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A Bill

HOUSE BILL 1020

4 By: Representatives Murphy, Townsend, M. Wilson, Bryant, Cash, Malone,
5 Stewart, Wilkinson, Argue, Schexnayder, Ferrell, Vess, DeLay, Hudson, Purdom,
6 Choate, Fletcher, Laverty, and Booker

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For An Act To Be Entitled

11 "The Uniform Probate Code."

12
13

Subtitle

14 "RELATING TO AFFAIRS OF DECEDENTS,
15 MISSING PERSONS, PROTECTED PERSONS,
16 MINORS, INCAPACITATED PERSONS AND
17 OTHERS; CONSOLIDATING AND REVISING
18 ASPECTS OF LAW RELATING TO WILLS AND
19 INTESTACY; FACILITATING ENFORCEMENT OF
20 TESTAMENTARY AND OTHER TRUSTS."

21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

23

24

Article I

25

26 GENERAL PROVISIONS, DEFINITIONS AND PROBATE JURISDICTION OF COURT

27

Part 1

28

SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS

29

Section 28-1-101. Short Title.

30

This Act shall be known and may be cited as the Uniform Probate Code.

31

32

Section 28-1-102. Purposes; Rule of Construction.

33

(a) This Code shall be liberally construed and applied to promote its
34 underlying purposes and policies.

35

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

36

(1) to simplify and clarify the law concerning the affairs of

1 decedents, missing persons, protected persons, minors and incapacitated
2 persons;

3 (2) to discover and make effective the intent of a decedent in
4 distribution of his property;

5 (3) to promote a speedy and efficient system for liquidating the
6 estate of the decedent and making distribution to his successors;

7 (4) to facilitate use and enforcement of certain trusts;

8 (5) to make uniform the law among the various jurisdictions.
9

10 Section 28-1-103. Supplementary General Principles of Law Applicable.

11 Unless displaced by the particular provisions of this Code, the
12 principles of law and equity supplement its provisions.
13

14 Section 28-1-104. Severability.

15 If any provision of this Code or the application thereof to any person
16 or circumstances is held invalid, the invalidity shall not affect other
17 provisions or applications of the Code which can be given effect without the
18 invalid provision or application, and to this end the provisions of this Code
19 are declared to be severable.
20

21 Section 28-1-105. Construction Against Implied Repeal.

22 This Code is a general act intended as a unified coverage of its
23 subject matter and no part of it shall be deemed impliedly repealed by
24 subsequent legislation if it can reasonably be avoided.
25

26 Section 28-1-106. Effect of Fraud and Evasion.

27 Whenever fraud has been perpetrated in connection with any proceeding
28 or in any statement filed under this Code or if fraud is used to avoid or
29 circumvent the provisions or purposes of this Code, any person injured
30 thereby may obtain appropriate relief against the perpetrator of the fraud or
31 restitution from any person (other than a bona fide purchaser) benefitting
32 from the fraud, whether innocent or not. Any proceeding must be commenced
33 within 2 years after the discovery of the fraud, but no proceeding may be
34 brought against one not a perpetrator of the fraud later than 5 years after
35 the time of commission of the fraud. This section has no bearing on remedies

1 relating to fraud practiced on a decedent during his lifetime which affects
2 the succession of his estate.

3

4 Section 28-1-107. Evidence of Death or Status.

5 In addition to the rules of evidence in courts of general jurisdiction,
6 the following rules relating to a determination of death and status apply:

7 (1) Death occurs when an individual is determined to be dead under §
8 20-17-101.

9 (2) A certified or authenticated copy of a death certificate purporting
10 to be issued by an official or agency of the place where the death
11 purportedly occurred is prima facie evidence of the fact, place, date, and
12 time of death and the identity of the decedent.

13 (3) A certified or authenticated copy of any record or report of a
14 governmental agency, domestic or foreign, that an individual is missing,
15 detained, dead, or alive is prima facie evidence of the status and of the
16 dates, circumstances, and places disclosed by the record or report.

17 (4) In the absence of prima facie evidence of death under paragraph (2)
18 or (3), the fact of death may be established by clear and convincing
19 evidence, including circumstantial evidence.

20 (5) An individual whose death is not established under the preceding
21 paragraphs who is absent for a continuous period of 5 years, during which he
22 or she has not been heard from, and whose absence is not satisfactorily
23 explained after diligent search or inquiry, is presumed to be dead. His or
24 her death is presumed to have occurred at the end of the period unless there
25 is sufficient evidence for determining that death occurred earlier.

26 (6) In the absence of evidence disputing the time of death stated on a
27 document described in paragraph (2) or (3), a document described in paragraph
28 (2) or (3) that states a time of death 120 hours or more after the time of
29 death of another individual, however the time of death of the other
30 individual is determined, establishes by clear and convincing evidence that
31 the individual survived the other individual by 120 hours.

32

33 Section 28-1-108. Acts by Holder of General Power.

34 For the purpose of granting consent or approval with regard to the acts
35 or accounts of a personal representative or trustee, including relief from

1 liability or penalty for failure to post bond, to register a trust, or to
2 perform other duties, and for purposes of consenting to modification or
3 termination of a trust or to deviation from its terms, the sole holder or all
4 co-holders of a presently exercisable general power of appointment, including
5 one in the form of a power of amendment or revocation, are deemed to act for
6 beneficiaries to the extent their interests (as objects, takers in default,
7 or otherwise) are subject to the power.

8 PART 2

9 DEFINITIONS

10 Section 28-1-201. General Definitions.

11 Subject to additional definitions contained in the subsequent Articles
12 that are applicable to specific Articles, parts, or sections, and unless the
13 context otherwise requires, in this Code:

14 (1) "Agent" includes an attorney-in-fact under a durable or nondurable
15 power of attorney, an individual authorized to make decisions concerning
16 another's health care, and an individual authorized to make decisions for
17 another under a natural death act.

18 (2) "Application" means a written request to the Registrar for an order
19 of informal probate or appointment under Part 3 of Article III.

20 (3) "Beneficiary," as it relates to a trust beneficiary, includes a
21 person who has any present or future interest, vested or contingent, and also
22 includes the owner of an interest by assignment or other transfer; as it
23 relates to a charitable trust, includes any person entitled to enforce the
24 trust; as it relates to a "beneficiary of a beneficiary designation," refers
25 to a beneficiary of an insurance or annuity policy, of an account with POD
26 designation, of a security registered in beneficiary form (TOD), or of a
27 pension, profit-sharing, retirement, or similar benefit plan, or other
28 nonprobate transfer at death; and, as it relates to a "beneficiary
29 designated in a governing instrument," includes a grantee of a deed, a
30 devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a
31 donee, appointee, or taker in default of a power of appointment, or a person
32 in whose favor a power of attorney or a power held in any individual,
33 fiduciary, or representative capacity is exercised.

34 (4) "Beneficiary designation" refers to a governing instrument naming a
35 beneficiary of an insurance or annuity policy, of an account with POD

1 designation, of a security registered in beneficiary form (TOD), or of a
2 pension, profit-sharing, retirement, or similar benefit plan, or other
3 nonprobate transfer at death.

4 (5) "Child" includes an individual entitled to take as a child under
5 this Code by intestate succession from the parent whose relationship is
6 involved and excludes a person who is only a stepchild, a foster child, a
7 grandchild, or any more remote descendant.

8 (6) "Claims," in respect to estates of decedents and protected persons,
9 includes liabilities of the decedent or protected person, whether arising in
10 contract, in tort, or otherwise, and liabilities of the estate which arise at
11 or after the death of the decedent or after the appointment of a conservator,
12 including funeral expenses and expenses of administration. The term does not
13 include estate or inheritance taxes, or demands or disputes regarding title
14 of a decedent or protected person to specific assets alleged to be included
15 in the estate.

16 (7) "Court" means the Probate Court in this State having jurisdiction
17 in matters relating to the affairs of decedents.

18 (8) "Conservator" means a person who is appointed by a Court to manage
19 the estate of a protected person.

20 (9) "Descendant" of an individual means all of his or her descendants
21 of all generations, with the relationship of parent and child at each
22 generation being determined by the definition of child and parent contained
23 in this Code.

24 (10) "Devise," when used as a noun, means a testamentary disposition of
25 real or personal property and, when used as a verb, means to dispose of real
26 or personal property by will.

27 (11) "Devisee" means a person designated in a will to receive a devise.
28 For the purposes of Article II, in the case of a devise to an existing trust
29 or trustee, or to a trustee on trust described by will, the trust or trustee
30 is the devisee and the beneficiaries are not devisees.

31 (12) "Disability" means cause for a protective order as described in
32 Section 28-5-401.

33 (13) "Distributee" means any person who has received property of a
34 decedent from his or her personal representative other than as a creditor or
35 purchaser. A testamentary trustee is a distributee only to the extent of

1 distributed assets or increment thereto remaining in his or her hands. A
2 beneficiary of a testamentary trust to whom the trustee has distributed
3 property received from a personal representative is a distributee of the
4 personal representative. For the purposes of this provision, "testamentary
5 trustee" includes a trustee to whom assets are transferred by will, to the
6 extent of the devised assets.

7 (14) "Estate" includes the property of the decedent, trust, or other
8 person whose affairs are subject to this Code as originally constituted and
9 as it exists from time to time during administration.

10 (15) "Exempt property" means that property of a decedent's estate which
11 is described in Section 28-2-403.

12 (16) "Fiduciary" includes a personal representative, guardian,
13 conservator, and trustee.

14 (17) "Foreign personal representative" means a personal representative
15 appointed by another jurisdiction.

16 (18) "Formal proceedings" means proceedings conducted before a judge
17 with notice to interested persons.

18 (19) "Governing instrument" means a deed, will, trust, insurance or
19 annuity policy, account with POD designation, security registered in
20 beneficiary form (TOD), pension, profit-sharing, retirement, or similar
21 benefit plan, instrument creating or exercising a power of appointment or a
22 power of attorney, or a dispositive, appointive, or nominative instrument of
23 any similar type.

24 (20) "Guardian" means a person who has qualified as a guardian of a
25 minor or incapacitated person pursuant to testamentary or court appointment,
26 but excludes one who is merely a guardian ad litem.

27 (21) "Heirs," except as controlled by Section 28-2-711, means persons,
28 including the surviving spouse and the state, who are entitled under the
29 statutes of intestate succession to the property of a decedent.

30 (22) "Incapacitated person" means an individual described in Section
31 28-5-103.

32 (23) "Informal proceedings" means those conducted without notice to
33 interested persons by an officer of the Court acting as a registrar for
34 probate of a will or appointment of a personal representative.

35 (24) "Interested person" includes heirs, devisees, children, spouses,

1 creditors, beneficiaries, and any others having a property right in or claim
2 against a trust estate or the estate of a decedent, ward, or protected
3 person. It also includes persons having priority for appointment as personal
4 representative, and other fiduciaries representing interested persons. The
5 meaning as it relates to particular persons may vary from time to time and
6 must be determined according to the particular purposes of, and matter
7 involved in, any proceeding.

8 (25) "Issue" of a person means descendant as defined in subsection (9).

9 (26) "Joint tenants with the right of survivorship" and "community
10 property with the right of survivorship" includes co-owners of property held
11 under circumstances that entitle one or more to the whole of the property on
12 the death of the other or others, but excludes forms of co-ownership
13 registration in which the underlying ownership of each party is in proportion
14 to that party's contribution.

15 (27) "Lease" includes an oil, gas, or other mineral lease.

16 (28) "Letters" includes letters testamentary, letters of guardianship,
17 letters of administration, and letters of conservatorship.

18 (29) "Minor" means a person who is under 18 years of age.

19 (30) "Mortgage" means any conveyance, agreement, or arrangement in
20 which property is encumbered or used as security.

21 (31) "Nonresident decedent" means a decedent who was domiciled in
22 another jurisdiction at the time of his or her death.

23 (32) "Organization" means a corporation, business trust, estate, trust,
24 partnership, joint venture, association, government or governmental
25 subdivision or agency, or any other legal or commercial entity.

26 (33) "Parent" includes any person entitled to take, or who would be
27 entitled to take if the child died without a will, as a parent under this
28 Code by intestate succession from the child whose relationship is in question
29 and excludes any person who is only a stepparent, foster parent, or
30 grandparent.

31 (34) "Payor" means a trustee, insurer, business entity, employer,
32 government, governmental agency or subdivision, or any other person
33 authorized or obligated by law or a governing instrument to make payments.

34 (35) "Person" means an individual or an organization.

35 (36) "Personal representative" includes executor, administrator,

1 successor personal representative, special administrator, and persons who
2 perform substantially the same function under the law governing their status.

3 "General personal representative" excludes special administrator.

4 (37) "Petition" means a written request to the Court for an order after
5 notice.

6 (38) "Proceeding" includes action at law and suit in equity.

7 (39) "Property" includes both real and personal property or any
8 interest therein and means anything that may be the subject of ownership.

9 (40) "Protected person" is as defined in Section 28-5-103.

10 (41) "Protective proceeding" means a proceeding described in Section
11 28-5-103.

12 (42) "Registrar" refers to the official of the Court designated to
13 perform the functions of Registrar as provided in Section 28-1-307.

14 (43) "Security" includes any note, stock, treasury stock, bond,
15 debenture, evidence of indebtedness, certificate of interest or participation
16 in an oil, gas, or mining title or lease or in payments out of production
17 under such a title or lease, collateral trust certificate, transferable
18 share, voting trust certificate or, in general, any interest or instrument
19 commonly known as a security, or any certificate of interest or
20 participation, any temporary or interim certificate, receipt, or certificate
21 of deposit for, or any warrant or right to subscribe to or purchase, any of
22 the foregoing.

23 (44) "Settlement," in reference to a decedent's estate, includes the
24 full process of administration, distribution, and closing.

25 (45) "Special administrator" means a personal representative as
26 described by Sections 28-3-614 through 28-3-618.

27 (46) "State" means a state of the United States, the District of
28 Columbia, the Commonwealth of Puerto Rico, or any territory or insular
29 possession subject to the jurisdiction of the United States.

30 (47) "Successor personal representative" means a personal
31 representative, other than a special administrator, who is appointed to
32 succeed a previously appointed personal representative.

33 (48) "Successors" means persons, other than creditors, who are entitled
34 to property of a decedent under his or her will or this Code.

35 (49) "Supervised administration" refers to the proceedings described in

1 Article III, Part 5.

2 (50) "Survive" means that an individual has neither predeceased an
3 event, including the death of another individual, nor is deemed to have
4 predeceased an event under Section 28-2-104 or 28-2-702. The term includes
5 its derivatives, such as "survives," "survived," "survivor," "surviving."

6 (51) "Testacy proceeding" means a proceeding to establish a will or
7 determine intestacy.

8 (52) "Testator" includes an individual of either sex.

9 (53) "Trust" includes an express trust, private or charitable, with
10 additions thereto, wherever and however created. The term also includes a
11 trust created or determined by judgment or decree under which the trust is to
12 be administered in the manner of an express trust. The term excludes other
13 constructive trusts and excludes resulting trusts, conservatorships, personal
14 representatives, trust accounts as defined in Article VI, custodial
15 arrangements pursuant to the Uniform Transfers to Minors Act, ACA § 9-26-201
16 through 9-26-227 and the Uniform Securities Ownership by Minors Act, ACA § 9-
17 26-301 through 9-26-307, business trusts providing for certificates to be
18 issued to beneficiaries, common trust funds, voting trusts, security
19 arrangements, liquidation trusts, and trusts for the primary purpose of
20 paying debts, dividends, interest, salaries, wages, profits, pensions, or
21 employee benefits of any kind, and any arrangement under which a person is
22 nominee or escrowee for another.

23 (54) "Trustee" includes an original, additional, or successor trustee,
24 whether or not appointed or confirmed by court.

25 (55) "Ward" means an individual described in Section 28-5-103.

26 (56) "Will" includes codicil and any testamentary instrument that
27 merely appoints an executor, revokes or revises another will, nominates a
28 guardian, or expressly excludes or limits the right of an individual or class
29 to succeed to property of the decedent passing by intestate succession.

30 PART 3

31 SCOPE, JURISDICTION AND COURTS

32 Section 28-1-301. Territorial Application.

33 Except as otherwise provided in this Code, this Code applies to (1) the
34 affairs and estates of decedents, missing persons, and persons to be
35 protected, domiciled in this state, (2) the property of nonresidents located

1 in this state or property coming into the control of a fiduciary who is
2 subject to the laws of this state, (3) incapacitated persons and minors in
3 this state, (4) survivorship and related accounts in this state, and (5)
4 trusts subject to administration in this state.

5

6 Section 28-1-302. Subject Matter Jurisdiction.

7 (a) To the full extent permitted by the constitution, the Court has
8 jurisdiction over all subject matter relating to (1) estates of decedents,
9 including construction of wills and determination of heirs and successors of
10 decedents, and estates of protected persons; (2) protection of minors and
11 incapacitated persons; and (3) trusts.

12 (b) The Court has full power to make orders, judgments and decrees and
13 take all other action necessary and proper to administer justice in the
14 matters which come before it.

15 (c) The Court has jurisdiction over protective proceedings and
16 guardianship proceedings.

17 (d) If both guardianship and protective proceedings as to the same
18 person are commenced or pending in the same court, the proceedings may be
19 consolidated.

20

21 Section 28-1-303. Venue; Multiple Proceedings; Transfer.

22 (a) Where a proceeding under this Code could be maintained in more than
23 one place in this state, the Court in which the proceeding is first commenced
24 has the exclusive right to proceed.

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

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

34

35 Section 28-1-304. Practice in Court.

1 Unless specifically provided to the contrary in this Code or unless
2 inconsistent with its provisions, the rules of civil procedure including the
3 rules concerning vacation of orders and appellate review govern formal
4 proceedings under this Code.

5

6 Section 28-1-305. Records and Certified Copies.

7 The Clerk of Court shall keep a record for each decedent, ward,
8 protected person or trust involved in any document which may be filed with
9 the Court under this Code, including petitions and applications, demands for
10 notices or bonds, trust registrations, and of any orders or responses
11 relating thereto by the Registrar or Court, and establish and maintain a
12 system for indexing, filing or recording which is sufficient to enable users
13 of the records to obtain adequate information. Upon payment of the fees
14 required by law the clerk must issue certified copies of any probated wills,
15 letters issued to personal representatives, or any other record or paper
16 filed or recorded. Certificates relating to probated wills must indicate
17 whether the decedent was domiciled in this state and whether the probate was
18 formal or informal. Certificates relating to letters must show the date of
19 appointment.

20

21 Section 28-1-306. Jury Trial.

22 (a) If duly demanded, a party is entitled to trial by jury in any
23 proceeding in which any controverted question of fact arises as to which any
24 party has a constitutional right to trial by jury.

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

28

29 Section 28-1-307. Registrar; Powers.

30 The acts and orders which this Code specifies as performable by the
31 Registrar may be performed either by a judge of the Court or by a person,
32 including the clerk, designated by the Court by a written order filed and
33 recorded in the office of the Court.

34

35 Section 28-1-308. Appeals.

1 Appellate review, including the right to appellate review,
2 interlocutory appeal, provisions as to time, manner, notice, appeal bond,
3 stays, scope of review, record on appeal, briefs, arguments and power of the
4 appellate court, is governed by the rules applicable to the appeals to the
5 Supreme Court in equity cases, except that in proceedings where jury trial
6 has been had as a matter of right, the rules applicable to the scope of
7 review in jury cases apply.

8

9 Section 28-1-309. Qualifications of Judge.

10 A judge of the Court must have the same qualifications as a judge of
11 the chancery court.

12

13 Section 28-1-310. Oath or Affirmation on Filed Documents.

14 Except as otherwise specifically provided in this Code or by rule,
15 every document filed with the Court under this Code including applications,
16 petitions, and demands for notice, shall be deemed to include an oath,
17 affirmation, or statement to the effect that its representations are true as
18 far as the person executing or filing it knows or is informed, and penalties
19 for perjury may follow deliberate falsification therein.

20

PART 4

21 NOTICE, PARTIES AND REPRESENTATION IN ESTATE LITIGATION AND OTHER MATTERS

22 Section 28-1-401. Notice; Method and Time of Giving.

23 (a) If notice of a hearing on any petition is required and except for
24 specific notice requirements as otherwise provided, the petitioner shall
25 cause notice of the time and place of hearing of any petition to be given to
26 any interested person or his attorney if he has appeared by attorney or
27 requested that notice be sent to his attorney. Notice shall be given:

28 (1) by mailing a copy thereof at least 14 days before the time
29 set for the hearing by certified, registered or ordinary first class mail
30 addressed to the person being notified at the post office address given in
31 his demand for notice, if any, or at his office or place of residence, if
32 known;

33 (2) by delivering a copy thereof to the person being notified
34 personally at least 14 days before the time set for the hearing; or

35 (3) if the address, or identity of any person is not known and

1 cannot be ascertained with reasonable diligence, by publishing at least once
2 a week for 2 consecutive weeks, a copy thereof in a newspaper having general
3 circulation in the county where the hearing is to be held, the last
4 publication of which is to be at least 10 days before the time set for the
5 hearing.

6 (b) The Court for good cause shown may provide for a different method
7 or time of giving notice for any hearing.

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

10

11 Section 28-1-402. Notice; Waiver.

12 A person, including a guardian ad litem, conservator, or other
13 fiduciary, may waive notice by a writing signed by him or his attorney and
14 filed in the proceeding. A person for whom a guardianship or other
15 protective order is sought, a ward, or a protected person may not waive
16 notice.

17

18 Section 28-1-403. Pleadings; When Parties Bound by Others; Notice.

19 In formal proceedings involving trusts or estates of decedents, minors,
20 protected persons, or incapacitated persons, and in judicially supervised
21 settlements, the following apply:

22 (1) Interests to be affected shall be described in pleadings which give
23 reasonable information to owners by name or class, by reference to the
24 instrument creating the interests, or in other appropriate manner.

25 (2) Persons are bound by orders binding others in the following cases:

26 (i) Orders binding the sole holder or all co-holders of a power
27 of revocation or a presently exercisable general power of appointment,
28 including one in the form of a power of amendment, bind other persons to the
29 extent their interests (as objects, takers in default, or otherwise) are
30 subject to the power.

31 (ii) To the extent there is no conflict of interest between them
32 or among persons represented, orders binding a conservator bind the person
33 whose estate he controls; orders binding a guardian bind the ward if no
34 conservator of his estate has been appointed; orders binding a trustee bind
35 beneficiaries of the trust in proceedings to probate a will establishing or

1 adding to a trust, to review the acts or accounts of a prior fiduciary and in
2 proceedings involving creditors or other third parties; and orders binding a
3 personal representative bind persons interested in the undistributed assets
4 of a decedent's estate in actions or proceedings by or against the estate.
5 If there is no conflict of interest and no conservator or guardian has been
6 appointed, a parent may represent his minor child.

