12 relating to the estate or to any liability assumed by them.

13 B. Any heir or devisee who voluntarily joins in an application
14 under Section 13 of this act may not subsequently seek appointment
15 of a personal representative.

16 SECTION 19. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 36.19 of Title 58, unless there
18 is created a duplication in numbering, reads as follows:

19 Not later than thirty (30) days after issuance of the statement
20 of universal succession, each universal successor shall inform the
21 heirs and devisees who did not join in the application of the
22 succession without administration. The information shall be
23 delivered or be sent by ordinary mail to each of the heirs and
24 devisees whose address is reasonably available to the universal

1 successors. The information shall include the names and addresses
2 of the universal successors, indicate that it is being sent to
3 persons who have or may have some interest in the estate, and
4 describe the court where the application and statement of universal
5 succession has been filed. The failure of a universal successor to
6 give this information is a breach of duty to the persons concerned
7 but does not affect the validity of the approval of succession
8 without administration or the powers or liabilities of the universal
9 successors. A universal successor may inform other persons of the
10 succession without administration by delivery or by ordinary first
11 class mail.

12 SECTION 20. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 36.20 of Title 58, unless there
14 is created a duplication in numbering, reads as follows:

15 If a personal representative is subsequently appointed,
16 universal successors are personally liable for restitution of any
17 property of the estate to which they are not entitled as heirs or
18 devisees of the decedent and their liability is the same as a
19 distributee.

20 SECTION 21. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 36.21 of Title 58, unless there
22 is created a duplication in numbering, reads as follows:

23 The liability of universal successors is subject to any defenses
24 that would have been available to the decedent. Other than

1 liability arising from fraud, conversion, or other wrongful conduct
2 of a universal successor, the personal liability of each universal
3 successor to any creditor, claimant, other heir, devisee, or person
4 entitled to decedent's property may not exceed the proportion of the
5 claim that the universal successor's share bears to the share of all
6 heirs and residuary devisees.

7 SECTION 22. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 36.22 of Title 58, unless there
9 is created a duplication in numbering, reads as follows:

10 In addition to remedies otherwise provided by law, any creditor,
11 heir, devisee, or person entitled to decedent's property may demand
12 bond of universal successors. If the demand for bond precedes the
13 granting of an application for universal succession, it shall be
14 treated as an objection under Section 14 of this act unless it is
15 withdrawn, the claim satisfied, or the applicants post bond in an
16 amount sufficient to protect the demandant. If the demand for bond
17 follows the granting of an application for universal succession, the
18 universal successors, within ten (10) days after notice of the
19 demand, upon satisfying the claim or posting bond sufficient to
20 protect the demandant, may disqualify the demandant from seeking
21 administration of the estate.

22 SECTION 23. This act shall become effective November 1, 2011.

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