

IN THE SENATE

SENATE BILL NO. 1302

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO ESTATES; AMENDING SECTION 15-2-203, IDAHO CODE, TO REMOVE REFER-
2 ENCE TO A FAMILY ALLOWANCE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING
3 SECTION 15-2-206, IDAHO CODE, TO REMOVE REFERENCE TO A FAMILY ALLOWANCE
4 AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 15-2-208, IDAHO
5 CODE, TO REMOVE REFERENCE TO A FAMILY ALLOWANCE; AMENDING SECTION
6 15-3-906, IDAHO CODE, TO REMOVE REFERENCE TO A FAMILY ALLOWANCE AND TO
7 MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 15-3-1004, IDAHO CODE,
8 TO REMOVE REFERENCE TO A FAMILY ALLOWANCE AND TO MAKE TECHNICAL CORREC-
9 TIONS; AND AMENDING SECTION 68-10-201, IDAHO CODE, TO REMOVE REFERENCE
10 TO A FAMILY ALLOWANCE.
11

12 Be It Enacted by the Legislature of the State of Idaho:

13 SECTION 1. That Section 15-2-203, Idaho Code, be, and the same is hereby
14 amended to read as follows:

15 15-2-203. ELECTIVE RIGHT TO QUASI-COMMUNITY PROPERTY AND AUGMENTED
16 ESTATE. (a) The right of the surviving spouse in the augmented quasi-com-
17 munity property estate shall be elective and shall be limited to one-half
18 (1/2) of the total augmented quasi-community property estate which will in-
19 clude, as a part of the property described in sections 15-2-201 and ~~section~~
20 15-2-202, ~~of this code~~ Idaho Code, property received from the decedent and
21 owned by the surviving spouse at the decedent's death, plus the value of such
22 property transferred by the surviving spouse at any time during marriage to
23 any person other than the decedent which would have been in the surviving
24 spouse's quasi-community property augmented estate if that spouse had pre-
25 deceased the decedent to the extent that the owner's transferred property is
26 derived from the decedent by any means other than testate or intestate suc-
27 cession without a full consideration in money or money's worth. This shall
28 not include any benefits derived from the federal social security system by
29 reason of service performed or disability incurred by the decedent and shall
30 include property transferred from the decedent to the surviving spouse by
31 virtue of joint ownership and through the exercise of a power of appointment
32 also exercisable in favor of others than the surviving spouse and appointed
33 to the surviving spouse.

34 (b) The elective share to the quasi-community estate thus computed
35 shall be reduced by an allocable portion of general administration expenses,
36 homestead allowance, ~~family allowance~~, exempt property and enforceable
37 claims.

38 (c) Property owned by the surviving spouse at the time of the decedent's
39 death and property transferred by the surviving spouse is presumed to have
40 been derived from the decedent except to the extent that the surviving spouse
41 establishes that it was derived from another source.

1 SECTION 2. That Section 15-2-206, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 15-2-206. EFFECT OF ELECTION ON BENEFITS BY WILL OR STATUTE. (a) The
4 surviving spouse's election of his elective share does not affect the share
5 of the surviving spouse under the provisions of the decedent's will or intes-
6 tate succession unless the surviving spouse also expressly renounces in the
7 petition for an elective share the benefit of all or any of the provisions.
8 If any provision is so renounced, the property or other benefit which would
9 otherwise have passed to the surviving spouse thereunder is treated, subject
10 to contribution under ~~subsection~~ 15-2-207(b), Idaho Code, as if the surviv-
11 ing spouse had predeceased the testator.

12 (b) A surviving spouse is entitled to homestead allowance, ~~and~~ exempt
13 ~~property and family allowance~~ whether or not he elects to take an elective
14 share and whether or not he renounces the benefits conferred upon him by
15 the will except that, if it clearly appears from the will that a provision
16 therein made for the surviving spouse was intended to be in lieu of these
17 rights, he is not so entitled if he does not renounce the provision so made
18 for him in the will.