7 (iii) An unborn or unascertained person who is not otherwise
8 represented is bound by an order to the extent his interest is adequately
9 represented by another party having a substantially identical interest in the
10 proceeding.

11 (3) Notice is required as follows:

12 (i) Notice as prescribed by Section 28-1-401 shall be given to
13 every interested person or to one who can bind an interested person as
14 described in (2)(i) or (2)(ii) above. Notice may be given both to a person
15 and to another who may bind him.

16 (ii) Notice is given to unborn or unascertained persons, who are
17 not represented under (2)(i) or (2)(ii) above, by giving notice to all known
18 persons whose interests in the proceedings are substantially identical to
19 those of the unborn or unascertained persons.

20 (4) At any point in a proceeding, a court may appoint a guardian ad
21 litem to represent the interest of a minor, an incapacitated, unborn, or
22 unascertained person, or a person whose identity or address is unknown, if
23 the Court determines that representation of the interest otherwise would be
24 inadequate. If not precluded by conflict of interests, a guardian ad litem
25 may be appointed to represent several persons or interests. The Court shall
26 set out its reasons for appointing a guardian ad litem as a part of the
27 record of the proceeding.

28 ARTICLE II

29 INTESTACY, WILLS, AND DONATIVE TRANSFERS

30 PART 1

31 INTESTATE SUCCESSION

32 ARTICLE 2

33 Section 28-2-101. Intestate Estate.

34 (a) Any part of a decedent's estate not effectively disposed of by will
35 passes by intestate succession to the decedent's heirs as prescribed in this

1 Code, except as modified by the decedent's will.

2 (b) A decedent by will may expressly exclude or limit the right of an
3 individual or class to succeed to property of the decedent passing by
4 intestate succession. If that individual or a member of that class survives
5 the decedent, the share of the decedent's intestate estate to which that
6 individual or class would have succeeded passes as if that individual or each
7 member of that class had disclaimed his or her intestate share.

8

9 Section 28-2-102. Share of Spouse.

10 The intestate share of a decedent's surviving spouse is:

11 (1) the entire intestate estate if:

12 (i) no descendant or parent of the decedent survives the
13 decedent; or

14 (ii) all of the decedent's surviving descendants are also
15 descendants of the surviving spouse and there is no other descendant of the
16 surviving spouse who survives the decedent;

17 (2) the first \$200,000, plus three-fourths of any balance of the
18 intestate estate, if no descendant of the decedent survives the decedent, but
19 a parent of the decedent survives the decedent;

20 (3) the first \$150,000, plus one-half of any balance of the intestate
21 estate, if all of the decedent's surviving descendants are also descendants
22 of the surviving spouse and the surviving spouse has one or more surviving
23 descendants who are not descendants of the decedent;

24 (4) the first \$100,000, plus one-half of any balance of the intestate
25 estate, if one or more of the decedent's surviving descendants are not
26 descendants of the surviving spouse.

27

28 Section 28-2-103. Share of Heirs other than Surviving Spouse.

29 Any part of the intestate estate not passing to the decedent's
30 surviving spouse under Section 28-2-102, or the entire intestate estate if
31 there is no surviving spouse, passes in the following order to the
32 individuals designated below who survive the decedent:

33 (1) to the decedent's descendants by representation;

34 (2) if there is no surviving descendant, to the decedent's parents
35 equally if both survive, or to the surviving parent;

1 (3) if there is no surviving descendant or parent, to the descendants
2 of the decedent's parents or either of them by representation;

3 (4) if there is no surviving descendant, parent, or descendant of a
4 parent, but the decedent is survived by one or more grandparents or
5 descendants of grandparents, half of the estate passes to the decedent's
6 paternal grandparents equally if both survive, or to the surviving paternal
7 grandparent, or to the descendants of the decedent's paternal grandparents or
8 either of them if both are deceased, the descendants taking by
9 representation; and the other half passes to the decedent's maternal
10 relatives in the same manner; but if there is no surviving grandparent or
11 descendant of a grandparent on either the paternal or the maternal side, the
12 entire estate passes to the decedent's relatives on the other side in the
13 same manner as the half.

14

15 Section 28-2-104. Requirement that Heir Survive Decedent for 120
16 Hours.

17 An individual who fails to survive the decedent by 120 hours is deemed
18 to have predeceased the decedent for purposes of homestead allowance, exempt
19 property, and intestate succession, and the decedent's heirs are determined
20 accordingly. If it is not established by clear and convincing evidence that
21 an individual who would otherwise be an heir survived the decedent by 120
22 hours, it is deemed that the individual failed to survive for the required
23 period. This section is not to be applied if its application would result in
24 a taking of intestate estate by the state under Section 28-2-105.

25

26 Section 28-2-105. No Taker.

27 If there is no taker under the provisions of this Article, the
28 intestate estate passes to the state.

29

30 Section 28-2-106. Representation.

31 (a) Definitions. In this section:

32 (1) "Deceased descendant," "deceased parent," or "deceased
33 grandparent" means a descendant, parent, or grandparent who either
34 predeceased the decedent or is deemed to have predeceased the decedent under
35 Section 28-2-104.

1 (2) "Surviving descendant" means a descendant who neither
2 predeceased the decedent nor is deemed to have predeceased the decedent under
3 Section 28-2-104.

4 (b) Decedent's Descendants. If, under Section 28-2-103(1), a
5 decedent's intestate estate or a part thereof passes "by representation" to
6 the decedent's descendants, the estate or part thereof is divided into as
7 many equal shares as there are (i) surviving descendants in the generation
8 nearest to the decedent which contains one or more surviving descendants and
9 (ii) deceased descendants in the same generation who left surviving
10 descendants, if any. Each surviving descendant in the nearest generation is
11 allocated one share. The remaining shares, if any, are combined and then
12 divided in the same manner among the surviving descendants of the deceased
13 descendants as if the surviving descendants who were allocated a share and
14 their surviving descendants had predeceased the decedent.

15 (c) Descendants of Parents or Grandparents. If, under Section 28-
16 2-103(3) or (4), a decedent's intestate estate or a part thereof passes "by
17 representation" to the descendants of the decedent's deceased parents or
18 either of them or to the descendants of the decedent's deceased paternal or
19 maternal grandparents or either of them, the estate or part thereof is
20 divided into as many equal shares as there are (i) surviving descendants in
21 the generation nearest the deceased parents or either of them, or the
22 deceased grandparents or either of them, that contains one or more surviving
23 descendants and (ii) deceased descendants in the same generation who left
24 surviving descendants, if any. Each surviving descendant in the nearest
25 generation is allocated one share. The remaining shares, if any, are
26 combined and then divided in the same manner among the surviving descendants
27 of the deceased descendants as if the surviving descendants who were
28 allocated a share and their surviving descendants had predeceased the
29 decedent.

30

31 Section 28-2-107. Kindred of Half Blood.

32 Relatives of the half blood inherit the same share they would inherit
33 if they were of the whole blood.

34

35 Section 28-2-108. Afterborn Heirs.

1 An individual in gestation at a particular time is treated as living at
2 that time if the individual lives 120 hours or more after birth.

3

4 Section 28-2-109. Advancements.

5 (a) If an individual dies intestate as to all or a portion of his or
6 her estate, property the decedent gave during the decedent's lifetime to an
7 individual who, at the decedent's death, is an heir is treated as an
8 advancement against the heir's intestate share only if (i) the decedent
9 declared in a contemporaneous writing or the heir acknowledged in writing
10 that the gift is an advancement or (ii) the decedent's contemporaneous
11 writing or the heir's written acknowledgment otherwise indicates that the
12 gift is to be taken into account in computing the division and distribution
13 of the decedent's intestate estate.

14 (b) For purposes of subsection (a), property advanced is valued as of
15 the time the heir came into possession or enjoyment of the property or as of
16 the time of the decedent's death, whichever first occurs.

17 (c) If the recipient of the property fails to survive the decedent, the
18 property is not taken into account in computing the division and distribution
19 of the decedent's intestate estate, unless the decedent's contemporaneous
20 writing provides otherwise.

21

22 Section 28-2-110. Debts to Decedent.

23 A debt owed to a decedent is not charged against the intestate share of
24 any individual except the debtor. If the debtor fails to survive the
25 decedent, the debt is not taken into account in computing the intestate share
26 of the debtor's descendants.

27

28 Section 28-2-111. Alienage.

29 No individual is disqualified to take as an heir because the individual
30 or an individual through whom he or she claims is or has been an alien.

31

32 Section 28-2-112. Dower and Curtesy Abolished.

33 The estates of dower and curtesy are abolished.

34

35 Section 28-2-113. Individuals Related to Decedent Through Two Lines.

1 An individual who is related to the decedent through two lines of
2 relationship is entitled to only a single share based on the relationship
3 that would entitle the individual to the larger share.

4

5 Section 28-2-114. Parent and Child Relationship.

6 (a) Except as provided in subsections (b) and (c), for purposes of
7 intestate succession by, through, or from a person, an individual is the
8 child of his or her natural parents, regardless of their marital status. The
9 parent and child relationship may be established under §§ 9-10-101 through 9-
10 10-202.

11 (b) An adopted individual is the child of his or her adopting parent or
12 parents and not of his or her natural parents, but adoption of a child by the
13 spouse of either natural parent has no effect on (i) the relationship between
14 the child and that natural parent or (ii) the right of the child or a
15 descendant of the child to inherit from or through the other natural parent.

16 (c) Inheritance from or through a child by either natural parent or his
17 or her kindred is precluded unless that natural parent has openly treated the
18 child as his or hers, and has not refused to support the child.

19

PART 2

20

ELECTIVE SHARE OF SURVIVING SPOUSE

21 Section 28-2-201. Definitions.

22 In this Part:

23 (1) As used in sections other than Section 28-2-205, "decedent's
24 nonprobate transfers to others" means the amounts that are included in the
25 augmented estate under Section 28-2-205.

26 (2) "Fractional interest in property held in joint tenancy with the
27 right of survivorship," whether the fractional interest is unilaterally
28 severable or not, means the fraction, the numerator of which is one and the
29 denominator of which, if the decedent was a joint tenant, is one plus the
30 number of joint tenants who survive the decedent and which, if the decedent
31 was not a joint tenant, is the number of joint tenants.

32 (3) "Marriage," as it relates to a transfer by the decedent during
33 marriage, means any marriage of the decedent to the decedent's surviving
34 spouse.

35 (4) "Nonadverse party" means a person who does not have a substantial

1 beneficial interest in the trust or other property arrangement that would be
2 adversely affected by the exercise or nonexercise of the power that he or she
3 possesses respecting the trust or other property arrangement. A person
4 having a general power of appointment over property is deemed to have a
5 beneficial interest in the property.

6 (5) "Power" or "power of appointment" includes a power to designate the
7 beneficiary of a beneficiary designation.

8 (6) "Presently exercisable general power of appointment" means a power
9 of appointment under which, at the time in question, the decedent, whether or
10 not he or she then had the capacity to exercise the power, held a power to
11 create a present or future interest in himself or herself, his or her
12 creditors, his or her estate, or creditors of his or her estate, and includes
13 a power to revoke or invade the principal of a trust or other property
14 arrangement.

15 (7) "Probate estate" means property that would pass by intestate
16 succession if the decedent died without a valid will.

17 (8) "Property" includes values subject to a beneficiary designation.

18 (9) "Right to income" includes a right to payments under a commercial
19 or private annuity, an annuity trust, a unitrust, or a similar arrangement.

20 (10) "Transfer," as it relates to a transfer by or of the decedent,
21 includes (A) an exercise or release of a presently exercisable general power
22 of appointment held by the decedent, (B) a lapse at death of a presently
23 exercisable general power of appointment held by the decedent, and (C) an
24 exercise, release, or lapse of a general power of appointment that the
25 decedent created in himself or herself and of a power described in Section
26 28-2-205(2)(ii) that the decedent conferred on a nonadverse party.

27

28 Section 28-2-202. Elective Share.

29 (a) Elective-Share Amount. The surviving spouse of a decedent who
30 dies domiciled in this State has a right of election, under the limitations
31 and conditions stated in this Part, to take an elective-share amount equal to
32 the value of the elective-share percentage of the augmented estate,
33 determined by the length of time the spouse and the decedent were married to
34 each other, in accordance with the following schedule:

35 If the decedent and the

| | | |
|----|---------------------------------------|------------------------------|
| 1 | spouse were married | The elective-share |
| 2 | to each other: | percentage is: |
| 3 | Less than 1 year | Supplemental Amount Only. |
| 4 | 1 year but less than 2 years | 3% of the augmented estate. |
| 5 | 2 years but less than 3 years | 6% of the augmented estate. |
| 6 | 3 years but less than 4 years | 9% of the augmented estate. |
| 7 | 4 years but less than 5 years | 12% of the augmented estate. |
| 8 | 5 years but less than 6 years | 15% of the augmented estate. |
| 9 | 6 years but less than 7 years | 18% of the augmented estate. |
| 10 | 7 years but less than 8 years | 21% of the augmented estate. |
| 11 | 8 years but less than 9 years | 24% of the augmented estate. |
| 12 | 9 years but less than 10 years | 27% of the augmented estate. |
| 13 | 10 years but less than 11 years | 30% of the augmented estate. |
| 14 | 11 years but less than 12 years | 34% of the augmented estate. |
| 15 | 12 years but less than 13 years | 38% of the augmented estate. |
| 16 | 13 years but less than 14 years | 42% of the augmented estate. |
| 17 | 14 years but less than 15 years | 46% of the augmented estate. |
| 18 | 15 years or more | 50% of the augmented estate. |

19 (b) Supplemental Elective-Share Amount. If the sum of the amounts
20 described in Sections 28-2-207, 28-2-209(a)(1), and that part of the
21 elective-share amount payable from the decedent's probate estate and
22 nonprobate transfers to others under Section 28-2-209(b) and (c) is less than
23 \$50,000, the surviving spouse is entitled to a supplemental elective-share
24 amount equal to \$50,000, minus the sum of the amounts described in those
25 sections. The supplemental elective-share amount is payable from the
26 decedent's probate estate and from recipients of the decedent's nonprobate
27 transfers to others in the order of priority set forth in Section 28-2-209(b)
28 and (c).

29 (c) Effect of Election on Statutory Benefits. If the right of
30 election is exercised by or on behalf of the surviving spouse, the surviving
31 spouse's homestead allowance, exempt property, and family allowance, if any,
32 are not charged against but are in addition to the elective-share and
33 supplemental elective-share amounts.

34 (d) Non-Domiciliary. The right, if any, of the surviving spouse of a
35 decedent who dies domiciled outside this State to take an elective share in

1 property in this State is governed by the law of the decedent's domicile at
2 death.

3

4 Section 28-2-203. Composition of the Augmented Estate.

5 Subject to Section 28-2-208, the value of the augmented estate, to the
6 extent provided in Sections 28-2-204, 28-2-205, 28-2-206, and 28-2-207,
7 consists of the sum of the values of all property, whether real or personal;
8 movable or immovable, tangible or intangible, wherever situated, that
9 constitute the decedent's net probate estate, the decedent's nonprobate
10 transfers to others, the decedent's nonprobate transfers to the surviving
11 spouse, and the surviving spouse's property and nonprobate transfers to
12 others.

13

14 Section 28-2-204. Decedent's Net Probate Estate.

15 The value of the augmented estate includes the value of the decedent's
16 probate estate, reduced by funeral and administration expenses, homestead
17 allowance, family allowances, exempt property, and enforceable claims.

18

19 Section 28-2-205. Decedent's Nonprobate Transfers to Others.

20 The value of the augmented estate includes the value of the decedent's
21 nonprobate transfers to others, not included under Section 28-2-204, of any
22 of the following types, in the amount provided respectively for each type of
23 transfer:

24 (1) Property owned or owned in substance by the decedent immediately
25 before death that passed outside probate at the decedent's death. Property
26 included under this category consists of:

27 (i) Property over which the decedent alone, immediately before
28 death, held a presently exercisable general power of appointment. The amount
29 included is the value of the property subject to the power, to the extent the
30 property passed at the decedent's death, by exercise, release, lapse, in
31 default, or otherwise, to or for the benefit of any person other than the
32 decedent's estate or surviving spouse.

33 (ii) The decedent's fractional interest in property held by the
34 decedent in joint tenancy with the right of survivorship. The amount
35 included is the value of the decedent's fractional interest, to the extent

1 the fractional interest passed by right of survivorship at the decedent's
2 death to a surviving joint tenant other than the decedent's surviving spouse.

3 (iii) The decedent's ownership interest in property or accounts
4 held in POD, TOD, or co-ownership registration with the right of
5 survivorship. The amount included is the value of the decedent's ownership
6 interest, to the extent the decedent's ownership interest passed at the
7 decedent's death to or for the benefit of any person other than the
8 decedent's estate or surviving spouse.

9 (iv) Proceeds of insurance, including accidental death benefits,
10 on the life of the decedent, if the decedent owned the insurance policy
11 immediately before death or if and to the extent the decedent alone and
12 immediately before death held a presently exercisable general power of
13 appointment over the policy or its proceeds. The amount included is the
14 value of the proceeds, to the extent they were payable at the decedent's
15 death to or for the benefit of any person other than the decedent's estate or
16 surviving spouse.

17 (2) Property transferred in any of the following forms by the decedent
18 during marriage:

19 (i) Any irrevocable transfer in which the decedent retained the
20 right to the possession or enjoyment of, or to the income from, the property
21 if and to the extent the decedent's right terminated at or continued beyond
22 the decedent's death. The amount included is the value of the fraction of
23 the property to which the decedent's right related, to the extent the
24 fraction of the property passed outside probate to or for the benefit of any
25 person other than the decedent's estate or surviving spouse.

26 (ii) Any transfer in which the decedent created a power over
27 income or property, exercisable by the decedent alone or in conjunction with
28 any other person, or exercisable by a nonadverse party, to or for the benefit
29 of the decedent, creditors of the decedent, the decedent's estate, or
30 creditors of the decedent's estate. The amount included with respect to a
31 power over property is the value of the property subject to the power, and
32 the amount included with respect to a power over income is the value of the
33 property that produces or produced the income, to the extent the power in
34 either case was exercisable at the decedent's death to or for the benefit of
35 any person other than the decedent's surviving spouse or to the extent the

1 property passed at the decedent's death, by exercise, release, lapse, in
2 default, or otherwise, to or for the benefit of any person other than the
3 decedent's estate or surviving spouse. If the power is a power over both
4 income and property and the preceding sentence produces different amounts,
5 the amount included is the greater amount.

6 (3) Property that passed during marriage and during the two-year period
7 next preceding the decedent's death as a result of a transfer by the decedent
8 if the transfer was of any of the following types:

9 (i) Any property that passed as a result of the termination of a
10 right or interest in, or power over, property that would have been included
11 in the augmented estate under paragraph (1)(i), (ii), or (iii), or under
12 paragraph (2), if the right, interest, or power had not terminated until the
13 decedent's death. The amount included is the value of the property that
14 would have been included under those paragraphs if the property were valued
15 at the time the right, interest, or power terminated, and is included only to
16 the extent the property passed upon termination to or for the benefit of any
17 person other than the decedent or the decedent's estate, spouse, or surviving
18 spouse. As used in this subparagraph, "termination," with respect to a right
19 or interest in property, occurs when the right or interest terminated by the
20 terms of the governing instrument or the decedent transferred or relinquished
21 the right or interest, and, with respect to a power over property, occurs
22 when the power terminated by exercise, release, lapse, default, or otherwise,
23 but, with respect to a power described in paragraph (1)(i), "termination"
24 occurs when the power terminated by exercise or release, but not otherwise.

25 (ii) Any transfer of or relating to an insurance policy on the
26 life of the decedent if the proceeds would have been included in the
27 augmented estate under paragraph (1)(iv) had the transfer not occurred. The
28 amount included is the value of the insurance proceeds to the extent the
29 proceeds were payable at the decedent's death to or for the benefit of any
30 person other than the decedent's estate or surviving spouse.

31 (iii) Any transfer of property, to the extent not otherwise
32 included in the augmented estate, made to or for the benefit of a person
33 other than the decedent's surviving spouse. The amount included is the value
34 of the transferred property to the extent the aggregate transfers to any one
35 donee in either of the two years exceeded \$10,000.

1

2 Section 28-2-206. Decedent's Nonprobate Transfers to the Surviving
3 Spouse.

4 Excluding property passing to the surviving spouse under the federal
5 Social Security system, the value of the augmented estate includes the value
6 of the decedent's nonprobate transfers to the decedent's surviving spouse,
7 which consist of all property that passed outside probate at the decedent's
8 death from the decedent to the surviving spouse by reason of the decedent's
9 death, including:

10 (1) the decedent's fractional interest in property held as a joint
11 tenant with the right of survivorship, to the extent that the decedent's
12 fractional interest passed to the surviving spouse as surviving joint tenant,

13 (2) the decedent's ownership interest in property or accounts held in
14 co-ownership registration with the right of survivorship, to the extent the
15 decedent's ownership interest passed to the surviving spouse as surviving
16 co-owner, and

17 (3) all other property that would have been included in the augmented
18 estate under Section 28-2-205(1) or (2) had it passed to or for the benefit
19 of a person other than the decedent's spouse, surviving spouse, the decedent,
20 or the decedent's creditors, estate, or estate creditors.

21

22 Section 28-2-207. Surviving Spouse's Property and Nonprobate Transfers
23 to Others.

24 (a) Included Property. Except to the extent included in the augmented
25 estate under Section 28-2-204 or 28-2-206, the value of the augmented estate
26 includes the value of:

27 (1) property that was owned by the decedent's surviving spouse at
28 the decedent's death, including:

29 (i) the surviving spouse's fractional interest in property
30 held in joint tenancy with the right of survivorship,

31 (ii) the surviving spouse's ownership interest in property
32 or accounts held in co-ownership registration with the right of survivorship,
33 and

34 (iii) property that passed to the surviving spouse by
35 reason of the decedent's death, but not including the spouse's right to

1 homestead allowance, family allowance, exempt property, or payments under the
2 federal Social Security system; and

3 (2) property that would have been included in the surviving
4 spouse's nonprobate transfers to others, other than the spouse's fractional
5 and ownership interests included under subsection (a)(1)(i) or (ii), had the
6 spouse been the decedent.

7 (b) Time of Valuation. Property included under this section is valued
8 at the decedent's death, taking the fact that the decedent predeceased the
9 spouse into account, but, for purposes of subsection (a)(1)(i) and (ii), the
10 values of the spouse's fractional and ownership interests are determined
11 immediately before the decedent's death if the decedent was then a joint
12 tenant or a co-owner of the property or accounts. For purposes of subsection
13 (a)(2), proceeds of insurance that would have been included in the spouse's
14 nonprobate transfers to others under Section 28-2-205(1)(iv) are not valued
15 as if he or she were deceased.

