

A Bill for an Act Relating to the Uniform Probate Code.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawaii Revised Statutes is amended by adding the Uniform Probate Code to be codified and to read as follows:

**“UNIFORM PROBATE CODE  
ARTICLE 1  
GENERAL PROVISIONS, DEFINITIONS  
AND PROBATE JURISDICTION  
OF COURT**

**PART 1. SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS**

**Sec. 1-101 Short title.** This chapter shall be known and may be cited as the Uniform Probate Code.

**Sec. 1-102 Purposes; rule of construction.** (a) This chapter shall be liberally construed and applied to promote its underlying purposes and policies.

(b) The underlying purposes and policies of this chapter are:

- (1) To simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors and incapacitated persons;
- (2) To discover and make effective the intent of a decedent in distribution of his property;
- (3) To promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to his successors;
- (4) To facilitate use and enforcement of certain trusts;
- (5) To make uniform the law among the various jurisdictions.

**Sec. 1-103 Supplementary general principles of law applicable.** Unless displaced by the particular provisions of this chapter, the principles of the common law of the State of Hawaii supplement its provisions.

**Sec. 1-104 Severability.** If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect

without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

**Sec. 1-105 Construction against implied repeal.** This chapter is a general act intended as a unified coverage of its subject matter and no part of it shall be deemed impliedly repealed by subsequent legislation if it can reasonably be avoided.

**Sec. 1-106 Effect of fraud and evasion.** Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this chapter or if fraud is used to avoid or circumvent the provisions or purposes of this chapter, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud or restitution from any person (other than a bona fide purchaser) benefitting from the fraud, whether innocent or not. Any proceeding must be commenced within six years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than five years after the time of commission of the fraud. This section has no bearing on remedies relating to fraud practiced on a decedent during his lifetime which affects the succession of his estate.

**Sec. 1-107 Evidence as to death or status.** In proceedings under this chapter the rules of evidence in courts of general jurisdiction including any relating to simultaneous deaths, are applicable unless specifically displaced by the chapter. In addition, the following rules relating to determination of death and status are applicable:

- (1) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie proof of the fact, place, date and time of death and the identity of the decedent;
- (2) A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that a person is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances and places disclosed by the record or report;
- (3) A person who is absent for a continuous period of five years, during which he has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead. His death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

**Sec. 1-108 Acts by holder of general power.** For the purpose of granting consent or approval with regard to the acts or accounts of a personal representative or trustee, including relief from liability or penalty for failure to post bond, to register a trust, or to perform other duties, and for purposes of consenting to modification or termination of a trust or to deviation from its terms, the sole holder or all co-holders of a presently exercisable general power of appointment, including one in the form of a power of amendment or revocation, are deemed to act for beneficiaries to the extent their interests (as objects, takers in default, or otherwise) are subject to the power. The settlor of a revocable inter vivos trust may direct the trustee in writing not to register the trust, reveal the terms to

beneficiaries, or account to beneficiaries, and the trustee shall abide by such direction; provided, however, any such direction shall only be effective, and shall only relieve the trustee from the duty to register and to keep beneficiaries informed, during the life of the settlor.

## PART 2. DEFINITIONS

**Sec. 1-201 General definitions.** Subject to additional definitions contained in the subsequent Articles which are applicable to specific Articles or parts, and unless the context otherwise requires, in this chapter:

- (1) "Application" means a written request to the registrar for an order of informal probate or appointment under Part 3 of Article III.
- (2) "Beneficiary", as it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer and as it relates to a charitable trust, includes any person entitled to enforce the trust.
- (3) "Child" includes any individual entitled to take as a child under this chapter by intestate succession from the parent whose relationship is involved and excludes any person who is only a stepchild, a foster child, a grandchild or any more remote descendant.
- (4) "Claims", in respect to estates of decedents and protected persons, include liabilities of the decedent or protected person whether arising in contract, in tort or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a guardian of the property, including funeral expenses and expenses of administration. Except as indicated in section 3-805, the term does not include estate or inheritance taxes, or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.
- (5) "Court" means the circuit court having jurisdiction in matters relating to trusts and the estates of decedents, missing persons, protected persons, minors and incapacitated persons.
- (6) "Conservator" means a guardian of the property.
- (7) "Devise", when used as a noun, means a testamentary disposition of real or personal property and when used as a verb, means to dispose of real or personal property by will.
- (8) "Devisee" means any person designated in a will to receive a devise. In the case of a devise to an existing trust or trustee, or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.
- (9) "Disability" means cause for a protective order as described by section 5-401.
- (10) "Distributee" means any person who has received property of a decedent from his personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his hands. A beneficiary of a testamentary trust to whom the trustee has distributed

property received from a personal representative is a distributee of the personal representative. For the purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

- (11) "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to this chapter as originally constituted and as it exists from time to time during administration.
- (12) "Exempt property" means that property of a decedent's estate which is described in section 2-402.
- (13) "Fiduciary" includes personal representative, guardian, guardian of the property and trustee.
- (14) "Foreign personal representative" means a personal representative of another jurisdiction.
- (15) "Formal proceedings" mean those conducted before a judge with notice to interested persons.
- (16) "General personal representative" means a personal representative excluding special administrator.
- (17) "Guardian ad litem" means a person who is appointed by the court to represent the interests of another person in a proceeding.
- (18) "Guardian of the person" means a person who has been appointed pursuant to sections 5-204 and 5-304.
- (19) "Guardian of the property" means a person who has been appointed pursuant to section 5-401.
- (20) "Guardianship proceeding" is as defined in section 5-101.
- (21) "Heirs" means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.
- (22) "Incapacitated person" is as defined in section 5-101.
- (23) "Informal proceedings" mean those probate proceedings conducted pursuant to Part 3 of Article III.
- (24) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries and any others having a property right in or claim against a trust estate or the estate of a decedent, ward or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative, or guardian, and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.
- (25) "Issue" of a person means all his lineal descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in this chapter.
- (26) "Lease" includes an oil, gas, or other mineral lease.
- (27) "Letters" include letters testamentary, letters of guardianship, and letters of administration.
- (28) "Minor" means a person who is under eighteen years of age.
- (29) "Mortgage" means any conveyance, agreement or arrangement in

- which property is used as security.
- (30) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of his death.
  - (31) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal entity.
  - (32) "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this chapter by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.
  - (33) "Person" means an individual, a corporation, an organization, or other legal entity.
  - (34) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.
  - (35) "Petition" means a written request to the court for an order after notice.
  - (36) "Probate proceeding" means a proceeding designed to effect the settlement of the estate of a decedent by collecting his assets, paying his debts and distributing his remaining property.
  - (37) "Proceeding" includes all civil actions.
  - (38) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.
  - (39) "Protected person" is as defined in section 5-101.
  - (40) "Protective proceeding" is as defined in section 5-101.
  - (41) "Registrar" refers to the judge of the court designated by the judicial circuit to perform the functions of registrar as provided in section 1-307 or his appointee under section 1-307.
  - (42) "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.
  - (43) "Settlement", in reference to a decedent's estate, includes the full process of administration, distribution and closing.
  - (44) "Special administrator" means a personal representative as described in sections 3-614 through 3-618.
  - (45) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.
  - (46) "Successor personal representative" means a personal representative,

other than a special administrator, who is appointed to succeed a previously appointed personal representative.

- (47) "Successors" mean those persons, other than creditors, who are entitled to property of a decedent under his will or this chapter.
- (48) "Supervised administration" refers to the probate proceedings described in Article III, Part 5.
- (49) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.
- (50) "Trust" includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts, and it excludes resulting trusts, guardianships, personal representatives, trust accounts as defined in Article VI, custodial arrangements pursuant to chapter 553, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.
- (51) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.
- (52) "Ward" is as defined in section 5-101.
- (53) "Will" includes codicil and any testamentary instrument which merely appoints an executor or revokes or revises another will.

### PART 3. SCOPE, JURISDICTION AND COURTS

**Sec. 1-301 Territorial application.** Except as otherwise provided in this chapter, this chapter applies to (1) the affairs and estates of decedents, missing persons, and persons to be protected, domiciled in this State; (2) the property of nonresidents located in this State or property coming into the control of a fiduciary who is subject to the laws of this State; (3) incapacitated persons and minors in this State; (4) survivorship and related accounts in this State; and (5) trusts subject to administration in this State.

#### **Sec. 1-302 (Reserved)**

**Sec. 1-303 Venue; multiple proceedings; transfer.** (a) A proceeding under this chapter may be maintained in any circuit of this State.

(b) If proceedings concerning the same estate, protected person, ward, or trust are commenced in more than one court of this State, the court in which the proceeding was first commenced shall continue to hear the matter, and the other courts shall hold the matter in abeyance until the question of venue is decided, and if the ruling court determines that venue is properly in another court, it shall transfer the proceeding to the other court.

(c) If a court finds that in the interest of justice a proceeding or a file should be located in another court of this State, the court making the finding may transfer the proceeding or file to the other court.

**Sec. 1-304 (Reserved)**

**Sec. 1-305 Records and certified copies.** The clerk of court shall keep a record for each decedent, ward, protected person or trust involved in any document which may be filed with the court under this chapter, including petitions and applications, demands for notices or bonds, trust registrations, and of any orders or responses relating thereto by the registrar or court, and establish and maintain a system for indexing, filing or recording which is sufficient to enable users of the records to obtain adequate information. Upon payment of the fees required by law the clerk must issue certified copies of any probated wills, letters issued to personal representatives, or any other record of paper filed or recorded. Certificates relating to probated wills must indicate whether the decedent was domiciled in this State and whether the probate was supervised or informal. Certificates relating to letters must show the date of appointment.

**Sec. 1-306 Jury trial.** (a) If duly demanded, a party is entitled to trial by jury in a formal testacy proceeding and any proceeding in which any controverted question of fact arises as to which any party has a constitutional right to trial by jury.

(b) If there is no right to trial by jury under subsection (a) or the right is waived, the court in its discretion may call a jury to decide any issue of fact, in which case the verdict is advisory only.

**Sec. 1-307 Registrar; powers.** The acts and orders which this chapter specifies as performable by the registrar may be performed either by a judge of the court or by a person, including the clerk, designated by the court by a written order filed and recorded in the office of the court.

**Sec. 1-308 (Reserved)**

**Sec. 1-309 (Reserved)**

**Sec. 1-310 Oath or affirmation on filed documents.** Except as otherwise specifically provided in this chapter or by rule, every document filed with the court under this chapter including applications, petitions, and demands for notice, shall be deemed to include an oath, affirmation, or statement to the effect that its representations are true as far as the person executing or filing it knows or is informed, and penalties for perjury may follow deliberate falsification therein.

**PART 4. NOTICE, PARTIES AND REPRESENTATION**

**Sec. 1-401 Notice; method and time of giving.** (a) If notice is required and except for specific notice requirements as otherwise provided, the applicant or petitioner shall cause notice to be given to any interested person or his attorney if he has appeared by attorney or requested that notice be sent to his attorney. Notice shall be given:

- (1) By mailing a copy thereof at least fourteen days before the time set for the hearing by certified or registered mail, return receipt requested, deliverable to the addressee only, addressed to the person being notified at the post office address given in his demand for notice, if any, or at his office or place of residence, if known; or
- (2) By serving or delivering a copy thereof to the person being notified

personally at least fourteen days before the time set for the hearing; or

- (3) If the address, or identity of any person is not known and cannot be ascertained with reasonable diligence, by publishing at least once a week for three consecutive weeks, a copy thereof in a newspaper having general circulation in the judicial circuit where the hearing is to be held or the probate proceedings are being maintained, the last publication of which is to be at least ten days before the time set for either the hearing or the registrar's granting of informal proceedings.

(b) The court for good cause shown may provide for a different method or time of giving notice.

(c) Proof of the giving of notice shall be made on or before the hearing and filed in the proceeding.

**Sec. 1-402 Notice; waiver.** A person, including a guardian ad litem, guardian of the property, or other fiduciary, may waive notice by a writing signed by him or his attorney and filed in the proceeding.

**Sec. 1-403 Pleadings; when parties bound by others; notice.** In formal proceedings involving trusts or estates of decedents, minors, protected persons, or incapacitated persons, and in judicially supervised settlements, the following apply:

- (1) Interests to be affected shall be described in pleadings which give reasonable information to owners by name or class, by reference to the instrument creating the interests, or in other appropriate manner.
- (2) Persons are bound by order binding others in the following cases:
  - (i) Orders binding the sole holder or all co-holders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, bind other persons to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.
  - (ii) To the extent there is no conflict of interest between them or among persons represented, orders binding a guardian of the property bind the person whose estate he controls; orders binding a guardian of the person bind the ward if no guardian of the property of his estate has been appointed; orders binding a trustee bind beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust, to review the acts or accounts of a prior fiduciary and in proceedings involving creditors or other third parties; and orders binding a personal representative bind persons interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate. If there is no conflict of interest and no guardian of the property or guardian of the person has been appointed, a parent may represent his minor child.
  - (iii) An unborn or unascertained person who is not otherwise represented is bound by an order to the extent his interest is adequately represented by another party having a substantially identical interest in the proceeding.



- (3) Notice is required as follows:
- (i) Notice is prescribed by section 1-401 shall be given to every interested person or to one who can bind an interested person as described in (2) (i) or (2) (ii) above. Notice may be given both to a person and to another who may bind him.
  - (ii) Notice is given to unborn or unascertained persons, who are not represented under (2) (i) or (2) (ii) above, by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.
- (4) At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding.

## ARTICLE II INTESTATE SUCCESSION AND WILLS

### PART 1. INTESTATE SUCCESSION

**Sec. 2-101 Intestate estate.** Any part of the estate of a decedent not effectively disposed of by his will passes to his heirs as prescribed in the following sections of this chapter.

**Sec. 2-102 Share of the spouse.** The intestate share of the surviving spouse is:

- (1) If there is no surviving issue or parent of the decedent or children of parents of the decedent, the entire intestate estate;
- (2) If there is surviving issue or parent of the decedent or children of parents of the decedent, one-half of the intestate estate.

**Sec. 2-103 Share of heirs other than surviving spouse.** The part of the intestate estate not passing to the surviving spouse under section 2-102, or the entire intestate estate if there is no surviving spouse, passes as follows:

- (1) To the issue of the decedent; if they are all of the same degree of kinship to the decedent they take equally, but if of unequal degree, then those of more remote degree take by representation;
- (2) If there is no surviving issue, to his parent or parents equally;
- (3) If there is no surviving issue or parent to the issue of the parents or either of them; if they are all of the same degree of kinship to the decedent they take equally, but if of unequal degree, then those of more remote degree take by representation;
- (4) If there is no surviving issue, parent or issue of a parent, but the decedent is survived by one or more grandparents or issue of grandparents, the estate passes either in equal shares to the grandparents, or to the

surviving grandparent, or in equal shares to the issue of equal degree of the grandparents if all grandparents are deceased, but no person shall be entitled by right of representation to the shares of the issue of the grandparents who have died; provided, that to the extent to which the estate comes from either set of grandparents of the decedent, those grandparents or their issue shall take to the exclusion of the other set of grandparents or their issue regardless of the degree of kinship unless this provision would cause an escheat to the State.

**Sec. 2-104 (Reserved)**

**Sec. 2-105 No taker.** If there is no taker under the provisions of this Article, the intestate estate passes to the State.

**Sec. 2-106 Representation.** If representation is called for by this chapter, the estate is divided into as many shares as there are surviving heirs in the nearest degree of kinship and deceased persons in the same degree who left issue who survive the decedent, each surviving heir in the nearest degree receiving one share and the share of each deceased person in the same degree being divided among his issue in the same manner.

**Sec. 2-107 Kindred of half blood.** Relatives of the half blood inherit the same share they would inherit if they were of the whole blood; provided, that, to the extent to which the estate came to the decedent by descent, devise or gift from some one of his ancestors, all those who are not of the blood of ancestor shall be excluded from such estate.

**Sec. 2-108 Afterborn heirs.** Relatives of the decedent conceived before his death but born thereafter inherit as if they had been born in the lifetime of the decedent.

**Sec. 2-109 Meaning of child and related terms.** If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person:

- (1) An adopted person is the child of an adopting parent and not of the natural parents except that adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and either natural parent.
- (2) In cases not covered by (1), a person is the child of its parents regardless of the marital status of its parents and the parent and child relationship may be established under chapter 584.

**Sec. 2-110 Advancements.** If a person dies intestate as to all his estate, property which he gave in his lifetime to an heir is treated as an advancement against the latter's share of the estate only if declared in a contemporaneous writing by the decedent or acknowledged in writing by the heir to be an advancement. For this purpose the property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of death of the decedent, whichever first occurs. If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the intestate share to be received by the recipient's issue, unless the declaration or acknowledgment provides otherwise.

**Sec. 2-111 Debts to decedent.** A debt owed to the decedent is not charged against the intestate share of any person except the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's issue.

**Sec. 2-112 Alienage.** No person is disqualified to take as an heir because he or a person through whom he claims is or has been an alien.

**Sec. 2-113 (Reserved)**

**Sec. 2-114 Persons related to decedent through two lines.** A person who is related to the decedent through two lines of relationship is entitled to only a single share based on the relationship which would entitle him to the larger share.

**PART 2. ELECTIVE SHARE OF SURVIVING SPOUSE**

**Sec. 2-201 Right to elective share.** (a) If a married person domiciled in this State dies, the surviving spouse has a right of election to take an elective share of one-third of the net estate under the limitations and conditions hereinafter stated.

(b) If a married person not domiciled in this State dies, the right, if any, of the surviving spouse to take an elective share in property in this State is governed by the law of the decedent's domicile at death.

**Sec. 2-202 Net estate.** The net estate means the estate which would, in the absence of the surviving spouse's election under section 2-205, be disposed of by the decedent's will or by intestate succession, reduced by all enforceable claims as specified in section 3-805.

**Sec. 2-203 Right of election personal to surviving spouse.** The right of election of the surviving spouse may be exercised only during his lifetime by him. In the case of a protected person, the right of election may be exercised only by order of the court in which protective proceedings as to his property are pending, after finding that exercise is necessary to provide adequate support for the protected person during his probable life expectancy.

**Sec. 2-204 Waiver of right to elect and of other rights.** The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance, exempt property and family allowance, or any of them, may be waived, wholly or partially, before or after marriage, by a written contract, agreement or waiver signed by the party waiving after fair disclosure. Unless it provides to the contrary, a waiver of "all rights" (or equivalent language) in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights to elective share, homestead allowance, exempt property and family allowance by each spouse in the property of the other and a renunciation by each of all benefits which would otherwise pass to him from the other by intestate succession or by virtue of the provisions of any will executed before the waiver or property settlement.

**Sec. 2-205 Proceeding for elective share; time limit.** (a) The surviving spouse may elect to take his elective share in the net estate by filing in the court and mailing or delivering to the personal representative a petition for the elective share within nine months after the date of death, or within six months after the

probate of the decedent's will, whichever limitation last expires. The court may extend the time for election as it sees fit for cause shown by the surviving spouse before the time for election has expired.

(b) The surviving spouse shall give notice of the time and place set for hearing to persons interested in the estate.

(c) The surviving spouse may withdraw his demand for an elective share at any time before entry of a final determination by the court.

(d) After notice and hearing, the court shall determine the amount of the elective share and shall order its payment from the assets of the net estate.

**Sec. 2-206 Effect of election on benefits by will or statute.** A surviving spouse is entitled to homestead allowance, exempt property and family allowance whether or not he elects to take an elective share.

**Sec. 2-207 Charging spouse with gifts received; liability of others for balance of elective share.** (a) In the proceeding for an elective share, property which is part of the net estate which passes to the surviving spouse by testate or intestate succession, or which would have so passed to the spouse but is renounced, is applied first to satisfy the elective share and to reduce the amount due from the remaining estate.

(b) Remaining property of the net estate is so applied that liability for the balance of the elective share of the surviving spouse is equitably apportioned among the recipients of the net estate in proportion to the value of their interests therein.

### PART 3. SPOUSE AND CHILDREN UNPROVIDED FOR IN WILLS

**Sec. 2-301 Omitted spouse.** (a) If a testator fails to provide by will for his surviving spouse who married the testator after the execution of the will, the omitted spouse shall receive the same share of the estate he would have received if the decedent left no will unless it appears from the will that the omission was intentional or the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

(b) In satisfying a share provided by this section, the devises made by the will abate as provided in section 3-902.

**Sec. 2-302 Pretermitted children.** (a) If a testator fails to provide in his will for any of his children born or adopted after the execution of his will, the omitted child receives a share in the estate equal in value to that which he would have received if the testator has died intestate unless:

- (1) It appears from the will that the omission was intentional;
- (2) When the will was executed the testator had one or more children and devised substantially all his estate to the other parent of the omitted child; or
- (3) The testator provided for the child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

(b) If at the time of execution of the will the testator fails to provide in his

will for a living child solely because he believes the child to be dead, the child receives a share in the estate equal in value to that which he would have received if the testator had died intestate.

(c) In satisfying a share provided by this section, the devises made by the will abate as provided in section 3-902.

#### PART 4. EXEMPT PROPERTY AND ALLOWANCES

**Sec. 2-401 Homestead allowance.** A surviving spouse of a decedent who was domiciled in this State is entitled to a homestead allowance of \$5,000. If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance amounting to \$5,000 divided by the number of minor and dependent children of the decedent. The homestead allowance has priority as specified in section 3-805. The homestead allowance is in addition to any share passing to the surviving spouse or minor or dependent child by the will of the decedent unless otherwise provided, by intestate succession or by way of elective share.

**Sec. 2-402 Exempt property.** In addition to the homestead allowance, the surviving spouse of a decedent who was domiciled in this State is entitled from the estate to value in kind not exceeding \$5,000 in excess of any security interests therein in household furniture, automobiles, furnishings, appliances and personal effects. If there is no surviving spouse, children of the decedent are entitled jointly to such property of the same value. If encumbered chattels are selected and if the value in excess of security interests, plus that of other exempt property, is less than \$5,000, or if there is not \$5,000 worth of exempt property in the estate, the spouse or children are not entitled to other assets of the estate, if any, to the extent necessary to make up the \$5,000 value. Rights to exempt property have priority as specified in section 3-805. These rights are in addition to any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share.

**Sec. 2-403 Family allowance.** In addition to the right to homestead allowance and exempt property, if the decedent was domiciled in this State, the surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by him are entitled to a reasonable allowance in money out of the estate up to \$6,000 for their maintenance during the period of administration, which allowance may not continue for longer than one year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments. It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children; otherwise to the children, or persons having their care and custody; but in case any minor child or dependent child is not living with the surviving spouse, the allowance may be made partially to the child or his guardian or other person having his care and custody, and partially to the spouse, as their needs may appear. The family allowance has priority as specified in section 3-805.

The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise

provided, by intestate succession, or by way of elective share. The death of any person entitled to family allowance terminates his right to allowances not yet paid.

**Sec. 2-404 Source, determination and documentation.** If the estate is otherwise sufficient, property specifically devised is not used to satisfy rights to homestead and exempt property. Subject to this restriction, the surviving spouse, the guardians of the minor children, or children who are adults may select property of the estate as homestead allowance and exempt property. The personal representative may make these selections if the surviving spouse, the children or the guardians of the minor children are unable or fail to do so within a reasonable time or if there are no guardians of the minor children. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as homestead allowance or exempt property. He may determine the family allowance in a lump sum not exceeding \$6,000 or periodic installments not exceeding \$500 per month for one year, and may disburse funds of the estate in payment of the family allowance and any part of the homestead allowance payable in cash. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which relief may provide a family allowance larger or smaller than that which the personal representative determined or could have determined, but may in no event provide for a family allowance larger than \$6,000.

**PART 5. WILLS**

**Sec. 2-501 Who may make a will.** Any person eighteen or more years of age who is of sound mind may make a will.

**Sec. 2-502 Execution.** Except as provided for writings within section 2-513 and wills within section 2-506, every will shall be in writing signed by the testator or in the testator's name by some other person in the testator's presence and by his direction, and shall be signed by at least two persons each of whom witnessed either the signing or the testator's acknowledgment of the signature or of the will.

**Sec. 2-503 (Reserved)**

**Sec. 2-504 Self-proved will.** An attested will may at the time of its execution or at any subsequent date be made self-proved, by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state where execution occurs, and evidenced by the officer's certificate, under official seal, attached or annexed to the will in form and content as follows:

THE STATE OF \_\_\_\_\_  
 COUNTY OF \_\_\_\_\_

We, \_\_\_\_\_,  
 \_\_\_\_\_, and \_\_\_\_\_,

the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as his

last will and that he had signed willingly or directed another to sign for him, and that he executed it as his free and voluntary act for the purposes therein expressed; and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of his knowledge the testator was at that time eighteen or more years of age, of sound mind and under no constraint or undue influence.

\_\_\_\_\_  
Testator

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

Subscribed, sworn to and acknowledged before me by \_\_\_\_\_,  
the testator, and subscribed and sworn to before me by \_\_\_\_\_  
and \_\_\_\_\_, witnesses, this \_\_\_\_\_ day  
of \_\_\_\_\_.

(SEAL) (Signed) \_\_\_\_\_

\_\_\_\_\_  
(Official capacity of officer)

**Sec. 2-505 Who may witness.** (a) Any person generally competent to be a witness may act as a witness to a will.

(b) A will or any provision thereof is not invalid because the will is signed by an interested witness.

**Sec. 2-506 Choice of law as to execution.** A written will is valid if executed in compliance with section 2-502 or if its execution complies with the law at the time of execution of the place where the will is executed, or of the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode or is a national.

**Sec. 2-507 Revocation by writing or by act.** (a) A will or any part thereof is revoked by a subsequent will which revokes the prior will or part expressly or by inconsistency.

(b) A will is also revoked by being burned, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking it by the testator or by another person in his presence and by his direction.

**Sec. 2-508 Revocation by divorce; no revocation by other changes of circumstances.** If after executing a will the testator is divorced or his marriage annulled, the divorce or annulment revokes any disposition or appointment of property made by the will to the former spouse, any provision conferring a general or special power of appointment on the former spouse, and any nomination of the former spouse as executor, trustee, guardian of the property, or guardian of the person, unless the will expressly provides otherwise. Property prevented from passing to a former spouse because of revocation by divorce or annulment passes as if the former spouse failed to survive the decedent, and other provisions conferring some power or office on the former spouse are interpreted as if the spouse failed to survive the decedent. If provisions are revoked solely by this section, they are revived by testator's remarriage to the

former spouse. For purposes of this section, divorce or annulment means any divorce or annulment which would exclude the spouse as a surviving spouse within the meaning of section 2-802(b). A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section. No change of circumstances other than as described in this section revokes a will.

**Sec. 2-509 Revival of revoked will.** (a) If a second will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked by acts under section 2-507, the first will is revoked in whole or in part unless the first will is re-executed by the testator pursuant to section 2-502.

(b) If a second will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked by a third will, the first will is revoked in whole or in part, except to the extent it appears from the terms of the third will that the testator intended the first will to take effect.

**Sec. 2-510 Incorporation by reference.** Any writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

**Sec. 2-511 Testamentary additions to trusts.** A devise or bequest, the validity of which is determinable by the law of this State, may be made by a will to the trustee of a trust established or to be established by the testator or by the testator and some other person or by some other person (including a funded or unfunded life insurance trust, although the trustor has reserved any or all rights of ownership of the insurance contracts) if the trust is identified in the testator's will and its terms are set forth in a written instrument (other than a will) executed before or concurrently with the execution of the testator's will or in the valid last will of a person who has predeceased the testator (regardless of the existence, size, or character of the corpus of the trust). The devise is not invalid because the trust is amendable or revocable, or because the trust was amended after the execution of the will or after the death of the testator. Unless the testator's will provides otherwise, the property so devised (1) is not deemed to be held under a testamentary trust of the testator but becomes a part of the trust to which it is given and (2) shall be administered and disposed of in accordance with the provisions of the instrument or will setting forth the terms of the trust, including any amendments thereto made before the death of the testator (regardless of whether made before or after the execution of the testator's will), and, if the testator's will so provides, including any amendments to the trust made after the death of the testator. A revocation or termination of the trust before the death of the testator causes the devise to lapse.

**Sec. 2-512 Events of independent significance.** A will may dispose of property by reference to acts and events which have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of a will of another person is such an event.

**Sec. 2-513 Separate writing identifying bequest of tangible property.** A



will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money, evidences of indebtedness, documents of title, and securities, and property used in trade or business. If such written statement or list is incorporated by reference in the will pursuant to section 2-510, it may be subsequently amended without satisfying the requirements of section 2-502 if the amendment is in the handwriting of the testator and is signed by him.

## PART 6. RULES OF CONSTRUCTION

### Sec. 2-601 (Reserved)

### Sec. 2-602 (Reserved)

**Sec. 2-603 Rules of construction and intention.** The intention of a testator as expressed in his will controls the legal effect of his dispositions. The rules of construction expressed in the succeeding sections of this Part apply unless a contrary intention is indicated by the will.

**Sec. 2-604 Construction that will passes all property; after-acquired property.** A will is construed to pass all property which the testator owns at his death including property acquired after the execution of the will.

**Sec. 2-605 Anti-lapse; deceased devisee; class gifts.** If a devisee who is a grandparent or a lineal descendant of a grandparent of the testator is dead at the time of execution of the will, or fails to survive the testator, or is treated as if he predeceased the testator, the issue of the deceased devisee who survive the testator take in place of the deceased devisee and if they are all of the same degree of kinship to the devisee they take equally, but if of unequal degree then those of more remote degree take by representation. One who would have been a devisee under a class gift if he had survived the testator is treated as a devisee for purposes of this section whether his death occurred before or after the execution of the will.

**Sec. 2-606 Failure of testamentary provision.** (a) Except as provided in section 2-605 if a devise other than a residuary devise fails for any reason, it becomes a part of the residue.

(b) Except as provided in section 2-605 if the residue is devised to two or more persons and the share of one of the residuary devisees fails for any reason, his share passes to the other residuary devisee, or to other residuary devisees in proportion to their interests in the residue.