19 SECTION 3. That Section 15-2-208, Idaho Code, be, and the same is hereby
20 amended to read as follows:

21 15-2-208. WAIVER. The right of election of a surviving spouse and the
22 rights of the surviving spouse to homestead allowance, ~~and~~ exempt property
23 ~~and family allowance~~, or any either of them, may be waived, wholly or par-
24 tially, before or after marriage, by a written contract, agreement or waiver
25 signed by the party waiving after fair disclosure. Unless it provides to
26 the contrary, a waiver of "all rights" (or equivalent language) in the prop-
27 erty or estate of a present or prospective spouse or a complete property set-
28 tlement entered into after or in anticipation of separation or divorce is
29 a waiver of all rights to elective share, homestead allowance, ~~and~~ exempt
30 ~~property and family allowance~~ by each spouse in the property of the other and
31 a renunciation by each of all benefits which would otherwise pass to him from
32 the other by intestate succession or by virtue of the provisions of any will
33 executed before the waiver or property settlement.

34 SECTION 4. That Section 15-3-906, Idaho Code, be, and the same is hereby
35 amended to read as follows:

36 15-3-906. DISTRIBUTION IN KIND -- VALUATION -- METHOD. (a) Unless a
37 contrary intention is indicated by the will, the distributable assets of
38 a decedent's estate shall be distributed in kind to the extent possible
39 through application of the following provisions:

40 (1) A specific devisee is entitled to distribution of the thing devised
41 to him, and a spouse or child who has selected particular assets of an
42 estate as provided in section 15-2-403 ~~of this code~~, Idaho Code, shall
43 receive the items selected.

44 (2) Any homestead ~~or family allowance~~ or devise payable in money may be
45 satisfied by value in kind provided:

1 (A) ~~The~~ person entitled to the payment has not demanded payment
2 in cash;

3 (B) ~~The~~ property distributed in kind is valued at fair market
4 value as of the date of its distribution; and

5 (C) ~~No~~ residuary devisee has requested that the asset in question
6 remain a part of the residue of the estate.

7 (3) For the purpose of valuation under paragraph (2), l securities reg-
8 ularly traded on recognized exchanges, if distributed in kind, are
9 valued at the price for the last sale of like securities traded on the
10 business day prior to distribution, or if there was no sale on that day,
11 at the median between amounts bid and offered at the close of that day.
12 Assets consisting of sums owed the decedent or the estate by solvent
13 debtors as to which there is no known dispute or defense are valued at
14 the sum due with accrued interest or discounted to the date of distribu-
15 tion. For assets ~~which~~ that do not have readily ascertainable values,
16 a valuation as of a date not more than thirty (30) days prior to the date
17 of distribution, if otherwise reasonable, controls. For purposes of
18 facilitating distribution, the personal representative may ascertain
19 the value of the assets as of the time of the proposed distribution in
20 any reasonable way, including the employment of qualified appraisers,
21 even if the assets may have been previously appraised.

22 (4) The residuary estate shall be distributed in kind if there is no ob-
23 jection to the proposed distribution and it is practicable to distrib-
24 ute undivided interests. In other cases, residuary property may be con-
25 verted into cash for distribution.

26 (b) After the probable charges against the estate are known, the per-
27 sonal representative may mail or deliver a proposal for distribution to all
28 persons who have a right to object to the proposed distribution. The right
29 of any distributee to object to the proposed distribution on the basis of the
30 kind or value of asset he is to receive, if not waived earlier in writing,
31 terminates if he fails to object in writing received by the personal repre-
32 sentative within thirty (30) days after mailing or delivery of the proposal.

33 SECTION 5. That Section 15-3-1004, Idaho Code, be, and the same is
34 hereby amended to read as follows:

35 15-3-1004. LIABILITY OF DISTRIBUTEES TO CLAIMANTS. After assets of an
36 estate have been distributed and subject to section 15-3-1006 ~~of this Part,~~
37 Idaho Code, an undischarged claim not barred may be prosecuted in a proceed-
38 ing against one (1) or more distributees. No distributee shall be liable to
39 claimants for amounts received as exempt property, ~~or homestead or family~~
40 ~~allowances~~, or for amounts in excess of the value of his distribution as of
41 the time of distribution. As between distributees, each shall bear the cost
42 of satisfaction of unbarred claims as if the claim had been satisfied in the
43 course of administration. Any distributee who shall have failed to notify
44 other distributees of the demand made upon him by the claimant in sufficient
45 time to permit them to join in any proceeding in which the claim was asserted
46 against him loses his right of contribution against other distributees.