16 (c) Reduction for Enforceable Claims. The value of property included
17 under this section is reduced by enforceable claims against the surviving
18 spouse.

19

20 Section 28-2-208. Exclusions, Valuation, and Overlapping Application.

21 (a) Exclusions. The value of any property is excluded from the
22 decedent's nonprobate transfers to others (i) to the extent the decedent
23 received adequate and full consideration in money or money's worth for a
24 transfer of the property or (ii) if the property was transferred with the
25 written joinder of, or if the transfer was consented to in writing by, the
26 surviving spouse.

27 (b) Valuation. The value of property:

28 (1) included in the augmented estate under Section 28-2-205, 28-
29 2-206, or 28-2-207 is reduced in each category by enforceable claims against
30 the included property; and

31 (2) includes the commuted value of any present or future interest
32 and the commuted value of amounts payable under any trust, life insurance
33 settlement option, annuity contract, public or private pension, disability
34 compensation, death benefit or retirement plan, or any similar arrangement,
35 exclusive of the federal Social Security system.

1 (c) Overlapping Application; No Double Inclusion. In case of
2 overlapping application to the same property of the paragraphs or
3 subparagraphs of Section 28-2-205, 28-2-206, or 28-2-207, the property is
4 included in the augmented estate under the provision yielding the greatest
5 value, and under only one overlapping provision if they all yield the same
6 value.

7

8 Section 28-2-209. Sources from Which Elective Share Payable.

9 (a) Elective-Share Amount Only. In a proceeding for an elective
10 share, the following are applied first to satisfy the elective-share amount
11 and to reduce or eliminate any contributions due from the decedent's probate
12 estate and recipients of the decedent's nonprobate transfers to others:

13 (1) amounts included in the augmented estate under Section 28-
14 2-204 which pass or have passed to the surviving spouse by testate or
15 intestate succession and amounts included in the augmented estate under
16 Section 28-2-206; and

17 (2) amounts included in the augmented estate under Section 28-
18 2-207 up to the applicable percentage thereof. For the purposes of this
19 subsection, the "applicable percentage" is twice the elective-share
20 percentage set forth in the schedule in Section 28-2-202(a) appropriate to
21 the length of time the spouse and the decedent were married to each other.

22 (b) Unsatisfied Balance of Elective-Share Amount; Supplemental
23 Elective-Share Amount. If, after the application of subsection (a), the
24 elective-share amount is not fully satisfied or the surviving spouse is
25 entitled to a supplemental elective-share amount, amounts included in the
26 decedent's probate estate and in the decedent's nonprobate transfers to
27 others, other than amounts included under Section 28-2-205(3)(i) or (iii),
28 are applied first to satisfy the unsatisfied balance of the elective-share
29 amount or the supplemental elective-share amount. The decedent's probate
30 estate and that portion of the decedent's nonprobate transfers to others are
31 so applied that liability for the unsatisfied balance of the elective-share
32 amount or for the supplemental elective-share amount is equitably apportioned
33 among the recipients of the decedent's probate estate and of that portion of
34 the decedent's nonprobate transfers to others in proportion to the value of
35 their interests therein.

1 (c) Unsatisfied Balance of Elective-Share and Supplemental
2 Elective-Share Amounts. If, after the application of subsections (a) and
3 (b), the elective-share or supplemental elective-share amount is not fully
4 satisfied, the remaining portion of the decedent's nonprobate transfers to
5 others is so applied that liability for the unsatisfied balance of the
6 elective-share or supplemental elective-share amount is equitably apportioned
7 among the recipients of the remaining portion of the decedent's nonprobate
8 transfers to others in proportion to the value of their interests therein.

9

10 Section 28-2-210. Personal Liability of Recipients.

11 (a) Only original recipients of the decedent's nonprobate transfers to
12 others, and the donees of the recipients of the decedent's nonprobate
13 transfers to others, to the extent the donees have the property or its
14 proceeds, are liable to make a proportional contribution toward satisfaction
15 of the surviving spouse's elective-share or supplemental elective-share
16 amount. A person liable to make contribution may choose to give up the
17 proportional part of the decedent's nonprobate transfers to him or her or to
18 pay the value of the amount for which he or she is liable.

19 (b) If any section or part of any section of this Part is preempted by
20 federal law with respect to a payment, an item of property, or any other
21 benefit included in the decedent's nonprobate transfers to others, a person
22 who, not for value, receives the payment, item of property, or any other
23 benefit is obligated to return the payment, item of property, or benefit, or
24 is personally liable for the amount of the payment or the value of that item
25 of property or benefit, as provided in Section 28-2-209, to the person who
26 would have been entitled to it were that section or part of that section not
27 preempted.

28

29 Section 28-2-211. Proceeding for Elective Share; Time Limit.

30 (a) Except as provided in subsection (b), the election must be made by
31 filing in the court and mailing or delivering to the personal representative,
32 if any, a petition for the elective share within nine months after the date
33 of the decedent's death, or within six months after the probate of the
34 decedent's will, whichever limitation later expires. The surviving spouse
35 must give notice of the time and place set for hearing to persons interested

1 in the estate and to the distributees and recipients of portions of the
2 augmented estate whose interests will be adversely affected by the taking of
3 the elective share. Except as provided in subsection (b), the decedent's
4 nonprobate transfers to others are not included within the augmented estate
5 for the purpose of computing the elective-share, if the petition is filed
6 more than nine months after the decedent's death.

7 (b) Within nine months after the decedent's death, the surviving spouse
8 may petition the court for an extension of time for making an election. If,
9 within nine months after the decedent's death, the spouse gives notice of the
10 petition to all persons interested in the decedent's nonprobate transfers to
11 others, the court for cause shown by the surviving spouse may extend the time
12 for election. If the court grants the spouse's petition for an extension,
13 the decedent's nonprobate transfers to others are not excluded from the
14 augmented estate for the purpose of computing the elective-share and
15 supplemental elective-share amounts, if the spouse makes an election by
16 filing in the court and mailing or delivering to the personal representative,
17 if any, a petition for the elective share within the time allowed by the
18 extension.

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

21 (d) After notice and hearing, the court shall determine the
22 elective-share and supplemental elective-share amounts, and shall order its
23 payment from the assets of the augmented estate or by contribution as appears
24 appropriate under Sections 28-2-209 and 28-2-210. If it appears that a fund
25 or property included in the augmented estate has not come into the possession
26 of the personal representative, or has been distributed by the personal
27 representative, the court nevertheless shall fix the liability of any person
28 who has any interest in the fund or property or who has possession thereof,
29 whether as trustee or otherwise. The proceeding may be maintained against
30 fewer than all persons against whom relief could be sought, but no person is
31 subject to contribution in any greater amount than he or she would have been
32 under Sections 28-2-209 and 28-2-210 had relief been secured against all
33 persons subject to contribution.

34 (e) An order or judgment of the court may be enforced as necessary in
35 suit for contribution or payment in other courts of this State or other

1 jurisdictions.

2

3 Section 28-2-212. Right of Election Personal to Surviving Spouse;
4 Incapacitated Surviving Spouse.

5 (a) Surviving Spouse Must Be Living at Time of Election. The right of
6 election may be exercised only by a surviving spouse who is living when the
7 petition for the elective share is filed in the court under Section 28-
8 2-211(a). If the election is not exercised by the surviving spouse
9 personally, it may be exercised on the surviving spouse's behalf by his or
10 her conservator, guardian, or agent under the authority of a power of
11 attorney.

12 (b) Incapacitated Surviving Spouse. If the election is exercised on
13 behalf of a surviving spouse who is an incapacitated person, that portion of
14 the elective-share and supplemental elective-share amounts due from the
15 decedent's probate estate and recipients of the decedent's nonprobate
16 transfers to others under Section 28-2-209(b) and (c) must be placed in a
17 custodial trust for the benefit of the surviving spouse under the provisions
18 of the Arkansas Custodial Trust Act, except as modified below. For the
19 purposes of this subsection, an election on behalf of a surviving spouse by
20 an agent under a durable power of attorney is presumed to be on behalf of a
21 surviving spouse who is an incapacitated person. For purposes of the
22 custodial trust established by this subsection, (i) the electing guardian,
23 conservator, or agent is the custodial trustee, (ii) the surviving spouse is
24 the beneficiary, and (iii) the custodial trust is deemed to have been created
25 by the decedent spouse by written transfer that takes effect at the decedent
26 spouse's death and that directs the custodial trustee to administer the
27 custodial trust as for an incapacitated beneficiary.

28 (c) Custodial Trust. For the purposes of subsection (b), the Arkansas
29 Custodial Trust Act must be applied as if § 28-72-406(b) thereof were
30 repealed and § 28-72-402(e), § 28-72-409(b), and § 28-72-417(a) were amended
31 to read as follows:

32 (1) Neither an incapacitated beneficiary nor anyone acting on
33 behalf of an incapacitated beneficiary has a power to terminate the custodial
34 trust; but if the beneficiary regains capacity, the beneficiary then
35 acquires the power to terminate the custodial trust by delivering to the

1 custodial trustee a writing signed by the beneficiary declaring the
2 termination. If not previously terminated, the custodial trust terminates on
3 the death of the beneficiary.

4 (2) If the beneficiary is incapacitated, the custodial trustee
5 shall expend so much or all of the custodial trust property as the custodial
6 trustee considers advisable for the use and benefit of the beneficiary and
7 individuals who were supported by the beneficiary when the beneficiary became
8 incapacitated, or who are legally entitled to support by the beneficiary.
9 Expenditures may be made in the manner, when, and to the extent that the
10 custodial trustee determines suitable and proper, without court order but
11 with regard to other support, income, and property of the beneficiary and
12 benefits of medical or other forms of assistance from any state or federal
13 government or governmental agency for which the beneficiary must qualify on
14 the basis of need.

15 (3) Upon the beneficiary's death, the custodial trustee shall
16 transfer the unexpended custodial trust property in the following order: (i)
17 under the residuary clause, if any, of the will of the beneficiary's
18 predeceased spouse against whom the elective share was taken, as if that
19 predeceased spouse died immediately after the beneficiary; or (ii) to that
20 predeceased spouse's heirs under Section 28-2-711 of Arkansas_ Uniform
21 Probate Code.

22

23 Section 28-2-213. Waiver of Right to Elect and of Other Rights.

24 (a) The right of election of a surviving spouse and the rights of the
25 surviving spouse to homestead allowance, exempt property, and family
26 allowance, or any of them, may be waived, wholly or partially, before or
27 after marriage, by a written contract, agreement, or waiver signed by the
28 surviving spouse.

29 (b) A surviving spouse's waiver is not enforceable if the surviving
30 spouse proves that:

31 (1) he or she did not execute the waiver voluntarily; or

32 (2) the waiver was unconscionable when it was executed and,
33 before execution of the waiver, he or she:

34 (i) was not provided a fair and reasonable disclosure of
35 the property or financial obligations of the decedent;

1 (ii) did not voluntarily and expressly waive, in writing,
2 any right to disclosure of the property or financial obligations of the
3 decedent beyond the disclosure provided; and

4 (iii) did not have, or reasonably could not have had, an
5 adequate knowledge of the property or financial obligations of the decedent.

6 (c) An issue of unconscionability of a waiver is for decision by the
7 court as a matter of law.

8 (d) Unless it provides to the contrary, a waiver of "all rights," or
9 equivalent language, in the property or estate of a present or prospective
10 spouse or a complete property settlement entered into after or in
11 anticipation of separation or divorce is a waiver of all rights of elective
12 share, homestead allowance, exempt property, and family allowance by each
13 spouse in the property of the other and a renunciation by each of all
14 benefits that would otherwise pass to him or her from the other by intestate
15 succession or by virtue of any will executed before the waiver or property
16 settlement.

17

18 Section 28-2-214. Protection of Payors and Other Third Parties.

19 (a) Although under Section 28-2-205 a payment, item of property, or
20 other benefit is included in the decedent's nonprobate transfers to others, a
21 payor or other third party is not liable for having made a payment or
22 transferred an item of property or other benefit to a beneficiary designated
23 in a governing instrument, or for having taken any other action in good faith
24 reliance on the validity of a governing instrument, upon request and
25 satisfactory proof of the decedent's death, before the payor or other third
26 party received written notice from the surviving spouse or spouse's
27 representative of an intention to file a petition for the elective share or
28 that a petition for the elective share has been filed. A payor or other
29 third party is liable for payments made or other actions taken after the
30 payor or other third party received written notice of an intention to file a
31 petition for the elective share or that a petition for the elective share has
32 been filed.

33 (b) A written notice of intention to file a petition for the elective
34 share or that a petition for the elective share has been filed must be mailed
35 to the payor's or other third party's main office or home by registered or

1 certified mail, return receipt requested, or served upon the payor or other
2 third party in the same manner as a summons in a civil action. Upon receipt
3 of written notice of intention to file a petition for the elective share or
4 that a petition for the elective share has been filed, a payor or other third
5 party may pay any amount owed or transfer or deposit any item of property
6 held by it to or with the court having jurisdiction of the probate
7 proceedings relating to the decedent's estate, or if no proceedings have been
8 commenced, to or with the court having jurisdiction of probate proceedings
9 relating to decedents' estates located in the county of the decedent's
10 residence. The court shall hold the funds or item of property, and, upon its
11 determination under Section 28-2-211(d), shall order disbursement in
12 accordance with the determination. If no petition is filed in the court
13 within the specified time under Section 28-2-211(a) or, if filed, the demand
14 for an elective share is withdrawn under Section 28-2-211(c), the court shall
15 order disbursement to the designated beneficiary. Payments or transfers to
16 the court or deposits made into court discharge the payor or other third
17 party from all claims for amounts so paid or the value of property so
18 transferred or deposited.

19 (c) Upon petition to the probate court by the beneficiary designated in
20 a governing instrument, the court may order that all or part of the property
21 be paid to the beneficiary in an amount and subject to conditions consistent
22 with this Part.

23 PART 3

24 SPOUSE AND CHILDREN UNPROVIDED FOR IN WILLS

25 Section 28-2-301. Entitlement of Spouse; Premarital Will.

26 (a) If a testator's surviving spouse married the testator after the
27 testator executed his or her will, the surviving spouse is entitled to
28 receive, as an intestate share, no less than the value of the share of the
29 estate he or she would have received if the testator had died intestate as to
30 that portion of the testator's estate, if any, that neither is devised to a
31 child of the testator who was born before the testator married the surviving
32 spouse and who is not a child of the surviving spouse nor is devised to a
33 descendant of such a child or passes under Sections 28-2-603 or 28-2-604 to
34 such a child or to a descendant of such a child, unless:

35 (1) it appears from the will or other evidence that the will was

1 made in contemplation of the testator's marriage to the surviving spouse;

2 (2) the will expresses the intention that it is to be effective
3 notwithstanding any subsequent marriage; or

4 (3) the testator provided for the spouse by transfer outside the
5 will and the intent that the transfer be in lieu of a testamentary provision
6 is shown by the testator's statements or is reasonably inferred from the
7 amount of the transfer or other evidence.

8 (b) In satisfying the share provided by this section, devises made by
9 the will to the testator's surviving spouse, if any, are applied first, and
10 other devises, other than a devise to a child of the testator who was born
11 before the testator married the surviving spouse and who is not a child of
12 the surviving spouse or a devise or substitute gift under Section 28-2-603 or
13 28-2-604 to a descendant of such a child, abate as provided in Section 28-
14 3-902.

15

16 Section 28-2-302. Omitted Children.

17 (a) Except as provided in subsection (b), if a testator fails to
18 provide in his or her will for any of his or her children born or adopted
19 after the execution of the will, the omitted after-born or after-adopted
20 child receives a share in the estate as follows:

21 (1) If the testator had no child living when he or she executed
22 the will, an omitted after-born or after-adopted child receives a share in
23 the estate equal in value to that which the child would have received had the
24 testator died intestate, unless the will devised all or substantially all of
25 the estate to the other parent of the omitted child and that other parent
26 survives the testator and is entitled to take under the will.

27 (2) If the testator had one or more children living when he or
28 she executed the will, and the will devised property or an interest in
29 property to one or more of the then-living children, an omitted after-born or
30 after-adopted child is entitled to share in the testator's estate as follows:

31 (i) The portion of the testator's estate in which the
32 omitted after-born or after-adopted child is entitled to share is limited to
33 devises made to the testator's then-living children under the will.

34 (ii) The omitted after-born or after-adopted child is
35 entitled to receive the share of the testator's estate, as limited in

1 subparagraph (i), that the child would have received had the testator
2 included all omitted after-born and after-adopted children with the children
3 to whom devises were made under the will and had given an equal share of the
4 estate to each child.

5 (iii) To the extent feasible, the interest granted an
6 omitted after-born or after-adopted child under this section must be of the
7 same character, whether equitable or legal, present or future, as that
8 devised to the testator's then-living children under the will.

9 (iv) In satisfying a share provided by this paragraph,
10 devises to the testator's children who were living when the will was executed
11 abate ratably. In abating the devises of the then-living children, the court
12 shall preserve to the maximum extent possible the character of the
13 testamentary plan adopted by the testator.

14 (b) Neither subsection (a)(1) nor subsection (a)(2) applies if:

15 (1) it appears from the will that the omission was intentional;
16 or

17 (2) the testator provided for the omitted after-born or
18 after-adopted child by transfer outside the will and the intent that the
19 transfer be in lieu of a testamentary provision is shown by the testator's
20 statements or is reasonably inferred from the amount of the transfer or other
21 evidence.

22 (c) If at the time of execution of the will the testator fails to
23 provide in his or her will for a living child solely because he or she
24 believes the child to be dead, the child is entitled to share in the estate
25 as if the child were an omitted after-born or after-adopted child.

26 (d) In satisfying a share provided by subsection (a)(1), devises made
27 by the will abate under Section 28-3-902.

28 PART 4

29 EXEMPT PROPERTY AND ALLOWANCES

30 Section 28-2-401. Applicable Law.

31 This Part applies to the estate of a decedent who dies domiciled in
32 this State. Rights to homestead allowance, exempt property, and family
33 allowance for a decedent who dies not domiciled in this State are governed by
34 the law of the decedent's domicile at death.

35

1 Section 28-2-402. Homestead Allowance.

2 A decedent's surviving spouse is entitled to a homestead allowance of
3 \$15,000. If there is no surviving spouse, each minor child and each
4 dependent child of the decedent is entitled to a homestead allowance
5 amounting to \$15,000 divided by the number of minor and dependent children of
6 the decedent. The homestead allowance is exempt from and has priority over
7 all claims against the estate. Homestead allowance is in addition to any
8 share passing to the surviving spouse or minor or dependent child by the will
9 of the decedent, unless otherwise provided, by intestate succession, or by
10 way of elective share.

11

12 Section 28-2-402A. Constitutional Homestead.

13 The value of any constitutional right of homestead in the family home
14 received by a surviving spouse or child must be charged against the spouse or
15 child's homestead allowance to the extent the family home is part of the
16 decedent's estate or would have been but for the homestead provision of the
17 constitution.

18

19 Section 28-2-403. Exempt Property.

20 In addition to the homestead allowance, the decedent's surviving spouse
21 is entitled from the estate to a value, not exceeding \$10,000 in excess of
22 any security interests therein, in household furniture, automobiles,
23 furnishings, appliances, and personal effects. If there is no surviving
24 spouse, the decedent's children are entitled jointly to the same value. If
25 encumbered chattels are selected and the value in excess of security
26 interests, plus that of other exempt property, is less than \$10,000, or if
27 there is not \$10,000 worth of exempt property in the estate, the spouse or
28 children are entitled to other assets of the estate, if any, to the extent
29 necessary to make up the \$10,000 value. Rights to exempt property and assets
30 needed to make up a deficiency of exempt property have priority over all
31 claims against the estate, but the right to any assets to make up a
32 deficiency of exempt property abates as necessary to permit earlier payment
33 of homestead allowance and family allowance. These rights are in addition to
34 any benefit or share passing to the surviving spouse or children by the
35 decedent's will, unless otherwise provided, by intestate succession, or by

1 way of elective share.

2

3 Section 28-2-404. Family Allowance.

4 (a) In addition to the right to homestead allowance and exempt
5 property, the decedent's surviving spouse and minor children whom the
6 decedent was obligated to support and children who were in fact being
7 supported by the decedent are entitled to a reasonable allowance in money out
8 of the estate for their maintenance during the period of administration,
9 which allowance may not continue for longer than one year if the estate is
10 inadequate to discharge allowed claims. The allowance may be paid as a lump
11 sum or in periodic installments. It is payable to the surviving spouse, if
12 living, for the use of the surviving spouse and minor and dependent children;
13 otherwise to the children, or persons having their care and custody. If a
14 minor child or dependent child is not living with the surviving spouse, the
15 allowance may be made partially to the child or his or her guardian or other
16 person having the child's care and custody, and partially to the spouse, as
17 their needs may appear. The family allowance is exempt from and has priority
18 over all claims except the homestead allowance.

19 (b) The family allowance is not chargeable against any benefit or share
20 passing to the surviving spouse or children by the will of the decedent,
21 unless otherwise provided, by intestate succession or by way of elective
22 share. The death of any person entitled to family allowance terminates the
23 right to allowances not yet paid.

24

25 Section 28-2-405. Source, Determination, and Documentation.

26 (a) If the estate is otherwise sufficient, property specifically
27 devised may not be used to satisfy rights to homestead allowance or exempt
28 property. Subject to this restriction, the surviving spouse, guardians of
29 minor children, or children who are adults may select property of the estate
30 as homestead allowance and exempt property. The personal representative may
31 make those selections if the surviving spouse, the children, or the guardians
32 of the minor children are unable or fail to do so within a reasonable time or
33 there is no guardian of a minor child. The personal representative may
34 execute an instrument or deed of distribution to establish the ownership of
35 property taken as homestead allowance or exempt property. The personal

1 representative may determine the family allowance in a lump sum not exceeding
2 \$18,000 or periodic installments not exceeding \$1,500 per month for one year,
3 and may disburse funds of the estate in payment of the family allowance and
4 any part of the homestead allowance payable in cash. The personal
5 representative or an interested person aggrieved by any selection,
6 determination, payment, proposed payment, or failure to act under this
7 section may petition the court for appropriate relief, which may include a
8 family allowance other than that which the personal representative determined
9 or could have determined.

10 (b) If the right to an elective share is exercised on behalf of a
11 surviving spouse who is an incapacitated person, the personal representative
12 may add any unexpended portions payable under the homestead allowance, exempt
13 property, and family allowance to the trust established under Section 28-
14 2-212(b).