**Sec. 2-607 Change in securities; accessions; nonademption.** (a) If the testator intended a specific devise of certain securities rather than the equivalent value thereof, the specific devisee is entitled only to:

- (1) As much of the devised securities as is a part of the estate at time of the testator's death;
- (2) Any additional or other securities of the same entity owned by the testator by reason of action initiated by the entity excluding any acquired by exercise of purchase options;
- (3) Securities of another entity owned by the testator as a result of a merger, consolidation, reorganization or other similar action initiated by the entity; and

(4) Any additional securities of the entity owned by the testator as a result of a plan of reinvestment if it is a regulated investment company.

(b) Distributions prior to death with respect to a specifically devised security not provided for in subsection (a) are not part of the specific devise.

**Sec. 2-608 Nonademption of specific devises in certain cases; unpaid proceeds of sale, condemnation or insurance; sale by guardian of the property.**

(a) A specific devisee has the right to the remaining specifically devised property and:

(1) Any balance of the purchase price (together with any security interest) owing from a purchaser to the testator at death by reason of sale of the property;

(2) Any amount of a condemnation award for the taking of the property unpaid at death;

(3) Any proceeds unpaid at death on fire or casualty insurance on the property; and

(4) Property owned by testator at his death as a result of foreclosure, or obtained in lieu of foreclosure, of the security for a specifically devised obligation.

(b) If specifically devised property is sold by a guardian of the property, or if a condemnation award or insurance proceeds are paid to a guardian of the property as a result of condemnation, fire, or casualty, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the condemnation award, or the insurance proceeds. This subsection does not apply if subsequent to the sale, condemnation, or casualty, it is adjudicated that the disability of the testator has ceased and the testator survives the adjudication by one year. The right of the specific devisee under this subsection is reduced by any right he has under subsection (a).

**Sec. 2-609 Non-exoneration.** A specific devise passes subject to any security interest existing at the date of death, without right of exoneration, regardless of a general directive in the will to pay debts.

**Sec. 2-610 Exercise of power of appointment.** A general residuary clause in a will, or a will making general disposition of all of the testator's property, does not exercise a power of appointment held by the testator unless specific reference is made to the power or there is some other indication of intention to include the property subject to the power.

**Sec. 2-611 Construction of generic terms to accord with relationships as defined for intestate succession.** Halfbloods, adopted persons and persons born out of wedlock are included in class gift terminology and terms of relationship in accordance with rules for determining relationship for purposes of intestate succession, as provided in sections 2-107 and 2-109.

**Sec. 2-612 Ademption by satisfaction.** Property which a testator gave in his lifetime to a person is treated as a satisfaction of a devise to that person in whole or in part, only if the will provides for deduction of the lifetime gift, or the testator declares in a contemporaneous writing that the gift is to be deducted from the devise or is in satisfaction of the devise, or the devisee acknowledges in

writing that the gift is in satisfaction. For purpose of partial satisfaction, property given during lifetime is valued as of the time the devisee came into possession or enjoyment of the property or as of the time of death of the testator, whichever occurs first.

## PART 7. CONTRACTUAL ARRANGEMENTS RELATING TO DEATH

**Sec. 2-701 Contracts concerning succession.** A contract to make a will or devise, or not to revoke a will or devise, or to die intestate, if executed after the effective date of this chapter, can be established only by (1) provisions of a will stating material provisions of the contract; (2) an express reference in a will to a contract and extrinsic evidence proving the terms of the contract; or (3) a writing signed by the decedent evidencing the contract. The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.

## PART 8. GENERAL PROVISIONS

**Sec. 2-801 Renunciation of succession.** (a) A person or the representative of an incapacitated or protected person, who is an heir, devisee, person succeeding to a renounced interest, beneficiary under a testamentary instrument, or appointee under a power of appointment exercised by a testamentary instrument, may renounce in whole or in part the right of succession to any property or interest therein, including a future interest, by filing a written renunciation under this section. The right to renounce does not survive the death of the person having it. The instrument shall (1) describe the property or interest renounced, (2) declare the renunciation and extent thereof, and (3) be signed by the person renouncing.

- (b) (1) An instrument renouncing a present interest shall be filed not later than six months after the death of the decedent or the donee of the power.
  - (2) An instrument renouncing a future interest shall be filed not later than six months after the event that determines that the taker of the property or interest is finally ascertained and his interest indefeasibly vested.
  - (3) The renunciation shall be filed in the court of the judicial circuit in which proceedings have been commenced for the administration of the estate of the deceased owner or deceased donee of the power or, if they have not been commenced, in which they could be commenced. A copy of the renunciation shall be delivered in person or mailed by registered or certified mail to any personal representative, or other fiduciary of the decedent or donee of the power. If real property or an interest therein is renounced, a copy of the renunciation may be recorded or filed in the bureau of conveyances or the office of the assistant registrar of the land court, as appropriate.
- (c) Unless the decedent or donee of the power has otherwise provided, the property or interest renounced devolves as if the person renouncing had predeceased the decedent or, if the person renouncing is designated to take under a power of appointment exercised by a testamentary instrument, as if the person

renouncing had predeceased the donee of the power. A future interest that takes effect in possession or enjoyment after the termination of the estate or interest renounced takes effect as if the person renouncing had predeceased the decedent or the donee of the power. A renunciation relates back for all purposes to the date of the death of the decedent or the donee of the power.

(d) (1) The right to renounce property or an interest therein is barred by (A) an assignment, conveyance, encumbrance, pledge, or transfer of the property or interest, or a contract therefor, (B) a written waiver of the right to renounce, (C) an acceptance of the property or interest or benefit thereunder, or (D) a sale of the property or interest under judicial sale made before the renunciation is effected.

(2) The right to renounce exists notwithstanding any limitation on the interest of the person renouncing in the nature of a spendthrift provision or similar restriction.

(3) The renunciation or the written waiver of the right to renounce is binding upon the person renouncing or person waiving and all persons claiming through or under him.

(e) This section does not abridge the right of a person to waive, release, disclaim, or renounce property or an interest therein under any other statute.

(f) An interest in property existing on the effective date of this section as to which, if a present interest, the time for filing a renunciation under this section has not expired, or if a future interest, the interest has not become indefeasibly vested or the taker finally ascertained, may be renounced within six months after the effective date of this section.

**Sec. 2-802 Effect of divorce, annulment, and decree of separation.** (a) A person who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, he is married to the decedent at the time of death. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section.

(b) For purposes of Parts 1, 2, 3 and 4 of this Article and of section 3-203, a surviving spouse does not include:

- (1) A person who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this State, unless they subsequently participate in a marriage ceremony purporting to marry each to the other, or subsequently live together as man and wife;
- (2) A person who, following a decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third person; or
- (3) A person who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.

**Sec. 2-803 Effect of homicide on intestate succession, wills, joint assets, life insurance and beneficiary designations.** (a) A surviving spouse, heir or devisee who feloniously and intentionally or knowingly kills the decedent in violation of sections 701 and 702(1) (b) of the Penal Code is not entitled to any

benefits under the will or under this Article, and the estate of decedent passes as if the killer had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of the killer passes as if the killer had predeceased the decedent.

(b) Any joint tenant who feloniously and intentionally or knowingly kills another joint tenant in violation of sections 701 and 702(1) (b) of the Penal Code thereby effects a severance of the interest of the decedent so that the share of the decedent passes as his property and the killer has no rights by survivorship. This provision applies to joint tenancies and tenancies by the entirety in real and personal property, joint accounts in banks, savings and loan associations, credit unions and other institutions, and any other form of co-ownership with survivorship incidents.

(c) A named beneficiary of a bond, life insurance policy, or other contractual arrangement who feloniously and intentionally or knowingly kills the principal obligee or the person upon whose life the policy is issued in violation of sections 701 and 702(1) (b) of the Penal Code is not entitled to any benefit under the bond, policy or other contractual arrangement, and it becomes payable as though the killer had predeceased the decedent.

(d) Any other acquisition of property or interest by the killer shall be treated in accordance with the principles of this section.

(e) A final judgment of conviction of felonious and intentional or knowing killing is conclusive for purposes of this section. In the absence of a conviction of felonious and intentional or knowing killing the court may determine by a preponderance of evidence whether the killing was felonious and intentional or knowing for purposes of this section.

(f) This section does not affect the rights of any person who, before rights under this section have been adjudicated, purchases from the killer for value and without notice property which the killer would have acquired except for this section, but the killer is liable for the amount of the proceeds or the value of the property. Any insurance company, bank, or other obligor making payment according to the terms of its policy or obligation is not liable by reason of this section unless prior to payment it has received at its home office or principal address written notice of a claim under this section.

## PART 9. CUSTODY AND DEPOSIT OF WILLS

### Sec. 2-901 (Reserved)

**Sec. 2-902 Duty of custodian of will; liability.** After the death of a testator and on request of an interested person, any person having custody of a will of the testator shall deliver it with reasonable promptness to a person able to secure its probate and if none is known, to an appropriate court. Any person who wilfully fails to deliver a will is liable to any person aggrieved for the damages which may be sustained by the failure. Any person who wilfully refuses or fails to deliver a will after being ordered by the court in a proceeding brought for the purpose of compelling delivery is subject to penalty for contempt of court.

## ARTICLE III PROBATE OF WILLS AND ADMINISTRATION

### PART 1. GENERAL PROVISIONS

**Sec. 3-101 Devolution of estate at death; restrictions.** The power of a person to leave property by will, and the rights of creditors, devisees, and heirs to his property are subject to the restrictions and limitations contained in this chapter to facilitate the prompt settlement of estates. Upon the death of a person, his real and personal property vests in the persons to whom it is devised by his last will or in those indicated as substitutes for them in cases involving lapse, renunciation, or other circumstances affecting the devolution of testate estates, or in the absence of testamentary disposition, in his heirs, or in those indicated as substitutes for them in cases involving renunciation or other circumstances affecting devolution of intestate estates, subject to homestead allowance, exempt property and family allowance, to rights of creditors, elective share of the surviving spouse, and to administration.

**Sec. 3-102 Necessity of order of probate for will.** Except as provided in section 3-1201, to be effective to prove the transfer of any property or to nominate a personal representative, a will must be declared to be valid by an order of informal probate by the registrar, or an adjudication of probate by the court.

**Sec. 3-103 Necessity of appointment for administration.** Except as otherwise provided in Article IV, to acquire the powers and undertake the duties and liabilities of a personal representative of a decedent, a person must be appointed by order of the court or registrar, qualify, accept and be issued letters. Administration of an estate is commenced by the issuance of letters.

**Sec. 3-104 Claims against decedent; necessity of administration.** No proceeding to enforce a claim against the estate of a decedent or his successors may be revived or commenced before the appointment of a personal representative. After the appointment and until distribution, all proceedings and actions to enforce a claim against the estate are governed by the procedure prescribed by this Article. After distribution a creditor whose claim has not been barred may recover from the distributees as provided in section 3-1004 or from a former personal representative individually liable as provided in section 3-1005. This section has no application to a proceeding by a secured creditor of the decedent to enforce his right to his security except as to any deficiency judgment which might be sought therein.

**Sec. 3-105 Jurisdiction of subject matter; persons bound.** The court may hear and determine formal proceedings involving administration and distribution of decedents' estates after notice to interested persons in conformity with section 1-401. Persons notified are bound though less than all interested persons may have been given notice.

**Sec. 3-106 (Reserved)**

**Sec. 3-107 Appointment of personal representative; scope of proceedings.** Where a probate proceeding is commenced for a decedent's estate, a personal

representative shall be appointed and the proceeding shall be a continuous action, commenced as provided in sections 3-301, 3-401, or 3-502 and closed as provided in sections 3-1001 and 3-1003. Petitions for orders of the court may combine various requests for relief in a single proceeding if the orders sought may be finally granted without delay. Except as required for proceedings which are particularly described by other sections of this Article, no petition is defective because it fails to embrace all matters which might then be the subject of a final order.

**Sec. 3-108 Probate proceedings; ultimate time limit.** (a) No probate proceeding seeking to establish a will, other than an ancillary proceeding, may be commenced more than five years after the decedent's death except under the following conditions and circumstances:

- (1) If a previous probate proceeding was dismissed because of doubt about the fact of the decedent's death, a probate proceeding may be commenced at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous probate proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding; or
  - (2) A probate proceeding may be commenced in relation to the estate of an absent, disappeared or missing person for whose estate a guardian of the property has been appointed, at any time within three years after the guardian of the property becomes able to establish the death of the protected person; or
  - (3) A formal testacy proceeding or a supervised administration may be commenced by an adult on or before his nineteenth birthday if (i) he is a devisee of or an heir to property of the decedent under the proceedings which he intends to commence, (ii) he was under the age of majority when he had a meaningful opportunity to contest any prior probate proceeding concerning the decedent, and (iii) his interest was not adequately represented by another party having a substantially identical interest in any prior probate proceeding concerning the decedent; or
  - (4) A formal testacy proceeding or a supervised administration may be commenced within twelve months after the petitioner learns of a prior probate proceeding in which an order of probate or an adjudication of intestacy was entered if the petitioner (i) is a devisee of or an heir to property of the decedent under the proceedings which he intends to commence, and (ii) did not receive notice pursuant to section 1-401 of the commencement of the prior probate proceeding, and if the petitioner's interest was not adequately represented by another party having a substantially identical interest in the prior probate proceeding.
- (b) A probate proceeding seeking an adjudication of intestacy may be commenced at any time unless there has been a prior probate proceeding concerning the decedent's estate, in which event a formal testacy proceeding or a supervised administration seeking an adjudication of intestacy may be commenced only under the conditions and circumstances set forth in subparagraphs (a) (3) and (4) above.

(c) A prior probate proceeding determining heirs by intestacy shall not be res judicata as to any subsequent proceedings unless the notice provisions of section 1-401 are complied with as to the person asserting heirship.

**Sec. 3-109 Statutes of limitation on decedent's cause of action.** No statute of limitation running on a cause of action belonging to a decedent which had not been barred as of the date of his death, shall apply to bar a cause of action surviving the decedent's death sooner than four months after death. A cause of action which, but for this section, would have been barred less than four months after death, is barred after four months unless tolled.

**Se. 3-110 Informal proceedings; forms.** The courts and registrars of the various judicial circuits shall prepare and make available to the public standard forms for the opening and closing of informal probate proceedings.

## **PART 2. VENUE FOR PROBATE PROCEEDINGS; PRIORITY TO ADMINISTER; DEMAND FOR NOTICE**

**Sec. 3-201 Venue for first and subsequent probate proceedings; location of property.** (a) Venue for the first probate proceedings after a decedent's death is:

- (1) In the judicial circuit where the decedent had his domicile at the time of his death; or
- (2) In the judicial circuit where the decedent owned real property at the time of his death; or
- (3) If the decedent was not domiciled in this State, in any judicial circuit where property of the decedent was located at the time of his death.

(b) Venue for all subsequent proceedings within the jurisdiction of the court is in the place where the initial proceeding occurred, unless the initial proceeding has been transferred as provided in section 1-303 or (c) of this section.

(c) Upon application of an interested person and after notice to the proponent in the first proceeding, the court, upon finding that venue is elsewhere, may transfer the proceeding and the file to the other court.

(d) For the purpose of aiding determinations concerning location of assets which may be relevant in cases involving nondomiciliaries, a debt, other than one evidenced by investment or commercial paper or other instrument in favor of a nondomiciliary, is located where the debtor resides or, if the debtor is a person other than an individual, at the place where it has its principal office. Commercial paper, investment paper and other instruments are located where the instrument is. An interest in property held in trust is located where the trustee may be sued.

**Sec. 3-202 Probate proceedings; conflicting claim of domicile in another state.** If conflicting claims as to the domicile of a decedent are made in a probate proceeding commenced in this State, and in a probate proceeding after notice pending at the same time in another state, the court of this State may stay, dismiss, or permit suitable amendment in, the proceeding here if it determines that the best interests of the estate and interested persons so require. The determination of domicile in the other state's proceeding shall be accorded full faith and credit to the extent constitutionally required.



**Sec. 3-203 Priority among persons seeking appointment as personal representative.** (a) Whether the proceedings are formal or informal, persons who are qualified under section 3-601 have priority for appointment in the following order:

- (1) The person with priority as determined by a will including a person nominated by a power conferred in a will;
- (2) The surviving spouse of the decedent who is a devisee of the decedent;
- (3) Children of the decedent who are devisees;
- (4) Other devisees of the decedent;
- (5) The surviving spouse of the decedent;
- (6) Children of the decedent;
- (7) Other heirs of the decedent;
- (8) Forty-five days after the death of the decedent, any creditor.

(b) An objection to an appointment can be made only in formal proceedings. In case of objection the priorities stated in (a) apply except that:

- (1) If the estate appears to be more than adequate to meet exemptions and costs of administration but inadequate to discharge anticipated unsecured claims, the court, on petition of creditors, may appoint any qualified person;
- (2) In case of objection to appointment of a person other than one whose priority is determined by will by an heir or devisee appearing to have a substantial interest in the estate, the court may but is not required to appoint a person who is acceptable to heirs and devisees whose interests in the estate appear to be worth in total more than half of the probable distributable value, or, in default of this accord any suitable person.

(c) A person entitled to letters under (2) through (7) of (a) above may nominate a qualified person to act as personal representative. Any person may renounce his right to nominate or to an appointment by appropriate writing filed with the court. When two or more persons share a priority, those of them who do not renounce must concur in nominating another to act for them, or in applying for appointment.

(d) Guardians of the property of the estates of protected persons, or if there is no guardian of the property, any guardian except a guardian ad litem of a minor or incapacitated person, may exercise the same right to nominate, to object to another's appointment, or to participate in determining the preference of a majority in interest of the heirs and devisees that the protected person or ward would have if qualified for appointment.

(e) Appointment of one who does not have priority, including priority resulting from renunciation or nomination determined pursuant to this section, may be made only in formal proceedings. Before appointing one without priority, the court must determine that those having priority, although given notice of the proceedings, have failed to request appointment or to nominate another for appointment.

- (f) No person is qualified to serve as a personal representative who:
- (1) Does not satisfy the requirements of section 3-601; or
  - (2) Is a person whom the court finds unsuitable in formal proceedings.
- (g) Subject to paragraph (f) above, a personal representative appointed by

a court of the decedent's domicile has priority over all other persons except where the decedent's will nominates different persons to be personal representative in this State and in the state of domicile. The domiciliary personal representative may nominate another, who shall have the same priority as the domiciliary personal representative.

(h) This section governs priority for appointment of a successor personal representative but does not apply to the selection of a special administrator.

**Sec. 3-204 Demand for notice of order or filing concerning decedent's estate.** Any interested person desiring notice of any order or filing pertaining to a decedent's estate may file a demand for notice with the court at any time after the death of a decedent stating the name of the decedent, the nature of his interest in the estate, and the demandant's address or that of his attorney. The clerk shall mail a copy of the demand to the personal representative if one has been appointed. After filing of a demand, no order or filing to which the demand relates shall be made or accepted without notice as prescribed in section 1-401 to the demandant or his attorney. The validity of an order which is issued or filing which is accepted without compliance with this requirement shall not be affected by the error, but the petitioner receiving the order or the person making the filing may be liable for any damage suffered by the demandant on account of the absence of notice. The requirement of notice arising from a demand under this provision may be waived in writing by the demandant and shall cease upon the termination of his interest in the estate.

### PART 3. INFORMAL PROBATE AND APPOINTMENT PROCEEDINGS

**Sec. 3-301 Testate informal probate and intestate informal appointment proceedings; limits on value of estate; contents of application; notice.** (a) Informal probate and appointment proceedings shall be available only if the estate of the decedent subject to probate proceedings in this State has a gross value of \$30,000 or less.

(b) Applications for informal probate or informal appointment shall be directed to the registrar, and shall be verified by the applicant to be accurate and complete to the best of his knowledge and belief as follows:

- (1) Every application for informal probate of a will and appointment of a personal representative or for informal appointment of a personal representative in the case of intestacy, other than a special or successor representative, shall contain the following:
  - (i) A statement of the interest of the applicant;
  - (ii) The name, and date of death of the decedent, his age, and the county and state of his domicile at the time of death, and, so far as known or ascertainable with reasonable diligence by the applicant, the names and addresses of the spouse, children, heirs and devisees and the ages of any who are minors;
  - (iii) If the decedent was not domiciled in the State at the time of his death, a statement showing venue;
  - (iv) A statement identifying and indicating the address and state in

- which appointed of any personal representative of the decedent whose appointment has not been terminated;
- (v) A statement indicating whether the applicant has received a demand for notice, or is aware of any demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this State or elsewhere, and, as to any such demand the names and addresses of the demandants;
  - (vi) A statement indicating that the time limit for informal probate proceedings as provided in section 3-108 has not expired;
  - (vii) A statement of the nature and value of the estate of the decedent subject to probate proceedings in this State;
  - (viii) A statement setting forth any request for homestead allowance, exempt property (in which case the specific items of property and their value shall be itemized) and family allowance under Article II, Part 4;
  - (ix) The name, address, and priority of appointment of the person whose appointment as personal representative is sought, a statement that the nominee is qualified to serve as such under section 3-601, and the names of any other persons having a prior or equal right to appointment under section 3-203; and
  - (x) If there are any persons listed under subparagraph (ix) above who have a prior or equal right to appointment, a statement in which they renounce their priority or concur in the nomination of the person seeking appointment.
- (2) An application for informal probate of a will and appointment of a personal representative shall state the following in addition to the statements required by (1):
- (i) That the original of the decedent's last will is in the possession of the court, or accompanies the application, or that an authenticated copy of a will probated in another jurisdiction accompanies the application;
  - (ii) That the applicant, to the best of his knowledge, believes the will to have been validly executed;
  - (iii) That after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the will; and
  - (iv) That the applicant believes that the instrument which is the subject of the application is the decedent's last will and is not one of a series of testamentary instruments, the latest of which does not expressly revoke the earlier.
- (3) An application for informal appointment of a personal representative in the case of intestacy shall state in addition to the statements required by (1) that, after the exercise of reasonable diligence, the applicant is unaware of any unrevoked testamentary instrument relating to property having a situs in this State under section 1-301, or, a statement why any such instrument of which he may be aware is not being probated.
- (4) An application for appointment of a personal representative to succeed a personal representative appointed in a prior probate proceeding shall

identify the prior proceeding, state the name and address of the person whose appointment will be terminated if the application is granted, and describe the priority of the nominee.

- (5) An application for appointment of a personal representative to succeed a personal representative who has tendered a resignation as provided in section 3-610(c), or whose appointment has been terminated by death or removal, shall adopt the statements in the application which led to the appointment of the person being succeeded except as specifically changed or corrected, state the name and address of the person who seeks appointment as successor, and describe the priority of the nominee.

(c) Notice of the application shall be effected by delivering a copy of the application as provided in section 1-401 to the persons enumerated in subparagraph (b) (1) (v) above and in section 3-403. The application shall be accompanied by a statement to the effect that, if the recipient has an objection to the informal probate or to the granting of the requested statutory allowances or exempt property, he may file a petition for a formal testacy proceeding.

(d) Any published notice of the application shall contain the following information:

- (1) Name and date of the death of the decedent;
- (2) Name and address of nominee for personal representative;
- (3) Name and address of applicant;
- (4) Applicant's estimate of the value of the decedent's estate subject to probate proceedings in this State;
- (5) Total value of requests for homestead and family allowances and exempt property;
- (6) A statement to the effect that, if the noticed person has an objection to the informal probate or to the granting of the requested statutory allowances and exempt property, he may file a petition for a formal testacy proceeding; and
- (7) A statement to the effect that, if the noticed person desires any further notice concerning the estate, including notice concerning the closing and distribution of the estate, he must file a demand for notice under section 3-204.

(e) By verifying an application, the applicant submits personally to the jurisdiction of the court in any proceeding for relief from fraud relating to the application, or for perjury, that may be instituted against him.

**Sec. 3-302 Testate informal probate proceedings; duty of registrar; effect of informal probate and appointment.** (a) Upon receipt of an application requesting informal probate of a will, the registrar, upon making the findings required by section 3-303, shall issue a written statement admitting the will to informal probate, granting any request for statutory allowances and exempt property, and appointing a personal representative subject to acceptance if at least forty days have passed after the first mailing or publication of notice, if proof that notice has been given is filed with the registrar and if no petition for formal testacy proceedings has been filed.

(b) Informal probate is conclusive as to all persons until superseded by an

order in a formal testacy proceeding or a supervised administration. The status of personal representative and the powers and duties pertaining to the office are fully established by informal appointment. An appointment, and the office of personal representative created thereby, is subject to termination as provided in sections 3-608 through 3-612, but is not subject to retroactive vacation.

**Sec. 3-303 Testate informal probate proceedings: proof and findings required.** (a) In an informal proceeding for original probate of a will, the registrar shall determine whether:

- (1) The application is complete;
- (2) The application states that the value of the estate is \$30,000 or less;
- (3) The applicant has made oath or affirmation that the statements contained in the application are accurate and complete to the best of his knowledge and belief;
- (4) The applicant appears from the application to be an interested person as defined in section 1-201(24);
- (5) Any requested statutory allowances or exempt property are proper;
- (6) The person nominated as personal representative has priority and is qualified to serve as such;
- (7) On the basis of the statements in the application, venue is proper;
- (8) An original, duly executed and apparently unrevoked will is in the registrar's possession;
- (9) Notice required by sections 3-204 and 3-301 has been given;
- (10) The application is not within section 3-304; and
- (11) It appears from the application that the time limit contained in section 3-108 has not expired.

(b) The application shall be denied if it indicates that a personal representative has been appointed in this or another judicial circuit of this State or, except as provided in subsection (d) below, if it appears that his or another will of the decedent has been the subject of a previous probate order.

(c) A will which appears to have the required signatures and which contains an attestation clause showing that requirements of execution under section 2-502 or 2-506 have been met shall be probated without further proof. In other cases, the registrar may accept a sworn statement or affidavit of any person having personal knowledge of the circumstances of execution.

(d) Informal probate of a will which has been previously probated elsewhere may be granted at any time upon written application by an interested person, together with deposit of an authenticated copy of the will and of the statement probating it from the office of court where it was first probated.

(e) A will from a place which does not provide for probate of a will after death and which is not eligible for probate under subsection (a) above, may be probated in this State upon receipt by the registrar of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of the other place.

(f) The registrar may grant the application but deny any portion or all of a request for statutory allowances or exempt property. In the event of any such denial, the spouse or the children of the decedent may petition for an award of the

same under Part 4 following.

**Sec. 3-304 Testate informal probate proceedings; unavailable in certain cases.** Applications for informal probate which relate to one or more of a known series of testamentary instruments (other than a will and its codicils), the latest of which does not expressly revoke the earlier, shall be declined. A declination of informal probate does not preclude formal testacy proceedings or supervised administration.

**Sec. 3-305 Testate informal probate proceedings; registrar not satisfied.** If the registrar is not satisfied that a will is entitled to be probated or a personal representative appointed in informal proceedings because of failure to meet the requirements of section 3-303 or 3-304, or for any other reason, he may decline the application.

**Sec. 3-306 (Reserved)**

**Sec. 3-307 Intestate informal appointment proceedings; delay in order; duty of registrar; effect of appointment.** (a) Upon receipt of an application for informal appointment of a personal representative other than a special administrator as provided in section 3-614, the registrar, after making the findings required by section 3-308, shall appoint the nominee subject to acceptance; provided, that if the decedent was a nonresident, the registrar shall delay the order of appointment until thirty days have elapsed since death unless the personal representative appointed at the decedent's domicile is the applicant, or unless the decedent's will directs that his estate be subject to the laws of this State.

(b) The status of personal representative and the powers and duties pertaining to the office are fully established by informal appointment. An appointment, and the office of personal representative created thereby, is subject to termination as provided in sections 3-608 through 3-612, but is not subject to retroactive vacation.

**Sec. 3-308 Intestate informal appointment proceedings; proof and findings required.** (a) In an intestate informal appointment proceeding, the registrar shall determine whether:

- (1) The application is complete;
- (2) The value of the estate is \$30,000 or less;
- (3) The applicant has made oath or affirmation that the statements contained in the application are accurate and complete to the best of his knowledge and belief;
- (4) The applicant appears from the application to be an interested person as defined in section 1-201(24);
- (5) Any requested statutory allowances or exempt property are proper;
- (6) The person nominated as personal representative has priority and is qualified to serve as such;
- (7) On the basis of the statements in the application, venue is proper;
- (8) Notice required by sections 3-204 and 3-301 has been given; and
- (9) It appears from the application that the time limit contained in section 3-108 has not expired.

(b) Unless section 3-612 controls, the application shall be denied if it indicates that a personal representative who has not filed a written statement of

resignation as provided in section 3-610(c) has been appointed in this or another judicial circuit of this State, that (unless the applicant is the domiciliary personal representative or his nominee) the decedent was not domiciled in this State and that a personal representative whose appointment has not been terminated has been appointed by a court in the State of domicile, or that other requirements of this section have not been met.

**Sec. 3-309 Intestate informal appointment proceedings; registrar not satisfied.** If the registrar is not satisfied that a requested informal appointment of a personal representative should be made because of failure to meet the requirements of section 3-307, 3-308, or 3-311, or for any other reason, he may decline the application. A declination of informal appointment does not preclude formal testacy proceedings or supervised administration.

**Sec. 3-310 (Reserved)**

**Sec. 3-311 Intestate informal appointment proceedings; unavailable in certain cases.** Applications for informal appointment which indicate the existence of a possible unrevoked testamentary instrument which may relate to property subject to the laws of this State, and which is not filed for probate in this court, shall be declined.

