

## **Kansas Probate Code—Inheritance Rights; Automatic Revocation; Divorce; HB 2038**

**HB 2038** creates law within the Kansas Probate Code providing for the automatic revocation of certain inheritance rights of a former spouse or former spouse's relatives upon divorce, as follows.

### ***Automatic Revocation and Severance***

The bill provides, on and after July 1, 2019, the divorce or annulment of a marriage revokes any revocable:

- Disposition or appointment of property made to an individual's former spouse or relative of such spouse in a governing instrument;
- Provision in a governing instrument conferring a general or nongeneral power of appointment on a former spouse or relative of such spouse; and
- Nomination in a governing instrument of a former spouse or relative of such spouse to serve in any fiduciary or representative capacity.

A divorce or annulment also 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 and transforms these interests into equal tenancies in common. Such severance will 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 written declaration of the severance has been noted, registered, filed, or recorded in a manner further specified by the bill.

Provisions of a governing instrument will be given effect as if the former spouse and relatives of such spouse disclaimed all automatically revoked provisions, or, for a revoked nomination in a fiduciary or representative capacity, as if the former spouse and such spouse's relatives died immediately before the divorce or annulment.

An exception to the automatic revocation or severance will apply if 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.

No change of circumstances other than those described in the bill and in a similar continuing section of the Probate Code applicable to wills will effect a revocation.

### ***Liability of Payors or Third Parties***

The bill states a payor or other third party is not liable for making a payment, transferring an item of property or any other benefit to a beneficiary designated by a document affected by

the operation of the provisions of the bill, or taking any other action in good faith reliance on the validity of the governing instrument before receiving written notice of the claimed forfeiture or revocation. A payor or third party is liable for such payments or actions taken after receiving such notice. The bill provides specific requirements for the written notice required, including manner of service. Upon receiving such notice, the payor or third party may pay any amount owed or transfer or deposit any item of property held by the payor or third party to or with the court having jurisdiction of the relevant probate proceedings or, if no proceedings have commenced, with the court having jurisdiction of probate proceedings located in the county of the decedent's residence. This would discharge the payor or third party from all claims related to the amounts paid or property transferred to the court. The court would then hold the funds or property and order disbursement or transfer in accordance with its determination.

### ***Obligations of Those Purchasing or Receiving Payment or Items of Property; Effect of Federal Preemption***

The bill states its provisions do not obligate a purchaser for value without notice, or a receiver of a payment or property in partial or full satisfaction of a legally enforceable obligation, to return the payment, property, or benefit, and the purchaser or receiver is not liable for the amount of payment or value of the property or benefit.

A former spouse, former spouse's relative, or other person who, not for value, receives a payment, property, or other benefit to which the person is not entitled under the provisions of the bill is obligated to return the same, or is personally liable for the payment or value of the property or benefit, to the person entitled to it. A similar provision applies where federal law preempts the bill's provisions.

The bill states that, if its provisions are preempted by federal law with regard to any property item, the provisions of the bill will not apply to such preempted item, but will apply in all other circumstances.

### ***Definitions***

The bill defines "disposition or appointment of property," "divorce or annulment," "divorced individual," "governing instrument," "relative of the divorced individual's former spouse," and "revocable," and provides exclusions to the term "surviving spouse."