

Article 16.

Surplus Income and Advancements.

§ 35A-1320: Repealed by Session Laws 1989, c. 473, s. 14.

§ 35A-1321. Advancement of surplus income to certain relatives.

When any incompetent person, of full age, and not having made a valid will, has children or grandchildren (such grandchildren being the issue of a deceased child), and is possessed of an estate, real or personal, whose annual income is more than sufficient abundantly and amply to support himself, and to support, maintain and educate the members of his family, with all the necessaries and suitable comforts of life, it is lawful for the clerk of the superior court for the county in which such person has his residence to order from time to time, and so often as may be judged expedient, that fit and proper advancements be made, out of the surplus of such income, to any such child, or grandchild, not being a member of his family and entitled to be supported, educated and maintained out of the estate of such person. Whenever any incompetent person of full age, not being married and not having issue, be possessed, or his guardian be possessed for him, of any estate, real or personal, or of an income which is more than sufficient amply to provide for such person, it shall be lawful for the clerk of the superior court for the county in which such person resided prior to incompetency to order from time to time, and so often as he may deem expedient, that fit and proper advancements be made, out of the surplus of such estate or income, to his or her parents, brothers and sisters, or grandparents to whose support, prior to his incompetency, he contributed in whole or in part. (R.C., c. 57, s. 9; Code, s. 1677; Rev., s. 1900; C.S., s. 2296; Ex. Sess. 1924, c. 93; 1971, c. 528, s. 32; 1977, c. 725, s. 5; 1987, c. 550, s. 3.)

§ 35A-1322. Advancement to adult child or grandchild.

When such incompetent person is possessed of a real or personal estate in excess of an amount more than sufficient to abundantly and amply support himself with all the necessaries and suitable comforts of life and has no minor children nor immediate family dependent upon him for support, education or maintenance, such advancements may be made out of such excess of the principal of his estate to such child or grandchild of age for the better promotion or advancement in life or in business of such child or grandchild: Provided, that the order for such advancement shall be approved by the resident or presiding judge of the district who shall find the facts in said order of approval. (1925, c. 136, s. 1; 1977, c. 725, s. 5; 1987, c. 550, s. 3.)

§ 35A-1323. For what purpose and to whom advanced.

Such advancements shall be ordered only for the better promotion in life of such as are of age, or married, and for the maintenance, support and education of such as are under the age of 21 years and unmarried; and in all cases the sums ordered shall be paid to such persons as, in the opinion of the clerk, will most effectually execute the purpose of the advancement. (R.C., c. 57, s. 10; Code, s. 1678; Rev., s. 1901; C.S., s. 2297; 1987, c. 550, s. 3.)

§ 35A-1324. Distributees to be parties to proceeding for advancements.

In every application for such advancements, the guardian of the incompetent person and all such other persons shall be parties as would at that time be entitled to a distributive share of his

estate if he were then dead. (R.C., c. 57, s. 11; Code, s. 1679; Rev., s. 1902; C.S., s. 2298; 1977, c. 725, s. 5; 1987, c. 550, s. 3.)

§ 35A-1325. Advancements to be equal; accounted for on death.

The clerk, in ordering such advancements, shall, as far as practicable, so order the same as that, on the death of the incompetent person, his estate shall be distributed among his distributees in the same equal manner as if the advancements had been made by the person himself; and on his death every sum advanced to a child or grandchild shall be an advancement, and shall bear interest from the time it may be received. (R.C., c. 57, s. 12; Code, s. 1680; Rev., s. 1903; C.S., s. 2299; 1977, c. 725, s. 5; 1987, c. 550, s. 3.)

§ 35A-1326. Advancements to those most in need.

When the surplus aforesaid or advancement from the principal estate is not sufficient to make distribution among all the parties, the clerk may select and decree advancement to such of them as may most need the same, and may apportion the sum decreed in such amounts as are expedient and proper. (R.C., c. 57, s. 13; Code, s. 1681; Rev., s. 1904; C.S., s. 2300; 1925, c. 136, s. 2; 1987, c. 550, s. 3.)

§ 35A-1327. Advancements to be secured against waste.

It is the duty of the clerk to withhold advancements from such persons as will probably waste them, or so to secure the same, when they may have families, that it may be applied to their support and comfort; but any sum so advanced shall be regarded as an advancement to such persons. (R.C., c. 57, s. 14; Code, s. 1682; Rev., s. 1905; C.S., s. 2301; 1987, c. 550, s. 3.)

§ 35A-1328. Appeal; removal to superior court.

Any person made a party may appeal from any order of the clerk; or may, when the pleadings are finished, require that all further proceedings shall be had in the superior court. (R.C., c. 57, s. 15; Code, s. 1683; Rev., s. 1906; C.S., s. 2302; 1987, c. 550, s. 3.)

§ 35A-1329. Advancements only when incompetence permanent.

No such application shall be allowed under this Article but in cases of such permanent and continued incompetence as that the incompetent person shall be judged by the clerk to be incapable, notwithstanding any lucid intervals, to make advancements with prudence and discretion. (R.C., c. 57, s. 16; Code, s. 1684; Rev., s. 1907; C.S., s. 2303; 1987, c. 550, ss. 3, 3.1.)

§ 35A-1330. Orders suspended upon restoration of competence.

Upon such incompetent person's being restored to competence, every order made for advancements shall cease to be further executed, and his estate shall be discharged of the same. (R.C., c. 57, s. 17; Code, s. 1685; Rev., s. 1908; C.S., s. 2304; 1987, c. 550, ss. 3, 3.2.)

§§ 35A-1331 through 35A-1334: Reserved for future codification purposes.