**PART 4. FORMAL TESTACY AND APPOINTMENT PROCEEDINGS**

**Sec. 3-401 Formal testacy proceedings; nature; how commenced.** A formal testacy proceeding is litigation to (i) determine whether a decedent left a valid will, or (ii) resolve whether or not an estate may be probated or a personal representative appointed informally, or (iii) resolve any other disputes arising in informal proceedings. A formal testacy proceeding may be commenced by an interested person filing a petition as described in section 3-402(a) in which he requests that the court, after notice and hearing, enter an order (i) probating a will; (ii) granting a petition to set aside an informal probate of a will or to prevent informal probate of a will which is the subject of a pending application; (iii) granting a petition in accordance with section 3-402(b) for an order that the decedent died intestate; (iv) appointing as a personal representative one who does not have priority; (v) granting a petition to require that informal probate proceedings be made supervised on account of the value of the estate; or (vi) granting a petition concerning any other disputes arising in informal proceedings.

A petition for formal testacy proceedings may be filed without regard to whether the same or a conflicting will has been informally probated. If a personal representative has been previously appointed, a formal testacy proceeding may, but need not, involve a request for appointment of a successor personal representative. If a personal representative has not been previously appointed, a formal testacy proceeding shall request the appointment of a personal representative.

During the pendency of a formal testacy proceeding, the registrar shall not act upon any application for informal probate of any will of the decedent or any application for informal appointment of a personal representative of the dece-

dent.

Unless a petition in a formal testacy proceeding also requests confirmation of the previous formal appointment, a previously appointed personal representative, after receipt of notice of the commencement of a formal probate proceeding, must refrain from exercising his power to make any further distribution of the estate during the pendency of the formal proceeding. A petitioner who seeks the appointment of a different personal representative in a formal proceeding also may request an order restraining the acting personal representative from exercising any of the powers of his office and requesting the appointment of a special administrator. In the absence of a request, or if the request is denied, the commencement of a formal proceeding has no effect on the powers and duties of a previously appointed personal representative other than those relating to distribution.

**Sec. 3-402 Formal testacy proceedings; petition; contents.** (a) Petitions for formal probate of a will, or for an adjudication of intestacy, with request for appointment of a personal representative, must be directed to the court, request a judicial order after notice and hearing and contain further statements as indicated in this section.

(b) A petition for formal probate of a will and appointment of a personal representative shall:

- (1) Request an order as to the testacy of the decedent in relation to a particular instrument which may or may not have been informally probated and determining the heirs;
- (2) Contain the statements required for informal applications as stated in the first nine subparagraphs under section 3-301(b) (1) and subparagraphs (ii) and (iii) of section 3-301(b) (2);
- (3) State the contents of the will and indicate why it is unavailable if the original will is neither in the possession of the court nor accompanies the petition and no authenticated copy of a will probated in another jurisdiction accompanies the petition; and
- (4) Indicate whether supervised administration is sought.

(c) A petition for an adjudication of intestacy and appointment of a personal representative shall:

- (1) Request a judicial finding and order that the decedent left no will and determining the heirs;
- (2) Contain the statements required for informal applications as stated in the first nine subparagraphs under section 3-301(b) (1) and under section 3-301(b) (3); and
- (3) Indicate whether supervised administration is sought.

(d) A petition for an order appointing as a personal representative one who does not have priority shall:

- (1) Request a finding that the persons having priority were given notice and failed to request appointment or nominate another for appointment;
- (2) Request an order appointing as personal representative one who does not have priority; and
- (3) Contain the statements required under paragraphs (b) (2) or (c) (2), as appropriate, above.



(e) A petition for an order determining whether informal proceedings may be maintained shall:

- (1) Request an order that probate proceedings concerning the estate be maintained as provided in part 5 hereof;
- (2) Contain the statements required for informal applications under section 3-301; and
- (3) Identify with particularity any reasons why informal proceedings may not be maintained.

**Sec. 3-403 Formal testacy proceedings; notice of hearing on petition.** (a) Upon commencement of a formal testacy proceeding, the court shall fix a time and place of hearing. Notice shall be given in the manner prescribed by section 1-401 by the petitioner to the persons herein enumerated and to any additional person who has filed a demand for notice under section 3-204 of this chapter.

Notice shall be given to the following persons, so far as the same are known or are ascertainable with reasonable diligence: the surviving spouse, children, and other heirs of the decedent, the devisees and personal representatives named in any will that is being, or has been probated, or offered for informal or formal probate in the judicial circuit, or that is known by the petitioner to have been probated, or offered for informal or formal probate elsewhere, and any personal representative of the decedent whose appointment has not been terminated. Notice may be given to other persons. In addition, the petitioner shall give notice by publication to all unknown persons and to all known persons whose addresses are unknown who have any interest in the matters being litigated.

(b) If it appears by the petition or otherwise that the fact of the death of the alleged decedent may be in doubt, or on the written demand of any interested person, a copy of the notice of the hearing on the petition shall be sent by registered or certified mail, return receipt requested, deliverable to the addressee only, to the alleged decedent at his last known address. The court shall direct the petitioner to report the results of, or make and report back concerning, a reasonably diligent search for the alleged decedent in any manner that may seem advisable, including any or all of the following methods:

- (1) By inserting in one or more suitable periodicals a notice requesting information from any person having knowledge of the whereabouts of the alleged decedent;
- (2) By notifying law enforcement officials and public welfare agencies in appropriate locations of the disappearance of the alleged decedent;
- (3) By engaging the services of an investigator. The costs of any search so directed shall be paid by the petitioner if there is no administration or by the estate of the decedent in case there is administration.

**Sec. 3-404 Formal testacy proceedings; written objections to probate.** Any party to a formal testacy proceeding who opposes the probate of a will for any reason shall state in his pleadings objections to probate of the will.

**Sec. 3-405 Formal testacy proceedings; uncontested cases; hearings and proof.** If a petition in a formal testacy proceeding is unopposed, the court may order probate or intestacy on the strength of the pleadings if satisfied that the conditions of section 3-409 have been met, or conduct a hearing in open court and

require proof of the matters necessary to support the order sought. If evidence concerning execution of the will is necessary, the affidavit or testimony of one of any attesting witnesses to the instrument is sufficient. If the affidavit or testimony of an attesting witness is not available, execution of the will may be proved by other evidence or affidavit.

**Sec. 3-406 Formal testacy proceedings; contested cases; testimony of attesting witnesses.** (a) If evidence concerning execution of an attested will which is not self-proved is necessary in contested cases, the testimony of at least one of the attesting witnesses, if within the State competent and able to testify, is required. Due execution of an attested will may be proved by other evidence.

(b) If the will is self-proved, compliance with signature requirements for execution is presumed and other requirements of execution are presumed subject to rebuttal without the testimony of any witness upon filing the will and the acknowledgment and affidavits annexed or attached thereto, unless there is proof of fraud or forgery affecting the acknowledgment or affidavit.

**Sec. 3-407 Formal testacy proceedings; burdens in contested cases; consolidation of proceedings.** (a) In contested cases, petitioners who seek to establish intestacy have the burden of establishing prima facie proof of death, venue, heirship. Proponents of a will have the burden of establishing prima facie proof of due execution in all cases, and, if they are also petitioners, prima facie proof of death and venue. Contestants of a will have the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake or revocation. Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof.

(b) If a will is opposed by the petition for probate of a later will revoking the former, it shall be determined first whether the later will is entitled to probate, and if a will is opposed by a petition for a declaration of intestacy, it shall be determined first whether the will is entitled to probate. The court has discretion to consolidate all proceedings regarding a decedent's estate.

**Sec. 3-408 Formal testacy proceedings; will construction; effect of final order in another jurisdiction.** A final order of a court of another state determining testacy or the validity or construction of a will, made in a proceeding involving notice pursuant to section 1-401 to the persons enumerated in section 3-403, must be accepted as determinative by the courts of this State to the extent required by *res judicata*, collateral estoppel, comity and full faith and credit.

**Sec. 3-409 Formal testacy proceedings; order; foreign will.** After the time required for any notice has expired, upon proof of notice, and after any hearing that may be necessary, if the court finds that the testator is dead, venue is proper and that the proceeding was commenced within the limitation prescribed by section 3-108, it shall determine, as applicable, the decedent's domicile at death, his heirs, his state of testacy, who shall serve as personal representative and whether or not informal proceedings may be maintained. Any will found to be valid and unrevoked shall be formally probated. Termination of any previous informal appointment of a personal representative, which may be appropriate in view of the relief requested and findings, is governed by section 3-612. The petition shall be dismissed or appropriate amendment allowed if the court is not

satisfied that the alleged decedent is dead. A will from a place which does not provide for probate of a will after death, may be proved for probate in this State by a duly authenticated certificate of its legal custodian that the copy introduced is a true copy and that the will has become effective under the law of the other place.

**Sec. 3-410 Formal testacy proceedings; probate of more than one will.** If two or more wills are offered for probate before a final order is entered in a formal testacy proceeding, more than one will may be probated if neither expressly revokes the other or contains provisions which work a total revocation by implication. If more than one will is probated, the order shall indicate what provisions control in respect to the nomination of an executor, if any. The order may, but need not, indicate how any provisions of a particular will are affected by the other will. After a final order in a formal testacy proceeding has been entered, no petition for probate of any other will of the decedent may be entertained, except incident to a petition to vacate or modify a previous probate order and subject to the conditions and time limits of sections 3-108 and 3-412.

**Sec. 3-411 Formal testacy proceedings; partial intestacy.** If it becomes evident in the course of a formal testacy proceeding that, though one or more wills are entitled to be probated, the decedent's estate is partially intestate, the court shall enter an order to that effect.

**Sec. 3-412 Formal testacy proceedings; effect of order; vacation.** Subject to appeal and subject to vacation as provided herein and in section 3-413, a formal testacy order under sections 3-409 to 3-411, including an order that the decedent left no valid will and determining heirs, is final as to all persons with respect to all issues concerning the decedent's estate that the court consisted or might have considered incident to its rendition relevant to the question of whether the decedent left a valid will, and to the determination of heirs, except that:

- (1) The court shall entertain a petition for modification or vacation of its order and probate of another will of the decedent under the conditions and within the time specified in section 3-108(a).
- (2) If intestacy of all or part of the estate has been ordered, the testacy status and determination of heirs of the decedent may be reconsidered under the conditions and within the time specified in section 3-108(b).
- (3) The order originally rendered in the formal testacy proceeding may be modified or vacated, if appropriate under the circumstances, by the order of probate of the later-offered will or the order concerning the testacy status of the decedent or the order redetermining heirs.
- (4) The finding of the fact of death is conclusive as to the alleged decedent only if notice of the hearing on the petition in the formal testacy proceeding was sent by registered or certified mail, return receipt requested, deliverable to the addressee only, addressed to the alleged decedent at his last known address and the court finds that a search under section 3-403(b) was made.

If the alleged decedent is not dead, even if notice was sent and search was made, he may recover estate assets in the hands of the personal representative. In addition to any remedies available to the alleged decedent by reason of any fraud

or intentional wrongdoing, the alleged decedent may recover any estate or its proceeds from distributees that is in their hands, or the value of distributions received by them, to the extent that any recovery from distributees is equitable in view of all of the circumstances.

**Sec. 3-413 Formal testacy proceedings; vacation of order for other cause.**

For good cause shown, an order in a formal testacy proceeding may be modified or vacated within the time allowed for appeal.

**Sec. 3-414 Formal proceedings concerning appointment of personal representative.** (a) A formal proceeding for adjudication regarding the priority or qualification of one who is an applicant for appointment as personal representative, or of one who previously has been appointed personal representative in informal proceedings, if an issue concerning the testacy of the decedent is or may be involved, is governed by section 3-402, as well as by this section. In other cases, the petition shall contain or adopt the statements required by section 3-301(1) and describe the question relating to priority or qualification of the personal representative which is to be resolved. If the proceeding precedes any appointment of a personal representative, it shall stay any pending informal appointment proceedings as well as any commenced thereafter. If the proceeding is commenced after appointment, the previously appointed personal representative, after receipt of notice thereof, shall refrain from exercising any power of administration except as necessary to preserve the estate or unless the court orders otherwise.

(b) After notice to interested persons, including all persons interested in the administration of the estate as successors under the applicable assumption concerning testacy, any previously appointed personal representative and any person having or claiming priority for appointment as personal representative, the court shall determine who is entitled to appointment under section 3-203, make a proper appointment and, if appropriate, terminate any prior appointment found to have been improper as provided in cases of removal under section 3-611.

## PART 5. SUPERVISED ADMINISTRATION

**Sec. 3-501 Supervised administration; nature of proceeding.** Supervised administration is a single proceeding to secure complete administration and settlement of a decedent's estate under the continuing authority of the court which extends until entry of an order approving distribution of the estate and discharging the personal representative or other order terminating the proceeding. A supervised personal representative is responsible to the court, as well as to the interested parties, and is subject to directions concerning the estate made by the court on its own motion or on the motion of any interested party. Except as otherwise provided in this Part, or as otherwise ordered by the court, a supervised personal representative has the same duties and powers as a personal representative who is not supervised.

**Sec. 3-502 Supervised administration; when required; petition; order.** A petition for supervised administration shall be filed for any estate subject to probate proceedings in this State if the gross value thereof is over \$30,000; provided however, if probate proceedings were commenced informally and the

file is transferred pursuant to section 3-706(b), no new petition need be filed. A petition for supervised administration may be filed by any interested person or by a personal representative at any time or the prayer for supervised administration may be joined with a petition in a formal testacy or appointment proceeding, but, if the estate qualifies for informal proceedings, the court may deny a petition for supervised administration filed by some one other than the personal representative for good cause. If the testacy of the decedent and the priority and qualification of any personal representative have not been adjudicated previously, the petition for supervised administration shall include the matters required of a petition in a formal testacy proceeding and the notice requirements and procedures applicable to a formal testacy proceeding apply. If not previously adjudicated, the court shall adjudicate the testacy of the decedent and questions relating to the priority and qualifications of the personal representative in any case involving a request for supervised administration even though the request for supervised administration may be denied. After notice to interested persons pursuant to section 1-401, the court shall order supervised administration of a decedent's estate:

- (1) If the gross value of the estate subject to probate proceedings in this State is over \$30,000;
- (2) If the decedent's will directs supervised administration, unless the court finds that circumstances bearing on the need for supervised administration have changed since the execution of the will and that there is no necessity for supervised administration;
- (3) If the decedent's will directs unsupervised administration, only upon a finding that it is necessary for protection of persons interested in the estate; or
- (4) In other cases if the court finds that supervised administration is necessary under the circumstances.

**Sec. 3-503 Supervised administration; effect on other proceedings.** (a) The pendency of a proceeding for supervised administration of a decedent's estate stays action on any informal application then pending or thereafter filed.

(b) If a will has been previously probated in informal proceedings, the effect of the filing of a petition for supervised administration is as provided for formal testacy proceedings by section 3-401.

(c) After he has received notice of the filing of a petition for supervised administration, a personal representative who has been appointed previously shall not exercise his power to distribute any estate. The filing of the petition does not affect his other powers and duties unless the court restricts the exercise of any of them pending full hearing on the petition.

**Sec. 3-504 Supervised administration; powers of personal representative.** Unless restricted by the court, a supervised personal representative has, without interim orders approving exercise of a power, all powers of personal representatives under this chapter, but he shall not exercise his power to make a final distribution of the estate without prior order of the court. Any other restriction on the power of a personal representative which may be ordered by the court must be endorsed on his letters of appointment and, unless so endorsed, is ineffective as to persons dealing in good faith with the personal representative.

**Sec. 3-505 Supervised administration; interim orders; distribution and closing orders.** Unless otherwise ordered by the court, supervised administration is terminated by order in accordance with time restrictions, notices and contents of orders prescribed for proceedings under section 3-1001. Interim orders approving or directing partial distributions or granting other relief may be issued by the court at any time during the pendency of a supervised administration on the application of the personal representative or any interested person.

## **PART 6. PERSONAL REPRESENTATIVE: APPOINTMENT, CONTROL AND TERMINATION OF AUTHORITY**

**Sec. 3-601 Qualification.** (a) To be entitled to serve as a personal representative in this State:

(1) A natural person must be eighteen years of age or above and be a resident of this State; and

(2) A corporation must be actually engaged in doing business in this State.

(b) If a proposed personal representative under (a) (2) above is not either a trust company qualified under chapter 406 or a bank with authority to engage in trust business under section 403-33, the registrar or the court shall determine whether or not the proposed personal representative of the estate has the experience and capacity to effectively serve as a personal representative, and whether or not the character, financial responsibility, and general fitness of the officers and the directors of the proposed personal representative are such as to command the confidence of the community and warrant the belief that the office of personal representative will be honestly and efficiently managed. If the registrar of the court determines that the proposed personal representative is so experienced and capable and its personnel does possess such qualities, the registrar of the court shall appoint the corporation as personal representative conditioned upon the posting of a bond under Part 6 in such amount as seems prudent under the circumstances of the estate.

(c) Prior to receiving letters, a personal representative shall qualify by filing with the registrar or the court any required bond and a statement of acceptance of the duties of the office; provided, however, that acceptance shall be presumed and no such statement shall be necessary if the personal representative was the applicant or petitioner who initiated the proceeding seeking appointment of himself as personal representative.

**Sec. 3-602 Acceptance of appointment; consent to jurisdiction.** By accepting appointment, a personal representative submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be delivered to the personal representative and his attorney, or mailed to them by ordinary first class mail at the addresses as listed in the application or petition for appointment or as thereafter reported to the court and to the addresses as then known to the petitioner.

**Sec. 3-603 Bond; when required.** (a) No bond is required of a personal representative appointed in informal proceeding, except (1) upon the appointment of a special administrator; (2) when an executor or other personal represen-

tative is appointed to administer an estate under a will containing an express requirement of bond; (3) when bond is required under section 3-601(b) or 3-605; or (4) when the registrar determines that the best interests of the estate and interested persons require one.

(b) No bond is required of a personal representative appointed in formal proceedings except as required in section 3-601(b), unless the court, on its own motion or at the request of an interested person, determines that the best interests of the estate and interested person, require one.

**Sec. 3-604 Bond amount; security; procedure; reduction.** If bond is required and the provisions of the will or order do not specify the amount, the person qualifying shall file a statement under oath with the registrar or the court indicating his best estimate of the income expected from the personal and real estate during the next year, and he shall execute and file a bond with the registrar or the court, or give other suitable security, in an amount not less than the sum of such estimate and the estimate of the value of the decedent's estate contained in his application or petition. The registrar or the court shall determine that the bond is duly executed by a corporate surety, or one or more individual sureties whose performance is secured by pledge of personal property, mortgage on real property or other adequate security. The registrar or the court may permit the amount of the bond to be reduced by the value of assets of the estate deposited with a domestic financial institution (as defined in section 6-101) in a manner that prevents their unauthorized disposition. Upon the application or petition of the personal representative or another interested person, the registrar or the court may excuse a requirement of bond (other than as required by section 3-601(b)), increase or reduce the amount of the bond, release sureties, or permit the substitution of another bond with the same or different sureties.

**Sec. 3-605 Demand for bond by interested person.** Any person apparently having an interest in the estate worth in excess of \$1,000, or any creditor having a claim in excess of \$1,000, may make a written demand that a personal representative give bond. The demand shall state the reasons therefor, shall be filed with the registrar or the court, as appropriate, and a copy mailed to the personal representative, if appointment and acceptance have occurred. If the registrar or the court determines that a bond should be required, an order to that effect shall be entered. After he has received notice of such order and until the filing of the bond or cessation of the requirement of bond, the personal representative shall refrain from exercising any powers of his office except as necessary to preserve the estate. Failure of the personal representative to meet a requirement of bond by giving suitable bond within thirty days after receipt of notice is cause for his removal and appointment of a successor personal representative.

**Sec. 3-606 Terms and conditions of bonds.** (a) The following requirements and provisions apply to any bond required by this Part:

- (1) Bonds shall name the judge presiding over the probate calendar in the judicial circuit or his successors as obligee for the benefit of the persons interested in the estate.
- (2) No bond hereunder shall be conditioned so as to relieve the surety from liability either on account of any breach by the personal representative

of his duties to the court, the registrar, the estate or interested persons, or on account of a failure by the personal representative to perform the acts or duties required of him by this chapter, and any provision of a bond which seeks to so limit the surety's liability shall be void and of no effect.

- (3) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the personal representative and with each other.
- (4) The address of sureties shall be stated in the bond.
- (5) By executing an approved bond of a personal representative, the surety consents to the jurisdiction of the court in the judicial circuit in which the probate proceedings are or were maintained in any proceedings pertaining to the acts or duties of the personal representative and naming the surety as a party. Notice of any such proceeding shall be served on the surety in the manner provided by chapter 634.
- (6) On petition of a successor personal representative, any other personal representative of the same decedent, or any interested person, a proceeding in the court may be initiated against a surety for breach of the obligation of the bond of the personal representative.
- (7) The bond of the personal representative is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(b) No action or proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

**Sec. 3-607 Order restraining personal representative.** (a) On petition of any person who appears to have an interest in the estate, the court by temporary order may restrain a personal representative from performing specified acts of administration, disbursement, or distribution, or exercise of any powers or discharge of any duties of his office, or make any other order to secure proper performance of his duty, if it appears to the court that the personal representative otherwise may take some action which would jeopardize unreasonably the interest of the petitioner or of some other interested person. Persons with whom the personal representative may transact business may be made parties.

(b) The matter shall be set for hearing as provided by the rules of court but in all events within ten days unless the parties otherwise agree. Notice as the court directs shall be given to the personal representative and his attorney of record, if any, and to any other parties named defendant in the petition.

**Sec. 3-608 Termination of appointment; general.** Termination of appointment of a personal representative occurs as indicated in sections 3-609 to 3-612, inclusive. Termination ends the right and power pertaining to the office of personal representative as conferred by this chapter or any will, except that a personal representative, at any time prior to distribution or until restrained or enjoined by court order, may perform acts necessary to protect the estate and may deliver the assets to a successor representative. Termination does not discharge a personal representative from liability for transactions or omissions occurring before termination, or relieve him of the duty to preserve assets subject to his



control, to account therefor and to deliver the assets. Termination does not affect the jurisdiction of the court over the personal representative, but terminates his authority to represent the estate in any pending or future proceeding.

**Sec. 3-609 Termination of appointment; death or disability.** The death of a personal representative or the appointment of a guardian of the property for the estate of a personal representative, terminates his appointment. Until appointment and qualification of a successor or special representative to replace the deceased or protected representative, the representative of the estate of the deceased or protected personal representative, if any, has the duty to protect the estate possessed and being administered by his decedent or ward at the time his appointment terminates, has the power to perform acts necessary for protection and shall account for and deliver the estate assets to a successor or special personal representative upon his appointment and qualification.

**Sec. 3-610 Termination of appointment; voluntary.** Except to the extent required on account of any proceeding then pending against the personal representative of the estate:

(a) An order closing an estate as provided in section 3-1001 or 3-1003 terminates an appointment of a personal representative.

(b) A personal representative may resign his position by filing a written statement of resignation with the registrar or the court after he has given at least fifteen days written notice to the persons known to be interested in the estate. If no one applies or petitions for appointment of a successor representative within the time indicated in the notice, the filed statement of resignation is ineffective as a termination of appointment and in any event is effective only upon the appointment and qualification of a successor representative and delivery of the assets to him.

**Sec. 3-611 Termination of appointment by removal; cause; procedure.** (a) A person interested in the estate may petition for removal of a personal representative for cause at any time. Upon filing of the petition, the court shall fix a time and place for hearing. Notice shall be given by the petitioner to the personal representative, and to other persons as the court may order. Except as otherwise ordered as provided in section 3-607, after receipt of notice of removal proceedings, the personal representative shall not act except to account, to correct maladministration or preserve the estate. If removal is ordered, the court also shall direct by order the disposition of the assets remaining in the name of, or under the control of, the personal representative being removed.

(b) Cause for removal exists when removal would be in the best interests of the estate, or if it is shown that a personal representative or the person seeking his appointment intentionally misrepresented material facts in the proceedings leading to his appointment, or that the personal representative has disregarded an order of the court, has become incapable of discharging the duties of his office, or has mismanaged the estate or failed to perform any duty pertaining to the office. Unless the decedent's will directs otherwise, a personal representative appointed at the decedent's domicile, incident to securing appointment of himself or his nominee as ancillary personal representative, may obtain removal of

another who was appointed personal representative in this State to administer local assets.

**Sec. 3-612 Termination of appointment; change of testacy status.** Except as otherwise ordered in formal proceedings, the probate of a will subsequent to the appointment of a personal representative in intestacy or under a will which is superseded by formal probate of another will, or the vacation of an informal probate of a will subsequent to the appointment of the personal representative thereunder, does not terminate the appointment of the personal representative although his powers may be reduced as provided in section 3-401. Termination occurs upon appointment in informal or formal appointment proceedings of a person entitled to appointment under the later assumption concerning testacy. If no request for new appointment is made in any such proceedings, changing the assumption concerning testacy, the previously appointed personal representative upon request shall be appointed personal representative under the subsequently probated will, or as in intestacy as the case may be.

**Sec. 3-613 Successor personal representative.** Parts 3 and 4 of this Article govern proceedings for appointment of a personal representative to succeed one whose appointment has been terminated. After appointment and acceptance, a successor personal representative may be substituted in all actions and proceedings to which the former personal representative was a party, and no notice, process or claim which was given or served upon the former personal representative need be given to or served upon the successor in order to preserve any position or right the person giving the notice or filing the claim may thereby have obtained or preserved with reference to the former personal representative. Except as otherwise ordered by the court, the successor personal representative has the powers and duties in respect to the continued administration which the former personal representative would have had if his appointment had not been terminated.

**Sec. 3-614 Special administrator; appointment.** A special administrator may be appointed:

- (1) Informally by the registrar on the application of any interested person when necessary to protect the estate of a decedent prior to the appointment of a general personal representative or if a prior appointment has been terminated as provided in section 3-609;
- (2) In a formal proceeding by order of the court on the petition of any interested person and finding, after notice and hearing, that appointment is necessary to preserve the estate or to secure its proper administration including its administration in circumstances where a general personal representative cannot or should not act. If it appears to the court that an emergency exists, appointment may be ordered without notice.

**Sec. 3-615 Special administrator; who may be appointed.** (a) If a special administrator is to be appointed pending the probate of a will which is the subject of a pending application or petition for probate, the person named executor in the will shall be appointed if available, and qualified.

(b) In other cases, any proper person may be appointed special administrator.

**Sec. 3-616 Special administrator; appointed informally; powers and duties.**

A special administrator appointed by the registrar in informal proceedings pursuant to section 3-614(1) has the duty to collect and manage the assets of the estate, to preserve them, to account therefor and to deliver them to the general personal representative upon his acceptance. The special administrator has the power of a personal representative under this chapter necessary to perform his duties.

**Sec. 3-617 Special administrator; formal proceedings; power and duties.**

A special administrator appointed by order of the court in any formal proceeding has the power of a general personal representative except as limited in the appointment and duties as prescribed in the order. The appointment may be for a specified time, to perform particular acts or on other terms as the court may direct.

**Sec. 3-618 Termination of appointment; special administrator.**

The appointment of a special administrator terminates in accordance with the provisions of the order of appointment or on the appointment of a general personal representative. In other cases, the appointment of a special administrator is subject to termination as provided in sections 3-608 through 3-611.

**PART 7. DUTIES AND POWERS OF  
PERSONAL REPRESENTATIVES**

**Sec. 3-701 Time of accrual of duties and powers.**

The duties and powers of a personal representative commence upon his appointment. The powers of a personal representative relate back in time to give acts by the persons appointed which are beneficial to the estate occurring prior to appointment to the same effect as those occurring thereafter. Prior to appointment, a person named executor in a will may carry out written instructions of the decedent relating to his body, funeral and burial arrangements. A personal representative may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative.

**Sec. 3-702 Priority among different letters.**

A person to whom general letters are issued first has exclusive authority under the letters until his appointment is terminated or modified. If, through error, general letters are afterwards issued to another, the first appointed representative may recover any property of the estate in the hands of the representative subsequently appointed, but the acts of the latter done in good faith before notice of the first letters are not void for want of validity of appointment.

**Sec. 3-703 General duties; relation and liability to persons interested in estate; standing to sue.**

(a) A personal representative is a fiduciary who shall observe the standards of care applicable to trustees as described by section 7-302. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this chapter, and as expeditiously and efficiently as is consistent with the best interests

of the estate. He shall use the authority conferred upon him by this chapter, the terms of the will, if any, and any order in proceedings to which he is party for the best interests of successors to the estate.

(b) A personal representative shall not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration, including closing as described in Part 10, an informally probated will is authority to administer and distribute the estate according to its terms. An order of appointment of a personal representative, whether issued in informal or formal proceedings, is authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding questioning his appointment or fitness to continue, or a supervised administration proceeding. Nothing in this section affects the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants, the surviving spouse, any minor and dependent children and any pretermitted child of the decedent as described elsewhere in this chapter.

(c) Except as to proceedings which do not survive the death of the decedent, a personal representative of a decedent domiciled in this State at his death has the same standing to sue and be sued in the courts of this State and the courts of any other jurisdiction as his decedent has immediately prior to death.

**Sec. 3-704 Personal representative to proceed without court order; exceptions.** A personal representative shall proceed expeditiously with the settlement and distribution of a decedent's estate and, except as otherwise provided in section 3-504, in Part 10 hereof, or in section 531-29, or as otherwise specified or ordered in regard to a supervised personal representative, do so without adjudication, order or direction of the court, but he may invoke the jurisdiction of the court, in proceedings authorized by this chapter, to resolve questions concerning the estate or its administration.

**Sec. 3-705 (Reserved)**

**Sec. 3-706 Duty of personal representative; inventory; transfer from informal to supervised administration.** (a) Within thirty days after his appointment, in a supervised administration, or on or before filing the statement specified in section 3-1003 in an informal proceeding, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall prepare and file with the registrar or the court, as appropriate, an inventory of property owned by the decedent at the time of his death, listing it with reasonable detail, and indicating as to each listed item, its fair market value as of the date of the decedent's death, if known with reasonable accuracy, and the type and amount of any encumbrance that may exist with reference to any item. The personal representative shall send a copy of the inventory to interested persons who request it.