47 SECTION 6. That Section 68-10-201, Idaho Code, be, and the same is
48 hereby amended to read as follows:

1 68-10-201. DETERMINATION AND DISTRIBUTION OF NET INCOME. After a
2 decedent dies, in the case of an estate, or after an income interest in a
3 trust ends, the following rules apply:

4 (1) A fiduciary of an estate or of a terminating income interest shall
5 determine the amount of net income and net principal receipts received from
6 property specifically given to a beneficiary under the rules in parts 3
7 through 5 of this chapter which apply to trustees and the rules in subsection
8 (5) of this section. The fiduciary shall distribute the net income and net
9 principal receipts to the beneficiary who is to receive the specific prop-
10 erty.

11 (2) A fiduciary shall determine the remaining net income of a dece-
12 dent's estate or a terminating income interest under the rules in parts 3
13 through 5 of this chapter which apply to trustees and by:

14 (A) Including in net income all income from property used to discharge
15 liabilities;

16 (B) Paying from income or principal, in the fiduciary's discretion,
17 fees of attorneys, accountants and fiduciaries; court costs and other
18 expenses of administration; and interest on death taxes, but the fidu-
19 ciary may pay those expenses from income of property passing to a trust
20 for which the fiduciary claims an estate tax marital or charitable
21 deduction only to the extent that the payment of those expenses from
22 income will not cause the reduction or loss of the deduction; and

23 (C) Paying from principal all other disbursements made or incurred in
24 connection with the settlement of a decedent's estate or the winding up
25 of a terminating income interest, including debts, funeral expenses,
26 disposition of remains, ~~family allowances,~~ and death taxes and related
27 penalties that are apportioned to the estate or terminating income in-
28 terest by the will, the terms of the trust, or applicable law.

29 (3) A fiduciary shall distribute to a beneficiary who receives a pecu-
30 niary amount outright the interest or any other amount provided by the will,
31 the terms of the trust, or applicable law from net income determined under
32 subsection (2) of this section or from principal to the extent that net in-
33 come is insufficient. If a beneficiary is to receive a pecuniary amount out-
34 right from a trust after an income interest ends and no interest or other
35 amount is provided for by the terms of the trust or applicable law, the fidu-
36 ciary shall distribute the interest or other amount to which the beneficiary
37 would be entitled under applicable law if the pecuniary amount were required
38 to be paid under a will.

39 (4) A fiduciary shall distribute the net income remaining after distri-
40 butions required by subsection (3) of this section in the manner described
41 in section 68-10-202, Idaho Code, to all other beneficiaries, including a
42 beneficiary who receives a pecuniary amount in trust, even if the benefi-
43 ciary holds an unqualified power to withdraw assets from the trust or other
44 presently exercisable general power of appointment over the trust.

45 (5) A fiduciary may not reduce principal or income receipts from prop-
46 erty described in subsection (1) of this section because of a payment de-
47 scribed in section 68-10-501 or 68-10-502, Idaho Code, to the extent that
48 the will, the terms of the trust, or applicable law requires the fiduciary
49 to make the payment from assets other than the property or to the extent that
50 the fiduciary recovers or expects to recover the payment from a third party.

1 The net income and principal receipts from the property are determined by in-
2 cluding all of the amounts the fiduciary receives or pays with respect to the
3 property, whether those amounts accrued or became due before, on, or after
4 the date of a decedent's death or an income interest's terminating event, and
5 by making a reasonable provision for amounts that the fiduciary believes the
6 estate or terminating income interest may become obligated to pay after the
7 property is distributed.