15 PART 5

16 WILLS, WILL CONTRACTS, AND CUSTODY AND DEPOSIT OF WILLS

17 Section 28-2-501. Who May Make Will.

18 An individual 18 or more years of age who is of sound mind may make a
19 will.

20
21 Section 28-2-502. Execution; Witnessed Wills; Holographic Wills.

22 (a) Except as provided in subsection (b) and in Sections 28-2-503, 28-
23 2-506, and 28-2-513, a will must be:

24 (1) in writing;

25 (2) signed by the testator or in the testator's name by some
26 other individual in the testator's conscious presence and by the testator's
27 direction; and

28 (3) signed by at least two individuals, each of whom signed
29 within a reasonable time after he or she witnessed either the signing of the
30 will as described in paragraph (2) or the testator's acknowledgment of that
31 signature or acknowledgment of the will.

32 (b) A will that does not comply with subsection (a) is valid as a
33 holographic will, whether or not witnessed, if the signature and material
34 portions of the document are in the testator's handwriting.

35 (c) Intent that the document constitute the testator's will can be

1 established by extrinsic evidence, including, for holographic wills, portions
2 of the document that are not in the testator's handwriting.

3

4 Section 28-2-503. Writings Intended as Wills, etc.

5 Although a document or writing added upon a document was not executed
6 in compliance with Section 28-2-502, the document or writing is treated as if
7 it had been executed in compliance with that section if the proponent of the
8 document or writing establishes by clear and convincing evidence that the
9 decedent intended the document or writing to constitute (i) the decedent's
10 will, (ii) a partial or complete revocation of the will, (iii) an addition to
11 or an alteration of the will, or (iv) a partial or complete revival of his or
12 her formerly revoked will or of a formerly revoked portion of the will.

13

14 Section 28-2-504. Self-Proved Will.

15 (a) A will may be simultaneously executed, attested, and made
16 self-proved, by acknowledgment thereof by the testator and affidavits of the
17 witnesses, each made before an officer authorized to administer oaths under
18 the laws of the state in which execution occurs and evidenced by the
19 officer's certificate, under official seal, in substantially the following
20 form:

21 I, _____, the testator, sign my name to this instrument this ____ day
22 of _____, and being first duly sworn, do hereby declare to the undersigned
23 authority that I sign and execute this instrument as my will and that I sign
24 it willingly (or willingly direct another to sign for me), that I execute it
25 as my free and voluntary act for the purposes therein expressed, and that I
26 am eighteen years of age or older, of sound mind, and under no constraint or
27 undue influence.

28

29

Testator

30 We, _____, _____, the witnesses, sign our names to this instrument,
31 being first duly sworn, and do hereby declare to the undersigned authority
32 that the testator signs and executes this instrument as [his] [her] will and
33 that [he] [she] signs it willingly (or willingly directs another to sign for
34 [him] [her]), and that each of us, in the presence and hearing of the
35 testator, hereby signs this will as witness to the testator's signing, and

1 that to the best of our knowledge the testator is eighteen years of age or
2 older, of sound mind, and under no constraint or undue influence.

3

4

Witness

5

6

Witness

7

8 The State of _____

9 County of _____

10 Subscribed, sworn to and acknowledged before me by _____, the
11 testator, and subscribed and sworn to before me by _____, and _____,
12 witness, this ____ day of _____.

13

14 (Seal)

15 (Signed) _____

16

17

(Official capacity of officer)

18
19 (b) An attested will may be made self-proved at any time after its
20 execution by the acknowledgment thereof by the testator and the affidavits of
21 the witnesses, each made before an officer authorized to administer oaths
22 under the laws of the state in which the acknowledgment occurs and evidenced
23 by the officer's certificate, under the official seal, attached or annexed to
24 the will in substantially the following form:

25 The State of _____

26 County of _____

27 We, _____, _____, and _____, the testator and the witnesses,
28 respectively, whose names are signed to the attached or foregoing instrument,
29 being first duly sworn, do hereby declare to the undersigned authority that
30 the testator signed and executed the instrument as the testator's will and
31 that [he] [she] had signed willingly (or willingly directed another to sign
32 for [him] [her]), and that [he] [she] executed it as [his] [her] free and
33 voluntary act for the purposes therein expressed, and that each of the
34 witnesses, in the presence and hearing of the testator, signed the will as
35 witness and that to the best of [his] [her] knowledge the testator was at

1 (a) A will or any part thereof is revoked:

2 (1) by executing a subsequent will that revokes the previous will
3 or part expressly or by inconsistency; or

4 (2) by performing a revocatory act on the will, if the testator
5 performed the act with the intent and for the purpose of revoking the will or
6 part or if another individual performed the act in the testator's conscious
7 presence and by the testator's direction. For purposes of this paragraph,
8 "revocatory act on the will" includes burning , tearing, canceling,
9 obliterating, or destroying the will or any part of it. A burning, tearing,
10 or canceling is a "revocatory act on the will," whether or not the burn,
11 tear, or cancellation touched any of the words on the will.

12 (b) If a subsequent will does not expressly revoke a previous will, the
13 execution of the subsequent will wholly revokes the previous will by
14 inconsistency if the testator intended the subsequent will to replace rather
15 than supplement the previous will.

16 (c) The testator is presumed to have intended a subsequent will to
17 replace rather than supplement a previous will if the subsequent will makes a
18 complete disposition of the testator's estate. If this presumption arises
19 and is not rebutted by clear and convincing evidence, the previous will is
20 revoked; only the subsequent will is operative on the testator's death.

21 (d) The testator is presumed to have intended a subsequent will to
22 supplement rather than replace a previous will if the subsequent will does
23 not make a complete disposition of the testator's estate. If this
24 presumption arises and is not rebutted by clear and convincing evidence, the
25 subsequent will revokes the previous will only to the extent the subsequent
26 will is inconsistent with the previous will; each will is fully operative on
27 the testator's death to the extent they are not inconsistent.

28

29 Section 28-2-508. Revocation by Change of Circumstances.

30 Except as provided in Sections 28-2-803 and 28-2-804, a change of
31 circumstances does not revoke a will or any part of it.

32

33 Section 28-2-509. Revival of Revoked Will.

34 (a) If a subsequent will that wholly revoked a previous will is
35 thereafter revoked by a revocatory act under Section 28-2-507(a)(2), the

1 previous will remains revoked unless it is revived. The previous will is
2 revived if it is evident from the circumstances of the revocation of the
3 subsequent will or from the testator's contemporary or subsequent
4 declarations that the testator intended the previous will to take effect as
5 executed.

6 (b) If a subsequent will that partly revoked a previous will is
7 thereafter revoked by a revocatory act under Section 28-2-507(a)(2), a
8 revoked part of the previous will is revived unless it is evident from the
9 circumstances of the revocation of the subsequent will or from the testator's
10 contemporary or subsequent declarations that the testator did not intend the
11 revoked part to take effect as executed.

12 (c) If a subsequent will that revoked a previous will in whole or in
13 part is thereafter revoked by another, later, will, the previous will remains
14 revoked in whole or in part, unless it or its revoked part is revived. The
15 previous will or its revoked part is revived to the extent it appears from
16 the terms of the later will that the testator intended the previous will to
17 take effect.

18

19 Section 28-2-510. Incorporation by Reference.

20 A writing in existence when a will is executed may be incorporated by
21 reference if the language of the will manifests this intent and describes the
22 writing sufficiently to permit its identification.

23

24 Section 28-2-511. Testamentary Additions to Trusts.

25 (a) A will may validly devise property to the trustee of a trust
26 established or to be established (i) during the testator's lifetime by the
27 testator, by the testator and some other person, or by some other person,
28 including a funded or unfunded life insurance trust, although the settlor has
29 reserved any or all rights of ownership of the insurance contracts, or (ii)
30 at the testator's death by the testator's devise to the trustee, if the trust
31 is identified in the testator's will and its terms are set forth in a written
32 instrument, other than a will, executed before, concurrently with, or after
33 the execution of the testator's will or in another individual's will if that
34 other individual has predeceased the testator, regardless of the existence,
35 size, or character of the corpus of the trust. The devise is not invalid

1 because the trust is amendable or revocable, or because the trust was amended
2 after the execution of the will or the testator's death.

3 (b) Unless the testator's will provides otherwise, property devised to
4 a trust described in subsection (a) is not held under a testamentary trust of
5 the testator, but it becomes a part of the trust to which it is devised, and
6 must be administered and disposed of in accordance with the provisions of the
7 governing instrument setting forth the terms of the trust, including any
8 amendments thereto made before or after the testator's death.

9 (c) Unless the testator's will provides otherwise, a revocation or
10 termination of the trust before the testator's death causes the devise to
11 lapse.

12

13 Section 28-2-512. Events of Independent Significance.

14 A will may dispose of property by reference to acts and events that
15 have significance apart from their effect upon the dispositions made by the
16 will, whether they occur before or after the execution of the will or before
17 or after the testator's death. The execution or revocation of another
18 individual's will is such an event.

19

20 Section 28-2-513. Separate Writing Identifying Devise of Certain Types
21 of Tangible Personal Property.

22 Whether or not the provisions relating to holographic wills apply, a
23 will may refer to a written statement or list to dispose of items of tangible
24 personal property not otherwise specifically disposed of by the will, other
25 than money. To be admissible under this section as evidence of the intended
26 disposition, the writing must be signed by the testator and must describe the
27 items and the devisees with reasonable certainty. The writing may be
28 referred to as one to be in existence at the time of the testator's death;
29 it may be prepared before or after the execution of the will; it may be
30 altered by the testator after its preparation; and it may be a writing that
31 has no significance apart from its effect on the dispositions made by the
32 will.

33

34 Section 28-2-514. Contracts Concerning Succession.

35 A contract to make a will or devise, or not to revoke a will or devise,

1 or to die intestate, if executed after the effective date of this Article,
2 may be established only by (i) provisions of a will stating material
3 provisions of the contract, (ii) an express reference in a will to a contract
4 and extrinsic evidence proving the terms of the contract, or (iii) a writing
5 signed by the decedent evidencing the contract. The execution of a joint
6 will or mutual wills does not create a presumption of a contract not to
7 revoke the will or wills.

8

9 Section 28-2-515. Deposit of Will with Court in Testator's Lifetime.

10 A will may be deposited by the testator or the testator's agent with
11 any court for safekeeping, under rules of the court. The will must be sealed
12 and kept confidential. During the testator's lifetime, a deposited will must
13 be delivered only to the testator or to a person authorized in writing signed
14 by the testator to receive the will. A conservator may be allowed to examine
15 a deposited will of a protected testator under procedures designed to
16 maintain the confidential character of the document to the extent possible,
17 and to ensure that it will be resealed and kept on deposit after the
18 examination. Upon being informed of the testator's death, the court shall
19 notify any person designated to receive the will and deliver it to that
20 person on request; or the court may deliver the will to the appropriate
21 court.

22

23 Section 28-2-516. Duty of Custodian of Will; Liability.

24 After the death of a testator and on request of an interested person, a
25 person having custody of a will of the testator shall deliver it with
26 reasonable promptness to a person able to secure its probate and if none is
27 known, to an appropriate court. A person who wilfully fails to deliver a
28 will is liable to any person aggrieved for any damages that may be sustained
29 by the failure. A person who wilfully refuses or fails to deliver a will
30 after being ordered by the court in a proceeding brought for the purpose of
31 compelling delivery is subject to penalty for contempt of court.

32

33 Section 28-2-517. Penalty Clause for Contest.

34 A provision in a will purporting to penalize an interested person for
35 contesting the will or instituting other proceedings relating to the estate

1 is unenforceable if probable cause exists for instituting proceedings.

2 PART 6

3 RULES OF CONSTRUCTION APPLICABLE ONLY TO WILLS

4 Section 28-2-601. Scope.

5 In the absence of a finding of a contrary intention, the rules of
6 construction in this Part control the construction of a will.

7
8 Section 28-2-602. Will May Pass All Property and After-Acquired
9 Property.

10 A will may provide for the passage of all property the testator owns at
11 death and all property acquired by the estate after the testator's death.

12
13 Section 28-2-603. Antilapse; Deceased Devisee; Class Gifts.

14 (a) Definitions. In this section:

15 (1) "Alternative devise" means a devise that is expressly created
16 by the will and, under the terms of the will, can take effect instead of
17 another devise on the happening of one or more events, including survival of
18 the testator or failure to survive the testator, whether an event is
19 expressed in condition-precedent, condition-subsequent, or any other form. A
20 residuary clause constitutes an alternative devise with respect to a
21 nonresiduary devise only if the will specifically provides that, upon lapse
22 or failure, the nonresiduary devise, or nonresiduary devises in general, pass
23 under the residuary clause.

24 (2) "Class member" includes an individual who fails to survive
25 the testator but who would have taken under a devise in the form of a class
26 gift had he or she survived the testator.

27 (3) "Devise" includes an alternative devise, a devise in the form
28 of a class gift, and an exercise of a power of appointment.

29 (4) "Devisee" includes (i) a class member if the devise is in the
30 form of a class gift, (ii) an individual or class member who was deceased at
31 the time the testator executed his or her will as well as an individual or
32 class member who was then living but who failed to survive the testator, and
33 (iii) an appointee under a power of appointment exercised by the testator's
34 will.

35 (5) "Stepchild" means a child of the surviving, deceased, or

1 former spouse of the testator or of the donor of a power of appointment, and
2 not of the testator or donor.

3 (6) "Surviving devisee" or "surviving descendant" means a devisee
4 or a descendant who neither predeceased the testator nor is deemed to have
5 predeceased the testator under Section 28-2-702.

6 (7) "Testator" includes the donee of a power of appointment if
7 the power is exercised in the testator's will.

8 (b) Substitute Gift. If a devisee fails to survive the testator and
9 is a grandparent, a descendant of a grandparent, or a stepchild of either the
10 testator or the donor of a power of appointment exercised by the testator's
11 will, the following apply:

12 (1) Except as provided in paragraph (4), if the devise is not in
13 the form of a class gift and the deceased devisee leaves surviving
14 descendants, a substitute gift is created in the devisee's surviving
15 descendants. They take by representation the property to which the devisee
16 would have been entitled had the devisee survived the testator.

17 (2) Except as provided in paragraph (4), if the devise is in the
18 form of a class gift, other than a devise to "issue," "descendants," "heirs
19 of the body," "heirs," "next of kin," "relatives," or "family," or a class
20 described by language of similar import, a substitute gift is created in the
21 surviving descendant's of any deceased devisee. The property to which the
22 devisees would have been entitled had all of them survived the testator
23 passes to the surviving devisees and the surviving descendants of the
24 deceased devisees. Each surviving devisee takes the share to which he or she
25 would have been entitled had the deceased devisees survived the testator.
26 Each deceased devisee's surviving descendants who are substituted for the
27 deceased devisee take by representation the share to which the deceased
28 devisee would have been entitled had the deceased devisee survived the
29 testator. For the purposes of this paragraph, "deceased devisee" means a
30 class member who failed to survive the testator and left one or more
31 surviving descendants.

32 (3) For the purposes of Section 28-2-601, words of survivorship,
33 such as in a devise to an individual "if he survives me," or in a devise to
34 "my surviving children," are not, in the absence of additional evidence, a
35 sufficient indication of an intent contrary to the application of this

1 section.

2 (4) If the will creates an alternative devise with respect to a
3 devise for which a substitute gift is created by paragraph (1) or (2), the
4 substitute gift is superseded by the alternative devise only if an expressly
5 designated devisee of the alternative devise is entitled to take under the
6 will.

7 (5) Unless the language creating a power of appointment expressly
8 excludes the substitution of the descendants of an appointee for the
9 appointee, a surviving descendant of a deceased appointee of a power of
10 appointment can be substituted for the appointee under this section, whether
11 or not the descendant is an object of the power.

12 (c) More Than One Substitute Gift; Which One Takes. If, under
13 subsection (b), substitute gifts are created and not superseded with respect
14 to more than one devise and the devises are alternative devises, one to the
15 other, the determination of which of the substitute gifts takes effect is
16 resolved as follows:

17 (1) Except as provided in paragraph (2), the devised property
18 passes under the primary substitute gift.

19 (2) If there is a younger-generation devise, the devised property
20 passes under the younger-generation substitute gift and not under the primary
21 substitute gift.

22 (3) In this subsection:

23 (i) "Primary devise" means the devise that would have taken
24 effect had all the deceased devisees of the alternative devises who left
25 surviving descendants survived the testator.

26 (ii) "Primary substitute gift" means the substitute gift
27 created with respect to the primary devise.

28 (iii) "Younger-generation devise" means a devise that (A)
29 is to a descendant of a devisee of the primary devise, (B) is an alternative
30 devise with respect to the primary devise, (C) is a devise for which a
31 substitute gift is created, and (D) would have taken effect had all the
32 deceased devisees who left surviving descendants survived the testator except
33 the deceased devisee or devisees of the primary devise.

34 (iv) "Younger-generation substitute gift" means the
35 substitute gift created with respect to the younger-generation devise.

1

2 Section 28-2-604. Failure of Testamentary Provision.

3 (a) Except as provided in Section 28-2-603, a devise, other than a
4 residuary devise, that fails for any reason becomes a part of the residue.

5 (b) Except as provided in Section 28-2-603, if the residue is devised
6 to two or more persons, the share of a residuary devisee that fails for any
7 reason passes to the other residuary devisee, or to other residuary devisees
8 in proportion to the interest of each in the remaining part of the residue.

9

10 Section 28-2-605. Increase in Securities; Accessions.

11 (a) If a testator executes a will that devises securities and the
12 testator then owned securities that meet the description in the will, the
13 devise includes additional securities owned by the testator at death to the
14 extent the additional securities were acquired by the testator after the will
15 was executed as a result of the testator's ownership of the described
16 securities and are securities of any of the following types:

17 (1) securities of the same organization acquired by reason of
18 action initiated by the organization or any successor, related, or acquiring
19 organization, excluding any acquired by exercise of purchase options;

20 (2) securities of another organization acquired as a result of a
21 merger, consolidation, reorganization, or other distribution by the
22 organization or any successor, related, or acquiring organization; or

23 (3) securities of the same organization acquired as a result of a
24 plan of reinvestment.

25 (b) Distributions in cash before death with respect to a described
26 security are not part of the devise.

27

28 Section 28-2-606. Nonademption of Specific Devises; Unpaid Proceeds of
29 Sale, Condemnation, or Insurance; Sale by Conservator or Agent.

30 (a) A specific devisee has a right to the specifically devised property
31 in the testator's estate at death and:

32 (1) any balance of the purchase price, together with any security
33 agreement, owing from a purchaser to the testator at death by reason of sale
34 of the property;

35 (2) any amount of a condemnation award for the taking of the

1 property unpaid at death;

2 (3) any proceeds unpaid at death on fire or casualty insurance on
3 or other recovery for injury to the property;

4 (4) property owned by the testator at death and acquired as a
5 result of foreclosure, or obtained in lieu of foreclosure, of the security
6 interest for a specifically devised obligation;

7 (5) real or tangible personal property owned by the testator at
8 death which the testator acquired as a replacement for specifically devised
9 real or tangible personal property; and

10 (6) unless the facts and circumstances indicate that ademption of
11 the devise was intended by the testator or ademption of the devise is
12 consistent with the testator's manifested plan of distribution, the value of
13 the specifically devised property to the extent the specifically devised
14 property is not in the testator's estate at death and its value or its
15 replacement is not covered by paragraphs (1) through (5).

16 (b) If specifically devised property is sold or mortgaged by a
17 conservator or by an agent acting within the authority of a durable power of
18 attorney for an incapacitated principal, or if a condemnation award,
19 insurance proceeds, or recovery for injury to the property are paid to a
20 conservator or to an agent acting within the authority of a durable power of
21 attorney for an incapacitated principal, the specific devisee has the right
22 to a general pecuniary devise equal to the net sale price, the amount of the
23 unpaid loan, the condemnation award, the insurance proceeds, or the recovery.

24 (c) The right of a specific devisee under subsection (b) is reduced by
25 any right the devisee has under subsection (a).

26 (d) For the purposes of the references in subsection (b) to a
27 conservator, subsection (b) does not apply if after the sale, mortgage,
28 condemnation, casualty, or recovery, it was adjudicated that the testator's
29 incapacity ceased and the testator survived the adjudication by one year.

30 (e) For the purposes of the references in subsection (b) to an agent
31 acting within the authority of a durable power of attorney for an
32 incapacitated principal, (i) "incapacitated principal" means a principal who
33 is an incapacitated person, (ii) no adjudication of incapacity before death
34 is necessary, and (iii) the acts of an agent within the authority of a
35 durable power of attorney are presumed to be for an incapacitated principal.

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Section 28-2-607. Nonexoneration.

A specific devise passes subject to any mortgage interest existing at the date of death, without right of exoneration, regardless of a general directive in the will to pay debts.

Section 28-2-608. Exercise of Power of Appointment.

In the absence of a requirement that a power of appointment be exercised by a reference, or by an express or specific reference, to the power, a general residuary clause in a will, or a will making general disposition of all of the testator's property, expresses an intention to exercise a power of appointment held by the testator only if (i) the power is a general power and the creating instrument does not contain a gift if the power is not exercised or (ii) the testator's will manifests an intention to include the property subject to the power.

Section 28-2-609. Ademption by Satisfaction.

(a) Property a testator gave in his or her lifetime to a person is treated as a satisfaction of a devise in whole or in part, only if (i) the will provides for deduction of the gift, (ii) the testator declared in a contemporaneous writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise, or (iii) the devisee acknowledged in writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise.

(b) For purposes of partial satisfaction, property given during lifetime is valued as of the time the devisee came into possession or enjoyment of the property or at the testator's death, whichever occurs first.

(c) If the devisee fails to survive the testator, the gift is treated as a full or partial satisfaction of the devise, as appropriate, in applying Sections 28-2-603 and 28-2-604, unless the testator's contemporaneous writing provides otherwise.

PART 7

RULES OF CONSTRUCTION APPLICABLE TO WILLS AND OTHER GOVERNING INSTRUMENTS

Section 28-2-701. Scope.

In the absence of a finding of a contrary intention, the rules of

1 construction in this Part control the construction of a governing instrument.
2 The rules of construction in this Part apply to a governing instrument of
3 any type, except as the application of a particular section is limited by its
4 terms to a specific type or types of provision or governing instrument.

5

6 Section 28-2-702. Requirement of Survival by 120 Hours.

7 (a) Requirement of Survival by 120 Hours Under Probate Code. For the
8 purposes of this Code, except as provided in subsection (d), an individual
9 who is not established by clear and convincing evidence to have survived an
10 event, including the death of another individual, by 120 hours is deemed to
11 have predeceased the event.

