

CHAPTER 237.

DESCENT.

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237.01 How to descend. When any person shall die seized of any lands, tenements or hereditaments or any right thereto or entitled to any interest therein, in fee simple, not having lawfully devised the same, they shall descend, subject to his debts, except as provided in section 237.02, in the manner following:

(1) In equal shares to his children and to the lawful issue of any deceased child by right of representation; and if there be no child of the intestate living at his death his estate shall descend to all his other lineal descendants; and if all the said descendants are in the same degree of kindred to the intestate they shall share the estate equally, otherwise they shall take according to the right of representation.

(2) If the intestate leave no lawful issue, to his or her widow or widower; if the intestate leave no such issue, widow or widower, to the parents of the intestate, if living, and if either parent shall not be living, to the survivor.

(3) If the intestate leave no lawful issue nor widow nor widower nor father nor mother the estate shall descend in equal shares to the intestate's brothers and sisters and to the lineal descendants of any deceased brother or sister by right of representation.

(4) If the intestate leave no lawful issue, widow, widower, father, mother, brother nor sister the estate shall descend to the intestate's next of kin in equal degree, except that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor shall be preferred to those claiming through an ancestor more remote; provided, however,

(5) If any person shall die leaving several children or leaving one child and the issue of one or more other children, and any such surviving child shall die under age, not having been married, all the estate that came to the deceased child by inheritance or by testamentary gift from such deceased parent and all personal property which belongs to such deceased child by reason of distribution under subsection (1) of section 318.01 shall descend and be distributed in equal shares to the other children of the same parent and to the issue of any such other children who shall have died, by right of representation.

(6) If at the death of such child who shall die under age and not having been married all the other children of his said parent shall also be dead and any of them shall have left issue, the estate that came to said child by inheritance from his said parent shall descend to all the issue of the other children of the same parent; and if all the said issue are in the same degree of kindred to said child they shall share the said estate equally; otherwise they shall take according to the right of representation.

(7) If the intestate shall have no widow nor kindred his estate shall escheat to the state and be added to the capital of the school fund.

Cross Reference: For distribution of personalty, see 318.01.

No statutes of descent are involved in the devolution of property held in joint tenancy, since the devolution of such property is an incident of joint tenancy, and the property does not pass to the survivor by inheritance nor according to any laws of descent. Estate of King, 261 W 266, 52 NW (2d) 885.

By virtue of (3), the surviving adopted child of a predeceased sister of an intestate, whose nearest surviving relative was another sister, acquired the inheritance rights which the adoptive mother would have had if such mother had survived the intestate.

(Estate of Holcombe, 259 W 642, followed; Estate of Bradley, 185 W 393; Estate of Matzke, 250 W 204, distinguished as construing earlier statute differently worded.) Estate of Nelson, 266 W 617, 64 NW (2d) 406.

Under (4) when an intestate is survived only by a first cousin and by second cousins who are children of a predeceased first cousin, the surviving first cousin inherits all of the intestate's estate to the exclusion of the second cousins' right to inherit the share their parent would have taken had he survived. Estate of Szaczywka, 270 W 238, 70 NW (2d) 600.

237.02 Homestead, how to descend. When the owner of any homestead shall die, not having lawfully devised the same, such homestead shall descend in the manner following:

(1) If the decedent shall have no lawful issue, to the widow or widower.

(2) If the decedent shall leave a widow and issue or a widower and issue, to the widow or widower so long as not remarried, and upon marriage or death to the original decedent's heirs according to section 237.01, provided that the limitation as to the value of the homestead in section 272.20 shall not apply to a widow and the heirs of her husband during widowhood.

(3) If the decedent shall leave issue and no widow or widower, to such issue according to section 237.01.

(4) If the decedent shall leave no issue or widow or widower, according to section 237.01, subject to lawful liens thereon.

History: 1951 c. 727.

237.025 Homestead exemption. (1) If there be a widow or widower or child or child of a deceased child of the deceased owner, the exempt homestead shall descend subject to lawful liens thereon but free of all judgments and claims against the deceased owner or his estate.

(2) If there be a widow or widower or minor child of the deceased owner, such exempt homestead shall in addition be free from expenses of last illness and funeral and the costs and charges of administration.

237.03 Degrees of kindred, how computed. The degrees of kindred shall be computed according to the rules of the civil law; and kindred of the half blood shall inherit equally with those of the whole blood in the same degree unless the inheritance came to the intestate by descent, devise or gift of some one of his ancestors; in which case all those who are not of the blood of such ancestors shall be excluded from such inheritance.