(b) If the probate proceedings were commenced informally but the inventory and/or any appraisal reveal, or the personal representative otherwise learns, that the gross value of the estate is in excess of \$30,000, the personal represen-

tative shall forthwith:

- (1) Commence a supervised proceeding by instructing the registrar to transfer the file to the court; and
- (2) Notify all interested persons pursuant to section 1-401 of such transfer; provided, however, no newspaper publication of the transfer shall be required.

**Sec. 3-707 Use of appraisers.** The registrar or the court may appoint a qualified and disinterested appraiser for the purpose of ascertaining the fair market value as of the date of the decedent's death of any asset the value of which appears to the registrar or the court to be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser shall be indicated on the appraisal with the item or items he appraised. The cost of the appraisal shall be borne by the estate.

**Sec. 3-708 Duty of personal representative; supplementary inventory.** If any property not included in the original inventory comes to the knowledge of a personal representative or if the personal representative learns that the value or description indicated in the original inventory for any item is erroneous or misleading, he shall file a supplementary inventory showing the market value as of the date of the decedent's death if known with reasonable certainty of the new item or the revised market value or descriptions, and shall send a copy of the supplementary inventory to interested persons who received the original inventory.

**Sec. 3-709 Duty of personal representative; possession of estate.** Except as otherwise provided by a decedent's will, every personal representative has a right to, and shall take possession or control of, the decedent's property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled thereto unless or until, in the judgment of the personal representative, possession of the property by him will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by an heir or devisee is conclusive evidence, in any action against the heir or devisee for possession thereof, that the possession of the property by the personal representative is necessary for purposes of administration. The personal representative shall pay taxes on, and take all steps reasonably necessary for the management, protection and preservation of, the estate in his possession. He may maintain an action to recover possession of property or to determine the title thereto.

**Sec. 3-710 Power to avoid transfers.** The property liable for the payment of unsecured debts of a decedent includes all property transferred by him by any means which is in law void or voidable as against his creditors, and subject to prior liens, the right to recover this property, so far as necessary for the payment of unsecured debts of the decedent, is exclusively in the personal representative.

**Sec. 3-711 Powers of personal representatives; in general.** Until termination of his appointment a personal representative has the same power over the title to property of the estate that an absolute owner would have, in trust

however, for the benefit of the creditors and others interested in the estate. This power may be exercised without notice, hearing, or order of court, except as provided in section 531-20.

**Sec. 3-712 Improper exercise of power; breach of fiduciary duty.** If the exercise of power concerning the estate is improper, the personal representative is liable to interested persons for damage or loss resulting from breach of his fiduciary duty to the same extent as a trustee of an express trust. The rights of purchasers and others dealing with a personal representative shall be determined as provided in sections 3-713 and 3-714.

**Sec. 3-713 Sale, encumbrance or transaction involving conflict of interest.** Any sale or encumbrance to the personal representative, his spouse, agent or attorney, or any corporation or trust in which he has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest on the part of the personal representative, must be approved by the registrar or the court, as appropriate, after notice pursuant to section 1-401 (except that no newspaper publication is required) to interested persons, and any such transaction which is not so approved is voidable by any person interested in the estate.

**Sec. 3-714 Persons dealing with personal representative; protection.** A person who in good faith either assists a personal representative or deals with him for value is protected as if the personal representative properly exercised his power. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise. Except for restrictions on powers of supervised personal representatives which are endorsed on letters as provided in section 3-504, no provision in any will or order of court purporting to limit the power of a personal representative is effective except as to persons with actual knowledge thereof. A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

**Sec. 3-715 Transactions authorized for personal representatives; exceptions.** Except as restricted or otherwise provided by the will or by an order in a formal proceeding and subject to section 531-29, and the priorities stated in section 3-902, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

- (1) Retain assets owned by the decedent pending distribution or liquidation including those in which the representative is personally interested or which are otherwise improper for trust investment;
- (2) Receive assets from fiduciaries, or other sources;
- (3) Perform, compromise or refuse performance of the decedent's contracts that continue as obligations of the estate, as he may determine under the circumstances. In performing enforceable contracts by the

- decedent to convey or lease land, the personal representative, among other possible courses of action, may:
- (i) Execute and deliver a deed of conveyance for cash payment of all sums remaining due on the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or
  - (ii) Deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement;
- (4) Satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;
  - (5) If funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including moneys received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements or other prudent investments which would be reasonable for use by trustees generally;
  - (6) Acquire or, subject to section 531-29, dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale; and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;
  - (7) Make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing or erect new party walls or buildings;
  - (8) Subdivide, develop or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; or adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate easements to public use without consideration;
  - (9) Enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration;
  - (10) Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;
  - (11) Abandon property when, in the opinion of the personal representative, it is valueless, or is so encumbered, or is in condition that it is of no benefit to the estate;
  - (12) Vote stocks or other securities in person or by general or limited proxy;
  - (13) Pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;
  - (14) Hold a security in the name of a nominee or in other form without disclosure of the interest of the estate but the personal representative is liable for any act of the nominee in connection with the security so held;
  - (15) Insure the assets of the estate against damage, loss and liability and

- himself against liability as to third persons;
- (16) Borrow money with or without security to be repaid from the estate assets or otherwise; and advance money for the protection of the estate;
  - (17) Effect a fair and reasonable compromise with any debtor or obligor, or extend, renew or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge or other lien upon property of another person, he may, in lieu of foreclosure, accept a conveyance or transfer or encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien;
  - (18) Pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate;
  - (19) Sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprises;
  - (20) Allocate items of income or expense to either estate income or principal, as permitted or provided by law;
  - (21) Employ persons, including attorneys, auditors, appraisers, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of his administrative duties; act without independent investigation upon their recommendations; and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;
  - (22) Prosecute or defend claims, or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of his duties;
  - (23) Subject to section 531-29, sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit, or for part cash and part credit, and with or without security for unpaid balances;
  - (24) Continue any unincorporated business or venture in which the decedent was engaged at the time of his death (i) in the same business form for a period of not more than four months from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business including good will; (ii) in the same business form for any additional period of time that may be approved by order of the court in a formal proceeding to which the persons interested in the estate are parties; or (iii) throughout the period of administration if the business is incorporated by the personal representative and if none of the probable distributees of the business who are competent adults object to its incorporation and retention in the estate;
  - (25) Incorporate any business or venture in which the decedent was engaged at the time of his death;
  - (26) Provide for exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate;
  - (27) Satisfy and settle claims and distribute the estate as provided in this chapter.



**Sec. 3-716 Powers and duties of successor personal representative.** A successor personal representative has the same power and duty as the original personal representative to complete the administration and distribution of the estate, as expeditiously as possible, but he shall not exercise any power expressly made personal to the executor named in the will.

**Sec. 3-717 Corepresentatives; when joint action required.** If two or more persons are appointed corepresentatives and unless the will provides otherwise, the concurrence of all is required on all acts connected with the administration and distribution of the estate. This restriction does not apply when any corepresentative receives and receipts for property due the estate, when the concurrence of all cannot readily be obtained in the time reasonably available for emergency action necessary to preserve the estate, or when a corepresentative has been delegated to act for the others. Persons dealing with a corepresentative if actually unaware that another has been appointed to serve with him or if advised by the personal representative with whom they deal that he has authority to act alone for any of the reasons mentioned herein, are as fully protected as if the person with whom they dealt had been the sole personal representative.

**Sec. 3-718 Powers of surviving personal representative.** Unless the terms of the will otherwise provide, every power exercisable by personal corepresentatives may be exercised by the one or more remaining after the appointment of one or more is terminated, and if one of two or more nominated as coexecutors is not appointed, those appointed may exercise all the powers incident to the office.

**Sec. 3-719 Compensation of personal representative.** A personal representative is entitled to reasonable compensation for his services, which compensation shall be set forth in his final accounts and shall be approved by the registrar or the court as provided in sections 3-1001 or 3-1003. If a will provides for compensation of the personal representative and there is no contract with the decedent regarding compensation, he may renounce the provision before qualifying and be entitled to reasonable compensation. A personal representative also may renounce his right to all or any part of the compensation. A written renunciation of the fee may be filed with the court.

**Sec. 3-720 Expenses in estate litigation.** If any personal representative or person nominated as personal representative defends or prosecutes any proceeding in good faith, whether successful or not he is entitled to receive from the estate his necessary expenses and disbursements including reasonable attorneys' fees incurred.

**Sec. 3-721 Compensation of employees of estate.** The propriety of employment of any person by a personal representative including any attorney, auditor, investment advisor or other specialized agent or assistant, the reasonableness of the compensation of any person so employed, or the reasonableness of the compensation determined by the personal representative for his own services, shall be reviewed by the court or the registrar at the time of its approval of the final account. Any person who has received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.

## PART 8. CREDITORS' CLAIMS

**Sec. 3-801 Notice to creditors; transfer of claims.** (a) Unless notice has already been given under this section, a person applying or petitioning for appointment of a personal representative shall publish a notice once a week for three successive weeks in a newspaper of general circulation in the judicial circuit in which the application or petition is filed announcing his application or petition, the name of the person nominated as personal representative, and notifying creditors of the estate to present their claims to the nominee within four months after the date of the first publication of the notice or be forever barred. The notice shall be combined with any published notice of the pendency of the probate proceedings.

(b) If the application or petition is denied, the nominee shall promptly deliver all claims to the person who is appointed. Failure to deliver shall render the nominee liable for any damages suffered by the claimants.

**Sec. 3-802 Statutes of limitations.** Unless an estate is insolvent, the personal representative, with the consent of all successors whose interests would be affected, may waive any defense of limitations available to the estate. If the defense is not waived, no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid. The running of any statute of limitations measured from some other event than death and advertisement for claims against a decedent is suspended during the four months following the decedent's death but resumes thereafter as to claims not barred pursuant to sections which follow. For purposes of any statute of limitations, the proper presentation of a claim under section 3-804 is equivalent to commencement of a proceeding on the claim.

**Sec. 3-803 Limitations on presentation of claims.** (a) All claims against a decedent's estate which arose before the death of the decedent, including claims of the State and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

- (1) Within four months after the date of the first publication of notice to creditors if notice is given in compliance with section 3-801; provided, claims barred by the nonclaim statute at the decedent's domicile before the first publication for claims in this State are also barred in this State.
- (2) Within three years after the decedent's death, if notice to creditors has not been published.

(b) All claims against a decedent's estate which arise at or after the death of the decedent, including claims of the State and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

- (1) A claim based on a contract with the personal representative, within four months after performance by the personal representative is due;

- (2) Any other claim, within four months after it arises.
- (c) Nothing in this section affects or prevents:
  - (1) Any proceeding to enforce any mortgage, pledge, lien, or other secured interest upon property of the estate; or
  - (2) To the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by liability insurance, but any such proceeding must be commenced within two years of the occurrence of the event insured against.

**Sec. 3-804 Manner of presentation of claims.** Claims against a decedent's estate may be presented as follows:

- (1) The claimant may deliver or mail to the personal representative a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed, or may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court. The claim is deemed presented on the first to occur of receipt of the written statement of claim by the personal representative, or the filing of the claim with the court. If a claim is not yet due, the date when it will become due shall be stated. If the claim is contingent or unliquidated, the nature of the uncertainty shall be stated. If the claim is secured, the security shall be described. Failure to describe correctly the security, the nature of any uncertainty, and the due date of a claim not yet due does not invalidate the presentation made.
- (2) The claimant may commence a proceeding against the personal representative in any court where the personal representative may be subjected to jurisdiction, to obtain payment of his claim against the estate, but the commencement of the proceeding must occur within the time limited for presenting the claim. No presentation of claim is required in regard to matters claimed in proceedings against the decedent which were pending at the time of his death.
- (3) If a claim is presented under subsection (1), no proceeding thereon may be commenced more than ninety days after the personal representative has mailed by certified or registered mail, deliverable to the addressee only, return receipt requested, a notice of disallowance; but, in the case of a claim which is not presently due or which is contingent or unliquidated, the personal representative may consent to an extension of the ninety-day period, or to avoid injustice the court, on petition, may order an extension of the ninety-day period, but in no event shall the extension run beyond the applicable statute of limitations.

**Sec. 3-805 Classification of claims.** (a) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

- (1) Costs and expenses of administration;
- (2) Reasonable funeral expenses;
- (3) Homestead allowance under section 2-401;
- (4) Exempt property under section 2-402;

- (5) Family allowance under sections 2-403 and 2-404;
- (6) Debts and taxes with preference under federal law;
- (7) Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him;
- (8) Debts and taxes with preference under other laws of this State;
- (9) All other claims.

(b) No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due.

**Sec. 3-806 Allowance and disallowance of claims.** (a) As to claims presented in the manner described in section 3-804 within the time limit prescribed in section 3-803, the personal representative may but is not required to mail a notice to any claimant stating that the claim has been disallowed. If, after allowing or disallowing a claim, the personal representative changes his decision concerning the claim, he shall notify the claimant. The personal representative may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run and the claim has been barred. Every claim which is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than ninety days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar.

(b) Upon the petition of the personal representative or of a claimant in a proceeding for the purpose, the court may allow in whole or in part any claim or claims presented to the personal representative or filed with the clerk of the court in due time and not barred by subsection (a) of this section. Notice in this proceeding shall be given to the claimant, the personal representative and those other persons interested in the estate as the court may direct by order entered at the time the proceeding is commenced.

(c) A judgment in a proceeding in another court against a personal representative to enforce a claim against a decedent's estate is an allowance of the claim.

(d) Unless otherwise provided in any judgment in another court entered against the personal representative, allowed claims bear interest at the legal rate for the period commencing sixty days after the time for original presentation of the claim has expired unless based on a contract making a provision for interest, in which case they bear interest in accordance with that provision.

**Sec. 3-807 Payment of claims.** (a) Upon the expiration of four months from the date of the first publication of the notice to creditors, the personal representative shall proceed to pay the claims allowed against the estate in the order of priority prescribed, after making provision for homestead, family and support allowances, for claims already presented which have not yet been allowed or whose allowance has been appealed, and for unbarred claims which may yet be presented, including costs and expenses of administration. By petition to the

court in a proceeding for the purpose, or by appropriate motion if the administration is supervised, a claimant whose claim has been allowed but not paid as provided herein may secure an order directing the personal representative to pay the claim to the extent that funds of the estate are available for the payment.

(b) The personal representative at any time may pay any just claim which has not been barred, with or without formal presentation, but, if the estate has insufficient assets with which to pay all other claims with equal or greater priority, he is personally liable to any other claimant whose claim is allowed and who is injured by such payment if:

- (1) The payment was made before the expiration of the time limit stated in subsection (a) and the personal representative failed to require the payee to give adequate security for the refund of any of the payment necessary to pay other claimants; or
- (2) The payment was made, due to the negligence or wilful fault of the personal representative, in such manner as to deprive the injured claimant of his priority.

**Sec. 3-808 Individual liability of personal representative.** (a) Unless otherwise provided in the contract, a personal representative is personally liable on contracts entered into in his fiduciary capacity in the course of administration of the estate.

(b) A personal representative is personally liable for obligations arising from ownership or control of the estate and for torts committed in the course of administration of the estate.

(c) Claims based on contracts entered into by a personal representative in his fiduciary capacity, on obligations arising from ownership or control of the estate or on torts committed in the course of estate administration may be asserted against the estate by proceeding against the personal representative in his fiduciary capacity, whether or not the personal representative is personally liable therefor.

(d) Issues of liability as between the estate and the personal representative personally may be determined in a proceeding for accounting, surcharge or indemnification or other appropriate proceeding.

**Sec. 3-809 Secured claims.** Payment of a secured claim is upon the basis of the amount allowed if the creditor surrenders his security; otherwise payment is upon the basis of one of the following:

- (1) If the creditor exhausts his security before receiving payment, unless precluded by other law upon the amount of the claim allowed less the fair value of the security; or
- (2) If the creditor does not have the right to exhaust his security or has not done so, upon the amount of the claim allowed less the value of the security determined by converting it into money according to the terms of the agreement pursuant to which the security was delivered to the creditor, or by the creditor and personal representative by agreement, arbitration, compromise or litigation.

**Sec. 3-810 Claims not due and contingent or unliquidated claims.** (a) If a claim which will become due at a future time or a contingent or unliquidated

claim becomes due or certain before the distribution of the estate, and if the claim has been allowed or established by a proceeding, it is paid in the same manner as presently due and absolute claims of the same class.

(b) In other cases the personal representative or, on petition of the personal representative or the claimant in a special proceeding for the purpose, the court may provide for payment as follows:

- (1) If the claimant consents, he may be paid the present or agreed value of the claim, taking any uncertainty into account;
- (2) Arrangement for future payment, or possible payment, on the happening of the contingency or on liquidation may be made by creating a trust, giving a mortgage, obtaining a bond or security from a distributee, or otherwise.

**Sec. 3-811 Counterclaims.** In allowing a claim the personal representative may deduct any counterclaim which the estate has against the claimant. In determining a claim against an estate a court shall reduce the amount allowed by the amount of any counterclaims and, if the counterclaims exceed the claim, render a judgment against the claimant in the amount of the excess. A counterclaim, liquidated or unliquidated, may arise from a transaction other than that upon which the claim is based. A counterclaim may give rise to relief exceeding in amount or different in kind from that sought in the claim.

**Sec. 3-812 Execution and levies prohibited.** No execution may issue upon nor may any levy be made against any property of the estate under any judgment against a decedent or a personal representative, but this section shall not be construed to prevent the enforcement of mortgages, pledges, liens or other secured interests upon real or personal property in an appropriate proceeding.

**Sec. 3-813 Compromise of claims.** When a claim against the estate has been presented in any manner, the personal representative may, if it appears for the best interest of the estate, compromise the claim, whether due or not due, absolute or contingent, liquidated or unliquidated.

**Sec. 3-814 Encumbered assets.** If any assets of the estate are encumbered by mortgage, pledge, lien, or other secured interest, the personal representative may pay the encumbrance or any part thereof, renew or extend any obligation secured by the encumbrance or convey or transfer the assets to the creditor in satisfaction of his lien, in whole or in part, whether or not the holder of the encumbrance has presented a claim, if it appears to be for the best interest of the estate. Payment of an encumbrance does not increase the share of the distributee entitled to the encumbered assets unless the distributee is entitled to exoneration.

**Sec. 3-815 Administration in more than one state; duty of personal representative.** (a) All assets of estates being administered in this State are subject to all claims, allowances and charges existing or established against the personal representative wherever appointed.

(b) If the estate either in this State or as a whole is insufficient to cover all family exemptions and allowances determined by the law of the decedent's domicile, prior charges and claims, after satisfaction of the exemptions, allowances and charges, each claimant whose claim has been allowed either in

this State or elsewhere in administrations of which the personal representative is aware, is entitled to receive payment of an equal proportion of his claim. If a preference or security in regard to a claim is allowed in another jurisdiction but not in this State, the creditor so benefited is to receive dividends from local assets only upon the balance of his claim after deducting the amount of the benefit.

(c) In case the family exemptions and allowances, prior charges and claims of the entire estate exceed the total value of the portions of the estate being administered separately and this State is not the state of the decedent's last domicile, the claims allowed in this State shall be paid their proportion if local assets are adequate for the purpose, and the balance of local assets shall be transferred to the domiciliary personal representative. If local assets are not sufficient to pay all claims allowed in this State the amount to which they are entitled, local assets shall be marshalled so that each claim allowed in this State is paid its proportion as far as possible, after taking into account all dividends on claims allowed in this State from assets in other jurisdictions.

**Sec. 3-816 Final distribution to domiciliary representative.** The estate of a nonresident decedent being administered by a personal representative appointed in this State shall, if there is a personal representative of the decedent's domicile willing to receive it, be distributed to the domiciliary personal representative for the benefit of the successors of the decedent unless (1) by virtue of the decedent's will, if any, and applicable choice of law rules, the successors are identified pursuant to the local law of this State without reference to the local law of the decedent's domicile; (2) the personal representative of this State, after reasonable inquiry, is unaware of the existence or identity of a domiciliary personal representative; or (3) the court or the registrar orders otherwise in a proceeding for a closing order under section 3-1001 or 3-1003. In other cases, distribution of the estate of a decedent shall be made in accordance with the other Parts of this Article.

## PART 9. SPECIAL PROVISIONS RELATING TO DISTRIBUTION

**Sec. 3-901 Successors' rights.** The heirs and devisees are entitled to the estate in accordance with the terms of a probated will or the laws of intestate succession. Heirs and devisees may establish title by the order of distribution. Persons entitled to property by homestead allowance or exemption may establish title thereto by proof of the decedent's ownership, his death, and their relationship to the decedent. Successors take subject to all charges incident to administration, including the claims of creditors and allowances of surviving spouse and dependent children, and subject to the rights of others resulting from abatement, retainer, advancement, and ademption.

**Sec. 3-902 Distribution; order in which assets appropriated; abatement.** (a) Except as provided in subsection (b) and except as provided in connection with the share of the surviving spouse who elects to take an elective share, shares of distributees abate, with personal property being abated prior to real property, in the following order: (1) property not disposed of by the will; (2) residuary devises; (3) general devises; (4) specific devises. For purposes of abatement, a general devise charged on any specific property or fund is a specific devise to the extent of

the value of the property on which it is charged, and upon the failure or insufficiency of the property on which it is charged, a general devise to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.

(b) If the will expresses an order of abatement, or if the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in subsection (a), the shares of the distributees abate as may be found necessary to give effect to the intention of the testator.

(c) If the subject of a preferred devise is sold or used incident to administration, abatement shall be achieved by appropriate adjustments in, or contribution from other interests in the remaining assets.

**Sec. 3-903 Right of retainer.** The amount of a noncontingent indebtedness of a successor to the estate if due, or its present value if not due, shall be offset against the successor's interest; but the successor has the benefit of any defense which would be available to him in a direct proceeding for recovery of the debt.

**Sec. 3-904 (Reserved)**

**Sec. 3-905 Penalty clause for contest.** A provision in a will purporting to penalize any interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings.

**Sec. 3-906 Distribution in kind; valuation; method.** (a) Unless a contrary intention is indicated by the will, the distributable assets of a decedent's estate shall be distributed in kind to the extent possible through application of the following provisions:

- (1) A specific devisee is entitled to distribution of the thing devised to him, and a spouse or child who has selected particular assets of an estate as provided in section 2-402 shall receive the items selected.
- (2) Any homestead or family allowance or devise payable in money may be satisfied by value in kind provided:
  - (i) The person entitled to the payment has not demanded payment in cash;
  - (ii) The property distributed in kind is valued at fair market value as of the date of its distribution; and
  - (iii) No residuary devisee has requested that the asset in question remain a part of the residue of the estate.
- (3) For the purpose of valuation under paragraph (2) securities regularly traded on recognized exchanges, if distributed in kind, are valued at the price for the last sale of like securities traded on the business day prior to distribution, or if there was no sale on that day, at the median between amounts bid and offered at the close of that day. Assets consisting of sums owed the decedent or the estate by solvent debtors as to which there is no known dispute or defense are valued at the sum due with accrued interest or discounted to the date of distribution. For



assets which do not have readily ascertainable values, a valuation as of a date not more than thirty days prior to the date of distribution, if otherwise reasonable, controls. For purposes of facilitating distribution, the personal representative may ascertain the value of the assets as of the time of the proposed distribution in any reasonable way, including the employment of qualified appraisers, even if the assets may have been previously appraised.

- (4) The residuary estate shall be distributed in kind if there is no objection to the proposed distribution and it is practicable to distribute undivided interests. In other cases, residuary property may be converted into cash for distribution.

(b) After the probable charges against the estate are known, the personal representative may mail by registered or certified mail, return receipt requested, or deliver a proposal for distribution to all persons who have a right to object to the proposed distribution. The right of any distributee to object to the proposed distribution on the basis of the kind or value of asset he is to receive, if not waived earlier in writing, terminates if he fails to object in writing received by the personal representative within thirty days after mailing or delivery of the proposal. The court, however, on its own motion, or on the motion of a distributee upon a finding of excusable neglect by the distributee may order a different method of distribution if equity so compels.

**Sec. 3-907 Distribution in kind; evidence.** If distribution in kind is made, the order of distribution entered pursuant to section 3-1001 or 3-1003 shall evidence the distributee's title to the property.

**Sec. 3-908 Distribution; right or title of distributee.** Proof that a distributee is named in an order of distribution of assets in kind, or payment in distribution, from a personal representative, is evidence that the distributee has succeeded to the interest of the estate in the distributed assets, as against all persons interested in the estate, except that the personal representative may recover the assets or their value if the distribution was improper.

**Sec. 3-909 Improper distribution; liability of distributee or claimant.** Unless the distribution or payment no longer can be questioned because of adjudication estoppel, or limitation, a distributee of property improperly distributed or paid, or a claimant who was improperly paid, is liable to return the property improperly received and its income since distribution if he has the property. If he does not have the property, then he is liable to return the value as of the date of disposition of the property improperly received and its income and gain received by him.

**Sec. 3-910 Purchasers from distributees protected.** If property distributed in kind or a security interest therein is acquired for value, without actual knowledge of the fact that such distribution or acquisition was improper, by a purchaser from or lender to a distributee who is named in an order of distribution, or is so acquired by a purchaser from or lender to a transferee without such actual knowledge from such distributee, the purchaser or lender takes title free of rights of any interested person in the estate and incurs no personal liability to the estate, whether or not the distribution was proper.

**Sec. 3-911 (Reserved)**

**Sec. 3-912 Private agreements among successors to decedent binding on personal representative.** Subject to the rights of creditors and taxing authorities, competent successors may agree among themselves to alter the interests, shares, or amounts to which they are entitled under the will of the decedent, or under the laws of intestacy, in any way that they provide in a written contract executed by all who are affected by its provisions. The personal representative shall abide by the terms of the agreement subject to his obligation to administer the estate for the benefit of creditors, to pay all taxes and costs of administration, and to carry out the responsibilities of his office for the benefit of any successors of the decedent who are not parties. Personal representatives of decedents' estates are not required to see to the performance of trusts if the trustee thereof is another person who is willing to accept the trust. Accordingly, trustees of a testamentary trust are successors for the purposes of this section. Nothing herein relieves trustees of any duties owed to beneficiaries of trusts.

**Sec. 3-913 Distributions to trustee.** (a) Before distributing to a trustee, the personal representative may require that the trust be registered if the state in which it is to be administered provides for registration and that the trustee inform the beneficiaries as provided in section 7-303.

(b) If the trust instrument does not excuse the trustee from giving bond, the personal representative may petition the appropriate court to require that the trustee post bond if he apprehends that distribution might jeopardize the interests of persons who are not able to protect themselves, and he may withhold distribution until the court has acted.

(c) No inference of negligence on the part of the personal representative shall be drawn from his failure to exercise the authority conferred by subsections (a) and (b).

**Sec. 3-914 (Reserved)**

**Sec. 3-915 Distribution to person under disability.** A personal representative may discharge his obligation to distribute to any person under legal disability by distributing to his guardian of the property, or any other person authorized by this chapter or otherwise to give a valid receipt and discharge for the distribution.

**PART 10. CLOSING PROBATE PROCEEDINGS**

**Sec. 3-1001 Formal proceedings terminating administration; order of general protection.** (a) If an estate is being administered in a supervised proceeding, or if the personal representative in an informal proceeding so elects, or upon the petition of an interested person in an informal proceeding and a finding of good cause by the court:

- (1) A personal representative shall petition for an order of complete settlement of the estate within two years following the original appointment of a general personal representative for the estate, and any interested person may so petition after one year from the original appointment of a general personal representative for the estate, except that no petition under this section may be maintained until the time for presenting

- claims which arose prior to the death of the decedent has expired;
- (2) The petition shall request the court to approve the final accounts, to construe any will or determine heirs, to adjudicate the final settlement and distribution of the estate, to terminate the personal representative's appointment, and to discharge the personal representative from further claims;
  - (3) After notice pursuant to section 1-401 to all interested persons and hearing, the court shall enter an order or orders, on appropriate conditions, approving the final accounts, determining the persons entitled to distribution of the estate, and directing or approving settlement and distribution of the estate, terminating the personal representative's appointment and discharging the personal representative from further claim or demand of any interested person upon proof of distribution in the manner ordered.
- (b) If one or more heirs or devisees were omitted as parties in, or were not given notice of, the probate proceedings, the court, on proper petition for an order of complete settlement of the estate under this section or on its own motion, and after notice to the omitted or unnotified persons and other interested persons, may determine testacy as it affects the omitted persons and confirm or alter the previous order of testacy as it affects all interested persons as appropriate in the light of the new proofs. In the absence of objection by an omitted or unnotified person, evidence received in the original testacy proceeding shall constitute prima facie proof of due execution of any will previously admitted to probate, or of the fact that the decedent left no valid will if the prior proceedings determined this fact.

**Sec. 3-1002 (Reserved)**

**Sec. 3-1003 Informal proceedings terminating administration; order of general protection.** (a) Unless prohibited by order of the court and except for estates being administered in supervised administration proceedings, a personal representative shall close an estate by filing with the registrar no later than one year following the original appointment of a general personal representative for the estate, a verified statement containing the following:

- (1) A statement that he, or a prior personal representative whom he has succeeded, has or have published notice to creditors as provided by section 3-801;
- (2) A statement that he, or a prior personal representative whom he has succeeded, has or have fully administered the estate of the decedent by making payment, settlement or other disposition of all claims which were timely presented (except as specified in the statement), and all estate, inheritance and other death taxes. If any claims or taxes remain undischarged, the statement shall state whether the personal representative has or intends to distribute the estate subject to possible liability with the agreement of the distributees or it shall state in detail other arrangements which have been made to accommodate such outstanding liabilities;

- (3) An itemization of all income received and all expenses paid by the personal representative or a prior personal representative whom he has succeeded, and of all property of the estate remaining in the hands of the personal representative;
- (4) The names of all distributees of the estate and the property received or to be received by each; and
- (5) Proof that a copy of the statement has been delivered to all interested persons pursuant to section 1-401 (except that published notice shall not be required) together with a statement advising them that they have thirty days from the date of mailing within which to deliver to the registrar any objection to the statement and a petition for a supervised closing.