12 (b) Requirement of Survival by 120 Hours under Governing Instrument.
13 Except as provided in subsection (d), for purposes of a provision of a
14 governing instrument that relates to an individual surviving an event,
15 including the death of another individual, an individual who is not
16 established by clear and convincing evidence to have survived the event by
17 120 hours is deemed to have predeceased the event.

18 (c) Co-owners With Right of Survivorship; Requirement of Survival by
19 120 Hours. Except as provided in subsection (d), if (i) it is not
20 established by clear and convincing evidence that one of two co-owners with
21 right of survivorship survived the other co-owner by 120 hours, one-half of
22 the property passes as if one had survived by 120 hours and one-half as if
23 the other had survived by 120 hours and (ii) there are more than two
24 co-owners and it is not established by clear and convincing evidence that at
25 least one of them survived the others by 120 hours, the property passes in
26 the proportion that one bears to the whole number of co-owners. For the
27 purposes of this subsection, "co-owners with right of survivorship" includes
28 joint tenants, tenants by the entireties, and other co-owners of property or
29 accounts held under circumstances that entitles one or more to the whole of
30 the property or account on the death of the other or others.

31 (d) Exceptions. Survival by 120 hours is not required if:

32 (1) the governing instrument contains language dealing explicitly
33 with simultaneous deaths or deaths in a common disaster and that language is
34 operable under the facts of the case;

35 (2) the governing instrument expressly indicates that an

1 individual is not required to survive an event, including the death of
2 another individual, by any specified period or expressly requires the
3 individual to survive the event by a specified period; but survival of the
4 event or the specified period must be established by clear and convincing
5 evidence;

6 (3) the imposition of a 120-hour requirement of survival would
7 cause a nonvested property interest or a power of appointment to fail to
8 qualify for validity under Section 28-2-901(a)(1), (b)(1), or (c)(1) or to
9 become invalid under Section 28-2-901(a)(2), (b)(2), or (c)(2); but survival
10 must be established by clear and convincing evidence; or

11 (4) the application of a 120-hour requirement of survival to
12 multiple governing instruments would result in an unintended failure or
13 duplication of a disposition; but survival must be established by clear and
14 convincing evidence.

15 (e) Protection of Payors and Other Third Parties.

16 (1) A payor or other third party is not liable for having made a
17 payment or transferred an item of property or any other benefit to a
18 beneficiary designated in a governing instrument who, under this section, is
19 not entitled to the payment or item of property, or for having taken any
20 other action in good faith reliance on the beneficiary's apparent entitlement
21 under the terms of the governing instrument, before the payor or other third
22 party received written notice of a claimed lack of entitlement under this
23 section. A payor or other third party is liable for a payment made or other
24 action taken after the payor or other third party received written notice of
25 a claimed lack of entitlement under this section.

26 (2) Written notice of a claimed lack of entitlement under
27 paragraph (1) must be mailed to the payor's or other third party's main
28 office or home by registered or certified mail, return receipt requested, or
29 served upon the payor or other third party in the same manner as a summons in
30 a civil action. Upon receipt of written notice of a claimed lack of
31 entitlement under this section, a payor or other third party may pay any
32 amount owed or transfer or deposit any item of property held by it to or with
33 the court having jurisdiction of the probate proceedings relating to the
34 decedent's estate, or if no proceedings have been commenced, to or with the
35 court having jurisdiction of probate proceedings relating to decedents'

1 estates located in the county of the decedent's residence. The court shall
2 hold the funds or item of property and, upon its determination under this
3 section, shall order disbursement in accordance with the determination.
4 Payments, transfers, or deposits made to or with the court discharge the
5 payor or other third party from all claims for the value of amounts paid to
6 or items of property transferred to or deposited with the court.

7 (f) Protection of Bona Fide Purchasers; Personal Liability of
8 Recipient.

9 (1) A person who purchases property for value and without notice,
10 or who receives a payment or other item of property in partial or full
11 satisfaction of a legally enforceable obligation, is neither obligated under
12 this section to return the payment, item of property, or benefit nor is
13 liable under this section for the amount of the payment or the value of the
14 item of property or benefit. But a person who, not for value, receives a
15 payment, item of property, or any other benefit to which the person is not
16 entitled under this section is obligated to return the payment, item of
17 property, or benefit, or is personally liable for the amount of the payment
18 or the value of the item of property or benefit, to the person who is
19 entitled to it under this section.

20 (2) If this section or any part of this section is preempted by
21 federal law with respect to a payment, an item of property, or any other
22 benefit covered by this section, a person who, not for value, receives the
23 payment, item of property, or any other benefit to which the person is not
24 entitled under this section is obligated to return the payment, item of
25 property, or benefit, or is personally liable for the amount of the payment
26 or the value of the item of property or benefit, to the person who would have
27 been entitled to it were this section or part of this section not preempted.

28

29 Section 28-2-703. Choice of Law as to Meaning and Effect of Governing
30 Instrument.

31 The meaning and legal effect of a governing instrument is determined by
32 the local law of the state selected in the governing instrument, unless the
33 application of that law is contrary to the provisions relating to the
34 elective share described in Part 2, the provisions relating to exempt
35 property and allowances described in Part 4, or any other public policy of

1 this State otherwise applicable to the disposition.

2

3 Section 28-2-704. Power of Appointment; Meaning of Specific Reference
4 Requirement.

5 If a governing instrument creating a power of appointment expressly
6 requires that the power be exercised by a reference, an express reference, or
7 a specific reference, to the power or its source, it is presumed that the
8 donor's intention, in requiring that the donee exercise the power by making
9 reference to the particular power or to the creating instrument, was to
10 prevent an inadvertent exercise of the power.

11

12 Section 28-2-705. Class Gifts Construed to Accord With Intestate
13 Succession.

14 (a) Adopted individuals and individuals born out of wedlock, and their
15 respective descendants if appropriate to the class, are included in class
16 gifts and other terms of relationship in accordance with the rules for
17 intestate succession. Terms of relationship that do not differentiate
18 relationships by blood from those by affinity, such as "uncles," "aunts,"
19 "nieces," or "nephews", are construed to exclude relatives by affinity.
20 Terms of relationship that do not differentiate relationships by the half
21 blood from those by the whole blood, such as "brothers," "sisters," "nieces,"
22 or "nephews", are construed to include both types of relationships.

23 (b) In addition to the requirements of subsection (a), in construing a
24 dispositive provision of a transferor who is not the natural parent, an
25 individual born to the natural parent is not considered the child of that
26 parent unless the individual lived while a minor as a regular member of the
27 household of that natural parent or of that parent's parent, brother, sister,
28 spouse, or surviving spouse.

29 (c) In addition to the requirements of subsection (a), in construing a
30 dispositive provision of a transferor who is not the adopting parent, an
31 adopted individual is not considered the child of the adopting parent unless
32 the adopted individual lived while a minor, either before or after the
33 adoption, as a regular member of the household of the adopting parent.

34

35 Section 28-2-706. Life Insurance; Retirement Plan; Account With POD

1 Designation; Transfer-on-Death Registration; Deceased Beneficiary.

2 (a) Definitions. In this section:

3 (1) "Alternative beneficiary designation" means a beneficiary
4 designation that is expressly created by the governing instrument and, under
5 the terms of the governing instrument, can take effect instead of another
6 beneficiary designation on the happening of one or more events, including
7 survival of the decedent or failure to survive the decedent, whether an event
8 is expressed in condition-precedent, condition-subsequent, or any other form.

9 (2) "Beneficiary" means the beneficiary of a beneficiary
10 designation under which the beneficiary must survive the decedent and
11 includes (i) a class member if the beneficiary designation is in the form of
12 a class gift and (ii) an individual or class member who was deceased at the
13 time the beneficiary designation was executed as well as an individual or
14 class member who was then living but who failed to survive the decedent, but
15 excludes a joint tenant of a joint tenancy with the right of survivorship and
16 a party to a joint and survivorship account.

17 (3) "Beneficiary designation" includes an alternative beneficiary
18 designation and a beneficiary designation in the form of a class gift.

19 (4) "Class member" includes an individual who fails to survive
20 the decedent but who would have taken under a beneficiary designation in the
21 form of a class gift had he or she survived the decedent.

22 (5) "Stepchild" means a child of the decedent's surviving,
23 deceased, or former spouse, and not of the decedent.

24 (6) "Surviving beneficiary" or "surviving descendant" means a
25 beneficiary or a descendant who neither predeceased the decedent nor is
26 deemed to have predeceased the decedent under Section 28-2-702.

27 (b) Substitute Gift. If a beneficiary fails to survive the decedent
28 and is a grandparent, a descendant of a grandparent, or a stepchild of the
29 decedent, the following apply:

30 (1) Except as provided in paragraph (4), if the beneficiary
31 designation is not in the form of a class gift and the deceased beneficiary
32 leaves surviving descendants, a substitute gift is created in the
33 beneficiary's surviving descendants. They take by representation the
34 property to which the beneficiary would have been entitled had the
35 beneficiary survived the decedent.

1 (2) Except as provided in paragraph (4), if the beneficiary
2 designation is in the form of a class gift, other than a beneficiary
3 designation to "issue," "descendants," "heirs of the body," "heirs," "next of
4 kin," "relatives," or "family," or a class described by language of similar
5 import, a substitute gift is created in the surviving descendants of any
6 deceased beneficiary. The property to which the beneficiaries would have
7 been entitled had all of them survived the decedent passes to the surviving
8 beneficiaries and the surviving descendants of the deceased beneficiaries.
9 Each surviving beneficiary takes the share to which he or she would have been
10 entitled had the deceased beneficiaries survived the decedent. Each deceased
11 beneficiary's surviving descendants who are substituted for the deceased
12 beneficiary take by representation the share to which the deceased
13 beneficiary would have been entitled had the deceased beneficiary survived
14 the decedent. For the purposes of this paragraph, "deceased beneficiary"
15 means a class member who failed to survive the decedent and left one or more
16 surviving descendants.

17 (3) For the purposes of Section 28-2-701, words of survivorship,
18 such as in a beneficiary designation to an individual "if he survives me," or
19 in a beneficiary designation to "my surviving children," are not, in the
20 absence of additional evidence, a sufficient indication of an intent contrary
21 to the application of this section.

22 (4) If a governing instrument creates an alternative beneficiary
23 designation with respect to a beneficiary designation for which a substitute
24 gift is created by paragraph (1) or (2), the substitute gift is superseded by
25 the alternative beneficiary designation only if an expressly designated
26 beneficiary of the alternative beneficiary designation is entitled to take.

27 (c) More Than One Substitute Gift; Which One Takes. If, under
28 subsection (b), substitute gifts are created and not superseded with respect
29 to more than one beneficiary designation and the beneficiary designations are
30 alternative beneficiary designations, one to the other, the determination of
31 which of the substitute gifts takes effect is resolved as follows:

32 (1) Except as provided in paragraph (2), the property passes
33 under the primary substitute gift.

34 (2) If there is a younger-generation beneficiary designation, the
35 property passes under the younger-generation substitute gift and not under

1 the primary substitute gift.

2 (3) In this subsection:

3 (i) "Primary beneficiary designation" means the beneficiary
4 designation that would have taken effect had all the deceased beneficiaries
5 of the alternative beneficiary designations who left surviving descendants
6 survived the decedent.

7 (ii) "Primary substitute gift" means the substitute gift
8 created with respect to the primary beneficiary designation.

9 (iii) "Younger-generation beneficiary designation" means a
10 beneficiary designation that (A) is to a descendant of a beneficiary of the
11 primary beneficiary designation, (B) is an alternative beneficiary
12 designation with respect to the primary beneficiary designation, (C) is a
13 beneficiary designation for which a substitute gift is created, and (D) would
14 have taken effect had all the deceased beneficiaries who left surviving
15 descendants survived the decedent except the deceased beneficiary or
16 beneficiaries of the primary beneficiary designation.

17 (iv) "Younger-generation substitute gift" means the
18 substitute gift created with respect to the younger-generation beneficiary
19 designation.

20 (d) Protection of Payors.

21 (1) A payor is protected from liability in making payments under
22 the terms of the beneficiary designation until the payor has received written
23 notice of a claim to a substitute gift under this section. Payment made
24 before the receipt of written notice of a claim to a substitute gift under
25 this section discharges the payor, but not the recipient, from all claims for
26 the amounts paid. A payor is liable for a payment made after the payor has
27 received written notice of the claim. A recipient is liable for a payment
28 received, whether or not written notice of the claim is given.

29 (2) The written notice of the claim must be mailed to the payor's
30 main office or home by registered or certified mail, return receipt
31 requested, or served upon the payor in the same manner as a summons in a
32 civil action. Upon receipt of written notice of the claim, a payor may pay
33 any amount owed by it to the court having jurisdiction of the probate
34 proceedings relating to the decedent's estate or, if no proceedings have been
35 commenced, to the court having jurisdiction of probate proceedings relating

1 to decedents' estates located in the county of the decedent's residence. The
2 court shall hold the funds and, upon its determination under this section,
3 shall order disbursement in accordance with the determination. Payment made
4 to the court discharges the payor from all claims for the amounts paid.

5 (e) Protection of Bona Fide Purchasers; Personal Liability of
6 Recipient.

7 (1) A person who purchases property for value and without notice,
8 or who receives a payment or other item of property in partial or full
9 satisfaction of a legally enforceable obligation, is neither obligated under
10 this section to return the payment, item of property, or benefit nor is
11 liable under this section for the amount of the payment or the value of the
12 item of property or benefit. But a person who, not for value, receives a
13 payment, item of property, or any other benefit to which the person is not
14 entitled under this section is obligated to return the payment, item of
15 property, or benefit, or is personally liable for the amount of the payment
16 or the value of the item of property or benefit, to the person who is
17 entitled to it under this section.

18 (2) If this section or any part of this section is preempted by
19 federal law with respect to a payment, an item of property, or any other
20 benefit covered by this section, a person who, not for value, receives the
21 payment, item of property, or any other benefit to which the person is not
22 entitled under this section is obligated to return the payment, item of
23 property, or benefit, or is personally liable for the amount of the payment
24 or the value of the item of property or benefit, to the person who would have
25 been entitled to it were this section or part of this section not preempted.

26
27 Section 28-2-707. Survivorship with Respect to Future Interests under
28 Terms of Trust; Substitute Takers.

29 (a) Definitions. In this section:

30 (1) "Alternative future interest" means an expressly created
31 future interest that can take effect in possession or enjoyment instead of
32 another future interest on the happening of one or more events, including
33 survival of an event or failure to survive an event, whether an event is
34 expressed in condition-precedent, condition-subsequent, or any other form. A
35 residuary clause in a will does not create an alternative future interest

1 with respect to a future interest created in a nonresiduary devise in the
2 will, whether or not the will specifically provides that lapsed or failed
3 devises are to pass under the residuary clause.

4 (2) "Beneficiary" means the beneficiary of a future interest and
5 includes a class member if the future interest is in the form of a class
6 gift.

7 (3) "Class member" includes an individual who fails to survive
8 the distribution date but who would have taken under a future interest in the
9 form of a class gift had he or she survived the distribution date.

10 (4) "Distribution date," with respect to a future interest, means
11 the time when the future interest is to take effect in possession or
12 enjoyment. The distribution date need not occur at the beginning or end of a
13 calendar day, but can occur at a time during the course of a day.

14 (5) "Future interest" includes an alternative future interest and
15 a future interest in the form of a class gift.

16 (6) "Future interest under the terms of a trust" means a future
17 interest that was created by a transfer creating a trust or to an existing
18 trust or by an exercise of a power of appointment to an existing trust,
19 directing the continuance of an existing trust, designating a beneficiary of
20 an existing trust, or creating a trust.

21 (7) "Surviving beneficiary" or "surviving descendant" means a
22 beneficiary or a descendant who neither predeceased the distribution date nor
23 is deemed to have predeceased the distribution date under Section 28-2-702.

24 (b) Survivorship Required; Substitute Gift. A future interest under
25 the terms of a trust is contingent on the beneficiary's surviving the
26 distribution date. If a beneficiary of a future interest under the terms of
27 a trust fails to survive the distribution date, the following apply:

28 (1) Except as provided in paragraph (4), if the future interest
29 is not in the form of a class gift and the deceased beneficiary leaves
30 surviving descendants, a substitute gift is created in the beneficiary's
31 surviving descendants. They take by representation the property to which the
32 beneficiary would have been entitled had the beneficiary survived the
33 distribution date.

34 (2) Except as provided in paragraph (4), if the future interest
35 is in the form of a class gift, other than a future interest to "issue,"

1 "descendants," "heirs of the body," "heirs," "next of kin," "relatives," or
2 "family," or a class described by language of similar import, a substitute
3 gift is created in the surviving descendants of any deceased beneficiary.
4 The property to which the beneficiaries would have been entitled had all of
5 them survived the distribution date passes to the surviving beneficiaries and
6 the surviving descendants of the deceased beneficiaries. Each surviving
7 beneficiary takes the share to which he or she would have been entitled had
8 the deceased beneficiaries survived the distribution date. Each deceased
9 beneficiary's surviving descendants who are substituted for the deceased
10 beneficiary take by representation the share to which the deceased
11 beneficiary would have been entitled had the deceased beneficiary survived
12 the distribution date. For the purposes of this paragraph, "deceased
13 beneficiary" means a class member who failed to survive the distribution date
14 and left one or more surviving descendants.

15 (3) For the purposes of Section 28-2-701, words of survivorship
16 attached to a future interest are not, in the absence of additional evidence,
17 a sufficient indication of an intent contrary to the application of this
18 section. Words of survivorship include words of survivorship that relate to
19 the distribution date or to an earlier or an unspecified time, whether those
20 words of survivorship are expressed in condition-precedent,
21 condition-subsequent, or any other form.

22 (4) If a governing instrument creates an alternative future
23 interest with respect to a future interest for which a substitute gift is
24 created by paragraph (1) or (2), the substitute gift is superseded by the
25 alternative future interest only if an expressly designated beneficiary of
26 the alternative future interest is entitled to take in possession or
27 enjoyment.

28 (c) More Than One Substitute Gift; Which One Takes. If, under
29 subsection (b), substitute gifts are created and not superseded with respect
30 to more than one future interest and the future interests are alternative
31 future interests, one to the other, the determination of which of the
32 substitute gifts takes effect is resolved as follows:

33 (1) Except as provided in paragraph (2), the property passes
34 under the primary substitute gift.

35 (2) If there is a younger-generation future interest, the

1 property passes under the younger-generation substitute gift and not under
2 the primary substitute gift.

3 (3) In this subsection:

4 (i) "Primary future interest" means the future interest
5 that would have taken effect had all the deceased beneficiaries of the
6 alternative future interests who left surviving descendants survived the
7 distribution date.

8 (ii) "Primary substitute gift" means the substitute gift
9 created with respect to the primary future interest.

10 (iii) "Younger-generation future interest" means a future
11 interest that (A) is to a descendant of a beneficiary of the primary future
12 interest, (B) is an alternative future interest with respect to the primary
13 future interest, (C) is a future interest for which a substitute gift is
14 created, and (D) would have taken effect had all the deceased beneficiaries
15 who left surviving descendants survived the distribution date except the
16 deceased beneficiary or beneficiaries of the primary future interest.

17 (iv) "Younger-generation substitute gift" means the
18 substitute gift created with respect to the younger-generation future
19 interest.

20 (d) If No Other Takers, Property Passes Under Residuary Clause or to
21 Transferor's Heirs. Except as provided in subsection (e), if, after the
22 application of subsections (b) and (c), there is no surviving taker, the
23 property passes in the following order:

24 (1) if the trust was created in a nonresiduary devise in the
25 transferor's will or in a codicil to the transferor's will, the property
26 passes under the residuary clause in the transferor's will; for purposes of
27 this section, the residuary clause is treated as creating a future interest
28 under the terms of a trust.

29 (2) if no taker is produced by the application of paragraph (1),
30 the property passes to the transferor's heirs under Section 28-2-711.

31 (e) If No Other Takers and If Future Interest Created by Exercise of
32 Power of Appointment. If, after the application of subsections (b) and (c),
33 there is no surviving taker and if the future interest was created by the
34 exercise of a power of appointment:

35 (1) the property passes under the donor's gift-in-default clause,

1 if any, which clause is treated as creating a future interest under the terms
2 of a trust; and

3 (2) if no taker is produced by the application of paragraph (1),
4 the property passes as provided in subsection (d). For purposes of
5 subsection (d), "transferor" means the donor if the power was a nongeneral
6 power and means the donee if the power was a general power.

7
8 Section 28-2-708. Class Gifts to "Descendants," "Issue," or "Heirs of
9 the Body"; Form of Distribution if None Specified.

10 If a class gift in favor of "descendants," "issue," or "heirs of the
11 body" does not specify the manner in which the property is to be distributed
12 among the class members, the property is distributed among the class members
13 who are living when the interest is to take effect in possession or
14 enjoyment, in such shares as they would receive, under the applicable law of
15 intestate succession, if the designated ancestor had then died intestate
16 owning the subject matter of the class gift.

17
18 Section 28-2-709. Representation; Per Capita at Each Generation; Per
19 Stirpes.

20 (a) Definitions. In this section:

21 (1) "Deceased child" or "deceased descendant" means a child or a
22 descendant who either predeceased the distribution date or is deemed to have
23 predeceased the distribution date under Section 28-2-702.

24 (2) "Distribution date," with respect to an interest, means the
25 time when the interest is to take effect in possession or enjoyment. The
26 distribution date need not occur at the beginning or end of a calendar day,
27 but can occur at a time during the course of a day.

28 (3) "Surviving ancestor," "surviving child," or "surviving
29 descendant" means an ancestor, a child, or a descendant who neither
30 predeceased the distribution date nor is deemed to have predeceased the
31 distribution date under Section 28-2-702.

32 (b) Representation; Per Capita at Each Generation. If an applicable
33 statute or a governing instrument calls for property to be distributed "by
34 representation" or "per capita at each generation," the property is divided
35 into as many equal shares as there are (i) surviving descendants in the

1 generation nearest to the designated ancestor which contains one or more
2 surviving descendants (ii) and deceased descendants in the same generation
3 who left surviving descendants, if any. Each surviving descendant in the
4 nearest generation is allocated one share. The remaining shares, if any, are
5 combined and then divided in the same manner among the surviving descendants
6 of the deceased descendants as if the surviving descendants who were
7 allocated a share and their surviving descendants had predeceased the
8 distribution date.

9 (c) Per Stirpes. If a governing instrument calls for property to be
10 distributed "per stirpes," the property is divided into as many equal shares
11 as there are (i) surviving children of the designated ancestor and (ii)
12 deceased children who left surviving descendants. Each surviving child, if
13 any, is allocated one share. The share of each deceased child with surviving
14 descendants is divided in the same manner, with subdivision repeating at each
15 succeeding generation until the property is fully allocated among surviving
16 descendants.

