

59-2224. Hearings for probate and for determination of validity of spouse's consent; procedure.

The hearing of a petition for the probate of a will and the hearing of a petition for the determination that the consent of the spouse to the will is a valid and binding consent shall be separate issues which, in the discretion of the court, may be determined in a consolidated hearing or in separate hearings. On the hearing of a petition for the probate of a will or for the determination that the consent of a spouse to a will is a valid and binding consent, unless it is an uncontested, self-proved will or consent, the testimony of at least two of the subscribing witnesses shall be taken in person, by affidavit or by deposition. The court may waive the requirement of such testimony of such subscribing witnesses upon a proper showing that such witnesses are unavailable or cannot be located. Otherwise, the court may admit the testimony of other witnesses to prove the capacity of the testator or the spouse and the due execution of the will or consent and, as evidence of such execution, may admit proof of the handwriting of the testator or the spouse and of the subscribing witnesses. Any heir, devisee, or legatee may prosecute or oppose the probate of any will or the determination that the consent of the spouse to the will is a valid and binding consent. If the instrument alleged to be the will is not allowed as the last will and if the estate should be administered, the court shall grant administration to the person or persons entitled thereto.

History: L. 1939, ch. 180, § 200; L. 1963, ch. 299, § 1; L. 1975, ch. 299, § 17; L. 1977, ch. 197, § 2; L. 1981, ch. 228, § 4; L. 1996, ch. 106, § 1; July 1.