(b) If any interested person timely objects to a closing statement and files a petition for a supervised closing, proceedings pursuant to section 3-1001(a) above shall be maintained if the court finds good cause therefor. If no such petition or order is filed, the registrar without a hearing shall approve the closing statement, order the distribution specified therein, order the termination of the personal representative's appointment and discharge the personal representative from further claim or demand of any interested person upon proof of payment of taxes and distribution in the manner specified in the closing statement.

**Sec. 3-1004 Liability of distributees to claimants.** After assets of an estate have been distributed and subject to section 3-1006, an undischarged claim not barred may be prosecuted in a proceeding against the personal representative and one or more distributees. Except as provided in section 3-909, no distributee shall be liable to claimants for amounts received as exempt property, homestead or family allowance, or for amounts in excess of the value of his distribution as of the time of distribution. Unless otherwise provided pursuant to section 3-1003(a) (2), as between distributees, each shall bear the cost of satisfaction of unbarred claims as if the claim had been satisfied in the course of administration. Any distributee who shall have failed to notify other distributees of the demand made upon him by the claimant in sufficient time to permit them to join in any proceeding in which the claim was asserted against him loses his right of contribution against other distributees.

**Sec. 3-1005 Limitations on proceedings against personal representative.** Unless previously barred by adjudication and except as provided in orders issued pursuant to sections 3-1001 and 3-1003, the rights of successors and of creditors whose claims have not otherwise been barred against the personal representative for breach of fiduciary duty are barred unless a proceeding to assert the same is commenced within two years after the filing of the order discharging the personal representative. This section does not bar an action to recover from a personal representative for fraud, misrepresentation, or inadequate disclosure related to the settlement of the decedent's estate, which action is covered by the statutes of limitation applicable thereto, including section 1-106.

**Sec. 3-1006 Limitations on actions and proceedings against distributees.** Unless previously barred by adjudication or otherwise, the rights of successors and of creditors whose claims have not otherwise been barred to recover property

improperly distributed or the value thereof from any distributee liable to return the property or pay the claim is forever barred at the later of (1) three years after the decedent's death; or (2) two years after the time of distribution thereof. This section does not bar an action to recover property or value received as the result of fraud, which action is covered by the statutes of limitation applicable thereto, including section 1-106.

**Sec. 3-1007 Certificate discharging liens securing fiduciary performance.** After his appointment has terminated, the personal representative, his sureties, or any successor of either, upon the filing of a verified application showing, so far as is known by the applicant, that no action concerning the estate is pending in any court, is entitled to receive a certificate from the registrar or the court that the personal representative appears to have fully administered the estate in question. The certificate evidences discharge of any lien on any property given to secure the obligation of the personal representative in lieu of bond or any surety, but does not preclude action against the personal representative or the surety.

**Sec. 3-1008 Subsequent administration.** If other property of the estate is discovered after an estate has been settled and the personal representative discharged, the court upon petition of any interested person and upon notice as it directs may appoint the same or a successor personal representative to administer the subsequently discovered estate. If a new appointment is made, unless the court orders otherwise, the provisions of this chapter apply as appropriate; but no claim previously barred may be asserted in the subsequent administration.

## PART 11. COMPROMISE OF CONTROVERSIES

**Sec. 3-1101 Effect of approval of agreements involving trusts, inalienable interests, or interests of third persons.** A compromise of any controversy as to admission to probate of any instrument offered for probate as the will of a decedent, the construction, validity, or effect of any probated will, the testacy status of the decedent, the rights or interests in the estate of the decedent of any successor, or the administration of the estate, if approved in a formal proceeding in the court for that purpose, is binding on all the parties thereto. An approved compromise is binding even though it may affect a trust or an inalienable interest. A compromise does not impair the rights of creditors or of taxing authorities who are not parties to it.

**Sec. 3-1102 Procedure for securing court approval of compromise.** The procedure for securing court approval of a compromise is as follows:

- (1) The terms of the compromise shall be set forth in an agreement in writing which shall be executed by all competent persons and parents acting for any minor child having beneficial interests or having claims which will or may be affected by the compromise. Execution is not required by any person whose identity cannot be ascertained or whose whereabouts is unknown and cannot reasonably be ascertained.
- (2) Any interested person, including the personal representative or a trustee, then may submit the agreement to the court for its approval and for execution by the personal representative, the trustee of every affected testamentary trust, and other fiduciaries and representatives.

- (3) After notice to all interested persons or their representatives, including the personal representative of the estate and all affected trustees of trusts, the court, if it finds that the contest or controversy is in good faith and that the effect of the agreement upon the interests or persons represented by fiduciaries or other representatives is just and reasonable, shall make an order approving the agreement and directing all fiduciaries under its supervision to execute the agreement. Minor children may be bound only represented by a guardian ad litem who joins in execution of the compromise. Upon the making of the order and the execution of the agreement, all further disposition of the estate is in accordance with the terms of the agreement.

**PART 12. COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT  
AND SUMMARY ADMINISTRATION PROCEDURE  
FOR SMALL ESTATES**

**Sec. 3-1201 Collection of personal property by affidavit.** Any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating that:

- (1) The net value of the decedent's estate in this State does not exceed \$100;
- (2) No application or petition for the appointment of a personal representative is pending or has been granted in this State; and
- (3) The claiming successor is entitled to payment or delivery of the property and explaining the relationship of the claiming successor to the decedent.

**Sec. 3-1202 Effect of affidavit.** The person paying, delivering, transferring, or issuing personal property or the evidence thereof pursuant to affidavit is discharged and released to the same extent as if he dealt with a personal representative of the decedent. He is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit. If any person to whom an affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled thereto. Any person to whom payment, delivery, transfer or issuance is made is answerable and accountable therefor to any personal representative of the estate or to any other person having a superior right.

**Sec. 3-1203 (Reserved)**

**Sec. 3-1204 (Reserved)**

**Sec. 3-1205 Estates of \$10,000 or less; clerk of court to administer.** If a person dies leaving property in this State of a total value not exceeding \$10,000, and a personal representative of the estate has not been appointed in the State, the clerk of the court of the judicial circuit in which the decedent was residing or

domiciled at the time of his death or left property may, upon the verified petition of the clerk or of any interested person, obtain an order authorizing him to administer the estate, and, as the personal representative, he shall collect and receive the property and administer the same. The order may be made without notice or hearing, at the discretion of the court. Except as otherwise specifically required or authorized by law or where he may be interested as an heir, or devisee, no clerk of any court shall act as personal representative of any estate where the value of the same is in excess of \$10,000. No fees shall be allowed the clerk, except as set forth in section 3-1211.

**Sec. 3-1206 Publication by clerk of appointment as personal representative; notice to creditors, heirs, etc.** Upon such appointment the clerk shall publish the fact by posting a notice thereof at the front entrance of the court house of the judicial circuit and by advertising the notice in the English language at least once in a newspaper of general circulation in the judicial circuit, the notice to state briefly that all creditors of the deceased must file with the clerk duly verified claims within sixty days from the date of the publication, and that all persons claiming to be heirs of the estate are requested to file with the clerk notice of such claims within the period. The court may direct that the advertising of the notice in a newspaper need not be made if it deems the same unnecessary.

**Sec. 3-1207 Presentation of claims of creditors.** All creditors of the decedent shall present their claims, duly verified under oath, to the clerk within sixty days from the date of the first publication.

**Sec. 3-1208 Claims barred when.** All claims of creditors not filed within the period of sixty days from the date of the first publication are forever barred.

**Sec. 3-1209 Duties of clerk and distribution.** The clerk shall make diligent effort to ascertain the names and whereabouts of the heirs, or the whereabouts of the devisees of the decedent and present evidence relating thereto to the court having jurisdiction of the proceedings. After the expiration of sixty days after the first publication, the clerk shall pay or distribute the money, funds, or property of the estate, or any balance thereof, after the payment of creditors' claims timely presented, either as an allowance for the support and maintenance of the surviving spouse or the dependents of the deceased or both, as authorized by the court, or to or among such persons as may be found by the court to be the persons entitled thereto as distributees.

**Sec. 3-1210 Undistributed proceeds or balances, disposition.** When any balance remains in the hands of the clerk, after payment of all creditors' claims timely presented, and no heirs or devisees of the decedent, entitled to the balance, can be located after reasonable search and inquiry, the clerk, after the expiration of one year after the first publication, shall report the fact to the court, which shall forthwith enter an order forwarding such property to the state director of finance, and the clerk thereupon shall immediately deposit the money or funds, or any balance, with the director for disposition as provided in chapter 523. The director at any time may authorize the payment out of the general funds of the State of any amount so forwarded to any person who establishes to the satisfaction of the director that he is legally entitled thereto as an heir or devisee of the

decedent, and the person shall be entitled to receive the amount thereof out of any moneys in the treasury not otherwise appropriated, upon warrant drawn by the state comptroller.

**Sec. 3-1211 Exemption from costs.** All proceedings had under and by virtue of this part 12, shall be free from all costs of court, except that the clerk may charge the actual expenses for advertising the notice specified in section 3-1206, the advertising, posting, or service fees required in carrying out any order of the court, including orders relating to the sale of real or personal property, and any expenses reasonably necessary for the preservation, disposal, distribution, and administration of the estate, together with a fee of three per cent of the market value of the gross estate, the fee to be paid into the treasury of the State as a government realization from any available assets of the estate; provided, that if the administration is completed by another personal representative on account of the size of the estate or for any other reason, no fee shall be charged by the clerk.

**Sec. 3-1212 Estates of persons, leaving no known relatives.** Every coroner, or medical examiner, who is called to investigate the death of any person leaving no known spouse, issue, parent, grandparent, or issue of grandparents over the age of majority in the State, shall take immediate charge of such decedent's personal effects and if in the discretion of the coroner the value of such personal effect is in excess of \$100, forthwith deliver them to the clerk of the court of the judicial circuit in which such decedent died.

If after ten days no person appears, competent to initiate appropriate probate proceedings, the clerk shall administer the estate pursuant to the provisions of this part 12; provided, that if such decedent's estate be of a value exceeding \$10,000, the clerk shall notify the judge of such circuit having charge of the probate calendar, and shall petition for the appointment of a personal representative of such estate other than the clerk. In the meantime the clerk may take such steps as may be appropriate to preserve and conserve the real and personal property of the decedent. All expenses in connection with the taking possession, care and conservation of the property and with such proceedings shall be proper charges against the estate of the decedent. The corporation counsel or county attorney of each county shall advise, assist and represent as far as necessary any of such officers in the performance of any act or the institution or prosecution of any proceeding required by this section.

If such decedent's estate be of a value not exceeding \$100 and such decedent has no known relatives or whose relatives have failed to indicate any means of disposition of such estate, then the coroner, or medical examiner, having custody of such property shall dispose of such property in an appropriate manner, which may be any one of the following or a combination thereof:

- (1) Where the estate consists only of money and is not in excess of \$100 and expenditures have been made in connection with such death, to reimburse the appropriate city and/or county office which made the disbursement to defray said expenses;
- (2) Where the estate consists of cash and/or personal belongings of monetary value, not exceeding \$100, to liquidate said personal belongings and apply the proceeds, together with the cash, if the total does not exceed \$100, in accordance with paragraph 1 hereinabove set



forth;

- (3) Where the assets in the estate are of no monetary value (unsaleable) and in his best judgment and discretion can be used by some charitable institution, to donate said assets to whatever charitable institution is willing and able to pick up the assets in question;
- (4) Where the assets have no value whatsoever or are in such condition that, in his best judgment and discretion, a charitable institution cannot use said properties, or will not receive said properties, to destroy the same in any manner he sees fit; and
- (5) If under paragraphs 1 and 2, there are assets remaining, then he shall forthwith forward the same to the state director of finance for disposition as provided in chapter 523.

**Sec. 3-1213 Estates not in excess of \$700.** Upon the death of any person dying intestate and leaving only personal property in the State not exceeding \$700 and where a personal representative has not been appointed in the State, a clerk of the court of the judicial circuit wherein the person was domiciled or if not domiciled in the State, the judicial circuit wherein he was residing or had personal property at the time of his death, may, upon the filing with the clerk by any interested person of a death certificate issued by a government agency and of an affidavit setting forth the above facts, the names of the heirs if known, and other pertinent facts as required by the clerk, collect or otherwise reduce to possession or turn into cash all assets of the estate. If after payment of funeral expenses as a preferred claim against the estate there are assets remaining, the clerk shall give notice to creditors and heirs as provided by section 3-1206 by posting, or if there are sufficient funds, by posting and advertising, and if after the period and distribution of assets to creditors of deceased persons who have filed proper claims there are assets remaining, then the clerk upon the facts contained in the affidavit as to heirship, shall deliver the assets to the personal representative, if any, or if no personal representative has been appointed, then to the heirs in accordance with the statutes of descent of the State. If no creditors, personal representative, or heirs appear or are found within sixty days of the notice, the clerk shall convert all personal property into cash and forthwith deposit the same with the state director of finance for disposition as provided in chapter 523.

**Sec. 3-1214 Annual audit of accounts of clerk.** Any other law to the contrary notwithstanding, the comptroller of the State shall audit not less frequently than annually the accounts and transactions of the clerks of the courts in their official capacity as guardians of the property of protected persons or as personal representatives of small estates, and report the results of the audit to the judges of the respective courts.

**Sec. 3-1215 Prohibition on the private practice of law by attorneys for small estates.** No person who, pursuant to sections 3-1205 to 3-1214, or any of them, performs any services as or for the clerk of the first circuit court, for which he is compensated from public funds, shall engage in the private practice of law, provided, that he shall be entitled to accept fees or other compensation in connection with masterships.

**ARTICLE IV  
FOREIGN PERSONAL REPRESENTATIVES;  
ANCILLARY ADMINISTRATION**

**PART 1. DEFINITIONS**

**Sec. 4-101 Definitions.** In this Article:

- (1) "Local administration" means administration by a local personal representative.
- (2) "Local personal representative" means any person, qualified under section 3-601 or a spouse, parent or child of the decedent, who is appointed personal representative in this State pursuant to appointment proceedings described in Article III.
- (3) "Resident creditor" means a person domiciled in, or doing business in this State, who is, or could be, a claimant against an estate of a nonresident decedent.

**PART 2. POWERS OF FOREIGN PERSONAL REPRESENTATIVES**

**Sec. 4-201 (Reserved)**

**Sec. 4-202 (Reserved)**

**Sec. 4-203 (Reserved)**

**Sec. 4-204 (Reserved)**

**Sec. 4-205 (Reserved)**

**Sec. 4-206 (Reserved)**

**Sec. 4-207 (Reserved)**

**PART 3. JURISDICTION OVER FOREIGN REPRESENTATIVES**

**Sec. 4-301 Jurisdiction by act of foreign personal representative.** A foreign personal representative submits personally to the jurisdiction of the courts of this State in any proceeding relating to the estate by (1) filing an application or petition for appointment as a local personal representative together with authenticated copies of his appointment, or (2) doing any act as a personal representative in this State which would have given the State jurisdiction over him as an individual.

**Sec. 4-302 Jurisdiction by act of decedent.** In addition to jurisdiction conferred by section 4-301, a foreign personal representative is subject to the jurisdiction of the courts of this State to the same extent that his decedent was subject to jurisdiction immediately prior to death.

**Sec. 4-303 Service on foreign personal representative.** (a) Service of process may be made upon the foreign personal representative by registered or certified mail, addressed to his last reasonably ascertainable address, requesting a return receipt signed by addressee only. Notice by ordinary first class mail is sufficient if registered or certified mail service to the addressee is unavailable. Service may be made upon a foreign personal representative in the manner in which service could

have been made under other laws of this State on either the foreign personal representative or his decedent immediately prior to death.

(b) If service is made upon a foreign personal representative as provided in subsection (a), he shall be allowed at least thirty days within which to appear or respond.

**PART 4. JUDGMENTS AND PERSONAL REPRESENTATIVE**

**Sec. 4-401 (Reserved)**

**ARTICLE V  
PROTECTION OF PERSONS UNDER DISABILITY AND  
THEIR PROPERTY**

**PART 1. GENERAL PROVISIONS**

**Sec. 5-101 Definitions and use of terms.** Unless otherwise apparent from the context, in this chapter:

- (1) "Guardianship proceeding" is a proceeding to appoint a guardian of the person for an incapacitated person or a minor;
- (2) "Incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person;
- (3) A "protective proceeding" is a proceeding under the provisions of section 5-401 to determine that a person cannot effectively manage or apply his estate to necessary ends, either because he lacks the ability or is otherwise inconvenienced, or because he is a minor, and to secure administration of his estate by a guardian of the property or other appropriate relief;
- (4) A "protected person" is a minor or other person for whom a guardian of the property has been appointed or other protective order has been made;
- (5) A "ward" is a person for whom a guardian of the person has been appointed. A "minor ward" is a minor for whom a guardian of the person has been appointed solely because of minority.

**Sec. 5-102 Jurisdiction of subject matter; consolidation of proceedings.** The court has jurisdiction over protective proceedings and the family court has jurisdiction over guardianship proceedings.

**Sec. 5-103 Facility of payment or delivery.** Any person under a duty to pay or deliver money or personal property to a minor may perform this duty, once with respect to a minor in an amount not exceeding \$1,000, by paying or delivering the money or property to, (1) the minor, if he is married; (2) any person having the care and custody of the minor with whom the minor resides; (3) a guardian of

the person of the minor; or (4) a financial institution incident to a deposit in a federally insured savings account in the sole name of the minor and giving notice of the deposit to the minor. This section does not apply if the person making payment or delivery has actual knowledge that a guardian of the property has been appointed or proceedings for such appointment are pending. The persons, other than the minor or any financial institution under (4) above, receiving money or property for a minor, are obligated to apply the money to the support and education of the minor, but may not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the minor's support. Any excess sums shall be preserved for future support of the minor and any balance not so used and any property received for the minor must be turned over to the minor when he attains majority. Persons who pay or deliver in accordance with provisions of this section are not responsible for the proper application thereof.

**Sec. 5-104 (Reserved)**

**PART 2. GUARDIANS OF THE PERSON OF MINORS**

**Sec. 5-201 Status of guardian of the person of minor; general.** A person becomes a guardian of the person of a minor upon appointment by the family court. The guardianship status continues until terminated, without regard to the location from time to time of the guardian and minor ward.

**Sec. 5-202 (Reserved)**

**Sec. 5-203 (Reserved)**

**Sec. 5-204 Court appointment of guardian of the person of minor; conditions for appointment; letters; priority of testamentary nominee.** The family court may appoint a resident of this State as a guardian of the person for an unmarried minor if all parental rights of custody have been terminated or suspended by circumstances or prior court order. The appointment shall be evidenced by letters of guardianship. Such guardian may be nominated by the will of the minor's parent, and the family court shall give preference to any such nominee. The family court may appoint someone other than the testamentary nominee upon showing of cause.

**Sec. 5-205 Court appointment of guardian of the person of minor; venue.** The venue for guardianship proceedings for a minor is in the place where the minor resides or is present.

**Sec. 5-206 Court appointments of guardian of the person of minor; qualifications; priority of minor's nominee.** Subject to the provisions of section 5-204, the family court may appoint as guardian of the person of a minor any person whose appointment would be in the best interest of the minor, if the minor is fourteen years of age or older, unless the family court finds the appointment contrary to the best interests of the minor.

**Sec. 5-207 Court appointment of guardian of the person of minor; procedure.** (a) Notice of the time and place of hearing of a petition for the appointment of a guardian of the person of a minor is to be given by the petitioner

in the manner prescribed by section 1-401 to:

- (1) The minor, if he is fourteen or more years of age;
- (2) The person who has had the principal care and custody of the minor during the sixty days preceding the date of the petition;
- (3) Any living legal parent or grandparent of the minor; and
- (4) Any guardian of the minor's property.

(b) Upon hearing, if the family court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of section 5-204 have been met, and the welfare and best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases the family court may dismiss the proceedings, or make any other dispositions of the matter that will best serve the interests of the minor.

(c) If necessary, the family court may appoint a temporary guardian of the person, with the status of an ordinary guardian of the person of a minor, but the authority of such temporary guardian shall not last longer than ninety days.

(d) If, at any time in the proceeding, the family court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is fourteen years of age or older.

**Sec. 5-208 Consent to service by acceptance of appointment; notice.** By accepting appointment as guardian, a guardian of the person submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. Notice of any proceeding shall be delivered to the guardian of the person, or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to the petitioner.

**Sec. 5-209 Powers and duties of guardian of the person of minor.** A guardian of the person of a minor has the powers and responsibilities of a parent who has not been deprived of custody of his minor and unemancipated child, except that a guardian of the person is not legally obligated to provide from his own funds for the ward and is not liable to third persons by reason of the parental relationship for acts of the ward. In particular, and without qualifying the foregoing, a guardian of the person has the following powers and duties:

- (1) He must take reasonable care of his ward's personal effects and commence protective proceedings if necessary to protect other property of the ward.
- (2) He may receive money payable for the support of the ward to the ward's parent, guardian or custodian under the terms of any statutory benefit or insurance system, or any private contract, devise, trust, guardianship or custodianship. He may also receive money or property of the ward paid or delivered by virtue of section 5-103. Any sums so received shall be applied to the ward's current needs for support, care and education. He must exercise due care to conserve any excess for the ward's future needs unless a guardian of the property has been appointed for the ward, in which case excess shall be paid over at least annually to the guardian of the property. Sums so received by the guardian of the

person are not to be used for compensation for his services except as approved by order of court or as determined by a duly appointed guardian of the property other than the guardian of the person. A guardian of the person may institute proceedings to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward.

- (3) The guardian of the person is empowered to facilitate the ward's education, social, or other activities and to authorize medical or other professional care, treatment, or advice. A guardian of the person is not liable by reason of this consent for injury to the ward resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have consented. A guardian of the person may consent to the marriage or adoption of his ward.
- (4) A guardian of the person must report the condition of his ward and of the ward's estate which has been subject to his possession or control, as ordered by the family court on petition of any person interested in the minor's welfare or as required by court rule.

**Sec. 5-210 Termination of appointment of guardian of the person; general.**

A guardian of the person's authority and responsibility terminates upon the death, resignation or removal of the guardian or upon the minor's death, adoption, marriage or attainment of majority, but termination does not affect his liability for prior acts, nor his obligation to account for funds and assets of his ward. Resignation of a guardian of the person does not terminate the guardianship until it has been approved by the family court.

**Sec. 5-211 Proceedings subsequent to appointment; venue.** (a) The family court where the ward resides has concurrent jurisdiction with the court which appointed the guardian of the person, over resignation, removal, accounting and other proceedings relating to the guardianship.

(b) If the family court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever is in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed.

**Sec. 5-212 Resignation or removal proceedings.** (a) Any person interested in the welfare of a ward, or the guardian ad litem requested by a ward fourteen or more years of age and appointed by the family court, may petition for removal of a guardian of the person on the ground that removal would be in the best interest of the ward. A guardian of the person may petition for permission to resign. A petition for removal or for permission to resign may, but need not, include a request for appointment of a successor guardian of the person.

(b) After notice and hearing on a petition for removal or for permission to resign, the family court may terminate the guardianship and make any further order that may be appropriate.

(c) If, at any time in the proceeding, the family court determines that the interests of the ward are, or may be, inadequately represented, it shall appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is fourteen or more years of age.

### **PART 3. GUARDIANS OF THE PERSON OF INCAPACITATED PERSONS**

**Sec. 5-301 Testamentary nomination of guardian of the person for incapacitated person.** The parent or spouse of an incapacitated person may by will nominate a guardian of the person of the incapacitated person. The family court shall give preference to any such nominee, but the court may appoint someone other than the testamentary nominee upon a showing of cause. A testamentary nomination by a spouse shall be preferred by the family court over a nomination by a parent.

**Sec. 5-302 Venue.** The venue for guardianship proceedings for an incapacitated person is in the place where the incapacitated person resides or is present. If the incapacitated person is admitted to an institution pursuant to order of a court of competent jurisdiction, venue is also in the judicial circuit in which that court sits.

**Sec. 5-303 Procedure for court appointment of a guardian of the person of an incapacitated person.** (a) The incapacitated person or any person interested in his welfare may petition the family court for a finding of incapacity and appointment of a guardian of the person.

(b) Upon the filing of a petition, the family court shall set a date for hearing on the issues of incapacity and, if at any time in the proceeding, the court determines that the interests of the allegedly incapacitated person are or may be inadequately represented, it shall appoint an appropriate official or attorney to represent him in the proceeding, who shall have the powers and duties of a guardian ad litem. The person alleged to be incapacitated may be examined by a physician appointed by the family court who shall submit his report in writing to the court and shall be interviewed by a family court officer or other person designated by the family court. The family court officer or other person also shall interview the person seeking appointment as guardian of the persons, shall visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that he will be detained or reside if the requested appointment is made, and shall submit his report in writing to the family court. The person alleged to be incapacitated is entitled to be present at the hearing in person, and to see or hear all evidence bearing upon his condition. He is entitled to be represented by an attorney, to present evidence, to cross-examine witnesses, including any person submitting a report and the family court officer or other person designated by the court to interview him. The issue may be determined at a closed hearing.

**Sec. 5-304 Findings; order of appointment.** The family court may appoint a resident of this State as a guardian of the person as requested if it is satisfied that the person for whom a guardian is sought is incapacitated and that the appointment is necessary or desirable as a means of providing continuing care and

supervision of the person of the incapacitated person. The order of appointment may limit or otherwise modify the power of the guardian of the person or may specify areas in which the ward shall retain the power to make and carry out decisions concerning his person. Alternatively, the family court may dismiss the proceeding or enter any other appropriate order.

**Sec. 5-305 Acceptance of appointment; consent to jurisdiction.** By accepting appointment, a guardian of the person submits personally to the jurisdiction of the family court in any proceeding relating to the guardianship that may be instituted by any interested person. Notice of any proceeding shall be delivered to the guardian or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to the petitioner.

**Sec. 5-306 Termination of guardianship for incapacitated person.** The authority and responsibility of a guardian of the person for an incapacitated person terminates upon the death of the guardian or ward, the determination of incapacity of the guardian, or upon removal or resignation as provided in section 5-307. Termination does not affect his liability for prior acts nor his obligation to account for funds and assets of his ward.

**Sec. 5-307 Removal or resignation of guardian of the person; termination of incapacity.** (a) On petition of the ward or any person interested in his welfare, the family court may remove a guardian of the person and appoint a successor if in the best interests of the ward. On petition of the guardian of the person, the family court may accept his resignation and make any other order which may be appropriate.

(b) An order adjudicating incapacity may specify a minimum period, not exceeding one year, during which no petition for an adjudication that the ward is no longer incapacitated may be filed without special leave. Subject to this restriction, the ward or any person interested in his welfare may petition for an order that he is no longer incapacitated, and for removal or resignation of the guardian of the person. A request for this order may be made by informal letter to the family court or judge and any person who knowingly interferes with transmission of this kind of request to the court or judge may be adjudged guilty of contempt of court.

(c) Before removing a guardian of the person, accepting the resignation of a guardian of the person, or ordering that a ward's incapacity has been terminated, the family court, shall follow the same procedures to safeguard the rights of the ward as apply to a petition for appointment of a guardian of the person under section 5-303.

**Sec. 5-308 (Reserved)**

**Sec. 5-308A Periodic reports on status of ward.** The court may require the guardian of the person to file a report as to the status of the ward on a periodic basis for such periods and at such times as the court may require from time to time. Such report shall describe the ward's residential arrangements, care and treatment services, educational and training programs, physical, mental and social condition, and such other matters as the court may direct for the period involved. Based upon such reports, the court may, upon its own motion, com-



mence proceedings pursuant to section 5-307 for the removal of a guardian, appointment of a successor, determining that the ward is no longer incapacitated, or making orders modifying in any respect the order of appointment.

**Sec. 5-309 Notices in guardianship proceedings.** (a) In a proceeding for the appointment or removal of a guardian of the person of an incapacitated person other than the appointment of a temporary guardian or temporary suspension of guardian, notice of the time and place of hearing shall be given by the petitioner to each of the following:

- (1) The ward or the person concerning whom the proceeding has been commenced and his spouse, legal parents, grandparents and adult children;
- (2) Any person who is serving as the guardian of his estate or who has his care and custody; and
- (3) In case no other person is notified under (1), at least one of his closest adult relatives, if any can be found.

(b) Notice shall be served personally on the alleged incapacitated person, his spouse, his legal parents, and his grandparents, if they can be found within the State. Notice to such of those who cannot be found within the State, and to all other persons except the alleged incapacitated person shall be given as provided in section 1-401. Waiver of notice by the person alleged to be incapacitated is not effective unless he attends the hearing or his waiver of notice is confirmed in an interview with the person sent by the family court to interview him. Except as provided in section 5-303 representation of the alleged incapacitated person by a guardian ad litem is not necessary.

**Sec. 5-310 Temporary guardians.** If an incapacitated person has no guardian of the person and an emergency exists, the family court may exercise the power of a guardian of the person pending notice and hearing. If the family court finds that the welfare of the incapacitated person requires immediate action, it may, with or without notice, appoint any suitable individual as a temporary guardian of the person for the incapacitated person for a specified period not to exceed ninety days. A temporary guardian is entitled to the care and custody of the ward and the authority of any permanent guardian of the person previously appointed by the family court is suspended so long as a temporary guardian has authority. A temporary guardian may be removed at any time. A temporary guardian shall make any report the family court requires. In other respects the provisions of this chapter concerning guardians apply to temporary guardians.

**Sec. 5-311 Who may be guardian of the person; priorities.** (a) The family court may appoint any competent person or a suitable institution as guardian of the person of an incapacitated person, and, in the selection thereof, the family court shall in all cases consider the best interests of the ward.

(b) Except as otherwise provided in section 5-301, persons who are not disqualified are entitled to consideration for appointment in the following order:

- (1) The spouse of the incapacitated person, including a person nominated by will or other writing signed by a deceased spouse;
- (2) An adult child of the incapacitated person;
- (3) A parent of the incapacitated person, including a person nominated by

- will or other writing signed by a deceased parent;
- (4) Any relative of the incapacitated person with whom he has resided for more than six months prior to the filing of the petition;
  - (5) A person nominated by the person who is caring for him or paying benefits to him.