17 (d) Deceased Descendant With No Surviving Descendant Disregarded. For
18 the purposes of subsections (b) and (c), an individual who is deceased and
19 left no surviving descendant is disregarded, and an individual who leaves a
20 surviving ancestor who is a descendant of the designated ancestor is not
21 entitled to a share.

22

23 Section 28-2-710. Worthier-Title Doctrine Abolished.

24 The doctrine of worthier title is abolished as a rule of law and as a
25 rule of construction. Language in a governing instrument describing the
26 beneficiaries of a disposition as the transferor's "heirs," "heirs at law,"
27 "next of kin," "distributees," "relatives," or "family," or language of
28 similar import, does not create or presumptively create a reversionary
29 interest in the transferor.

30

31 Section 28-2-711. Interests in "Heirs" and Like.

32 If an applicable statute or a governing instrument calls for a present
33 or future distribution to or creates a present or future interest in a
34 designated individual's "heirs," "heirs at law," "next of kin," "relatives,"
35 or "family," or language of similar import, the property passes to those

1 persons, including the state, and in such shares as would succeed to the
2 designated individual's intestate estate under the intestate succession law
3 of the designated individual's domicile if the designated individual died
4 when the disposition is to take effect in possession or enjoyment. If the
5 designated individual's surviving spouse is living but is remarried at the
6 time the disposition is to take effect in possession or enjoyment, the
7 surviving spouse is not an heir of the designated individual.

8 **PART 8**

9 **GENERAL PROVISIONS CONCERNING PROBATE AND NONPROBATE TRANSFERS**

10 **Section 28-2-801. Disclaimer of Property Interests.**

11 (a) Right to Disclaim Interest in Property. A person, or the
12 representative of a person, to whom an interest in or with respect to
13 property or an interest therein devolves by whatever means may disclaim it in
14 whole or in part by delivering or filing a written disclaimer under this
15 section. The right to disclaim exists notwithstanding (i) any limitation on
16 the interest of the disclaimant in the nature of a spendthrift provision or
17 similar restriction or (ii) any restriction or limitation on the right to
18 disclaim contained in the governing instrument. For purposes of this
19 subsection, the "representative of a person" includes a personal
20 representative of a decedent, a conservator of a disabled person, a guardian
21 of a minor or incapacitated person, and an agent acting on behalf of the
22 person within the authority of a power of attorney.

23 (b) Time of Disclaimer. The following rules govern the time when a
24 disclaimer must be filed or delivered:

25 (1) If the property or interest has devolved to the disclaimant
26 under a testamentary instrument or by the laws of intestacy, the disclaimer
27 must be filed, if of a present interest, not later than nine months after the
28 death of the deceased owner or deceased donee of a power of appointment and,
29 if of a future interest, not later than nine months after the event
30 determining that the taker of the property or interest is finally ascertained
31 and his or her interest is indefeasibly vested. The disclaimer must be filed
32 in the probate court of the county in which proceedings for the
33 administration of the estate of the deceased owner or deceased donee of the
34 power have been commenced. A copy of the disclaimer must be delivered in
35 person or mailed by registered or certified mail, return receipt requested,

1 to any personal representative or other fiduciary of the decedent or donee of
2 the power.

3 (2) If a property or interest has devolved to the disclaimant
4 under a nontestamentary instrument or contract, the disclaimer must be
5 delivered or filed, if of a present interest, not later than nine months
6 after the effective date of the nontestamentary instrument or contract and,
7 if of a future interest, not later than nine months after the event
8 determining that the taker of the property or interest is finally ascertained
9 and his or her interest is indefeasibly vested. If the person entitled to
10 disclaim does not know of the existence of the interest, the disclaimer must
11 be delivered or filed not later than nine months after the person learns of
12 the existence of the interest. The effective date of a revocable instrument
13 or contract is the date on which the maker no longer has power to revoke it
14 or to transfer to himself or herself or another the entire legal and
15 equitable ownership of the interest. The disclaimer or a copy thereof must
16 be delivered in person or mailed by registered or certified mail, return
17 receipt requested, to the person who has legal title to or possession of the
18 interest disclaimed.

19 (3) A surviving joint tenant or tenant by the entireties may
20 disclaim as a separate interest any property or interest therein devolving to
21 him or her by right of survivorship. A surviving joint tenant or tenant by
22 the entireties may disclaim the entire interest in any property or interest
23 therein that is the subject of a joint tenancy or tenancy by the entireties
24 devolving to him or her, if the joint tenancy or tenancy by the entireties
25 was created by act of a deceased joint tenant or tenant by the entireties,
26 the survivor did not join in creating the joint tenancy or tenancy by the
27 entireties, and has not accepted a benefit under it.

28 (4) If real property or an interest therein is disclaimed, a copy
29 of the disclaimer may be recorded in the office of the circuit clerk of the
30 county in which the property or interest disclaimed is located.

31 (c) Form of Disclaimer. The disclaimer must (i) describe the property
32 or interest disclaimed, (ii) declare the disclaimer and extent thereof, and
33 (iii) be signed by the disclaimant.

34 (d) Effect of Disclaimer. The effects of a disclaimer are:

35 (1) If property or an interest therein devolves to a disclaimant

1 under a testamentary instrument, under a power of appointment exercised by a
2 testamentary instrument, or under the laws of intestacy, and the decedent has
3 not provided for another disposition of that interest, should it be
4 disclaimed, or of disclaimed, or failed interests in general, the disclaimed
5 interest devolves as if the disclaimant had predeceased the decedent, but if
6 by law or under the testamentary instrument the descendants of the
7 disclaimant would share in the disclaimed interest by representation or
8 otherwise were the disclaimant to predecease the decedent, then the
9 disclaimed interest passes by representation, or passes as directed by the
10 governing instrument, to the descendants of the disclaimant who survive the
11 decedent. A future interest that takes effect in possession or enjoyment
12 after the termination of the estate or interest disclaimed takes effect as if
13 the disclaimant had predeceased the decedent. A disclaimer relates back for
14 all purposes to the date of death of the decedent.

15 (2) If property or an interest therein devolves to a disclaimant
16 under a nontestamentary instrument or contract and the instrument or contract
17 does not provide for another disposition of that interest, should it be
18 disclaimed, or of disclaimed or failed interests in general, the disclaimed
19 interest devolves as if the disclaimant has predeceased the effective date of
20 the instrument or contract, but if by law or under the nontestamentary
21 instrument or contract the descendants of the disclaimant would share in the
22 disclaimed interest by representation or otherwise were the disclaimant to
23 predecease the effective date of the instrument, then the disclaimed interest
24 passes by representation, or passes as directed by the governing instrument,
25 to the descendants of the disclaimant who survive the effective date of the
26 instrument. A disclaimer relates back for all purposes to that date. A
27 future interest that takes effect in possession or enjoyment at or after the
28 termination of the disclaimed interest takes effect as if the disclaimant had
29 died before the effective date of the instrument or contract that transferred
30 the disclaimed interest.

31 (3) The disclaimer or the written waiver of the right to disclaim
32 is binding upon the disclaimant or person waiving and all persons claiming
33 through or under either of them.

34 (e) Waiver and Bar. The right to disclaim property or an interest
35 therein is barred by (i) an assignment, conveyance, encumbrance, pledge, or

1 transfer of the property or interest, or a contract therefor, (ii) a written
2 waiver of the right to disclaim, (iii) an acceptance of the property or
3 interest or a benefit under it or (iv) a sale of the property or interest
4 under judicial sale made before the disclaimer is made.

5 (f) Remedy Not Exclusive. This section does not abridge the right of
6 a person to waive, release, disclaim, or renounce property or an interest
7 therein under any other statute.

8 (g) Application. An interest in property that exists on the effective
9 date of this section as to which, if a present interest, the time for filing
10 a disclaimer under this section has not expired or, if a future interest, the
11 interest has not become indefeasibly vested or the taker finally ascertained,
12 may be disclaimed within nine months after the effective date of this
13 section.

14

15 Section 28-2-802. Effect of Divorce, Annulment, and Decree of
16 Separation.

17 (a) An individual who is divorced from the decedent or whose marriage
18 to the decedent has been annulled is not a surviving spouse unless, by virtue
19 of a subsequent marriage, he or she is married to the decedent at the time of
20 death. A decree of separation that does not terminate the status of husband
21 and wife is not a divorce for purposes of this section.

22 (b) For purposes of Parts 1, 2, 3, and 4 of this Article, and of
23 Section 28-3-203, a surviving spouse does not include:

24 (1) an individual who obtains or consents to a final decree or
25 judgment of divorce from the decedent or an annulment of their marriage,
26 which decree or judgment is not recognized as valid in this State, unless
27 subsequently they participate in a marriage ceremony purporting to marry each
28 to the other or live together as husband and wife;

29 (2) an individual who, following an invalid decree or judgment of
30 divorce or annulment obtained by the decedent, participates in a marriage
31 ceremony with a third individual; or

32 (3) an individual who was a party to a valid proceeding concluded
33 by an order purporting to terminate all marital property rights.

34

35 Section 28-2-803. Effect of Homicide on Intestate Succession, Wills,

1 Trusts, Joint Assets, Life Insurance, and Beneficiary Designations.

2 (a) Definitions. In this section:

3 (1) "Disposition or appointment of property" includes a transfer
4 of an item of property or any other benefit to a beneficiary designated in a
5 governing instrument.

6 (2) "Governing instrument" means a governing instrument executed
7 by the decedent.

8 (3) "Revocable," with respect to a disposition, appointment,
9 provision, or nomination, means one under which the decedent, at the time of
10 or immediately before death, was alone empowered, by law or under the
11 governing instrument, to cancel the designation, in favor of the killer,
12 whether or not the decedent was then empowered to designate himself or
13 herself in place of his or her killer and whether or not the decedent then
14 had capacity to exercise the power.

15 (b) Forfeiture of Statutory Benefits. An individual who feloniously
16 and intentionally kills the decedent forfeits all benefits under this Article
17 with respect to the decedent's estate, including an intestate share, an
18 elective share, an omitted spouse's or child's share, a homestead allowance,
19 exempt property, and a family allowance. If the decedent died intestate, the
20 decedent's intestate estate passes as if the killer disclaimed his or her
21 intestate share.

22 (c) Revocation of Benefits Under Governing Instruments. The felonious
23 and intentional killing of the decedent:

24 (1) revokes any revocable (i) disposition or appointment of
25 property made by the decedent to the killer in a governing instrument, (ii)
26 provision in a governing instrument conferring a general or nongeneral power
27 of appointment on the killer, and (iii) nomination of the killer in a
28 governing instrument, nominating or appointing the killer to serve in any
29 fiduciary or representative capacity, including a personal representative,
30 executor, trustee, or agent; and

31 (2) severs the interests of the decedent and killer in property
32 held by them at the time of the killing as joint tenants with the right of
33 survivorship, transforming the interests of the decedent and killer into
34 tenancies in common.

35 (d) Effect of Severance. A severance under subsection (c)(2) does not

1 affect any third-party interest in property acquired for value and in good
2 faith reliance on an apparent title by survivorship in the killer unless a
3 writing declaring the severance has been noted, registered, filed, or
4 recorded in records appropriate to the kind and location of the property
5 which are relied upon, in the ordinary course of transactions involving such
6 property, as evidence of ownership.

7 (e) Effect of Revocation. Provisions of a governing instrument are
8 given effect as if the killer disclaimed all provisions revoked by this
9 section or, in the case of a revoked nomination in a fiduciary or
10 representative capacity, as if the killer predeceased the decedent.

11 (f) Wrongful Acquisition of Property. A wrongful acquisition of
12 property or interest by a killer not covered by this section must be treated
13 in accordance with the principle that a killer cannot profit from his or her
14 wrong.

15 (g) Felonious and Intentional Killing; How Determined. After all
16 right to appeal has been exhausted, a judgment of conviction establishing
17 criminal accountability for the felonious and intentional killing of the
18 decedent conclusively establishes the convicted individual as the decedent's
19 killer for purposes of this section. In the absence of a conviction, the
20 court, upon the petition of an interested person, must determine whether,
21 under the preponderance of evidence standard, the individual would be found
22 criminally accountable for the felonious and intentional killing of the
23 decedent. If the court determines that, under that standard, the individual
24 would be found criminally accountable for the felonious and intentional
25 killing of the decedent, the determination conclusively establishes that
26 individual as the decedent's killer for purposes of this section.

27 (h) Protection of Payors and Other Third Parties.

28 (1) A payor or other third party is not liable for having made a
29 payment or transferred an item of property or any other benefit to a
30 beneficiary designated in a governing instrument affected by an intentional
31 and felonious killing, or for having taken any other action in good faith
32 reliance on the validity of the governing instrument, upon request and
33 satisfactory proof of the decedent's death, before the payor or other third
34 party received written notice of a claimed forfeiture or revocation under
35 this section. A payor or other third party is liable for a payment made or

1 other action taken after the payor or other third party received written
2 notice of a claimed forfeiture or revocation under this section.

3 (2) Written notice of a claimed forfeiture or revocation under
4 paragraph (1) must be mailed to the payor's or other third party's main
5 office or home by registered or certified mail, return receipt requested, or
6 served upon the payor or other third party in the same manner as a summons in
7 a civil action. Upon receipt of written notice of a claimed forfeiture or
8 revocation under this section, a payor or other third party may pay any
9 amount owed or transfer or deposit any item of property held by it to or with
10 the court having jurisdiction of the probate proceedings relating to the
11 decedent's estate, or if no proceedings have been commenced, to or with the
12 court having jurisdiction of probate proceedings relating to decedents'
13 estates located in the county of the decedent's residence. The court shall
14 hold the funds or item of property and, upon its determination under this
15 section, shall order disbursement in accordance with the determination.
16 Payments, transfers, or deposits made to or with the court discharge the
17 payor or other third party from all claims for the value of amounts paid to
18 or items of property transferred to or deposited with the court.

19 (i) Protection of Bona Fide Purchasers; Personal Liability of
20 Recipient.

21 (1) A person who purchases property for value and without notice,
22 or who receives a payment or other item of property in partial or full
23 satisfaction of a legally enforceable obligation, is neither obligated under
24 this section to return the payment, item of property, or benefit nor is
25 liable under this section for the amount of the payment or the value of the
26 item of property or benefit. But a person who, not for value, receives a
27 payment, item of property, or any other benefit to which the person is not
28 entitled under this section is obligated to return the payment, item of
29 property, or benefit, or is personally liable for the amount of the payment
30 or the value of the item of property or benefit, to the person who is
31 entitled to it under this section.

32 (2) If this section or any part of this section is preempted by
33 federal law with respect to a payment, an item of property, or any other
34 benefit covered by this section, a person who, not for value, receives the
35 payment, item of property, or any other benefit to which the person is not

1 entitled under this section is obligated to return the payment, item of
2 property, or benefit, or is personally liable for the amount of the payment
3 or the value of the item of property or benefit, to the person who would have
4 been entitled to it were this section or part of this section not preempted.

5

6 Section 28-2-804. Revocation of Probate and Nonprobate Transfers by
7 Divorce; No Revocation by other Changes of Circumstances.

8 (a) Definitions. In this section:

9 (1) "Disposition or appointment of property" includes a transfer
10 of an item of property or any other benefit to a beneficiary designated in a
11 governing instrument.

12 (2) "Divorce or annulment" means any divorce or annulment, or any
13 dissolution or declaration of invalidity of a marriage, that would exclude
14 the spouse as a surviving spouse within the meaning of Section 28-2-802. A
15 decree of separation that does not terminate the status of husband and wife
16 is not a divorce for purposes of this section.

17 (3) "Divorced individual" includes an individual whose marriage
18 has been annulled.

19 (4) "Governing instrument" means a governing instrument executed
20 by the divorced individual before the divorce or annulment of his or her
21 marriage to his or her former spouse.

22 (5) "Relative of the divorced individual's former spouse" means
23 an individual who is related to the divorced individual's former spouse by
24 blood, adoption, or affinity and who, after the divorce or annulment, is not
25 related to the divorced individual by blood, adoption, or affinity.

26 (6) "Revocable," with respect to a disposition, appointment,
27 provision, or nomination, means one under which the divorced individual, at
28 the time of the divorce or annulment, was alone empowered, by law or under
29 the governing instrument, to cancel the designation in favor of his or her
30 former spouse or former spouse's relative, whether or not the divorced
31 individual was then empowered to designate himself or herself in place of his
32 or her former spouse or in place of his or her former spouse's relative and
33 whether or not the divorced individual then had the capacity to exercise the
34 power.

35 (b) Revocation Upon Divorce. Except as provided by the express terms

1 of a governing instrument, a court order, or a contract relating to the
2 division of the marital estate made between the divorced individuals before
3 or after the marriage, divorce, or annulment, the divorce or annulment of a
4 marriage:

5 (1) revokes any revocable (i) disposition or appointment of
6 property made by a divorced individual to his or her former spouse in a
7 governing instrument and any disposition or appointment created by law or in
8 a governing instrument to a relative of the divorced individual's former
9 spouse, (ii) provision in a governing instrument conferring a general or
10 nongeneral power of appointment on the divorced individual's former spouse or
11 on a relative of the divorced individual's former spouse, and (iii)
12 nomination in a governing instrument, nominating a divorced individual's
13 former spouse or a relative of the divorced individual's former spouse to
14 serve in any fiduciary or representative capacity, including a personal
15 representative, executor, trustee, conservator, agent, or guardian; and

16 (2) severs the interests of the former spouses in property held
17 by them at the time of the divorce or annulment as joint tenants with the
18 right of survivorship, transforming the interests of the former spouses into
19 tenancies in common.

20 (c) Effect of Severance. A severance under subsection (b)(2) does not
21 affect any third-party interest in property acquired for value and in good
22 faith reliance on an apparent title by survivorship in the survivor of the
23 former spouses unless a writing declaring the severance has been noted,
24 registered, filed, or recorded in records appropriate to the kind and
25 location of the property which are relied upon, in the ordinary course of
26 transactions involving such property, as evidence of ownership.

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

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

1 (f) No Revocation for Other Change of Circumstances. No change of
2 circumstances other than as described in this section and in Section 28-2-803
3 effects a revocation.

4 (g) Protection of Payors and Other Third Parties.

5 (1) A payor or other third party is not liable for having made a
6 payment or transferred an item of property or any other benefit to a
7 beneficiary designated in a governing instrument affected by a divorce,
8 annulment, or remarriage, or for having taken any other action in good faith
9 reliance on the validity of the governing instrument, before the payor or
10 other third party received written notice of the divorce, annulment, or
11 remarriage. A payor or other third party is liable for a payment made or
12 other action taken after the payor or other third party received written
13 notice of a claimed forfeiture or revocation under this section.

14 (2) Written notice of the divorce, annulment, or remarriage under
15 subsection (g)(2) must be mailed to the payor's or other third party's main
16 office or home by registered or certified mail, return receipt requested, or
17 served upon the payor or other third party in the same manner as a summons in
18 a civil action. Upon receipt of written notice of the divorce, annulment, or
19 remarriage, a payor or other third party may pay any amount owed or transfer
20 or deposit any item of property held by it to or with the court having
21 jurisdiction of the probate proceedings relating to the decedent's estate or,
22 if no proceedings have been commenced, to or with the court having
23 jurisdiction of probate proceedings relating to decedents' estates located in
24 the county of the decedent's residence. The court shall hold the funds or
25 item of property and, upon its determination under this section, shall order
26 disbursement or transfer in accordance with the determination. Payments,
27 transfers, or deposits made to or with the court discharge the payor or other
28 third party from all claims for the value of amounts paid to or items of
29 property transferred to or deposited with the court.

30 (h) Protection of Bona Fide Purchasers; Personal Liability of
31 Recipient.

32 (1) A person who purchases property from a former spouse,
33 relative of a former spouse, or any other person for value and without
34 notice, or who receives from a former spouse, relative of a former spouse, or
35 any other person a payment or other item of property in partial or full

1 (2) the condition precedent either is satisfied or becomes
2 impossible to satisfy within 90 years after its creation.

3 (c) Validity of Nongeneral or Testamentary Power of Appointment. A
4 nongeneral power of appointment or a general testamentary power of
5 appointment is invalid unless:

6 (1) when the power is created, it is certain to be irrevocably
7 exercised or otherwise to terminate no later than 21 years after the death of
8 an individual then alive; or

9 (2) the power is irrevocably exercised or otherwise terminates
10 within 90 years after its creation.

11 (d) Possibility of Post-death Child Disregarded. In determining
12 whether a nonvested property interest or a power of appointment is valid
13 under subsection (a)(1), (b)(1), or (c)(1), the possibility that a child will
14 be born to an individual after the individual's death is disregarded.

15 (e) Effect of Certain "Later-of" Type Language. If, in measuring a
16 period from the creation of a trust or other property arrangement, language
17 in a governing instrument (i) seeks to disallow the vesting or termination of
18 any interest or trust beyond, (ii) seeks to postpone the vesting or
19 termination of any interest or trust until, or (iii) seeks to operate in
20 effect in any similar fashion upon, the later of (A) the expiration of a
21 period of time not exceeding 21 years after the death of the survivor of
22 specified lives in being at the creation of the trust or other property
23 arrangement or (B) the expiration of a period of time that exceeds or might
24 exceed 21 years after the death of the survivor of lives in being at the
25 creation of the trust or other property arrangement, that language is
26 inoperative to the extent it produces a period of time that exceeds 21 years
27 after the death of the survivor of the specified lives.

28

29 Section 28-2-902. When Nonvested Property Interest or Power of
30 Appointment Created.

31 (a) Except as provided in subsections (b) and (c) and in Section 28-
32 2-905(a), the time of creation of a nonvested property interest or a power of
33 appointment is determined under general principles of property law.

34 (b) For purposes of Subpart 1 of this Part, if there is a person who
35 alone can exercise a power created by a governing instrument to become the

1 unqualified beneficial owner of (i) a nonvested property interest or (ii) a
2 property interest subject to a power of appointment described in Section 28-
3 2-901(b) or (c), the nonvested property interest or power of appointment is
4 created when the power to become the unqualified beneficial owner terminates.

5 (c) For purposes of Subpart 1 of this Part, a nonvested property
6 interest or a power of appointment arising from a transfer of property to a
7 previously funded trust or other existing property arrangement is created
8 when the nonvested property interest or power of appointment in the original
9 contribution was created.

