

# State of Alabama



## Alabama Law Institute

### Amendments to Alabama Probate Code

March 2015

**ALABAMA LAW INSTITUTE**

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## **PREFACE**

The Alabama Law Institute presents to the Bench and Bar of Alabama, for consideration and constructive criticism, the following proposed act.

Under current law, a person who is divorced from a decedent is not a surviving spouse for purposes of inheritance through a will, however the law is silent as to the passage of assets through other devices or payable on death instruments.

This bill would expand this concept to cover “will substitutes” such as revocable inter-vivos trusts, life-insurance and retirement-plan beneficiary designations, transfer-on-death accounts, and other revocable dispositions to the former spouse that the divorced individual established before the divorce or annulment.

The bill would also affect a severance of the interests of the former spouses in property that they held at the time of the divorce or annulment as joint tenants with the right of survivorship by causing their co-ownership interests become tenancies in common.

Leonard Wertheimer, III served as chair for this project which originated from the Standing Trust Committee.

Othni J. Lathram  
Director

March 2015



**~~SECTION 2-804. REVOCATION OF PROBATE AND  
NONPROBATE TRANSFERS BY DIVORCE; NO  
REVOCATION BY OTHER CHANGES OF  
CIRCUMSTANCES OR ANNULMENT.~~**

(a) ~~{Definitions.}~~ In this section:

(1) “Disposition or appointment of property” includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

(2) “Divorce or annulment” means any divorce or annulment, or any dissolution or declaration of invalidity of a marriage, that would exclude the spouse as a surviving spouse within the meaning Code of Alabama (1975) of Section ~~2-802~~ 43-8-252. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section.

(3) “Divorced individual” means an individual whose marriage has been terminated by divorce or annulment.  
~~includes an individual whose marriage has been annulled.~~

(4) “Governing instrument” ~~means an~~ governing instrument executed by the divorced individual before the divorce or annulment of his {or her} marriage to his {or her} former spouse.

(5) “Relative of the divorced individual’s former

spouse” means an individual who is related to the divorced individual’s former spouse by blood, adoption, or affinity and who, after the divorce or annulment, is not related to the divorced individual by blood, adoption, or affinity.

(6) “Revocable,” with respect to a disposition, appointment, provision, or nomination, means one under which the divorced individual, at the time of the divorce or annulment, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of his {or her} former spouse or former spouse’s relative, whether or not the divorced individual was then empowered to designate himself {or herself} in place of his {or her} former spouse or in place of his {or her} former spouse’s relative and whether or not the divorced individual then had the capacity to exercise the power.

(b) {Revocation Upon Divorce.} Except as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage:

(1) revokes any revocable

(A) disposition or appointment of property

made by a divorced individual to his [for her] former spouse in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse,

(B) provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced individual's former spouse or on a relative of the divorced individual's former spouse, and

(C) nomination in a governing instrument, nominating a divorced individual's former spouse or a relative of the divorced individual's former spouse to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, conservator, agent, or guardian; and

(2) severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship ~~[or as community property with the right of survivorship]~~, transforming the interests of the former spouses into equal tenancies in common.

(c) [Effect of Severance.] A severance under subsection (b)(2) does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by

survivorship in the survivor of the former spouses unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property which are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

(d) ~~{Effect of Revocation.}~~ Provisions of a governing instrument are given effect as if the former spouse and relatives of the former spouse disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment.

(e) ~~{Revival if Divorce Nullified.}~~ Provisions revoked solely by this section are revived by the divorced individual's remarriage to the former spouse or by a nullification of the divorce or annulment.

~~(f) [No Revocation for Other Change of Circumstances.]  
No change of circumstances other than as described in this section and in Section 2-803 effects a revocation.~~

~~(g)~~(f) ~~{Protection of Payors and Other Third Parties.}~~

~~(1)~~ A payor or other third party is not liable for having made a payment or transferred an item of property or any

other benefit to a beneficiary designated in a governing instrument affected by a divorce, annulment, or remarriage, or for having taken any other action in good faith reliance on the validity of the governing instrument, before the payor or other third party received written notice of the divorce, annulment, or remarriage. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed forfeiture or revocation under this section.

~~(2) Written notice of the divorce, annulment, or remarriage under subsection (g)(1) must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of the divorce, annulment, or remarriage, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of~~

~~property and, upon its determination under this section, shall order disbursement or transfer in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.~~

~~(h)(g)~~ {Protection of Bona Fide Purchasers; Personal Liability of Recipient.}

(1) A person who purchases property from a former spouse, relative of a former spouse, or any other person for value and without notice, or who receives from a former spouse, relative of a former spouse, or any other person a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor is liable under this section for the amount of the payment or the value of the item of property or benefit. But a

(2) A former spouse, relative of a former spouse, or other person who, ~~not for value, received a~~ receives a payment, an item of property, or any other benefit to which that person is not entitled under this section is obligated to return the payment, item

of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

~~(2)~~(3) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a former spouse, relative of the former spouse, or any other person who, ~~not for value, received~~ receives a payment, an item of property, or any other benefit to which that person is not entitled under this section is obligated to return that payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

### **Comment**

This section was derived from Section 2-804 of the Uniform Probate Code as amended. The adaption of this section intends to unify the law of probate and nonprobate transfers. Section 43-8-252 already states that a person who is divorced from a decedent is not a surviving spouse. This statute expands the section to cover “will substitutes” such as revocable inter-vivos trusts, life-insurance and retirement-plan beneficiary designations, transfer-on-death accounts, and other revocable dispositions to the former spouse that the divorced individual established before the divorce (or annulment). As drafted, this section also effects a severance of the interests of the former spouses in property that they held at the time of the divorce (or annulment) as joint tenants with the right of survivorship; their co-ownership interests become

tenancies in common.