The family court, for good cause, may pass over a person having priority and appoint a person having less or no priority.

**Sec. 5-312 General powers and duties of guardian of the person.** (a) A guardian of the person of an incapacitated person has the same powers, rights and duties respecting his ward that a parent has respecting his unemancipated minor child except that a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship. In particular, and without qualifying the foregoing, a guardian of the person has the following powers and duties, except as modified by order of the family court:

- (1) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, he is entitled to custody of the person of his ward and may establish the ward's place of abode within or without this State.
- (2) If entitled to custody of his ward he shall make provision for the care, comfort and maintenance of his ward and, whenever appropriate, arrange for his training and education. Without regard to custodial rights of the ward's person, he shall take reasonable care of his ward's clothing, furniture, vehicles and other personal effects and commence protective proceedings if other property of his ward is in need of protection.
- (3) He may give any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment or service.
- (4) If no guardian of the property of the ward has been appointed, he may:
  - (i) Institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform his duty;
  - (ii) Receive money and tangible property deliverable to the ward and apply the money and property for support, care and education of the ward; but, he may not use funds from his ward's estate for room and board which he, his spouse, parent, or child have furnished the ward unless a charge for the service is approved by order of the family court made upon notice to at least one of the next of kin of the ward, if notice is possible. He must exercise care to conserve any excess for the ward's needs.
- (5) He shall report the condition of his ward and of the estate which has been subject to his possession or control, as required by the family court or family court rule.
- (6) If a guardian of the property has been appointed, all of the ward's estate received by the guardian of the person in excess of those funds expended to meet current expenses for support, care, and education of the ward must be paid to the guardian of the property for management as

provided in this chapter, and the guardian of the person must account to the guardian of the property for funds expended.

(b) Any guardian of the person of one for whom a guardian of the property also has been appointed shall control the custody and care of the ward, and is entitled to receive reasonable sums for his services and for room and board furnished to the ward as agreed upon between him and the guardian of the property, provided the amounts agreed upon are reasonable under the circumstances. The guardian of the person may request the guardian of the property to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

**Sec. 5-313 Proceedings subsequent to appointment; venue.** (a) The family court where the ward resides has concurrent jurisdiction with the court which appointed the guardian of the person, over resignation, removal, accounting and other proceedings relating to the guardianship.

(b) If the family court located where the ward resides is not the court in which acceptance of appointment is filed, the family court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever may be in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed.

#### **PART 4. PROTECTION OR PROPERTY OF PERSONS UNDER DISABILITY AND MINORS**

**Sec. 5-401 Protective proceedings.** Upon petition and after notice and hearing in accordance with this Part, the court may appoint a resident of this State or a trust company organized under the laws of this State as a guardian of the property or make other protective order for cause as follows:

- (1) Appointment of a guardian of the property or other protective order may be made in relation to the estate and affairs of a minor if the court determines that a minor owns money or property that requires management or protection which cannot otherwise be provided, has or may have business affairs which may be jeopardized or prevented by his minority, or that funds are needed for his support and education and that protection is necessary or desirable to obtain or provide funds.
- (2) Appointment of a guardian of the property or other protective order may be made in relation to the estate and affairs of a person if the court determines that (i) the person is unable to manage his property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, disappearance or other incapacity; and (ii) the person has property which will be wasted or dissipated unless proper management is provided, or that funds are needed for the support, care and welfare of the person or those entitled to be supported by him and that protection is necessary or desirable to obtain or provide funds.

**Sec. 5-402 (Reserved)**

**Sec. 5-403 Venue.** Venue for proceedings under this Part is:

- (1) In the place in this State where the person to be protected resides whether or not a guardian of the person has been appointed in another place; or
- (2) If the person to be protected does not reside in this State, in any place where he has property.

**Sec. 5-404 Original petition for appointment or protective order.** (a) The person to be protected, any person who is interested in his estate, affairs or welfare including his parent, guardian of the person, or custodian, or any person who would be adversely affected by lack of effective management of his property and affairs may petition for the appointment of a guardian of the property or for other appropriate protective order.

(b) The petition shall set forth to the extent known, the interest of the petitioner; the name, age, residence and address of the person to be protected; the name and address of his guardian of the person, if any; the name and address of his nearest relative known to the petitioner; a general statement of his property with an estimate of the value thereof, including any compensation, insurance, pension or allowance to which he is entitled; and the reason why appointment of a guardian of the person or other protective order is necessary. If the appointment of a guardian of the property is requested, the petition also shall set forth the name and address of the person whose appointment is sought and the basis of his priority for appointment.

**Sec. 5-405 Notice in protective proceedings.** In a proceeding for the appointment or removal of a guardian of the property or other protective order, notice of the time and place of hearing to the persons, including a guardian of the person, to the persons, and in the manner specified in section 5-309, and to any person who has filed a request for notice under section 5-406.

**Sec. 5-406 Protective proceedings; request for notice; interested person.** Any interested person who desires to be notified before any order is made in a protective proceeding may file with the court a request for notice subsequent to payment of any fee required by statute or court rule. The clerk shall mail a copy of the demand to the guardian of the property if one has been appointed. A request is not effective unless it contains a statement showing the interest of the person making it and his address, or that of his attorney, and is effective only as to matters occurring after the filing. Any governmental agency paying or planning to pay benefits to the person to be protected is an interested person in protective proceedings.

**Sec. 5-407 Procedure concerning hearing and order on original petition.** (a) Upon receipt of a petition for appointment of a guardian of the property or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it shall appoint an appropriate official or attorney to represent the minor in the proceeding, giving consideration to the choice of the minor if fourteen years of age or older, who shall have the powers and duties of a guardian ad litem.

(b) Upon receipt of a petition for appointment of a guardian of the property or other protective order for reasons other than minority, the court shall set a date for hearing on the matters alleged in the petition. Unless the person to be protected has competent counsel of his own choice, the court shall appoint an appropriate official or attorney to represent him, who shall have the powers and duties of a guardian ad litem. If the alleged disability is mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician designated by the court, preferably a physician who is not connected with any institution in which the person is a patient or is detained. The court shall appoint a court officer or other person to interview the person to be protected and the person seeking appointment. The person so appointed shall submit his report in writing to the court.

(c) The person to be protected is entitled to be present at the hearing in person, and to see or hear all evidence bearing upon his condition. He is entitled to be represented by an attorney, to present evidence, to cross-examine witnesses, including any person submitting a report and the court officer or other person appointed by the court to interview him.

(d) After hearing, upon finding that a basis for the appointment of a guardian of the property or other protective order has been established, the court shall either make an appointment by granting letters of guardianship or make other appropriate protective order.

**Sec. 5-408 Permissible court orders.** The court has the following powers which may be exercised directly or through a guardian of the property in respect to the estate and affairs of protected persons:

- (1) While a petition for appointment of a guardian of the property or other protective order is pending and after preliminary hearing and without notice to others, the court has power to preserve and apply the property of the person to be protected as may be required for his benefit or the benefit of his dependents.
- (2) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor without other disability, the court has all those powers over the estate and affairs of the minor which are or might be necessary for the best interests of the minor, his family and members of his household.
- (3) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a person for reasons other than minority, and subject to the limitations as to specified powers as contained in subparagraph (4) below, the court has, for the benefit of the person and members of his household, all the powers over his estate and affairs which he could exercise if present and not under disability, except the power to make a will. These powers include, but are not limited to power to make gifts, to convey or release his contingent and expectant interests in property including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety, to exercise or release his powers as trustee, personal representative, custodian for minors, guardian of the property, or donee of a

power of appointment, to enter into contracts, to create revocable or irrevocable trusts of property of the estate which may extend beyond his disability or life, to exercise options of the disabled person to purchase securities or other property, to exercise his rights to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value, to exercise his right to an elective share in the estate of his deceased spouse and to renounce any interest by testate or intestate succession or by inter vivos transfer.

- (4) The court may exercise or direct the exercise of, its authority to sell, mortgage, lease or otherwise encumber the real property of the protected person, to exercise or release powers of appointment of which the protected person is donee, to renounce interests, to make gifts in trust or otherwise exceeding twenty per cent of any year's income of the estate or to change beneficiaries under insurance and annuity policies, only if satisfied, after a hearing preceded by notice pursuant to section 1-401 to the persons entitled to notice under section 5-405, that it is in the best interests of the protected person, and that he either is incapable of consenting or has consented to the proposed exercise of power.
- (5) An order made pursuant to this section determining that a basis for appointment of a guardian of the property or other protective order exists, has no effect on the capacity of the protected person.

**Sec. 5-409 Protective arrangements and single transactions authorized. (a)**

If it is established in a proper proceeding that a basis exists as described in section 5-401 for affecting the property and affairs of a person the court, without appointing a guardian of the property, may authorize, direct or ratify any transaction necessary or desirable to achieve any security, service, or care arrangement meeting the foreseeable needs of the protected person. Protective arrangements include, but are not limited to, payment, delivery, deposit or retention of funds or property, sale, mortgage, lease or other transfer of property, entry into an annuity contract, a contract for life care, a deposit contract, a contract for training and education, or addition to or establishment of a suitable trust.

(b) When it has been established in a proper proceeding that a basis exists as described in section 5-401 for affecting the property and affairs of a person the court, without appointing a guardian of the property, may authorize, direct or ratify any contract, trust or other transaction relating to the protected person's financial affairs or involving his estate if the court determines that the transaction is in the best interests of the protected person.

(c) Before approving a protective arrangement or other transaction under this section, the court shall consider the interests of creditors and dependents of the protected person and, in view of his disability, whether the protected person needs the continuing protection of a guardian of the property. The court may appoint a special guardian of the property to assist in the accomplishment of any protective arrangement or other transaction authorized under this section who shall have the authority conferred by the order and serve until discharged by order after report to the court of all matters done pursuant to the order of appointment.

**Sec. 5-410 Who may be appointed guardian of the property; priorities. (a)**

The court may appoint an individual, or a corporation with general power to serve as trustee, as guardian of the property of a protective person, and, in the selection thereof, the court shall in all cases consider the best interests of the protected person. The following are entitled to consideration for appointment in the following order:

- (1) A guardian of the property or other like fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the protected person resides;
- (2) An individual or corporation nominated by the protected person if he is fourteen or more years of age and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice;
- (3) The spouse of the protected person;
- (4) An adult child of the protected person;
- (5) A parent of the protected person, or a person nominated by the will of a deceased parent;
- (6) Any relative of the protected person with whom he has resided for more than six months prior to the filing of the petition;
- (7) A person nominated by the person who is caring for him or paying benefits to him.

(b) A person in priorities (1), (3), (4), (5), or (6) may nominate in writing a person to serve in his stead. With respect to persons having equal priority, the court is to select the one who is best qualified of those willing to serve. The court, for good cause may pass over a person having priority and appoint a person having less priority or no priority.

**Sec. 5-411 Bond.** The court may require a guardian of the property to furnish a bond to insure his faithful discharge of all duties according to law, with sureties as it shall specify. The bond shall be in an amount determined by the court. The court in lieu of sureties on a bond, may accept other security for the performance of the bond, including a pledge of securities or a mortgage of land.

**Sec. 5-412 Terms and requirements of bonds. (a)** The following requirements and provisions apply to any bond required under section 5-411:

- (1) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the guardian of the property and with each other;
- (2) No bond hereunder shall be conditioned so as to relieve the surety from liability either on account of any breach by the guardian of the property of his duties to the court, the registrar, the estate or interested persons, or on account of a failure by the guardian of the property to perform the acts or duties required of him by this chapter, and any provision of a bond which seeks to so limit the surety's liability shall be void and of no effect.
- (3) By executing an approved bond of a guardian of the property, the surety consents to the jurisdiction of the court which issued letters to the primary obligor in any proceeding pertaining to the fiduciary duties of the guardian of the property and naming the surety as a party defen-

dant. Notice of any proceeding shall be delivered to the surety or mailed to him by registered or certified mail at his address as listed with the court where the bond is filed and to his address as then known to the petitioner;

- (4) On petition of a successor guardian of the property or any interested person, a proceeding may be initiated against a surety for breach of the obligation of the bond of the guardian of the property;
- (5) The bond of the guardian of the property is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(b) No proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

**Sec. 5-413 Acceptance of appointment; consent to jurisdiction.** By accepting appointment, a guardian of the property submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be delivered to the guardian of the property, or mailed to him by registered or certified mail, return receipt required, at his address as listed in the petition for appointment or as thereafter reported to the court and to his address as then known to the petitioner.

**Sec. 5-414 Compensation and expenses.** If not otherwise compensated for services rendered, any person appointed by the court, and any attorney, physician, guardian of the property, or special guardian of the property appointed in a protective proceeding is entitled to reasonable compensation from the estate as approved by the court.

**Sec. 5-415 Death, resignation or removal of guardian of the property.** The court may remove a guardian of the property for good cause, upon notice and hearing, or accept his resignation. After his death, resignation or removal, the court may appoint another guardian of the property. A guardian of the property so appointed succeeds to the title and powers of his predecessor.

**Sec. 5-416 Petitions for orders subsequent to appointment.** (a) Any person interested in the welfare of a person for whom a guardian of the property has been appointed may file a petition in the appointing court for an order (1) requiring bond or security or additional bond or security, or reducing bond; (2) requiring an accounting for the administration of the guardianship; (3) directing distribution; (4) removing the guardian of the property and appointing a temporary or successor of the property; or (5) granting other appropriate relief.

(b) A guardian of the property may petition the appointing court for instructions concerning his fiduciary responsibility.

(c) Upon notice and hearing, the court may give appropriate instructions or make any appropriate order.

**Sec. 5-417 General duty of guardian of the property.** In the exercise of his powers, a guardian of the property is to act as a fiduciary and shall observe the standards of care applicable to trustees as described by section 7-302.

**Sec. 5-418 Inventory and records.** Within ninety days after his appoint-



ment, every guardian of the property shall prepare and file with the appointing court a complete inventory of the estate of the protected person together with his oath or affirmation that it is complete and accurate so far as he is informed. The guardian of the property shall provide a copy thereof to the protected person if he can be located, has attained the age of fourteen years, and has sufficient mental capacity to understand these matters, and to any parent or guardian of the person with whom the protected person resides. The guardian of the property shall keep suitable records of his administration and exhibit the same on request of any interested person.

**Sec. 5-419 Accounts.** Every guardian of the property must account to the court for his administration of the guardianship upon his resignation or removal, on termination of the protected person's minority or disability, and periodically for such periods and at such times as the court may direct. Subject to appeal or vacation within the time permitted, an order, made upon notice and hearing, allowing an intermediate account of a guardian of the property, adjudicates as to his liabilities concerning the matters considered in connection therewith; and an order, made upon notice and hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the guardian of the property to the protected person or his successors relating to the guardianship. In connection with any account, the court may require a guardian of the property to submit to a physical check of the estate in his control, to be made in any manner the court may specify.

**Sec. 5-420 Guardians of the property; title by appointment.** The appointment of a guardian of the property vests in him title as trustee to all property of the protected person, presently held or thereafter acquired, including title to any property theretofore held for the protected person by custodians or attorneys in fact. The appointment of a guardian of the property is not a transfer or alienation within the meaning of general provisions of any federal or state statute or regulation, insurance policy, pension plan, contract, will or trust instrument, imposing restrictions upon or penalties for transfer or alienation by the protected person of his rights or interest, but this section does not restrict the ability of persons to make specific provision by contract or dispositive instrument relating to a guardian of the property.

**Sec. 5-421 Recording of guardian of the property's letters.** Letters of guardianship are evidence of transfer of all assets of a protected person to the guardian of the property. An order terminating a guardianship is evidence of transfer of all assets of the estate from the guardian of the property to the protected person, or his successors. Subject to the requirements of general statutes governing the filing or recordation of documents of title to land or other property, letters of guardianship, and orders terminating guardianships, may be filed or recorded to give record notice of title as between the guardian of the property and the protected person.

**Sec. 5-422 Sale, encumbrance of transaction involving conflict of interest; court approval.** Any sale or encumbrance to a guardian of the property, his spouse, agent or attorney, or any corporation or trust in which he has a substantial beneficial interest, or any transaction which is affected by a substantial

conflict of interest must be approved by the court after notice to interested persons and others as directed by the court.

**Sec. 5-423 Persons dealing with guardians of the property; protection.** A person who in good faith either assists a guardian of the property or deals with him for value in any transaction other than those requiring a court order as provided in sections 5-408 and 5-424, is protected as if the guardian of the property properly exercised the power. The fact that a person knowingly deals with a guardian of the property does not alone require the person to inquire into the existence of a power or the propriety of its exercise, except that restrictions on powers of guardians of the property which are endorsed on letters as provided in section 5-426 are effective as to third persons. A person is not bound to see to the proper application of estate assets paid or delivered to a guardian of the property. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

**Sec. 5-424 Powers of guardian of the property in administration.** Subject to the restrictions of sections 5-408(4) and 5-422: (a) A guardian of the property has all of the powers conferred herein and any additional powers conferred by law on trustees in this State. In addition, an individual guardian of the property of an unmarried minor, as to whom no one has parental rights, has the duties and powers of a guardian of the person of a minor described in section 5-209 until the minor marries, but the parental rights so conferred on a guardian of the property do not preclude appointment of a guardian of the person as provided by Part 2.

(b) A guardian of the property has power without court authorization or confirmation, to invest and reinvest funds of the estate as would a trustee.

(c) A guardian of the property, acting reasonably in efforts to accomplish the purpose for which he was appointed, may act without court authorization or confirmation, to:

- (1) Collect, hold and retain assets of the estate including land in another state, until, in his judgment, disposition of the assets should be made, and the assets may be retained even though they include an asset in which he is personally interested;
- (2) Receive additions to the estate;
- (3) Continue or participate in the operation of any business or other enterprise;
- (4) Acquire an undivided interest in an estate asset in which the guardian of the property, in any fiduciary capacity, holds an undivided interest;
- (5) Invest and reinvest estate assets in accordance with subsection (b);
- (6) Deposit estate funds in a bank including a bank operated by the guardian of the property;
- (7) Acquire or dispose of an estate asset including land in another state for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;
- (8) Make ordinary or extraordinary repairs or alterations in buildings or

- other structures, to demolish any improvements, to raze existing or erect new party walls or buildings;
- (9) Subdivide, develop, or dedicate land to public use; to make or obtain the vacation of plats and adjust boundaries; to adjust differences in valuation on exchange or to partition by giving or receiving considerations; and to dedicate easements to public use without consideration;
  - (10) Enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the guardianship;
  - (11) Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;
  - (12) Grant an option involving disposition of an estate asset, to take an option for the acquisition of any asset;
  - (13) Vote a security, in person or by general or limited proxy;
  - (14) Pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;
  - (15) Sell or exercise stock subscription or conversion rights; to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;
  - (16) Hold a security in the name of a nominee or in other form without disclosure of the guardianship so that title to the security may pass by delivery, but the guardian of the person is liable for any act of the nominee in connection with the stock so held;
  - (17) Insure the assets of the estate against damage or loss, and the guardian of the property against liability with respect to third persons;
  - (18) Borrow money to be repaid from estate assets or otherwise; to advance money for the protection of the estate or the protected person, and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of any estate assets and the guardian of the property has a lien on the estate as against the protected person for advances so made;
  - (19) Pay or contest any claim; to settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise; and to release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible;
  - (20) Pay taxes, assessments, compensation of the guardian of the property, and other expenses incurred in the collection, care, administration and protection of the estate;
  - (21) Allocate items of income or expense to either estate income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties;
  - (22) Pay any sum distributable to a protected person or his dependent, without liability to the guardian of the property by paying the sum to the distributee or by paying the sum for the use of the distributee either

- to his guardian or if none, to a relative or other person with custody of his person;
- (23) Employ persons, including attorneys, auditors, investment advisors, or agents, even though they are associated with the guardian of the property to advise or assist him in the performance of his administrative duties; to act upon their recommendation without independent investigation; and instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary;
  - (24) Prosecute or defend actions, claims or proceedings in any jurisdiction for the protection of estate assets and of the guardian of the property in the performance of his duties; and
  - (25) Execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the guardian of the property.

**Sec. 5-425 Distributive duties and powers of guardian of the property.** (a) A guardian of the property may expend or distribute income or principal of the estate without court authorization or confirmation for the support, education, care or benefit of the protected person and his dependents in accordance with the following principles:

- (1) The guardian of the property is to consider recommendations relating to the appropriate standard of support, education and benefit for the protected person made by a parent or guardian of the person, if any. He may not be surcharged for sums paid to persons or organizations actually furnishing support, education or care to the protected person pursuant to the recommendations of a parent or guardian of the person of the protected person unless he knows that said parent or guardian is deriving personal financial benefit therefrom, including relief from any personal duty of support, or unless the recommendations are clearly not in the best interests of the protected person.
- (2) The guardian of the property is to expand or distribute sums reasonably necessary for the support, education, care or benefit of the protected person with due regard to (i) the size of the estate, the probable duration of the guardianship and the likelihood that the protected person, at some future time, may be fully able to manage his affairs and the estate which has been conserved for him; (ii) the accustomed standard of living of the protected person and members of his household; (iii) other funds or sources used for the support of the protected person.
- (3) The guardian of the property may expend funds of the estate for the support of persons legally dependent on the protected person and others who are members of the protected person's household who are unable to support themselves, and who are in need of support.
- (4) Funds expended under this subsection may be paid by the guardian of the property to any person, including the protected person to reimburse for expenditures which the guardian of the property might have made, or in advance for services to be rendered to the protected person when it is reasonable to expect that they will be performed and where advance

payments are customary or reasonably necessary under the circumstances.

(b) If the estate is ample to provide for the purposes implicit in the distributions authorized by the preceding subsections, a guardian of the property for a protected person other than a minor has power to make gifts to charity and other objects as the protected person might have been expected to make, in amounts which do not exceed in total for any year twenty per cent of the income from the estate.

(c) When a minor who has not been adjudged disabled under section 5-401(2) attains his majority, his guardian of the property, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible, but such distribution shall not relieve the guardian of his duty to file final accounts under section 5-419.

(d) Subject to the provisions of section 5-429(d), when the guardian of the property is satisfied that a protected person's disability (other than minority) has ceased, the guardian of the property, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible, but such distribution shall not relieve the guardian of his duty to file final accounts under section 5-419.

(e) If a protected person dies, the guardian of the property shall retain for safekeeping any will of the deceased protected person which may have come into his possession, inform the executor or all beneficiaries named therein that he has the will, and retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled thereto. If after forty days from the death of the protected person no other person has been appointed personal representative and no application or petition for probate is before the registrar or the court, the guardian of the property shall apply or petition for probate of the will, if any, and appointment as personal representative as provided in Article III.

**Sec. 5-426 Enlargement or limitation of powers of guardian of the property.** Subject to the restrictions in section 5-408(4), the court may confer on a guardian of the property at the time of appointment or later, in addition to the powers conferred on him by sections 5-424 and 5-425, any power which the court itself could exercise under sections 5-408(2) and 5-408(3). The court may, at the time of appointment or later, limit the powers of a guardian of the property otherwise conferred by sections 5-424 and 5-425, or previously conferred by the court, and may at any time relieve him of any limitation. If the court limits any power conferred on the guardian of the property by section 5-424 or 5-425, the limitation shall be endorsed upon his letters of guardianship.

**Sec. 5-427 Preservation of estate plan.** In investing the estate, and in selecting assets of the estate for distribution under subsections (a) and (b) of section 5-425, in utilizing powers of revocation or withdrawal available for the support of the protected person, and exercisable by the guardian of the property or the court, the guardian of the property and the court should take into account any known estate plan of the protected person, including his will, any revocable trust of which he is settlor, and any contract, transfer or joint ownership arrangement with provisions for payment or transfer of benefits or interests at his death to

another or others which he may have originated. The guardian of the property may examine the will of the protected person.

**Sec. 5-428 Claims against protected person; enforcement.** (a) A guardian of the property must pay from the estate all just claims against the estate and against the protected person arising before or after the guardianship upon their presentation and allowance. A claim may be presented by either of the following methods:

- (1) The claimant may deliver or mail to the guardian of the property a written statement of the claim indicating its basis, the name and address of the claimant and the amount claimed;
- (2) The claimant may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court and deliver or mail a copy of the statement to the guardian of the property.

A claim is deemed presented on the first to occur of receipt of the written statement of claim by the guardian of the property, or the filing of the claim with the court. The presentation of a claim tolls any statute of limitation relating to the claim until thirty days after its disallowance.

(b) A claimant whose claim has not been paid may petition the court for determination of his claim at any time before it is barred by the applicable statute of limitation, and, upon due proof, procure an order for its allowance and payment from the estate. If a proceeding is pending against a protected person at the time of appointment of a guardian of the property or is initiated against the protected person thereafter, the moving party must give notice of the proceeding to the guardian of the property if the outcome is to constitute a claim against the estate.

(c) If it appears that the estate in guardianship is likely to be exhausted before all existing claims are paid, preference is to be given to prior claims for the care, maintenance and education of the protected person or his dependents and existing claims for expenses of administration.

**Sec. 5-429 Individual liability of guardian of the property.** (a) Unless otherwise provided in the contract, a guardian of the property is not personally liable on a contract entered into in his fiduciary capacity in the course of administration of the estate.

(b) The guardian of the property is personally liable for obligations arising from ownership or control of property of the estate and for torts committed in the course of administration of the estate.

(c) Claims based on contracts entered into by a guardian of the property in his fiduciary capacity, on obligations arising from ownership or control of the estate, or on torts committed in the course of administration of the estate may be asserted against the estate by proceeding against the guardian of the property in his fiduciary capacity, whether or not he is personally liable therefor.

(d) Any question of liability between the estate and the guardian of the property personally may be determined in a proceeding for accounting, surcharge, or indemnification, or other appropriate proceeding or action.

**Sec. 5-430 Termination of proceeding.** The protected person, his personal representative, the guardian of the property or any other interested person may petition the court to terminate the guardianship. A protected person seeking

termination is entitled to the same rights and procedures as in an original proceeding for a protective order. The court, upon determining after notice and hearing that the minority or disability of the protected person has ceased, may terminate the guardianship. Upon termination, title to assets of the estate passes to the former protected person or to his successors subject to provision in the order for expenses of administration or to conveyances from the guardian of the property to the former protected person or his successors, to evidence the transfer.

**Sec. 5-431 (Reserved)**

**Sec. 5-432 (Reserved)**

## **PART 5. POWERS OF ATTORNEY**

**Sec. 5-501 When power of attorney not affected by disability.** Whenever a principal designates another his attorney in fact or agent by a power of attorney in writing and the writing contains the words "This power of attorney shall not be affected by disability of the principal," or "This power of attorney shall become effective upon the disability of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding his disability, the authority of the attorney in fact or agent is exercisable by him as provided in the power on behalf of the principal notwithstanding later disability or incapacity of the principal at law or later uncertainty as to whether the principal is dead or alive. All acts done by the attorney in fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or his heirs, devisees and personal representative as if the principal were alive, competent and not disabled. If a guardian of the person or of the property thereafter is appointed for the principal, the attorney in fact or agent, during the continuance of the appointment, shall account to the guardian of the property rather than the principal. The guardian of the property has the same power the principal would have had if he were not disabled or incompetent to revoke, suspend, or terminate all or any part of the power of attorney or agency.

**Sec. 5-502 Other powers of attorney revoked upon death or disability.** (a) Except as provided in section 5-501, the death, disability, or incompetence of any principal who has executed a power of attorney revokes or terminates the power whether or not the attorney in fact has actual knowledge of the death, disability or incompetence of the principal.

(b) This section shall not be construed to alter or affect any provision for revocation or termination contained in the power of attorney.

## **ARTICLE VI**

### **NON-PROBATE TRANSFERS**

#### **PART 1. MULTIPLE-PARTY ACCOUNTS**

**Sec. 6-101 Definitions.** In this Part, unless the context otherwise requires:  
(1) "Account" means a contract of deposit of funds between a depositor

- and a financial institution, and includes a checking account, savings account, certificate of deposit, share account and other like arrangement;
- (2) "Beneficiary" means a person named in a trust account as one for whom a party to the account is named as trustee;
  - (3) "Financial institution" means any organization authorized to do business under state or federal laws relating to financial institutions, including, without limitation, banks, savings banks, savings and loan companies or associations, industrial loan companies, and credit unions;
  - (4) "Joint account" means an account payable on request presently or in the future to one or more of two or more parties whether or not mention is made of any right of survivorship;
  - (5) A "multiple-party account" is any of the following types of account: (i) a joint account, (ii) a P.O.D. account, or (iii) a trust account. It does not include accounts established for deposit of funds of a partnership, joint venture, or other association for business purposes, or accounts controlled by one or more persons as the duly authorized agent or trustee for a corporation, unincorporated association, charitable or civic organization or a regular fiduciary or trust account where the relationship is established other than by deposit agreement;
  - (6) "Net contribution" of a party to a joint account as of any given time is the sum of all deposits thereto made by or for him, less all withdrawals made by or for him which have not been paid to or applied to the use of any other party, plus a pro rata share of any interest or dividends included in the current balance. The term includes, in addition, any proceeds of deposit life insurance added to the account by reason of the death of the party whose net contribution is in question;
  - (7) "Party" means a person who, by the terms of the account, has a present right, subject to request, to payment from a multiple-party account. A P.O.D. payee or beneficiary of a trust account is a party only after the account becomes payable to him by reason of his surviving the original payee or trustee. Unless the context otherwise requires, it includes a guardian of the person or of the property, personal representative, or assignee, of a party. It also includes a person identified as a trustee of an account for another whether or not a beneficiary is named, but it does not include any named beneficiary unless he has a present right of withdrawal;
  - (8) "Payment" of sums on deposit includes withdrawal, payment on check or other directive of a party, and any pledge of sums on deposit by a party and any set-off, or reduction or other disposition of all or part of an account pursuant to a pledge;
  - (9) "Proof of death" includes a death certificate or record or report which is prima facie proof of death under section I-107;
  - (10) "P.O.D. account" ("payable on death") means an account payable on request to one person during lifetime and on his death to one or more P.O.D. payees, or to one or more persons during their lifetimes and on



- the death of all of them to one or more P.O.D. payees;
- (11) "P.O.D. payee" means a person designated on a P.O.D. account as one to whom the account is payable on request after the death of one or more persons;
  - (12) "Request" means a proper request for withdrawal, or a check or order for payment, which complies with all conditions of the account, including special requirements concerning necessary signatures and regulations of the financial institution; but if the financial institution conditions withdrawal or payment on advance notice, for purposes of this Part the request for withdrawal or payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for withdrawal;
  - (13) "Sums on deposit" means the balance payable on a multiple-party account including interest, dividends, and in addition any deposit life insurance proceeds added to the account by reason of the death of a party;
  - (14) "Trust account" means an account in the name of one or more parties as trustee for one or more beneficiaries where the relationship is established by the form of the account and the deposit agreement with the financial institution and there is no subject of the trust other than the sums on deposit in the account; it is not essential that payment to the beneficiary be mentioned in the deposit agreement. A trust account does not include a regular trust account under a testamentary trust or a trust agreement which has significance apart from the account, or a fiduciary account arising from a fiduciary relation such as attorney-client;
  - (15) "Withdrawal" includes payment to a third person pursuant to check or other directive of a party.