10

11 Section 28-2-903. Reformation.

12 Upon the petition of an interested person, a court shall reform a
13 disposition in the manner that most closely approximates the transferor's
14 manifested plan of distribution and is within the 90 years allowed by Section
15 28-2-901(a)(2), 28-2-901(b)(2), or 28-2-901(c)(2) if:

16 (1) a nonvested property interest or a power of appointment becomes
17 invalid under Section 28-2-901 (statutory rule against perpetuities);

18 (2) a class gift is not but might become invalid under Section 28-2-901
19 (statutory rule against perpetuities) and the time has arrived when the share
20 of any class member is to take effect in possession or enjoyment; or

21 (3) a nonvested property interest that is not validated by Section 28-
22 2-901(a)(1) can vest but not within 90 years after its creation.

23

24 Section 28-2-904. Exclusions from Statutory Rule Against Perpetuities.

25 Section 28-2-901 (statutory rule against perpetuities) does not apply
26 to:

27 (1) a nonvested property interest or a power of appointment arising out
28 of a nondonative transfer, except a nonvested property interest or a power of
29 appointment arising out of (i) a premarital or postmarital agreement, (ii) a
30 separation or divorce settlement, (iii) a spouse's election, (iv) a similar
31 arrangement arising out of a prospective, existing, or previous marital
32 relationship between the parties, (v) a contract to make or not to revoke a
33 will or trust, (vi) a contract to exercise or not to exercise a power of
34 appointment, (vii) a transfer in satisfaction of a duty of support, or (viii)
35 a reciprocal transfer;

1 (2) a fiduciary's power relating to the administration or management of
2 assets, including the power of a fiduciary to sell, lease, or mortgage
3 property, and the power of a fiduciary to determine principal and income;

4 (3) a power to appoint a fiduciary;

5 (4) a discretionary power of a trustee to distribute principal before
6 termination of a trust to a beneficiary having an indefeasibly vested
7 interest in the income and principal;

8 (5) a nonvested property interest held by a charity, government, or
9 governmental agency or subdivision, if the nonvested property interest is
10 preceded by an interest held by another charity, government, or governmental
11 agency or subdivision;

12 (6) a nonvested property interest in or a power of appointment with
13 respect to a trust or other property arrangement forming part of a pension,
14 profit-sharing, stock bonus, health, disability, death benefit, income
15 deferral, or other current or deferred benefit plan for one or more
16 employees, independent contractors, or their beneficiaries or spouses, to
17 which contributions are made for the purpose of distributing to or for the
18 benefit of the participants or their beneficiaries or spouses the property,
19 income, or principal in the trust or other property arrangement, except a
20 nonvested property interest or a power of appointment that is created by an
21 election of a participant or a beneficiary or spouse;

22 (7) a property interest, power of appointment, or arrangement that was
23 not subject to the common-law rule against perpetuities or is excluded by
24 another statute of this State; or

25 (8) a property interest or arrangement subjected to a time limit under
26 Subpart 2 of Part 9.

27

28 Section 28-2-905. Prospective Application.

29 (a) Except as extended by subsection (b), Subpart 1 of this Part
30 applies to a nonvested property interest or a power of appointment that is
31 created on or after the effective date of Subpart 1 of this Part. For
32 purposes of this section, a nonvested property interest or a power of
33 appointment created by the exercise of a power of appointment is created when
34 the power is irrevocably exercised or when a revocable exercise becomes
35 irrevocable.

1 (b) If a nonvested property interest or a power of appointment was
2 created before the effective date of Subpart 1 of this Part and is determined
3 in a judicial proceeding, commenced on or after the effective date of Subpart
4 1 of this Part, to violate this State's rule against perpetuities as that
5 rule existed before the effective date of Subpart 1 of this Part, a court
6 upon the petition of an interested person may reform the disposition in the
7 manner that most closely approximates the transferor's manifested plan of
8 distribution and is within the limits of the rule against perpetuities
9 applicable when the nonvested property interest or power of appointment was
10 created.

11

12 Section 28-2-906. Supersession Repeal.

13 Subpart 1 of this Part supersedes the rule of the common law known as
14 the rule against perpetuities.

15

SUBPART 2. HONORARY TRUSTS

16 Section 28-2-907. Honorary Trusts; Trusts for Pets.

17 (a) Honorary Trust. Subject to subsection (c), if (i) a trust is for
18 a specific lawful noncharitable purpose or for lawful noncharitable purposes
19 to be selected by the trustee and (ii) there is no definite or definitely
20 ascertainable beneficiary designated, the trust may be performed by the
21 trustee for 21 years but no longer, whether or not the terms of the trust
22 contemplate a longer duration.

23 (b) Trust for Pets. Subject to this subsection and subsection (c), a
24 trust for the care of a designated domestic or pet animal is valid. The
25 trust terminates when no living animal is covered by the trust. A governing
26 instrument must be liberally construed to bring the transfer within this
27 subsection, to presume against the merely precatory or honorary nature of the
28 disposition, and to carry out the general intent of the transferor.
29 Extrinsic evidence is admissible in determining the transferor's intent.

30 (c) Additional Provisions Applicable to Honorary Trusts and Trusts for
31 Pets. In addition to the provisions of subsection (a) or (b), a trust
32 covered by either of those subsections is subject to the following
33 provisions:

34 (1) Except as expressly provided otherwise in the trust
35 instrument, no portion of the principal or income may be converted to the use

1 of the trustee or to any use other than for the trust's purposes or for the
2 benefit of a covered animal.

3 (2) Upon termination, the trustee shall transfer the unexpended
4 trust property in the following order:

5 (i) as directed in the trust instrument;

6 (ii) if the trust was created in a nonresiduary clause in
7 the transferor's will or in a codicil to the transferor's will, under the
8 residuary clause in the transferor's will; and

9 (iii) if no taker is produced by the application of
10 subparagraph (i) or (ii), to the transferor's heirs under Section 28-2-711.

11 (3) For the purposes of Section 28-2-707, the residuary clause is
12 treated as creating a future interest under the terms of a trust.

13 (4) The intended use of the principal or income can be enforced
14 by an individual designated for that purpose in the trust instrument or, if
15 none, by an individual appointed by a court upon application to it by an
16 individual.

17 (5) Except as ordered by the court or required by the trust
18 instrument, no filing, report, registration, periodic accounting, separate
19 maintenance of funds, appointment, or fee is required by reason of the
20 existence of the fiduciary relationship of the trustee.

21 (6) A court may reduce the amount of the property transferred, if
22 it determines that that amount substantially exceeds the amount required for
23 the intended use. The amount of the reduction, if any, passes as unexpended
24 trust property under subsection (c)(2).

25 (7) If no trustee is designated or no designated trustee is
26 willing or able to serve, a court shall name a trustee. A court may order
27 the transfer of the property to another trustee, if required to assure that
28 the intended use is carried out and if no successor trustee is designated in
29 the trust instrument or if no designated successor trustee agrees to serve or
30 is able to serve. A court may also make such other orders and determinations
31 as shall be advisable to carry out the intent of the transferor and the
32 purpose of this section.

33 PART 10

34 INTERNATIONAL WILL; INFORMATION REGISTRATION

35 Section 28-2-1001. Definitions.

1 In this Part:

2 (1) "International Will" means a will executed in conformity with
3 Sections 28-2-1002 through 28-2-1005.

4 (2) "Authorized person" and "person authorized to act in connection
5 with international wills" mean a person who by Section 28-2-1009, or by the
6 laws of the United States including members of the diplomatic and consular
7 service of the United States designated by Foreign Service Regulations, is
8 empowered to supervise the execution of international wills.

9

10 Section 28-2-1002. International Will; Validity.

11 (a) A will shall be valid as regards form, irrespective particularly of
12 the place where it is made, of the location of the assets and of the
13 nationality, domicile, or residence of the testator, if it is made in the
14 form of an international will complying with the requirements of this Part.

15 (b) The invalidity of the will as an international will shall not
16 affect its formal validity as a will of another kind.

17 (c) This Part shall not apply to the form of testamentary dispositions
18 made by two or more persons in one instrument.

19

20 Section 28-2-1003. International Will; Requirements.

21 (a) The will shall be made in writing. It need not be written by the
22 testator himself. It may be written in any language, by hand or by any other
23 means.

24 (b) The testator shall declare in the presence of two witnesses and of
25 a person authorized to act in connection with international wills that the
26 document is his will and that he knows the contents thereof. The testator
27 need not inform the witnesses, or the authorized person, of the contents of
28 the will.

29 (c) In the presence of the witnesses, and of the authorized person, the
30 testator shall sign the will or, if he has previously signed it, shall
31 acknowledge his signature.

32 (d) When the testator is unable to sign, the absence of his signature
33 does not affect the validity of the international will if the testator
34 indicates the reason for his inability to sign and the authorized person
35 makes note thereof on the will. In these cases, it is permissible for any

1 other person present, including the authorized person or one of the
2 witnesses, at the direction of the testator to sign the testator's name for
3 him, if the authorized person makes note of this also on the will, but it is
4 not required that any person sign the testator's name for him.

5 (e) The witnesses and the authorized person shall there and then attest
6 the will by signing in the presence of the testator.

7

8 Section 28-2-1004. International Will; Other Points of Form.

9 (a) The signatures shall be placed at the end of the will. If the will
10 consists of several sheets, each sheet will be signed by the testator or, if
11 he is unable to sign, by the person signing on his behalf or, if there is no
12 such person, by the authorized person. In addition, each sheet shall be
13 numbered.

14 (b) The date of the will shall be the date of its signature by the
15 authorized person. That date shall be noted at the end of the will by the
16 authorized person.

17 (c) The authorized person shall ask the testator whether he wishes to
18 make a declaration concerning the safekeeping of his will. If so and at the
19 express request of the testator the place where he intends to have his will
20 kept shall be mentioned in the certificate provided for in Section 28-2-1005.

21 (d) A will executed in compliance with Section 28-2-1003 shall not be
22 invalid merely because it does not comply with this section.

23

24 Section 28-2-1005. International Will; Certificate.

25 The authorized person shall attach to the will a certificate to be
26 signed by him establishing that the requirements of this Part for valid
27 execution of an international will have been complied with. The authorized
28 person shall keep a copy of the certificate and deliver another to the
29 testator. The certificate shall be substantially in the following form:

30

CERTIFICATE

31

(Convention of October 26, 1973)

32 1. I, _____ (name, address and capacity), a person

33 authorized to act in connection with international wills

34 2. Certify that on _____ (date) at _____ (place)

35 3. (testator) _____

1 (name, address, date and place of birth) in my presence and that of the
2 witnesses

3 4. (a) _____ (name, address, date and place of birth)

4 (b) _____ (name, address, date and place of birth)

5 has declared that the attached document is his will and that he knows the
6 contents thereof.

7 5. I furthermore certify that:

8 6. (a) in my presence and in that of the witnesses

9 (1) the testator has signed the will or has acknowledged his
10 signature previously affixed.

11 * (2) following a declaration of the testator stating that he was
12 unable to sign his will for the following reason _____, I have
13 mentioned this declaration on the will

14 * and the signature has been affixed by _____ (name
15 and address)

16 7. (b) the witnesses and I have signed the will;

17 8. * (c) each page of the will has been signed by _____ and
18 numbered;

19 9. (d) I have satisfied myself as to the identity of the testator and of
20 the witnesses as designated above;

21 10. (e) the witnesses met the conditions requisite to act as such according
22 to the law under which I am acting;

23 11. * (f) the testator has requested me to include the following statement
24 concerning the safekeeping of his will:

25 12. PLACE OF EXECUTION

26 13. DATE

27 14. SIGNATURE and, if necessary, SEAL

28 * to be completed if appropriate

29

30 Section 28-2-1006. International Will; Effect of Certificate.

31 In the absence of evidence to the contrary, the certificate of the
32 authorized person shall be conclusive of the formal validity of the
33 instrument as a will under this Part. The absence or irregularity of a
34 certificate shall not affect the formal validity of a will under this Part.

35

1 Section 28-2-1007. International Will; Revocation.

2 The international will shall be subject to the ordinary rules of
3 revocation of wills.

4

5 Section 28-2-1008. Source and Construction.

6 Sections 28-2-1001 through 28-2-1007 derive from Annex to Convention of
7 October 26, 1973, Providing a Uniform Law on the Form of an International
8 Will. In interpreting and applying this Part, regard shall be had to its
9 international origin and to the need for uniformity in its interpretation.
10

11 Section 28-2-1009. Persons Authorized to Act in Relation to
12 International Will; Eligibility; Recognition by Authorizing Agency.

13 Individuals who have been admitted to practice law before the courts of
14 this state and who are in good standing as active law practitioners in this
15 state, are hereby declared to be authorized persons in relation to
16 international wills.

17

18 Section 28-2-1010. International Will Information Registration.

19 The Secretary of State shall establish a registry system by which
20 authorized persons may register in a central information center, information
21 regarding the execution of international wills, keeping that information in
22 strictest confidence until the death of the maker and then making it
23 available to any person desiring information about any will who presents a
24 death certificate or other satisfactory evidence of the testator's death to
25 the center. Information that may be received, preserved in confidence until
26 death, and reported as indicated is limited to the name, social-security or
27 any other individual-identifying number established by law, address, and date
28 and place of birth of the testator, and the intended place of deposit or
29 safekeeping of the instrument pending the death of the maker. The Secretary
30 of State, at the request of the authorized person, may cause the information
31 it receives about execution of any international will to be transmitted to
32 the registry system of another jurisdiction as identified by the testator, if
33 that other system adheres to rules protecting the confidentiality of the
34 information similar to those established in this state.

35

ARTICLE III

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PROBATE OF WILLS AND ADMINISTRATION

PART 1

GENERAL PROVISIONS

Section 28-3-101. 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 Code to facilitate the prompt settlement of estates. Upon the death of a person, his real and personal property devolves to the persons to whom it is devised by his last will or to those indicated as substitutes for them in cases involving lapse, renunciation, or other circumstances affecting the devolution of testate estate, or in the absence of testamentary disposition, to his heirs, or to 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.

Section 28-3-102. Necessity of Order of Probate For Will.

Except as provided in Section 28-3-1201, to be effective to prove the transfer of any property or to nominate an executor, 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.

Section 28-3-103. 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 and be issued letters. Administration of an estate is commenced by the issuance of letters.

Section 28-3-104. 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

1 proceedings and actions to enforce a claim against the estate are governed by
2 the procedure prescribed by this Article. After distribution a creditor
3 whose claim has not been barred may recover from the distributees as provided
4 in Section 28-3-1004 or from a former personal representative individually
5 liable as provided in Section 28-3-1005. This section has no application to
6 a proceeding by a secured creditor of the decedent to enforce his right to
7 his security except as to any deficiency judgment which might be sought
8 therein.

9

10 Section 28-3-105. Proceedings Affecting Devolution and Administration;
11 Jurisdiction of Subject Matter.

12 Persons interested in decedents' estates may apply to the Registrar for
13 determination in the informal proceedings provided in this Article, and may
14 petition the Court for orders in formal proceedings within the Court's
15 jurisdiction including but not limited to those described in this Article.
16 The Court has exclusive jurisdiction of formal proceedings to determine how
17 decedents' estates subject to the laws of this state are to be administered,
18 expended and distributed. The Court has concurrent jurisdiction of any other
19 action or proceeding concerning a succession or to which an estate, through a
20 personal representative, may be a party, including actions to determine title
21 to property alleged to belong to the estate, and of any action or proceeding
22 in which property distributed by a personal representative or its value is
23 sought to be subjected to rights of creditors or successors of the decedent.

24

25 Section 28-3-106. Proceedings Within the Exclusive Jurisdiction of
26 Court; Service; Jurisdiction Over Persons.

27 In proceedings within the exclusive jurisdiction of the Court where
28 notice is required by this Code or by rule, and in proceedings to construe
29 probated wills or determine heirs which concern estates that have not been
30 and cannot now be open for administration, interested persons may be bound by
31 the orders of the Court in respect to property in or subject to the laws of
32 this state by notice in conformity with Section 28-1-401. An order is
33 binding as to all who are given notice of the proceeding though less than all
34 interested persons are notified.

35

1 Section 28-3-107. Scope of Proceedings; Proceedings Independent;
2 Exception.

3 Unless supervised administration as described in Part 5 is involved,
4 (1) each proceeding before the Court or Registrar is independent of any other
5 proceeding involving the same estate; (2) petitions for formal orders of the
6 Court may combine various requests for relief in a single proceeding if the
7 orders sought may be finally granted without delay. Except as required for
8 proceedings which are particularly described by other sections of this
9 Article, no petition is defective because it fails to embrace all matters
10 which might then be the subject of a final order; (3) proceedings for
11 probate of wills or adjudications of no will may be combined with proceedings
12 for appointment of personal representatives; and (4) a proceeding for
13 appointment of a personal representative is concluded by an order making or
14 declining the appointment.

15

16 Section 28-3-108. Probate, Testacy and Appointment Proceedings;
17 Ultimate Time Limit.

18 (a) No informal probate or appointment proceeding or formal testacy or
19 appointment proceeding, other than a proceeding to probate a will previously
20 probated at the testator's domicile and appointment proceedings relating to
21 an estate in which there has been a prior appointment, may be commenced more
22 than three years after the decedent's death, except:

23 (1) if a previous proceeding was dismissed because of doubt about
24 the fact of the decedent's death, appropriate probate, appointment, or
25 testacy proceedings may be maintained at any time thereafter upon a finding
26 that the decedent's death occurred before the initiation of the previous
27 proceeding and the applicant or petitioner has not delayed unduly in
28 initiating the subsequent proceeding;

29 (2) appropriate probate, appointment, or testacy proceedings may
30 be maintained in relation to the estate of an absent, disappeared or missing
31 person for whose estate a conservator has been appointed, at any time within
32 three years after the conservator becomes able to establish the death of the
33 protected person;

34 (3) a proceeding to contest an informally probated will and to
35 secure appointment of the person with legal priority for appointment in the

1 event the contest is successful, may be commenced within the later of twelve
2 months from the informal probate or three years from the decedent's death;

3 (4) an informal appointment or a formal testacy or appointment
4 proceeding may be commenced thereafter if no proceedings concerning the
5 succession or estate administration has occurred within the three year period
6 after the decedent's death, but the personal representative has no right to
7 possess estate assets as provided in Section 28-3-709 beyond that necessary
8 to confirm title thereto in the successors to the estate and claims other
9 than expenses of administration may not be presented against the estate; and

10 (5) a formal testacy proceeding may be commenced at any time
11 after three years from the decedent's death for the purpose of establishing
12 an instrument to direct or control the ownership of property passing or
13 distributable after the decedent's death from one other than the decedent
14 when the property is to be appointed by the terms of the decedent's will or
15 is to pass or be distributed as a part of the decedent's estate or its
16 transfer is otherwise to be controlled by the terms of the decedent's will.

17 (b) These limitations do not apply to proceedings to construe probated
18 wills or determine heirs of an intestate.

19 (c) In cases under subsection (a)(1) or (2), the date on which a
20 testacy or appointment proceeding is properly commenced shall be deemed to be
21 the date of the decedent's death for purposes of other limitations provisions
22 of this Code which relate to the date of death.

23

24 Section 28-3-109. Statutes of Limitation on Decedent's Cause of
25 Action.

26 No statute of limitation running on a cause of action belonging to a
27 decedent which had not been barred as of the date of his death, shall apply
28 to bar a cause of action surviving the decedent's death sooner than four
29 months after death. A cause of action which, but for this section, would
30 have been barred less than four months after death, is barred after four
31 months unless tolled.

32

PART 2

33 VENUE FOR PROBATE AND ADMINISTRATION; PRIORITY TO ADMINISTER; DEMAND FOR
34 NOTICE

35 Section 28-3-201. Venue for First and Subsequent Estate Proceedings;

1 Location of Property.

2 (a) Venue for the first informal or formal testacy or appointment
3 proceedings after a decedent's death is:

4 (1) in the county where the decedent had his domicile at the time
5 of his death; or

6 (2) if the decedent was not domiciled in this state, in any
7 county where property of the decedent was located at the time of his death.

8 (b) Venue for all subsequent proceedings within the exclusive
9 jurisdiction of the Court is in the place where the initial proceeding
10 occurred, unless the initial proceeding has been transferred as provided in
11 Section 28-1-303 or (c) of this section.

12 (c) If the first proceeding was informal, on application of an
13 interested person and after notice to the proponent in the first proceeding,
14 the Court, upon finding that venue is elsewhere, may transfer the proceeding
15 and the file to the other court.

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

24

25 Section 28-3-202. Appointment or Testacy Proceedings; Conflicting
26 Claim of Domicile in Another State.

27 If conflicting claims as to the domicile of a decedent are made in a
28 formal testacy or appointment proceeding commenced in this state, and in a
29 testacy or appointment proceeding after notice pending at the same time in
30 another state, the Court of this state must stay, dismiss, or permit suitable
31 amendment in, the proceeding here unless it is determined that the local
32 proceeding was commenced before the proceeding elsewhere. The determination
33 of domicile in the proceeding first commenced must be accepted as
34 determinative in the proceeding in this state.

35

1 Section 28-3-203. Priority Among Persons Seeking Appointment as
2 Personal Representative.

3 (a) Whether the proceedings are formal or informal, persons who are not
4 disqualified have priority for appointment in the following order:

5 (1) the person with priority as determined by a probated will
6 including a person nominated by a power conferred in a will;

7 (2) the surviving spouse of the decedent who is a devisee of the
8 decedent;

9 (3) other devisees of the decedent;

10 (4) the surviving spouse of the decedent;

11 (5) other heirs of the decedent;

12 (6) 45 days after the death of the decedent, any creditor.

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

16 (1) if the estate appears to be more than adequate to meet
17 exemptions and costs of administration but inadequate to discharge
18 anticipated unsecured claims, the Court, on petition of creditors, may
19 appoint any qualified person;

20 (2) in case of objection to appointment of a person other than
21 one whose priority is determined by will by an heir or devisee appearing to
22 have a substantial interest in the estate, the Court may appoint a person who
23 is acceptable to heirs and devisees whose interests in the estate appear to
24 be worth in total more than half of the probable distributable value, or, in
25 default of this accord any suitable person.

26 (c) A person entitled to letters under (2) through (5) of (a) above,
27 and a person aged 18 and over who would be entitled to letters but for his
28 age, may nominate a qualified person to act as personal representative. Any
29 person aged 18 and over may renounce his right to nominate or to an
30 appointment by appropriate writing filed with the Court. When two or more
31 persons share a priority, those of them who do not renounce must concur in
32 nominating another to act for them, or in applying for appointment.

33 (d) Conservators of the estates of protected persons, or if there is no
34 conservator, any guardian except a guardian ad litem of a minor or
35 incapacitated person, may exercise the same right to nominate, to object to

1 another's appointment, or to participate in determining the preference of a
2 majority in interest of the heirs and devisees that the protected person or
3 ward would have if qualified for appointment.

