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An Act to Provide a Procedure for Determining Heirship in Cases Where the Estate of a Deceased Person is of Small Value.

Colorado General Assembly

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CHAPTER 248.

WILLS AND ESTATES.

ESTATES OF SMALL VALUE.

(S. B. No. 148, by Senator Anfenger.)

AN ACT

AN ACT TO PROVIDE A PROCEDURE FOR DETERMINING HEIRSHIP IN CASES WHERE THE ESTATE OF A DECEASED PERSON IS OF SMALL VALUE.

Be it Enacted by the General Assembly of the State of Colorado:

Section 1. Upon the death intestate of any person whose last known residence was in this State, or who, at the time of death, left personal or real estate situated within this state, it shall be competent for any person entitled under the laws of this state to receive as heir the estate of said decedent, or any portion thereof, to file in the County Court of the county in which said decedent had his last known residence, or wherein said estate or a portion thereof is situated, a petition, duly verified, setting forth the fact and time, as nearly as may be, of the death of said decedent, the relationship between the petitioner and the decedent, the names and addresses, so far as known to petitioner, of all other heirs of the decedent, and that the value of said estate does not exceed the sum of five hundred dollars. The petition shall ask for a judicial ascertainment and determination of the heirs of said decedent to the end that the devolution of said estate may be judicially established and made a part of the public records.

Sec. 2. Upon filing such petition it shall be the duty of the Court to enter an order directing the publication of a notice in a public newspaper. The notice shall be addressed in general terms as follows: "To all persons interested in the estate of (insert name of decedent), deceased," shall set forth the petition and state

that if administration of said estate be not demanded by some one entitled thereto within one year from the date of the last publication of said notice, then and in such event application will be made to the court for a decree determining [determining] the heirship of said estate. The notice shall be signed by the petitioner or his attorney, and shall be published at least three successive weeks in such newspaper of the county as the court shall direct.

How published.

Copy of notice mailed by clerk.

Publication—how proven.

Jurisdiction of court—when complete.

Proceedings dismissed—when.

Hearing—notice of.

Sec. 3. On or before the day of last publication of said notice, the clerk of the court in which said proceeding is pending shall despatch by registered mail, postage prepaid and properly addressed, a copy of said notice to each of the heirs named in the petition, whose addresses are stated therein. The due publication of said notice shall be proved in the customary manner by the affidavit of the publisher. The mailing of copies of the notice shall be proved by the certificate of the clerk of the court.

Sec. 4. Upon the publication of said notice and proof thereof, and upon the mailing of copies of notice and proof thereof as above required, the court shall obtain jurisdiction of said estate, and the matter of the heirship thereof, and may proceed therein as hereinafter provided, and its decree establishing the devolution of said estate shall have the force and effect mentioned below.

Sec. 5. If at any time within one year from the date of the last publication of said notice, letters of administration upon said estate shall be issued by said court, or by any county court within this state, then the proceedings authorized by this Act shall forthwith be dismissed at the cost of petitioner, but if no letters of administration are issued within said period of one year, then the right to administer and the claims of creditors against said estate shall be forever barred.

Sec. 6. After the lapse of one year from the date of the last publication of the notice provided for in section two (2) of this Act, the petitioner or any other heir of the decedent may file with the court an application for a hearing to determine the heirs entitled to the estate of said decedent, and for a decree to establish its devolution. Thereupon a day for the hearing shall be fixed, and the clerk of the court, at least fifteen days before the day fixed for the hearing, shall despatch by registered

mail, postage prepaid and properly addressed, a notice stating the date of the hearing to each person who has filed in his office an appearance and request for notice.

Sec. 7. On the day fixed for the hearing of the matter, or on any day to which the matter may have been continued, the court shall proceed to receive and hear proofs concerning the heirs of the decedent, and the matter may be continued from time to time for further evidence, as justice may require; thereafter the court shall enter a decree determining who are the heirs of the decedent and establishing the devolution of his estate. If it shall appear that any of the heirs or any claimant of said estate is a minor and not represented by guardian, the court shall appoint a guardian ad litem to represent such minor.

Sec. 8. Said decree shall be conclusive and binding upon all heirs of the decedent and their grantees unless an appeal be taken as in other cases and the decree set aside; provided, however, that any claimant or his grantee by deed executed delivered and recorded prior to the entry of such decree, not named in the petition and not appearing in the matter, may move to re-open said decree at any time within one year after the entry thereof, but not thereafter.

Sec. 9. The words "heir" and "heirs" as used in this act shall be construed to include all persons entitled under the laws of descent and distribution of this state to share in the estate of said decedent.

Approved April 3, 1907.