**Sec. 6-102 Ownership as between parties, and others; protection of financial institutions.** The provisions of sections 6-103 to 6-105 concerning beneficial ownership as between parties and P.O.D. payees, or as between parties or beneficiaries of multiple-party accounts, are relevant only to controversies between these persons and their creditors and other successors, and have no bearing on the power of withdrawal of these persons as determined by the terms of account contracts. The provisions of sections 6-108 to 6-113 govern the liability of financial institutions who make payments pursuant thereto, and their setoff rights.

**Sec. 6-103 Ownership during lifetime.** (a) A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent.

(b) A P.O.D. account belongs to the original payee during his lifetime and not to the P.O.D. payee or payees; if two or more parties are named as original payees, during their lifetimes rights as between them are governed by subsection (a) of this section.

(c) Unless a contrary intent is manifested by the terms of the account or the deposit agreement or there is other clear and convincing evidence of an

irrevocable trust, a trust account belongs beneficially to the trustee during his lifetime, and if two or more parties are named as trustee on the account, during their lifetimes beneficial rights as between them are governed by subsection (a) of this section. If there is an irrevocable trust, the account belongs beneficially to the beneficiary.

**Sec. 6-104 Right of survivorship.** (a) Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties as against the estate of the decedent unless there is clear and convincing evidence of a different intention at the time the account is created. If there are two or more surviving parties, their respective ownerships during lifetime shall be in proportion to their previous ownership interests under section 6-103 augmented by an equal share for each survivor of any interest the decedent may have owned in the account immediately before his death; and the right of survivorship continues between the surviving parties.

(b) If the account is a P.O.D. account,

(1) On death of one of two or more original payees the rights to any sums remaining on deposit are governed by subsection (a) of this section.

(2) On death of the sole original payee or of the survivor of two or more original payees, any sums remaining on deposit belong to the P.O.D. payee or payees if surviving, or to the survivor of them if one or more die before the original payee; if two or more P.O.D. payees survive, there is a right of survivorship in the event of death of a P.O.D. payee thereafter.

(c) If the account is a trust account,

(1) On death of one of two or more trustees, the rights to any sums remaining on deposit are governed by subsection (a) of this section, and

(2) On death of the sole trustee or the survivor of two or more trustees, any sums remaining on deposit belong to the person or persons named as beneficiaries, if surviving, or to the survivor of them if one or more die before the trustee, unless there is clear evidence of a contrary intent; if two or more beneficiaries survive, there is a right of survivorship in event of death of any beneficiary thereafter.

(d) In other cases, the death of any party to a multiple-party account has no effect on beneficial ownership of the account other than to transfer the rights of the decedent as part of his estate.

(e) A right of survivorship arising from the express terms of the account or under this section, or a beneficiary designation in a trust account, or a P.O.D. payee designation, cannot be changed by will.

**Sec. 6-105 Effect of written notice to financial institution.** The provisions of section 6-104 as to rights of survivorship are determined by the form of the account at the death of a party. This form may be altered by written order given by all parties to the financial institution to change the form of the account or to stop or vary payment under the terms of the account. The order or request must be signed by all parties, received by the financial institution during the parties' lifetime, and not countermanded by other written order of the parties during their lifetime.

**Sec. 6-106 Accounts and transfers nontestamentary.** Any transfers resulting from the application of section 6-104 are effective by reason of the account contracts involved and this statute and are not to be considered as testamentary or subject to Articles I to IV of this chapter except as provided in section 6-107.

**Sec. 6-107 Rights against multiple party accounts.** A transfer to a survivor pursuant to the provisions of section 6-104 can be set aside, to the extent described below, in the event the assets in the hands of the personal representative of the deceased party are insufficient to pay taxes, expenses of administration, and homestead and family allowances under sections 2-401 and 2-403. A surviving party, P.O.D. payee, or beneficiary who receives payment from a multiple-party account after the death of a deceased party may, on application of the personal representative of the deceased party's estate the surviving spouse of the deceased party, or one acting for a dependent or minor child of the deceased party, be required to account to said personal representative for the amount the decedent owned beneficially in the account immediately before his death to the extent necessary to discharge the insufficiency described above. No proceeding to assert this right shall be commenced later than two years following the death of the deceased party. Sums recovered hereunder shall be administered as part of the decedent's estate. This section shall not affect the right of a financial institution to make payment on multiple-party accounts according to the terms thereof, or make it liable to the estate of a deceased party unless before payment either the institution has been served with process in a proceeding by the personal representative or the institution has actual knowledge that making payment will jeopardize the payment of the taxes, expenses and allowances above mentioned.

**Sec. 6-108 Financial institution protection; payment on signature of one party.** Financial institutions may enter into multiple-party accounts to the same extent that they may enter into single-party accounts. Subject to the provision of sections 236-24 and 6-107, any multiple-party account may be paid, on request and according to its terms, to any one or more of the parties. A financial institution shall not be required to inquire as to the source of funds received for deposit to a multiple-party account, or to inquire as to the proposed application of any sum withdrawn from an account.

**Sec. 6-109 Financial institution protection; payment after death or disability; joint account.** Subject to the provisions of section 236-24 and 6-107 any sums in a joint account may be paid, on request and according to its terms, to any party without regard to whether any other party is incapacitated or deceased at the time the payment is demanded; but payment may not be made to the personal representative or heirs of a deceased party unless proofs of death are presented to the financial institution showing that the decedent was the last surviving party or unless there is no right of survivorship under section 6-104.

**Sec. 6-110 Financial institution protection; payment of P.O.D. account.** Any P.O.D. account may be paid, on request, to any original party to the account. Payment may be made, on request, to the P.O.D. payee or to the personal representative or heirs of a deceased P.O.D. payee upon presentation to the financial institution of proof of death showing that the P.O.D. payee survived all

persons named as original payees. Payment may be made to the personal representative or heirs of a deceased original payee if proof of death is presented to the financial institution showing that his decedent was the survivor of all other persons named on the account either as an original payee or as P.O.D. payee.

**Sec. 6-111 Financial institution protection; payment of trust account.** Subject to the provisions of section 6-107, any trust account may be paid, on request and according to its terms, to any trustee. Unless the financial institution has received written notice or has actual knowledge that the beneficiary has a vested interest not dependent upon his surviving the trustee, payment may be made to the personal representative or heirs of a deceased trustee if proof of death is presented to the financial institution showing that the deceased trustee was the survivor of all other persons named on the account either as trustee or beneficiary. A trust account may be paid, on request and according to its terms, to the beneficiary upon presentation to the financial institution of proof of death showing that the beneficiary or beneficiaries survived all persons named as trustees.

**Sec. 6-112 Financial institution protection; discharge.** Payment made pursuant to section 6-108, 6-109, 6-110, or 6-111 discharges the financial institution from all claims for amounts so paid whether or not the payment is consistent with the beneficial ownership of the account as between parties, P.O.D. payees, or beneficiaries, or their successors. The protection here given does not extend to payments made after a financial institution has received written notice from any party or has actual knowledge that withdrawals in accordance with the terms of the account should not be permitted. Unless the notice is withdrawn by the person giving it, the successor of any deceased party must concur in any demand for withdrawal if the financial institution is to be protected under this section. No other notice or any other information shown to have been available to a financial institution shall affect its right to the protection provided here. The protection here provided shall have no bearing on the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of funds in, or withdrawn from, multiple-party accounts.

**Sec. 6-113 Financial institution protection; set-off.** Without qualifying any other statutory right to set-off or lien and subject to any contractual provision, if a party to a multiple-party account is indebted to a financial institution, the financial institution has a right to set-off against the account in which the party has or had immediately before his death a present right of withdrawal. The amount of the account subject to set-off is that proportion to which the debtor is, or was immediately before his death, beneficially entitled, and in the absence of proof of net contributions, to an equal share with all parties having present rights of withdrawal.

## PART 2. (Reserved)

### Sec. 6-201 (Reserved)

## ARTICLE VII TRUST ADMINISTRATION

### PART 1. TRUST REGISTRATION

**Sec. 7-101 Duty to register trusts.** The trustee of a trust having its principal place of administration in this State shall register the trust in the court in the judicial circuit either of the principal place of administration of the trust, or, in the case of a trust relating only to land, of the place where the land is located. Unless otherwise designated in the trust instrument, the principal place of administration of a trust is the trustee's usual place of business where the records pertaining to the trust are kept, or at the trustee's residence if he has no such place of business. In the case of co-trustees, the principal place of administration, if not otherwise designated in the trust instrument, is (1) the usual place of business of the corporate trustee if there is but one corporate co-trustee, or (2) the usual place of business or residence of the individual trustee who is a professional fiduciary if there is but one such person and no corporate co-trustee, and otherwise (3) the usual place of business or residence of any of the co-trustees as agreed upon by them. The duty to register under this Part does not apply to the trustee of a trust if registration would be inconsistent with the retained jurisdiction of a foreign court from which the trustee cannot obtain release.

**Sec. 7-102 Registration procedures.** Registration shall be accomplished by filing a statement indicating the name and address of the trustee in which it acknowledges the trusteeship. The statement shall indicate whether the trust has been registered elsewhere. The statement shall identify the trust:

- (1) In the case of a testamentary trust, by the name of the testator and the date and place of domiciliary probate;
- (2) In the case of a written inter vivos trust, by the name of each settlor and the original trustee and the date of the trust instrument.

If a trust has been registered elsewhere, registration in the State is ineffective until the earlier registration is released by order of the court where prior registration occurred, or an instrument executed by the trustee and all beneficiaries, filed with the registration in this State.

**Sec. 7-103 Effect of registration.** (a) By registering a trust, or accepting the trusteeship of a registered trust, the trustee submits personally to the jurisdiction of the court in any proceeding under section 7-201 of this chapter relating to the trust that may be initiated by any interested person while the trust remains registered. Notice of any proceeding shall be delivered to the trustee in the manner required for the service of process by rule of court or, in the absence of any such rule, by mailing it to him by ordinary first class mail at his address as listed in the registration or as thereafter reported to the court and to his address as then known to the petitioner.

(b) To the extent of their interests in the trust, all beneficiaries of a trust properly registered in this State are subject to the jurisdiction of the court of registration for the purposes of proceedings under section 7-201, provided notice is given pursuant to section 1-401.

**Sec. 7-104 Effect of failure to register.** A trustee who fails to register a trust

in a proper court as required by this Part, for purposes of any proceedings initiated by a beneficiary of the trust prior to registration, is subject to the personal jurisdiction of any court in which the trust could have been registered. In addition, any trustee who, within thirty days after receipt of a written demand by a settlor or beneficiary of the trust, fails to register a trust as required by this Part is subject to removal and denial of compensation or to surcharge as the court may direct. Except as provided in section 1-108, a provision in the terms of the trust purporting to excuse the trustee from the duty to register, or directing that the trust or trustee shall not be subject to the jurisdiction of the court, is ineffective.

**Sec. 7-105 (Reserved)**

**Sec. 7-106 Release of registration.** Upon the termination and distribution of a registered trust, the trustee shall notify the court in which it is registered of such termination and distribution, whereupon the court may remove the record of the trust from its current registry of trusts.

**PART 2. JURISDICTION OF COURT CONCERNING TRUSTS**

**Sec. 7-201 Court; jurisdiction of trusts.** (a) The court has jurisdiction of proceedings initiated by trustees and interested persons concerning the internal affairs of trusts. Proceedings which may be maintained under this section are those concerning the administration and distribution of trusts, the declaration of rights and the determination of other matters involving trustees and beneficiaries of trusts. These include, but are not limited to, proceedings to:

- (1) Appoint or remove a trustee;
- (2) Review trustees' fees and to review and settle interim or final accounts;
- (3) Ascertain beneficiaries, to determine any question arising in the administration or distribution of any trust including questions of construction of trust instruments, to instruct trustees, and to determine the existence or nonexistence of any immunity, power, privilege, duty or right; and
- (4) Release registration of a trust.

(b) Neither registration of a trust nor a proceeding under this section result in continuing supervisory proceedings. The management and distribution of a trust estate, submission of accounts and reports to beneficiaries, payment of trustee's fees and other obligations of a trust, acceptance and change of trusteeship, and other aspects of the administration of a trust shall proceed expeditiously consistent with the terms of the trust, free of judicial intervention and without order, approval or other action of any court, subject to the jurisdiction of the court as invoked by interested persons or as otherwise exercised pursuant to law.

**Sec. 7-202 Trust proceedings; venue.** Venue for proceedings involving registered trusts is in the judicial circuit which is the place of registration. Venue for proceedings involving trusts not registered in this State is any place where the trust properly could have been registered, and as otherwise provided by the Hawaii Rules of Civil Procedure.

**Sec. 7-203 Trust proceedings; dismissal of matters relating to foreign trusts.**

The court will not, over the objection of a party, entertain proceedings concerning the internal affairs of a trust registered or having its principal place of administration in another state, unless (1) all appropriate parties could not be bound by litigation in the courts of the state where the trust is registered or has its principal place of administration or (2) the interests of justice otherwise would seriously be impaired. The court may condition a stay or dismissal of a proceeding under this section on the consent of any party to jurisdiction of the state in which the trust is registered or has its principal place of business, or the court may grant a continuance or enter any other appropriate order.

**Sec. 7-204 Court; concurrent jurisdiction of litigation involving trusts and third parties.** The court of the judicial circuit in which the trust is required to be registered has concurrent jurisdiction with other courts of this State of actions and proceedings to determine the existence or nonexistence of trusts created other than by will, of actions by or against creditors or debtors of trusts, and of other actions and proceedings involving trustees and third parties. Venue is determined by the rules generally applicable to civil actions.

**Sec. 7-205 Proceedings for review of employment of agents and review of compensation of trustee and employees of trust.** On petition of an interested person, after notice to all interested persons, the court may review the propriety of employment of any person by a trustee including any attorney, auditor, investment advisor or other specialized agent or assistant, the reasonableness of the compensation of any person so employed, the reasonableness of the determination of trust estate value or income made by the trustee for the purpose of computing the fee allowed by sections 607-18 and 607-20, and the reasonableness of any additional compensation for special services under sections 607-18 and 607-20. Any person who has received excessive compensation from a trust may be ordered to make appropriate refunds.

**Sec. 7-206 Trust proceedings; initiation by notice; necessary parties.** Proceedings under section 7-201 are initiated by filing a petition in the court and giving notice pursuant to section 1-401 to interested persons. The court may order notification of additional persons. A decree is valid as to all who are given notice of the proceeding though fewer than all interested persons are notified.

### **PART 3. DUTIES AND LIABILITIES OF TRUSTEES**

**Sec. 7-301 General duties not limited.** Except as specifically provided, the general duty of the trustee to administer a trust expeditiously for the benefit of the beneficiaries is not altered by this chapter.

**Sec. 7-302 Trustee's standard of care and performance.** Except as otherwise provided by the terms of the trust, the trustee shall observe the standards in dealing with the trust assets that would be observed by a prudent man dealing with the property of another, and if the trustee has special skills or is named trustee on the basis of representations of special skills or expertise, he is under a duty to use those skills.

**Sec. 7-303 Duty to inform and account to beneficiaries.** Subject to the

provisions of section 1-108, the trustee shall keep the beneficiaries of the trust reasonably informed of the trust and its administration. In addition:

- (1) Within thirty days after his acceptance of the trust, the trustee shall inform in writing the persons currently entitled to benefits from the trust, and if possible, one or more persons who under section 1-403 may represent beneficiaries with future interests, of the court in which the trust is registered and of its name and address.
- (2) Upon reasonable request, the trustee shall provide the beneficiary with a copy of the terms of the trust which describe or affect his interest and with information about the assets of the trust and the particulars relating to the administration.
- (3) Upon reasonable request, a beneficiary is entitled to a statement of the accounts of the trust annually and on termination of the trust or change of the trustee.

**Sec. 7-304 Duty to provide bond.** A trustee need not provide bond to secure performance of his duties unless required by the terms of the trust, reasonably requested by a beneficiary or found by the court to be necessary to protect the interests of the beneficiaries who are not able to protect themselves and whose interests otherwise are not adequately represented. On petition of the trustee or other interested person the court may excuse a requirement of bond, reduce the amount of the bond, release the surety, or permit the substitution of another bond with the same or different sureties. If bond is required, it shall be filed in the court of registration or other appropriate court in amounts and with sureties and liabilities as provided in sections 3-604 and 3-606 relating to bonds of personal representatives.

**Sec. 7-305 Trustee's duties; appropriate place of administration; deviation.** A trustee is under a continuing duty to administer the trust at a place appropriate to the purposes of the trust and to its sound, efficient management. If the principal place of administration becomes inappropriate the court may for good cause enter any order furthering efficient administration and the interests of beneficiaries, including, if appropriate, release of registration, removal of the trustee, designation of administration in another state, and appointment of a trustee in another state. Trust provisions relating to the place of administration and to changes in the place of administration or of trustee control unless compliance would be contrary to efficient administration or the purposes of the trust. Views of adult beneficiaries shall be given weight pursuant to section 554-2, in determining the suitability of the trustee and the place of administration.

**Sec. 7-306 Personal liability of trustee to third parties.** (a) Unless otherwise provided in the contract, a trustee is personally liable on contracts entered into in his fiduciary capacity in the course of administration of the trust estate.

(b) A trustee is personally liable for obligations arising from ownership or control of property of the trust estate and for torts committed in the course of administration of the trust estate.

(c) Claims based on contracts entered into by a trustee in his fiduciary capacity, on obligations arising from ownership or control of the trust estate, or on torts committed in the course of trust administration may be asserted against



the trust estate by proceeding against the trustee in his fiduciary capacity, whether or not the trustee is personally liable therefor.

(d) The question of liability as between the trust estate and the trustee personally may be determined in a proceeding for accounting, surcharge or indemnification or other appropriate proceeding.

**Sec. 7-307 Limitations on proceedings against trustees after final account.**

Unless previously barred by adjudication, consent or limitation, any claim against a trustee for breach of trust is barred as to any beneficiary who has received a final account or other statement fully disclosing the matter and showing termination of the trust relationship between the trustee and the beneficiary unless a proceeding to assert the claim is commenced within two years after receipt of the final account or statement. In any event and notwithstanding lack of full disclosure a trustee who has issued a final account or statement received by the beneficiary and has informed the beneficiary of the location and availability of records for his examination is protected after three years. A beneficiary is deemed to have received a final account or statement if accorded notice pursuant to section 1-401.

**PART 4. POWERS OF TRUSTEES**

**Sec. 7-401 Powers of trustees.** Trustees shall have, in addition to the powers set out in the trust agreement, the powers as provided in chapter 554 and otherwise as provided by law.

**ARTICLE VIII**

**EFFECTIVE DATE AND REPEALER**

**Sec. 8-101 Time of taking effect; provisions for transition.** (a) This chapter takes effect on July 1, 1976, except that the provisions of Articles II, III and IV and the Hawaii Revised Statutes sections amended or repealed in this Article VIII on account of Articles II, III and IV take effect on July 1, 1977.

(b) Except as provided elsewhere in this chapter, on the effective date of this chapter:

- (1) The chapter applies to any wills of decedents dying thereafter;
- (2) The chapter applies to any proceedings in court then pending or thereafter commenced regardless of the time of the death of decedent except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this chapter;
- (3) Every executor of a will admitted to a probate prior to July 1, 1977 in this State and every administrator appointed prior to July 1, 1977 by a court of this State shall be a supervised personal representative with respect to the estate, and every guardian of the property appointed prior to July 1, 1976 by a court of this State shall be a guardian of the property, with only the powers conferred by this chapter and subject to the duties imposed by this chapter with respect to any act occurring or

done thereafter. Every guardian of a person holding an appointment on that date continues to hold the appointment but has only the powers conferred by this chapter and is subject to the duties imposed by this chapter with respect to any act occurring or done thereafter;

- (4) The consequences of an act done before the applicable effective date in any proceeding and any accrued right is not impaired by this chapter. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before July 1, 1977, the provisions of such statute shall remain in force with respect to that right;
- (5) Any rule of construction or presumption provided in this chapter applies to instruments executed and multiple-party accounts opened before July 1, 1976 unless there is a clear indication of a contrary intent.
- (6) Notwithstanding any of the above, this chapter shall not affect any property or other rights accrued under the case and statutory law of this State, including but not limited to the law relating to intestacy, dower and curtesy (chapters 532 and 533, Hawaii Revised Statutes), which became vested prior to July 1, 1977.

**Sec. 8-102 Specific repealer and amendments.** The following chapters and sections of the Hawaii Revised Statutes are amended or repealed as follows:

- (1) Effective July 1, 1977, wherever any of the terms "executor", "administrator" or "administrator with the will annexed" appears in the Hawaii Revised Statutes, the term "personal representative" is substituted. In preparing the supplements to the revised statutes, the revisor of statutes shall make such changes in any section as shall be necessary to avoid redundancy and to conform the punctuation to the intent of this Act; provided that he shall not alter the sense, meaning, or effect of any section.
- (2) Section 236-29 is amended to read:

**"Sec. 236-29 Record kept by court clerk.** The director of taxation shall furnish to each of the clerks of the several circuit courts a book, which shall be a public record, and in which he shall enter the name of every decedent, upon whose estate an application or petition has been made to the registrars or the circuit judges of the several circuit courts, for the issuance of letters of administration, or letters testamentary, or ancillary letters, the date and place of death of such decedent, the estimated value of his real and personal property, the names, places of residence, and relationship to him of his heirs-at-law, the names and places of residence of the legatees and devisees in any will of any such decedent, the amount of each legacy and the estimated value of any real property devised therein, and to whom devised. These entries shall be made from the data contained in the papers filed on any such application or petition, or in any proceeding relating to the estate of the decedent. The clerk of the circuit court shall also enter in such book the amount of personal property of any such decedent, as shown by the inventory thereof when made and filed in his office, and the returns made by any appraiser appointed by the circuit judge under this chapter, and the value of annuities, life estates, terms of years, and other property of such decedent, or given by him in his will or otherwise, as fixed by the circuit

judge, and the tax assessed thereon, and the amounts of any receipts for payment of any tax on the estate of such decedent under this chapter filed with him. The clerk of the circuit court shall, on the first day of January, April, July, and October of each year, make a report in duplicate, upon forms to be furnished by the director, containing all the data and matters required to be entered in such book, and also of the property from which, or the party from which he has reason to believe the tax under this chapter is due and unpaid, one copy of which shall be immediately delivered to the director and the other transmitted to the attorney general.”

(3) Section 246-4 is amended to read:

**“Sec. 246-4 Assessment of property; to whom in general.** Real property shall be assessed in its entirety to the owner thereof; provided that where improved residential land has been leased for a term of fifteen years or more, the real property shall be assessed in its entirety to the lessee or his successor in interest holding the land for such term under such lease and the lessee or successor in interest shall be deemed the owner of the real property in its entirety for the purposes of this chapter; provided, however, that the lease and any extension, renewal, assignment, or agreement to assign the lease (1) shall have been duly entered into and recorded in the bureau of conveyances or filed in the office of the assistant registrar of the land court prior to [July 1 of] January 1 preceding the tax year for which the assessment is made, and (2) shall provide that the lessee shall pay all taxes levied on the property during the term of the lease.

“Improved residential land” as used herein means land improved with a single family dwelling on it.

For the purposes of this chapter, life tenants, personal representatives, trustees, guardians, or other fiduciaries may be, and persons holding government property under an agreement for the conveyance of the same to such persons shall be considered as owners during the time any real property is held or controlled by them as such. Lessees holding under any government lease shall be considered as owners during the time any real property is held or controlled by them as such, as more fully provided in section 246-36; and further, notwithstanding any provision to the contrary in this chapter, any tenant occupying government land, whether such occupancy be on a permit, license, month to month tenancy, or otherwise, shall be considered as owner where such occupancy has continued for a period of one year or more, as more fully provided in section 246-36. Persons holding any real property under an agreement to purchase the same, shall be considered as owners during the time the real property is held or controlled by them as such; provided the agreement to purchase (1) shall have been recorded in the bureau of conveyances, and (2) shall provide that the purchasers shall pay the real property taxes levied on the property. Persons holding any real property under a lease for a term to last during the lifetime of the lessee, shall be considered as owners during the time the real property is held or controlled by them as such; provided that the lease (1) shall have been duly entered into and recorded in the bureau of conveyances or filed in the office of the assistant registrar of the land court prior to [July 1 of] January 1 preceding the tax year for which the assessment is made, and (2) shall provide that the lessee shall pay all

taxes levied on the property during the term of the lease.”

[Revisor's note. Underscored matter is substituted for the bracketed matter, effective January 1, 1977. L 1975, c 157, §3.]

(4) Section 246-7 is amended to read:

**“Sec. 246-7 Fiduciaries, liability.** Every personal representative, trustee, guardian, or other fiduciary shall be answerable as such for the performance of all such acts, matters, or things as are required to be done by this chapter in respect to the assessment of the real property he represents in his fiduciary capacity, and he shall be liable as such fiduciary for the payment of taxes thereon up to the amount of the available property held by him in such capacity, but he shall not be personally liable. He may retain, out of the money or other property which he may hold or which may come to him in his fiduciary capacity, so much as may be necessary to pay the taxes or to recoup himself for the payment thereof, or he may recover the amount thereof paid by him from the beneficiary to whom the property shall have been distributed.”

(5) Sections 406-4 and 406-5 are amended to read:

**“Sec. 406-4 Corporations acting as personal representatives, etc.** Except as provided in section 3-601 of the Uniform Probate Code, no corporation or joint-stock company, except trust companies doing business under this chapter and except banks authorized to engage in a trust business, shall act as personal representative, guardian, assignee, or receiver or shall engage in the business of acting as trustee for the management and investment of funds of other persons, or shall continue to do business with the word “trust” or “trustee” in its corporate name, under penalty of \$10 for every day that it so acts or engages in business. The penalty may be recovered by the director of regulatory agencies in a civil action before any court of competent jurisdiction.

**Sec. 406-5 Powers of trust companies.** Every trust company shall have power, in addition to the general powers conferred by law upon corporations and joint-stock companies:

- (1) To take, receive, and hold, and repay, reconvey, and dispose of, any effects and property, both real and personal, which may be granted, devised, bequeathed, committed, transferred, or conveyed to it, upon any trust or trusts, at any time or times by any person or persons, including married women and minors, body or bodies corporate, or by any state, territorial, federal, or foreign court or judge, and to administer, fulfill, and discharge the duties of the trust or trusts for such remuneration as may be agreed upon or provided by law;
- (2) To act generally as agents or attorneys in the transaction of business or management of estates, the collection of rents, interest, dividends, mortgages, bonds, bills, notes, and securities for money;
- (3) To act as agent for the purpose of buying, selling, issuing, negotiating, registering, transferring, or countersigning the certificates of stock, bonds, or other obligations of any corporation, association, or municipality, and to manage any sinking fund therefor, on such terms as may be agreed upon;
- (4) To accept and to execute the offices of personal representative, trustee, receiver, assignee, or guardian, whether by appointment by will, by a

- court or judge, or otherwise;
- (5) To loan money upon real estate and collateral security and to execute and issue its notes and debentures, payable at a future date, and to pledge its mortgages on real estate and other securities as security therefor;
  - (6) To take and receive from any individual or corporation, on deposit for safekeeping and storage, gold and silver plate, jewelry, money, stocks, securities, and other valuables and personal property;
  - (7) To rent out the use of safes or other receptacles upon such terms and for such compensation as may be agreed upon;
  - (8) To lease, purchase, hold, and convey all such personal estate as may be necessary to carry on its business or that it may be necessary to acquire in the enforcement or settlement of any claims or demands arising out of its business transactions;
  - (9) To execute and issue in the transaction of its business all necessary receipts, certificates, papers, and contracts which shall be signed by such person or persons as may be designated in the bylaws;
  - (10) To lease, purchase, hold, and convey real estate as its corporate property;
  - (11) To purchase, hold, and sell the stocks and bonds of other corporations;
  - (12) To do a general trust and security business; and
  - (13) To transact as agents any other business or undertaking, trust, mercantile or otherwise, which may be necessary, useful, or convenient to the main purpose of the corporation.

Nothing herein shall be construed as giving the right to issue bills to circulate as money or to discount commercial paper, or to do a general banking business, or to do a savings bank business.

After June 30, 1970, no trust company shall have power to engage, directly or indirectly, in the business of acting as a real estate broker, stockbroker or insurance agent."

(6) Section 406-22 is amended by amending subsections (a) and (b) to read:

"(a) Fiduciary accounts. Within the limits of the standard prescribed by section 7-302 of the Uniform Probate Code, a trust company as fiduciary may acquire and retain every kind of property, real, personal, or mixed and every kind of investment, specifically including, but without in any way limiting the generality of the foregoing, bonds, debentures, and other corporate obligations, and corporate stocks, preferred or common, and securities of any open-end or closed-end management type investment company or unit investment trust registered under the Federal Investment Company Act of 1940, as from time to time amended, and may retain property properly acquired without limitation as to time and without regard to its suitability for original purchase. Nothing herein shall authorize a departure from or variation of, the express terms or limitations set forth in the instrument creating the fiduciary relationship, but the terms "legal investment" or "authorized investment", or words of similar import, means any investment conforming to the foregoing standard.