A cousin of an intestate is one degree nearer of kin than is a cousin's child. Estate of Szaczywka, 270 W 233, 70 NW (2d) 600.

237.04 Descent as to adopted persons. The right of descent from and to an adopted person shall be as prescribed in s. 48.92.

History: 1957 c. 97.

237.05 Property of child born out of wedlock. If any child born out of wedlock shall die intestate, without lawful issue, his estate shall descend to his mother; or in case of her decease, to her heirs at law.

History: 1957 c. 296 s. 15.

237.06 Heirship of children born out of wedlock. Every child born out of wedlock shall be considered as heir of the person who shall, in writing signed in the presence of a competent witness, have acknowledged himself to be the father of such child or who shall be adjudged to be such father under the provisions of ss. 52.21 to 52.45, or who shall admit in open court that he is such father, and shall in all cases be considered as heir of his mother, and shall inherit his or her estate, in whole or in part, as the case may be, in the same manner as if he had been born in lawful wedlock; but he shall not be allowed to claim, as representing his father or mother any part of the estate of his or her kindred, either lineal or collateral, unless before his death he shall have been legitimated by the marriage of his parents in the manner prescribed by law.

History: 1953 c. 31; 1957 c. 296 s. 15.

Where a decedent had been adjudged to be the father of 2 illegitimate children in illegitimacy proceedings, such illegitimate children were "heirs" of the decedent, so that they would have inherited his estate if he had died intestate. Will of Tousey, 260 W 150, 50 NW (2d) 454.

237.07 Right of representation. Inheritance, or succession by right of representation, takes place when the descendants of any deceased heir take the same share or right in the estate of another person that their parent would have taken if living; posthumous children are considered as living at the death of their parents.

This section does not apply to a statute which does not provide for descent by right of representation but restricts descent to "next of kin in equal degree," as in 237.01 (4). Estate of Szaczywka, 270 W 233, 70 NW (2d) 600.

237.08 Curtesy or dower not affected. Nothing in this chapter shall affect the title of a husband as tenant by the curtesy nor that of a widow as tenant in dower, nor shall the same affect any limitation of an estate by deed or will.

237.09 Certificate of heirship. (1) **PETITION.** If a person dies intestate owning real estate in this state, the court may upon petition so showing issue a certificate of heirship. The petition shall be made to the county court of the county of which the deceased was a resident at the time of his death, if he was a resident of this state, or to the county court of the county in which any real estate of the deceased is situated, if he was a non-resident.

(2) **CERTIFICATE.** If it appears that the deceased died intestate and that no inheritance tax is owing or that the tax has been paid, the court may issue a certificate so

showing; the certificate shall give the names of the heirs, a description of the real estate and the interest of each heir in the real estate. The certificate, or a duplicate, or a certified copy thereof when recorded in the office of the register of deeds of the county in which such real estate is situated shall be prima facie evidence of the facts therein recited. The notice requirements of s. 318.06 (7) shall not apply to proceedings under this section.

History: 1951 c. 250; Sup. Ct. Order, 262 W vl.

Note: See 1952 comment of Judicial Council under 237.28.

237.10 Uniform simultaneous death act. (1) Where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise in this section.

(2) If property is so disposed of that the right of a beneficiary to succeed to any interest therein is conditional upon his surviving another person, and both persons die, and there is no sufficient evidence that the 2 have died otherwise than simultaneously, the beneficiary shall be deemed not to have survived. If there is no sufficient evidence that 2 or more beneficiaries have died otherwise than simultaneously and property has been disposed of in such a way that at the time of their death each of such beneficiaries would have been entitled to the property if he had survived the others, the property shall be divided into as many equal portions as there were such beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each of such beneficiaries had survived.

(3) Where there is no sufficient evidence that two joint tenants or tenants by the entirety have died otherwise than simultaneously the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than two joint tenants and all of them have so died the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

(4) Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

(5) This section shall not apply to the distribution of the property of a person who has died before June 26, 1941.

(6) This section shall not apply in the case of wills, living trusts, deeds, or contracts of insurance, or any other situation where provision is made for distribution of property different from the provisions of this section, or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided.

(7) This section shall be so construed as to make uniform the law in those states which enact it.

(8) This section may be cited as the Uniform Simultaneous Death Act.

History: 1955 c. 505.

237.11 Decedent devolution of United States obligations in beneficiary form. Where any resident of this state shall die possessed of any bonds or certificates of indebtedness of the United States of America which are registered in his name, payable on death to another, the unqualified ownership thereof and of the proceeds which may be derived therefrom shall, on the death of the original owner, belong to such named alternate payee, any law of this state to the contrary notwithstanding.