(b) Depository. Any trust company acting as trustee or guardian holding funds awaiting investment, distribution, or other use may deposit the funds on

either demand or time with any state or national bank which has been designated as a depository by the director of regulatory agencies.”

(7) Sections 501-171 and 501-172 are amended to read:

**“Sec. 501-171 Registration upon transfer by descent and devise.** When the owner of registered land, or of any estate or interest therein, dies, having devised the same by will, the person or persons entitled thereto may file with the assistant registrar of the land court the duplicate certificate issued to the testator, a correct statement of the full names of the devisees, the residence and post office address of each and their marital status, a certified copy of the will, either a certified copy of the order of the circuit court admitting it to probate or a certified copy of the written statement of the registrar of the circuit court admitting it to informal probate, and a certified copy of an order of the registrar or the circuit court terminating the personal representative’s right to take possession and control of the registered land, and thereupon the assistant registrar shall cancel the duplicate certificate issued to the testator, and issue a new duplicate certificate or certificates to the devisee or devisees. When the owner of registered land or of any estate or interest therein dies, not having devised the same, the persons entitled thereto by law may file with the assistant registrar the duplicate certificate issued to the intestate, a correct statement of the full names of the heirs, the residence and post office address of each, and their marital status, a certified copy of the judgment of the registrar or the circuit court in an action determining the heirs, or a certified copy of an order of the registrar or the circuit court in probate proceedings terminating the personal representative’s right to take possession and control of the registered land and determining the heirs, and thereupon the assistant registrar shall cancel the duplicate certificate issued to the intestate, and issue a new duplicate certificate or certificates to the heir or heirs entitled thereto.

Instruments which must be registered. No voluntary instrument or deed of a personal representative, assignee for the benefit of creditors, sheriff, master, commissioner, or other officer purporting to transfer or create a lien or charge upon any estate or interest of any devisee or heir in registered land or to authorize the same to be done, shall have any effect to accomplish that purpose until the title of the heir or devisee is registered as herein provided. An involuntary lien, charge, or lis pendens against the interest of a relict, heir, or devisee in the lands of a deceased registered owner, prior to the registration of the title of such relict, heir, or devisee, only can be obtained by filing the proper papers with the assistant registrar as in other cases, and the assistant registrar making entry thereof as a memorial on the registered certificate of title of the deceased owner, giving the name, residence, and post office address of the relict, heir, or devisee against whom the lien, charge, or lis pendens is to operate.

**Sec. 501-172 License to sell or mortgage, not affected.** Nothing in this chapter shall in any way affect or impair the jurisdiction of a circuit court to license a personal representative or guardian, to sell, mortgage, or convey registered land for any purpose for which a license may be granted in the case of unregistered land. The purchaser or mortgagee taking a deed executed in pursuance of a license is entitled to a new certificate of title, or memorandum of registration, on presenting his deed to the assistant registrar.”

(8) Section 510-23 is amended to read:

**“Sec. 510-23 Disposition upon death.** Upon death of a married person, one-half of the property to which this part applies is the property of the surviving spouse and is not subject to testamentary disposition by the decedent or distribution under the laws of the succession of this State. One-half of that property is the property of the decedent and is subject to testamentary disposition or distribution under the laws of succession of this State. With respect to property to which this part applies, the one-half of the property which is the property of the decedent is not subject to the surviving spouse’s right to elect against the will, is not included in the decedent’s net estate which is subject to the elective share of the surviving spouse, and no estate of dower or courtesy exists in the property of the decedent.”

(9) Chapter 511 is repealed.

(10) Sections 531-1 through 531-10 are repealed effective July 1, 1977.

(11) Sections 531-12 through 531-14 are repealed effective July 1, 1977.

(12) Sections 531-16 through 531-19 are repealed effective July 1, 1977.

(13) Sections 531-21 through 531-28 are repealed effective July 1, 1977.

(14) Effective July 1, 1977, section 531-29 is amended to read:

**“Sec. 531-29 Confirmation of sales of real property by personal representatives.** Notwithstanding any provisions of the Uniform Probate Code, any personal representative selling real property of the estate shall obtain from the court an order of confirmation of the sale before making conveyance of the real property sold. The order confirming the sale shall be given upon affirmative proof that the selling price was a fair and just price for the property sold.

If a sale being presented to the court for confirmation is a private sale, the court shall require a notice of the sale to be posted in an appropriate place in the courthouse of the circuit wherein the matter is pending and also of the circuit wherein the property is located, if they are different, at least fifteen days prior to considering the confirmation, the notice to set forth a description of the property, including the tax key number, the proposed sale price including the terms of payment, a description of any encumbrances thereon, the date of the confirmation hearing and a solicitation for sealed bids thereon or any other information required by the court. The court may also require that the notice be published at least twice in a newspaper in the circuit where the property is located, the last publication to be at least fifteen days prior to considering the confirmation. If a written offer in an amount at least ten per cent more on the first \$10,000 of the selling price and five per cent more on the amount of the selling price in excess of \$10,000 is made to the court by a responsible person, who may be the original offerer, prior to the hearing of confirmation, the court upon the hearing of confirmation, shall permit the original offerer to make a further offer, and if the new offer shall be in an amount at least five per cent more than the highest written offer made to the court, then the court shall, in such manner as it shall determine, permit the original offerer and the person making the highest written offer to make additional higher offers and shall confirm the sale to the one of the persons making the highest offer finally received; but if the original offerer shall not make a further offer as herein provided, then the court may accept the highest written offer and confirm the sale to the person making the offer.

Upon the confirmation of any sale, the court shall fix the compensation for the services to the estate of the agent securing the original offerer. In case of a sale on an increased bid made at the time of confirmation to a purchaser other than the original offerer, the court shall also fix the compensation payable by the estate to the agent, if any, producing the successful bidder, but the total compensation payable by the estate in that case shall not exceed the amount of the commission payable on the amount for which the sale is confirmed.”

(15) Sections 531-30 through 531-32 are repealed effective July 1, 1977.

(15a) Effective July 1, 1977, parts III and IV of chapter 531 are repealed.

(16) Sections 532-1 through 532-15 are applicable to matters relating to persons who died, and rights accrued, prior to July 1, 1977, and such law shall continue in full force and effect as to any such rights notwithstanding the provisions of this Act, and the revisor of statutes is instructed to retain these sections in the Hawaii Revised Statutes with appropriate annotation.

(17) Effective July 1, 1977, section 533-1 is amended to read:

“**Sec. 533-1 Dower.** Every woman shall be endowed of one-third part of all the lands which are not included in the net estate of her husband which is subject to her elective share and which were owned by her husband in fee simple, in freehold, or in leasehold at any time during marriage, and prior to July 1, 1977, unless she is lawfully barred thereof. The interests to which the wife is entitled in accordance with this section in the husband’s real property shall not apply to, and nothing in this section shall be deemed to give to the wife any interest in, the husband’s interest in community property.”

(18) Sections 533-2 through 533-16 are applicable to rights accruing prior to July 1, 1977, and such law shall continue in full force and effect as to any such rights notwithstanding the provisions of this Act, and the revisor of statutes is instructed to retain these sections in the Hawaii Revised Statutes with appropriate annotation.

(19) **(Reserved)**

(20) Effective July 1, 1977, section 533-17 is amended to read:

“**Sec. 533-17 Standard of values; dower, etc.** Whenever it becomes expedient or necessary to determine the value of any right of dower or any other life estate or interest in any property, in any proceeding for partition or for the admeasurement of dower, or wherein the value of any estate is required to be provided for out of the proceeds of sale of the property subject thereto, the value thereof shall be determined by the rule, method, and the standards of mortality and of value that are set forth in the standard annuity tables of mortality for ascertaining the value of policies of life insurance and annuities, using five per cent a year as the rate of interest in connection therewith.

When the dower in real estate cannot be set apart without great injury to the owners, the court may ascertain the value of the dower in money, and order the same to be paid on such terms as shall be just and reasonable.”

(21) Chapter 536 is repealed effective July 1, 1977.

(22) Chapter 537 is repealed effective July 1, 1977.

(23) Chapter 538 is repealed effective July 1, 1977.

(24) Section 551-1 is amended to read:



**“Sec. 551-1 Jurisdiction.** Family courts shall have jurisdiction to appoint guardians of the person and circuit courts shall have jurisdiction to appoint guardians of the property. Either a guardian of the person or the property or both may be appointed.”

(25) Section 551-11 through 551-13 are repealed.

(26) Sections 551-16 and 551-17 are repealed.

(27) Sections 551-21 and 551-22 are amended to read:

**“Sec. 551-21 Small estates; clerk of court to act when.** Whenever so requested as provided in section 5-404 of the Uniform Probate Code, the court may appoint the clerk of the court of that circuit as guardian of the property of the protected person whose estate is of a value of less than \$3,000 who shall serve in such capacity, with the full powers of and under like obligations as other guardians appointed under this chapter and the Uniform Probate Code, except that he shall not be required to give any bond; nor shall he be entitled to any commission or compensation except for expenses necessarily and actually incurred, nor shall he or the protected person or the estate of the protected person be liable for any court costs arising out of the guardianship, except the actual cost of any advertising found necessary. The right of the clerk to act as the guardian of the property shall not be effected by reason of any increase of the estate to an amount in excess of \$3,000 as the result of any accumulation of income accruing from the original principal of the estate or by the increase in value of the principal; provided, that if the estate reaches in value the sum of \$5,000 a guardian of the property shall then be appointed under the preceding sections of this chapter or the court may, in its discretion allow the guardian appointed under this section to continue to act even though the total assets exceed \$5,000.

**Sec. 551-22 Estates less than \$100.** (a) Estate of minor. When the whole estate of a minor does not exceed the value of \$100, the court may, in its discretion, without the appointment of a guardian of the property or the giving of bond authorize:

- (1) The deposit thereof in a depository authorized to receive fiduciary funds, payable to the guardian of the property when appointed or to the minor upon his attaining the age of majority; or
- (2) If the assets do not consist of money, the delivery thereof to a suitable person designated by the court, deliverable to the guardian of the property when appointed or to the minor upon his attaining the age of majority; or
- (3) The payment or delivery thereof to the parent of the minor, to the person having the care or custody of the minor or to the minor himself.

The person receiving such money or other assets shall hold and dispose of the same in such manner as the court shall direct.

(b) Estate of protected person. When the whole estate of a person over the age of eighteen for whom a guardian of the property could be appointed does not exceed the value of \$100, the court may, in its discretion, without the appointment of a guardian or the giving of bond, authorize the deposit thereof in a depository authorized to receive fiduciary funds in the name of a suitable person designated by the court, or if the assets do not consist of money, authorize the delivery thereof to a suitable person designated by the court. The person receiv-

ing such money or other assets shall hold and dispose of the same in such manner as the court shall direct.”

(28) Sections 551-26 through 551-34 are repealed.

(29) Section 551-35 is amended to read:

“**Sec. 551-35 Natural guardian of person alleged to be incapacitated or in need of protective proceedings.** The father and mother of an incapacitated or protected person are jointly and severally the natural guardians of his person and property. They shall have equal powers and duties with respect to him and neither shall have any right superior to that of the other concerning his custody or control or any other matter affecting him; provided, that if either parent dies or abandons the family or is incapable for any reason to act as guardian, the guardianship devolves upon the other parent, and that when the parents live apart, the court may award the guardianship to either of them, having special regard to the interests of the incompetent adult person.”

(30) Sections 551-41 through 43 are repealed.

(31) Sections 551-46 through 551-48 are repealed.

(32) Sections 551-51 through 551-64 are repealed.

(33) Sections 551-71 through 551-91 are repealed.

(34) Chapter 552 is repealed.

(35) Section 554-4 is amended to read:

“**Sec. 554-4 Annual account; trustees to file.** Every trustee acting under appointment of any court or under any appointment requiring the approval of any court, shall, except in cases where the prior trustee, if any, was not required by statute or the instrument creating the trust or appointing the trustee to file such an account, file annually with the court having jurisdiction thereof an account showing in detail all his receipts and disbursements, together with a full and detailed inventory of all property in his possession or under his control; provided that the court in cases in which it deems it advisable in the interests of the beneficiaries may permit the accounts to be filed biennially or triennially instead of annually or, if they are filed annually, may permit them to accumulate to be passed upon biennially or triennially; and provided further that the court on its own examination or that of its clerk, shall, without reference to a master, pass upon the accounts in cases in which the annual income does not exceed \$1,000, except in the case of a final account when the court may refer the same to a master, irrespective of the amount of the annual income, if for any reason it is deemed proper or necessary. If any such trustee fails to file his account as herein required, the clerk of the court in which the trustee is required to file the account, shall notify him promptly of such failure, and, if the trustee fails to file his account within thirty days after such notification, he shall be cited to appear before the court and be required to show cause why he should not be punished for contempt of court as provided by chapter 729 and he shall be subject to all of the penalties in such chapter provided. The court may also, in its discretion, remove any such trustee.

Unless otherwise required by the instrument creating the trust, nothing herein shall be construed to require the filing of an annual account by a trustee or trustee appointed by the court as additional trustee or trustees to serve with or in

the place and stead of a trustee or trustees appointed in the instrument creating a trust, nor by a trustee whose appointment is made in accordance with or pursuant to the instrument creating the trust where such appointment has been confirmed by any court in proceedings brought to secure the confirmation or approval thereof. This provision applies to trusts existing on May 13, 1935, and appointments made thereunder as well as to future trusts.”

(36) Section 554-6 is amended to read:

“**Sec. 554-6 Investments.** Every trustee, other than a trust company acting as such, except insofar as the terms of the instrument or words creating or defining the trust specifically provide otherwise, or unless it is otherwise ordered by the court, which order may be made on an ex parte hearing, shall invest the funds of the trust only in the investments authorized in the cases of trust companies acting as trustees under section 406-22, and with respect to all investments and the security for the same every such trustee shall have and be subject to the same rights, powers, privileges, duties, obligations, and responsibilities as would apply to trust companies acting as trustees as to similar investments and the security for the same under section 406-22. Nothing in this section shall be deemed to authorize any trustee other than a trust company to issue participation certificates or notes. Any investment made by any such trustee under order by the court made on an ex parte hearing or otherwise may be held during the life of the trust or lesser period unless the terms of the instrument or words creating or defining the trust or the terms of the order of the court or of any subsequent order of the court specifically provide otherwise.”

(37) (Reserved)

(38) (Reserved)

(39) Effective July 1, 1977, section 573-2 is amended to read:

“**Sec. 573-2 Contracts.** A married woman may make contracts, oral and written, sealed and unsealed, with persons other than her husband, in the same manner as if she were sole. A married woman and her husband may contract with each other, as follows:

- (1) By deed or assignment to or in favor of the other;
- (2) By agreement settling their respective rights in property owned by them, or either of them, when the agreement is made in contemplation of divorce or judicial separation;
- (3) By agreement providing for periodic payments for the support, and maintenance of one spouse by the other, or for the support, maintenance, and education of children of the parties, when the agreement is made in contemplation of divorce or judicial separation; provided that the agreement shall be subject to approval by the court in any subsequent proceeding for divorce or judicial separation and that future payments under an approved agreement shall nevertheless be subject to increase, decrease, or termination from time to time upon application and a showing of circumstances justifying a modification thereof;
- (4) By partnership agreements for business purposes;
- (5) As provided in section 2-204 of the Uniform Probate Code.”

(40) Section 573-3 is amended to read:

**“Sec. 573-3 May be personal representative, guardian, trustee or other fiduciary.** A married woman may be a personal representative, guardian, trustee, custodian, or other fiduciary and may bind herself and the estate she represents without any act or assent on the part of her husband.”

(41) Effective July 1, 1977, section 577-14 is amended to read:

**“Sec. 577-14 Illegitimate children; support.** Except as otherwise provided by law, children whose parents have not been legally married, in contemplation of chapter 572, shall be denominated illegitimate; provided, that any person who in writing duly acknowledged before an officer authorized to take acknowledgments, declares himself to be the father of such children, shall be compellable to provide such children with necessary maintenance and support as if they were born in lawful wedlock, and to pay the expenses of the mother’s pregnancy and confinement. The mothers in all cases shall be compellable to maintain and support them during their minority.

(42) Effective July 1, 1977, section 578-16 is amended to read:

**“Sec. 578-16 Effect of adoption.** A legally adopted child shall be considered to be a natural child of the whole blood of the adopting parent or parents as provided in the Uniform Probate Code, relating to the descent of property, and the former legal parent or parents of an adopted child and any other former legal relatives or next of kin shall not be considered to be related to the child as provided in the Uniform Probate Code; and for all other purposes an adopted child and his adopting parent or parents shall sustain towards each other the legal relationship of parents and child and shall have all the rights and be subject to all the duties of that relationship, the same as if the child were the natural child of the adopting parent or parents, and all such duties and rights as between the child and its former legal parent or parents shall cease from the time of the adoption; provided, that if the child is adopted by a person married to a legal parent of the child, the full reciprocal rights and duties which theretofore existed between the legal parent and the child, and the rights of inheritance as between the child and the legal parent and the legal relatives of the parent as provided in the Uniform Probate Code shall continue, notwithstanding the adoption, subject only to the rights acquired by and the duties imposed upon the adoptive parents by reason of the adoption. A child legally adopted under the laws of any state or territory of the United States or under laws of any nation shall be accorded the same rights and benefits in all respects as a child adopted under this chapter.”

(43) Effective July 1, 1977, section 603-21.6 is amended to read:

**“Sec. 603-21.6 Probate.** The several circuit courts shall have power to grant probate of wills, to appoint personal representatives, to determine the heirs at law or devisees of deceased persons and to decree the distribution of decedents’ estates, to appoint guardians of the property, to compel personal representatives and such guardians to perform their respective trusts and to account in all respects for the discharge of their official duties, to remove any personal representative or any such guardian and to do all other things as provided in the Uniform Probate Code.

(44) Section 603-36 is amended to read:

**“Sec. 603-36 Actions and proceedings, where to be brought.** Actions and

proceedings of a civil nature within the jurisdiction of the circuit courts shall be brought as follows:

- (1) Actions described in section 603-21.5(2) shall be brought in the circuit where it is alleged the penalty or forfeiture was incurred;
- (2) Actions in the nature of ejectment or trespass quare clausum fregit or to quiet title to or partition real property shall be brought in the circuit in which the real property in question is situated; provided, that if the real property, partition of which is sought, lies in more than one circuit the action may be brought in any circuit in which the same or any part thereof is situated;
- (3) Proceedings concerning trusts and the estates of decedents, missing persons, protected persons, minors, and incapacitated persons, shall be brought as prescribed by the Uniform Probate Code;
- (4) Applications for writs directed to courts of inferior jurisdiction or for writs of quo warranto, shall be made in the circuit in which the alleged occasion for relief by any such writ arises; provided, that in case any such writ is necessary in the prosecution or furtherance of any action or proceeding already begun or pending before any circuit court, the court before which the action or proceeding has been begun or is pending may issue the writ even though the alleged occasion for relief arose in another circuit;
- (5) Actions other than those specified above shall be brought in the circuit where the claim for relief arose or where the defendant is domiciled; provided if there is more than one defendant, then the action shall be brought in the circuit in which the claim for relief arose unless a majority of the defendants are domiciled in another circuit, whereupon the action may be brought in the circuit where the majority of the defendants are domiciled."
- (45) Effective July 1, 1977, section 607-5 is amended to read:

**"Sec. 607-5 Costs, circuit courts.** The fees prescribed by the below schedule shall be paid to the clerk of the circuit court as costs of court by the person instituting the action or proceeding, or offering the paper for filing, or causing the document to be issued or the services to be performed in the circuit court; provided that nothing in the schedule shall apply to cases of adults charged with commission of a crime, or to proceedings under section 571-11(1) or (2), or to proceedings under chapter 333 or 334, or to small estates (including decedents' estates and protection of property of minors and persons under disability) when the amount payable is fixed by another statute.

For the purpose of this section, "judgment" includes a decree and any order from which an appeal lies.

### SCHEDULE

In the application of this schedule, each case assigned a new number or filed under the number previously assigned to a probate, trust, guardianship, or conservatorship, shall carry a fee for the institution or transfer of the action or proceeding as prescribed by part I, and in addition the fees prescribed by parts II and III unless otherwise provided.

PART I

Action or proceeding, general:

- (1) Civil action or special proceeding, unless another item in this part I applies . . . . . \$30
- (2) Appeal to a circuit court . . . . . \$30
- (3) Transfer of action to circuit court from district court, in addition to district court fees . . . . . \$20

Trusts:

- (4) Proceeding for (A) appointment of trustee; (B) appointment of successor; (C) resignation of trustee; (D) instructions; (E) approval of investment; (F) approval of sale, mortgage, lease, or other disposition of property; (G) approval of compromise of claim, for each such matter . . . . . \$15
- (5) Proceeding for (A) removal of trustee; (B) order requiring accounting; (C) invalidation of action taken by trustee; (D) termination of trust for each such matter . . . . . \$15
- (6) Accounting, this fee to be paid for each account filed and to include the settlement of the account . . . . . \$10
- (7) Vesting order . . . . . no charge under part I
- (8) Allowance of fees of trustees, attorneys, or other fees for services incurred in a proceeding for which a fee has been paid under this section . . . . . no charge under part I
- (8a) Registration of a trust, or release of registration, under the Uniform Probate Code . . . . . \$3
- (9) Any other proceeding relating to a trust . . . . . \$15

Guardianship of estate on conservatorship:

- (10) Proceeding for (A) appointment; (B) appointment of successor; (C) resignation; (D) instructions, unless included in one of the foregoing proceedings (E), (F), (G) approval of any matter listed in (E), (F), or (G) of item (4) in relation to a trust, for each such matter . . . . . \$15
- (11) Proceeding of the nature listed in (A), (B), (C), or (D) of item (5) in relation to a trust, for each such matter . . . . . \$15
- (12) Accounting, same as provided by item (6) in relation to a trust . . \$10
- (13) Any other proceeding relating to guardianship of an estate, or a conservatorship . . . . . no charge under part I

Probate (decedents' estates). These fees include all matters of the nature listed in items (4) to (9), without additional charge:

- (14) Application for appointment of special administrator by order of the court, in addition to fee prescribed by item (15) . . . . . \$10
- (15) Probate, administration, or ancillary administration, this fee to be paid once only for each decedent's estate . . . . . \$30
- (15a) Informal probate or appointment proceeding under the Uniform Probate Code, this fee to be paid instead of the fee prescribed by item (15) . . . . . \$10
- (15b) Application under the Uniform Probate Code for formal testacy proceedings, or for supervised administration, this fee to be paid once only for each decedent's estate as an addition to the fee prescribed by

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- item (15a) ..... \$20
- Family court cases:
  - (16) Matrimonial action (annulment, divorce, separation, or separate maintenance) ..... \$30
  - (17) Adoption ..... \$15
  - (18) Guardianship of the person, including all matters of the nature listed in items (4) to (9) ..... \$15
  - (19) Termination of parental rights ..... no charge under part I
  - (20) Any other family court proceeding, including without limitation custody proceedings even if in the form of an habeas corpus proceeding ..... \$15

**PART II**

The fees prescribed by this part do not apply to decedents' estates, guardianships, or conservatorships.

Intervention; affirmative relief:

- (21) Intervention ..... \$15
- (22) Answer containing one or more cross-claims, cross-complaints, or counterclaims ..... \$15
- (23) Third-party complaint ..... \$15

Motions:

- (24) Motion or other application for: (A) preliminary injunction including temporary restraining order; (B) change of venue; (C) involuntary dismissal, or preliminary hearing of a defense which may lead to involuntary dismissal; (D) judgment on the pleadings; (E) summary judgment; (F) new trial; (G) vacating, altering, or amending judgment, for each such matter, provided that an application in the alternative shall be treated as one matter ..... \$15

Writs; garnishee summons. For the issuance of the following:

- (25) Garnishee summons ..... \$10
- (26) Writ of possession, attachment, or execution ..... \$10
- (27) Temporary restraining order or other injunction ..... no charge  
except for the motion
- (28) Any other writ ..... \$10

**PART III**

The fees prescribed by this part apply without exception.

Jury trial:

- (29) Demand for jury trial, including without limitation probate cases, appeals to the circuit court, and cases transferred to the circuit court from the district court, this fee to be paid to the court in which the demand is filed by the party first making the demand ..... \$50

Subpoena:

- (30) Issuance of a subpoena, for each witness to be served ..... \$ 3

Deposition; examination:

- (31) Deposition upon oral examination or written questions, or physical or mental examination, or examination of judgment debtor or other per-

son under section 636-4, to be paid by the party filing the first paper in the matter, for each person whom the party seeks to question or examine . . . . . \$10

Miscellaneous:

- (32) Filing of notice of appeal to supreme court, to be paid in addition to the deposit of supreme court costs . . . . . \$30
- (33) Search of records by the clerk . . . . . \$ 2
- (34) Making of copy; comparing of copy with original; certification or authentication of notaries . . . . . Fees prescribed by section 92-21
- (35) Certification under seal of copy of pleading or other paper subsequent to the initial filing of the pleading or paper, except record on appeal . . . . . \$ 1
- (36) Exemplification instead of item (35) . . . . . \$ 2
- (37) Filing of copy of notice of completion of contract, with affidavit of publication . . . . . \$ 3
- (38) Filing of initial paper under section 507-43 by person asserting mechanic's or materialman's lien (this fee to, be additional to the fee prescribed by part I for bringing an action under section 507-47) . . . . . \$15
- (39) Filing of any other paper not in a pending proceeding . . . . . \$ 3
- (40) Printing, publishing, or posting notice; service fees; garnishee fees; mileage charges; or other services actually performed . . . . . Amounts necessary to cover actual costs or disbursements."
- (46) Effective July 1, 1977, section 607-18 is amended to read:

**"Sec. 607-18 Fees and expenses of trustees.** Upon all moneys and other property received in the nature of revenue or income of the estate, such as rents, interest, dividends, and general profits, trustees, except trustees of a charitable trust, shall be allowed as commissions payable out of the income received during each year, seven per cent for the first \$5,000 and five per cent for all over \$5,000 the commissions to be payable as and when the income is received, but not oftener than once a year.

Upon the principal of the estate, trustees shall be allowed as commissions one per cent on the value at the inception of the trust payable at the inception out of the principal, one per cent on the value of all or any part of the estate upon final distribution payable at the termination out of the principal, and two and one-half per cent upon all cash principal received after the inception of the trust and neither being nor representing the principal upon which the two and one-half per cent has previously at any time been charged, payable at the receipt out of the principal, and two and one-half per cent upon the final payment of any cash principal prior to the termination of the trust payable at the final payment out of the principal, and in addition thereto one-tenth of one per cent on the value at the expiration of each year during the continuance of the trust payable annually out of the principal; provided, that such one-tenth of one per cent on the principal shall not apply to trust estates created under a trust document which authorizes the trustees to employ others to perform bookkeeping and clerical services at the expense of the estate, unless first approved by the court, nor shall such one-tenth



of one per cent be allowed when such authority is granted by statute. For the purposes of this paragraph, the value of the estate shall be determined in such manner as the court may approve.

Such further allowances may be made as the court deems just and reasonable for services performed in connection with sales or leases of real estate, contested or litigated claims against the estate, the adjustment and payment of extensive or complicated estate or inheritance taxes, the preparation of estate and income tax returns, the carrying on of the decedent's business pursuant to an order of court or under the provisions of any will, litigation in regard to the property of the estate, and such other special services as may be necessary for the trustee to perform, prosecute, or defend. All contracts between a trustee and a beneficiary other than the creator of the trust, for higher compensation than is allowed in this section shall be void.

These provisions shall apply as well to future accounting in existing estates as to new estates."

(47) Effective July 1, 1977, section 607-19 is repealed.

(48) Effective July 1, 1977, section 607-21 is amended to read:

**"Sec. 607-21 Expense of bond.** Any receiver, assignee, guardian, trustee, committee, personal commissioner, or other fiduciary required by law or the order of any court to give a bond or other obligation as such, may include as a part of the lawful and chargeable expense of executing his trust such reasonable sum, paid a company authorized under the laws of the State to become surety on such bond or obligation, for becoming his surety thereon, as may be allowed by the court in which he is required to account, not exceeding one per cent a year on the amount of the bond."

(49) Effective July 1, 1977, section 656-1 is amended to read:

**"Sec. 656-1 Certain contracts, when actionable.** No action shall be brought and maintained in any of the following cases:

- (1) To charge an executor or administrator, upon any special promise to answer for damages out of his own estate;
- (2) To charge any person upon any special promise to answer for the debt, default, or misdoings of another;
- (3) To charge any person, upon an agreement made in consideration of marriage;
- (4) Upon any contract for the sale of lands, tenements, or hereditaments, or of any interest in or concerning them;
- (5) Upon any agreement that is not to be performed within one year from the making thereof;
- (6) To charge any person upon any agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation or commission;
- (7) To charge the estate of any deceased person upon any agreement which by its terms is not to be performed during the lifetime of the promisor.

Unless the promise, contract, or agreement, upon which the action is brought, or some memorandum or note thereof, is in writing, and is signed by the party to be charged therewith, or by some person thereunto by him in writing lawfully authorized."

(50) Effective July 1, 1977, sections 657-16 and 657-17 are repealed.

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring. In making the deletions allowed by this section, the revisor shall retain the amendments made by Section 3, Act 157, Session Laws of Hawaii 1975. It is not the intention of this Act to repeal or affect Act 157.\*

SECTION 3. This Act shall take effect on July 1, 1976, except that Articles II, III, and IV and the Hawaii Revised Statutes amended or repealed in Article VIII on account of Article II, III, and IV shall take effect on July 1, 1977.

(Approved June 4, 1976.)

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\*Edited accordingly.