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

10 (f) No person is qualified to serve as a personal representative who
11 is:

12 (1) under the age of 21;

13 (2) a person whom the Court finds unsuitable in formal
14 proceedings.

15 (g) A personal representative appointed by a court of the decedent's
16 domicile has priority over all other persons except where the decedent's will
17 nominates different persons to be personal representative in this state and
18 in the state of domicile. The domiciliary personal representative may
19 nominate another, who shall have the same priority as the domiciliary
20 personal representative.

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

24

25 Section 28-3-204. Demand for Notice of Order or Filing Concerning
26 Decedent's Estate.

27 Any person desiring notice of any order or filing pertaining to a
28 decedent's estate in which he has a financial or property interest, may file
29 a demand for notice with the Court at any time after the death of the
30 decedent stating the name of the decedent, the nature of his interest in the
31 estate, and the demandant's address or that of his attorney. The clerk shall
32 mail a copy of the demand to the personal representative if one has been
33 appointed. After filing of a demand, no order or filing to which the demand
34 relates shall be made or accepted without notice as prescribed in Section 28-
35 1-401 to the demandant or his attorney. The validity of an order which is

1 issued or filing which is accepted without compliance with this requirement
2 shall not be affected by the error, but the petitioner receiving the order or
3 the person making the filing may be liable for any damage caused by the
4 absence of notice. The requirement of notice arising from a demand under
5 this provision may be waived in writing by the demandant and shall cease upon
6 the termination of his interest in the estate.

7 **PART 3**

8 **INFORMAL PROBATE AND APPOINTMENT PROCEEDINGS; SUCCESSION WITHOUT**
9 **ADMINISTRATION**

10 **Section 28-3-301. Informal Probate or Appointment Proceedings;**
11 **Application; Contents.**

12 (a) Applications for informal probate or informal appointment shall be
13 directed to the Registrar, and verified by the applicant to be accurate and
14 complete to the best of his knowledge and belief as to the following
15 information:

16 (1) Every application for informal probate of a will or for
17 informal appointment of a personal representative, other than a special or
18 successor representative, shall contain the following:

19 (i) a statement of the interest of the applicant;

20 (ii) the name, and date of death of the decedent, his age,
21 and the county and state of his domicile at the time of death, and the names
22 and addresses of the spouse, children, heirs and devisees and the ages of any
23 who are minors so far as known or ascertainable with reasonable diligence by
24 the applicant;

25 (iii) if the decedent was not domiciled in the state at the
26 time of his death, a statement showing venue;

27 (iv) a statement identifying and indicating the address of
28 any personal representative of the decedent appointed in this state or
29 elsewhere whose appointment has not been terminated;

30 (v) a statement indicating whether the applicant has
31 received a demand for notice, or is aware of any demand for notice of any
32 probate or appointment proceeding concerning the decedent that may have been
33 filed in this state or elsewhere; and

34 (vi) that the time limit for informal probate or
35 appointment as provided in this Article has not expired either because 3

1 years or less have passed since the decedent's death, or, if more than 3
2 years from death have passed, circumstances as described by Section 28-3-108
3 authorizing tardy probate or appointment have occurred.

4 (2) An application for informal probate of a will shall state the
5 following in addition to the statements required by (1):

6 (i) that the original of the decedent's last will is in the
7 possession of the court, or accompanies the application, or that an
8 authenticated copy of a will probated in another jurisdiction accompanies the
9 application;

10 (ii) that the applicant, to the best of his knowledge,
11 believes the will to have been validly executed;

12 (iii) that after the exercise of reasonable diligence, the
13 applicant is unaware of any instrument revoking the will, and that the
14 applicant believes that the instrument which is the subject of the
15 application is the decedent's last will.

16 (3) An application for informal appointment of a personal
17 representative to administer an estate under a will shall describe the will
18 by date of execution and state the time and place of probate or the pending
19 application or petition for probate. The application for appointment shall
20 adopt the statements in the application or petition for probate and state the
21 name, address and priority for appointment of the person whose appointment is
22 sought.

23 (4) An application for informal appointment of an administrator
24 in intestacy shall state in addition to the statements required by (1):

25 (i) that after the exercise of reasonable diligence, the
26 applicant is unaware of any unrevoked testamentary instrument relating to
27 property having a situs in this state under Section 28-1-301, or, a statement
28 why any such instrument of which he may be aware is not being probated;

29 (ii) the priority of the person whose appointment is sought
30 and the names of any other persons having a prior or equal right to the
31 appointment under Section 28-3-203.

32 (5) An application for appointment of a personal representative
33 to succeed a personal representative appointed under a different testacy
34 status shall refer to the order in the most recent testacy proceeding, state
35 the name and address of the person whose appointment is sought and of the

1 person whose appointment will be terminated if the application is granted,
2 and describe the priority of the applicant.

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

10 (b) By verifying an application for informal probate, or informal
11 appointment, the applicant submits personally to the jurisdiction of the
12 court in any proceeding for relief from fraud relating to the application, or
13 for perjury, that may be instituted against him.

14

15 Section 28-3-302. Informal Probate; Duty of Registrar; Effect of
16 Informal Probate.

17 Upon receipt of an application requesting informal probate of a will,
18 the Registrar, upon making the findings required by Section 28-3-303 shall
19 issue a written statement of informal probate if at least 120 hours have
20 elapsed since the decedent's death. Informal probate is conclusive as to all
21 persons until superseded by an order in a formal testacy proceeding. No
22 defect in the application or procedure relating thereto which leads to
23 informal probate of a will renders the probate void.

24

25 Section 28-3-303. Informal Probate; Proof and Findings Required.

26 (a) In an informal proceeding for original probate of a will, the
27 Registrar shall determine whether:

28 (1) the application is complete;

29 (2) the applicant has made oath or affirmation that the
30 statements contained in the application are true to the best of his knowledge
31 and belief;

32 (3) the applicant appears from the application to be an
33 interested person as defined in Section 28-1-201(20);

34 (4) on the basis of the statements in the application, venue is
35 proper;

1 (5) an original, duly executed and apparently unrevoked will is
2 in the Registrar's possession;

3 (6) any notice required by Section 28-3-204 has been given and
4 that the application is not within Section 28-3-304; and

5 (7) it appears from the application that the time limit for
6 original probate has not expired.

7 (b) The application shall be denied if it indicates that a personal
8 representative has been appointed in another county of this state or except
9 as provided in subsection (d) below, if it appears that this or another will
10 of the decedent has been the subject of a previous probate order.

11 (c) A will which appears to have the required signatures and which
12 contains an attestation clause showing that requirements of execution under
13 Section 28-2-502, 28-2-503 or 28-2-506 have been met shall be probated
14 without further proof. In other cases, the Registrar may assume execution if
15 the will appears to have been properly executed, or he may accept a sworn
16 statement or affidavit of any person having knowledge of the circumstances of
17 execution, whether or not the person was a witness to the will.

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

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

29

30 Section 28-3-304. Informal Probate; Unavailable in Certain Cases.

31 Applications for informal probate which relate to one or more of a
32 known series of testamentary instruments (other than a will and one or more
33 codicils thereto), the latest of which does not expressly revoke the earlier,
34 shall be declined.

35

1 Section 28-3-305. Informal Probate; Registrar Not Satisfied.

2 If the Registrar is not satisfied that a will is entitled to be
3 probated in informal proceedings because of failure to meet the requirements
4 of Sections 28-3-303 and 28-3-304 or any other reason, he may decline the
5 application. A declination of informal probate is not an adjudication and
6 does not preclude formal probate proceedings.

7

8 Section 28-3-306. Informal Probate; Notice Requirements.

9 (a) The moving party must give notice as described by Section 28-1-401
10 of his application for informal probate to any person demanding it pursuant
11 to Section 28-3-204, and to any personal representative of the decedent whose
12 appointment has not been terminated. No other notice of informal probate is
13 required.

14 (b) If an informal probate is granted, within 30 days thereafter the
15 applicant shall give written information of the probate to the heirs and
16 devisees. The information shall include the name and address of the
17 applicant, the name and location of the court granting the informal probate,
18 and the date of the probate. The information shall be delivered or sent by
19 ordinary mail to each of the heirs and devisees whose address is reasonably
20 available to the applicant. No duty to give information is incurred if a
21 personal representative is appointed who is required to give the written
22 information required by Section 28-3-705. An applicant's failure to give
23 information as required by this section is a breach of his duty to the heirs
24 and devisees but does not affect the validity of the probate.

25

26 Section 28-3-307. Informal Appointment Proceedings; Delay in Order;
27 Duty of Registrar; Effect of Appointment.

28 (a) Upon receipt of an application for informal appointment of a
29 personal representative other than a special administrator as provided in
30 Section 28-3-614, if at least 120 hours have elapsed since the decedent's
31 death, the Registrar, after making the findings required by Section 28-3-308,
32 shall appoint the applicant subject to qualification and acceptance;
33 provided, that if the decedent was a non-resident, the Registrar shall delay
34 the order of appointment until 30 days have elapsed since death unless the
35 personal representative appointed at the decedent's domicile is the

1 applicant, or unless the decedent's will directs that his estate be subject
2 to the laws of this state.

3 (b) The status of personal representative and the powers and duties
4 pertaining to the office are fully established by informal appointment. An
5 appointment, and the office of personal representative created thereby, is
6 subject to termination as provided in Sections 28-3-608 through 28-3-612, but
7 is not subject to retroactive vacation.

8

9 Section 28-3-308. Informal Appointment Proceedings; Proof and
10 Findings Required.

11 (a) In informal appointment proceedings, the Registrar must determine
12 whether:

13 (1) the application for informal appointment of a personal
14 representative is complete;

15 (2) the applicant has made oath or affirmation that the
16 statements contained in the application are true to the best of his knowledge
17 and belief;

18 (3) the applicant appears from the application to be an
19 interested person as defined in Section 28-1-201(20);

20 (4) on the basis of the statements in the application, venue is
21 proper;

22 (5) any will to which the requested appointment relates has been
23 formally or informally probated; but this requirement does not apply to the
24 appointment of a special administrator;

25 (6) any notice required by Section 28-3-204 has been given;

26 (7) from the statements in the application, the person whose
27 appointment is sought has priority entitling him to the appointment.

28 (b) Unless Section 28-3-612 controls, the application must be denied if
29 it indicates that a personal representative who has not filed a written
30 statement of resignation as provided in Section 28-3-610(c) has been
31 appointed in this or another county of this state, that (unless the applicant
32 is the domiciliary personal representative or his nominee) the decedent was
33 not domiciled in this state and that a personal representative whose
34 appointment has not been terminated has been appointed by a Court in the
35 state of domicile, or that other requirements of this section have not been

1 met.

2

3 Section 28-3-309. Informal Appointment Proceedings; Registrar Not
4 Satisfied.

5 If the Registrar is not satisfied that a requested informal appointment
6 of a personal representative should be made because of failure to meet the
7 requirements of Sections 28-3-307 and 28-3-308, or for any other reason, he
8 may decline the application. A declination of informal appointment is not an
9 adjudication and does not preclude appointment in formal proceedings.

10

11 Section 28-3-310. Informal Appointment Proceedings; Notice
12 Requirements.

13 The moving party must give notice as described by Section 28-1-401 of
14 his intention to seek an appointment informally: (1) to any person demanding
15 it pursuant to Section 28-3-204; and (2) to any person having a prior or
16 equal right to appointment not waived in writing and filed with the Court.
17 No other notice of an informal appointment proceeding is required.

18

19 Section 28-3-311. Informal Appointment Unavailable in Certain Cases.

20 If an application for informal appointment indicates the existence of a
21 possible unrevoked testamentary instrument which may relate to property
22 subject to the laws of this state, and which is not filed for probate in this
23 court, the Registrar shall decline the application.

24

25 Section 28-3-312. Universal Succession; In General.

26 The heirs of an intestate or the residuary devisees under a will,
27 excluding minors and incapacitated, protected, or unascertained persons, may
28 become universal successors to the decedent's estate by assuming personal
29 liability for (1) taxes, (2) debts of the decedent, (3) claims against the
30 decedent or the estate, and (4) distributions due other heirs, devisees, and
31 persons entitled to property of the decedent as provided in Sections 28-3-313
32 through 28-3-322.

33

34 Section 28-3-313. Universal Succession; Application; Contents.

35 (a) An application to become universal successors by the heirs of an

1 intestate or the residuary devisees under a will must be directed to the
2 Registrar, signed by each applicant, and verified to be accurate and complete
3 to the best of the applicant's knowledge and belief as follows:

4 (1) An application by heirs of an intestate must contain the
5 statements required by Section 28-3-301(a)(1) and (4)(i) and state that the
6 applicants constitute all the heirs other than minors and incapacitated,
7 protected, or unascertained persons.

8 (2) An application by residuary devisees under a will must be
9 combined with a petition for informal probate if the will has not been
10 admitted to probate in this State and must contain the statements required by
11 Section 28-3-301(a)(1) and (2). If the will has been probated in this State,
12 an application by residuary devisees must contain the statements required by
13 Section 28-3-301(a)(2)(iii). An application by residuary devisees must state
14 that the applicants constitute the residuary devisees of the decedent other
15 than any minors and incapacitated, protected, or unascertained persons. If
16 the estate is partially intestate, all of the heirs other than minors and
17 incapacitated, protected, or unascertained persons must join as applicants.

18 (b) The application must state whether letters of administration are
19 outstanding, whether a petition for appointment of a personal representative
20 of the decedent is pending in any court of this State, and that the
21 applicants waive their right to seek appointment of a personal
22 representative.

23 (c) The application may describe in general terms the assets of the
24 estate and must state that the applicants accept responsibility for the
25 estate and assume personal liability for (1) taxes, (2) debts of the
26 decedent, (3) claims against the decedent or the estate and (4) distributions
27 due other heirs, devisees, and persons entitled to property of the decedent
28 as provided in Sections 28-3-316 through 28-3-322.

29

30 Section 28-3-314. Universal Succession; Proof and Findings Required.

31 (a) The Registrar shall grant the application if:

32 (1) the application is complete in accordance with Section 28-
33 3-313;

34 (2) all necessary persons have joined and have verified that the
35 statements contained therein are true, to the best knowledge and belief of

1 each;

2 (3) venue is proper;

3 (4) any notice required by Section 28-3-204 has been given or
4 waived;

5 (5) the time limit for original probate or appointment
6 proceedings has not expired and the applicants claim under a will;

7 (6) the application requests informal probate of a will, the
8 application and findings conform with Sections 28-3-301(a)(2) and 28-
9 3-303(a)(c)(d) and (e) so the will is admitted to probate; and

10 (7) none of the applicants is a minor or an incapacitated or
11 protected person.

12 (b) The Registrar shall deny the application if letters of
13 administration are outstanding.

14 (c) Except as provided in Section 28-3-322, the Registrar shall deny
15 the application if any creditor, heir, or devisee who is qualified by Section
16 28-3-605 to demand bond files an objection.

17

18 Section 28-3-315. Universal Succession; Duty of Registrar; Effect of
19 Statement of Universal Succession.

20 Upon receipt of an application under Section 28-3-313, if at least 120
21 hours have elapsed since the decedent's death, the Registrar, upon granting
22 the application, shall issue a written statement of universal succession
23 describing the estate as set forth in the application and stating that the
24 applicants (i) are the universal successors to the assets of the estate as
25 provided in Section 28-3-312, (ii) have assumed liability for the obligations
26 of the decedent, and (iii) have acquired the powers and liabilities of
27 universal successors. The statement of universal succession is evidence of
28 the universal successors' title to the assets of the estate. Upon its
29 issuance, the powers and liabilities of universal successors provided in
30 Sections 28-3-316 through 28-3-322 attach and are assumed by the applicants.

31

32 Section 28-3-316. Universal Succession; Universal Successors' Powers.

33 Upon the Registrar's issuance of a statement of universal succession:

34 (1) Universal successors have full power of ownership to deal with the
35 assets of the estate subject to the limitations and liabilities in this Act.

1 The universal successors shall proceed expeditiously to settle and
2 distribute the estate without adjudication but if necessary may invoke the
3 jurisdiction of the court to resolve questions concerning the estate.

4 (2) Universal successors have the same powers as distributees from a
5 personal representative under Sections 28-3-908 and 28-3-909 and third
6 persons with whom they deal are protected as provided in Section 28-3-910.

7 (3) For purposes of collecting assets in another state whose law does
8 not provide for universal succession, universal successors have the same
9 standing and power as personal representatives or distributees in this State.

10

11 Section 28-3-317. Universal Succession; Universal Successors'
12 Liability to Creditors, Other Heirs, Devisees and Persons Entitled to
13 Decedent's Property; Liability of Other Persons Entitled to Property.

14 (a) In the proportions and subject to limits expressed in Section 28-
15 3-321, universal successors assume all liabilities of the decedent that were
16 not discharged by reason of death and liability for all taxes, claims against
17 the decedent or the estate, and charges properly incurred after death for the
18 preservation of the estate, to the extent those items, if duly presented,
19 would be valid claims against the decedent's estate.

20 (b) In the proportions and subject to the limits expressed in Section
21 28-3-321, universal successors are personally liable to other heirs,
22 devisees, and persons entitled to property of the decedent for the assets or
23 amounts that would be due those heirs, were the estate administered, but no
24 allowance having priority over devisees may be claimed for attorney's fees or
25 charges for preservation of the estate in excess of reasonable amounts
26 properly incurred.

27 (c) Universal successors are entitled to their interests in the estate
28 as heirs or devisees subject to priority and abatement pursuant to Section
29 28-3-902 and to agreement pursuant to Section 28-3-912.

30 (d) Other heirs, devisees, and persons to whom assets have been
31 distributed have the same powers and liabilities as distributees under
32 Sections 28-3-908, 28-3-909, and 28-3-910.

33 (e) Absent breach of fiduciary obligations or express undertaking, a
34 fiduciary's liability is limited to the assets received by the fiduciary.

35

1 Section 28-3-318. Universal Succession; Universal Successors'
2 Submission to Jurisdiction; When Heirs or Devisees May Not Seek
3 Administration.

4 (a) Upon issuance of the statement of universal succession, the
5 universal successors become subject to the personal jurisdiction of the
6 courts of this state in any proceeding that may be instituted relating to the
7 estate or to any liability assumed by them.

8 (b) Any heir or devisee who voluntarily joins in an application under
9 Section 28-3-313 may not subsequently seek appointment of a personal
10 representative.

11

12 Section 28-3-319. Universal Succession; Duty of Universal Successors;
13 Information to Heirs and Devisees.

14 Not later than thirty days after issuance of the statement of universal
15 succession, each universal successor shall inform the heirs and devisees who
16 did not join in the application of the succession without administration.
17 The information must be delivered or be sent by ordinary mail to each of the
18 heirs and devisees whose address is reasonably available to the universal
19 successors. The information must include the names and addresses of the
20 universal successors, indicate that it is being sent to persons who have or
21 may have some interest in the estate, and describe the court where the
22 application and statement of universal succession has been filed. The
23 failure of a universal successor to give this information is a breach of duty
24 to the persons concerned but does not affect the validity of the approval of
25 succession without administration or the powers or liabilities of the
26 universal successors. A universal successor may inform other persons of the
27 succession without administration by delivery or by ordinary first class
28 mail.

29

30 Section 28-3-320. Universal Succession; Universal Successors'
31 Liability For Restitution to Estate.

32 If a personal representative is subsequently appointed, universal
33 successors are personally liable for restitution of any property of the
34 estate to which they are not entitled as heirs or devisees of the decedent
35 and their liability is the same as a distributee under Section 28-3-909,

1 subject to the provisions of Sections 28-3-317 and 28-3-321 and the
2 limitations of Section 28-3-1006.

3

4 Section 28-3-321. Universal Succession; Liability of Universal
5 Successors for Claims, Expenses, Intestate Shares and Devises.

6 The liability of universal successors is subject to any defenses that
7 would have been available to the decedent. Other than liability arising from
8 fraud, conversion, or other wrongful conduct of a universal successor, the
9 personal liability of each universal successor to any creditor, claimant,
10 other heir, devisee, or person entitled to decedent's property may not exceed
11 the proportion of the claim that the universal successor's share bears to the
12 share of all heirs and residuary devisees.

13

14 Section 28-3-322. Universal Succession; Remedies of Creditors, Other
15 Heirs, Devisees or Persons Entitled to Decedent's Property.

16 In addition to remedies otherwise provided by law, any creditor, heir,
17 devisee, or person entitled to decedent's property qualified under Section
18 28-3-605, may demand bond of universal successors. If the demand for bond
19 precedes the granting of an application for universal succession, it must be
20 treated as an objection under Section 28-3-314(c) unless it is withdrawn, the
21 claim satisfied, or the applicants post bond in an amount sufficient to
22 protect the demandant. If the demand for bond follows the granting of an
23 application for universal succession, the universal successors, within 10
24 days after notice of the demand, upon satisfying the claim or posting bond
25 sufficient to protect the demandant, may disqualify the demandant from
26 seeking administration of the estate.

27

PART 4

28

FORMAL TESTACY AND APPOINTMENT PROCEEDINGS

29 Section 28-3-401. Formal Testacy Proceedings; Nature; When
30 Commenced.

31 A formal testacy proceeding is litigation to determine whether a
32 decedent left a valid will. A formal testacy proceeding may be commenced by
33 an interested person filing a petition as described in Section 28-3-402(a) in
34 which he requests that the Court, after notice and hearing, enter an order
35 probating a will, or a petition to set aside an informal probate of a will or

1 to prevent informal probate of a will which is the subject of a pending
2 application, or a petition in accordance with Section 28-3-402(b) for an
3 order that the decedent died intestate.

4 A petition may seek formal probate of a will without regard to whether
5 the same or a conflicting will has been informally probated. A formal
6 testacy proceeding may, but need not, involve a request for appointment of a
7 personal representative.

8 During the pendency of a formal testacy proceeding, the Registrar shall
9 not act upon any application for informal probate of any will of the decedent
10 or any application for informal appointment of a personal representative of
11 the decedent.

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

24

25 Section 28-3-402. Formal Testacy or Appointment Proceedings;
26 Petition; Contents.

27 (a) Petitions for formal probate of a will, or for adjudication of
28 intestacy with or without request for appointment of a personal
29 representative, must be directed to the Court, request a judicial order after
30 notice and hearing and contain further statements as indicated in this
31 section. A petition for formal probate of a will

32 (1) requests an order as to the testacy of the decedent in
33 relation to a particular instrument which may or may not have been informally
34 probated and determining the heirs,

35 (2) contains the statements required for informal applications as

1 stated in the six subparagraphs under Section 28-3-301(a)(1), the statements
2 required by subparagraphs (ii) and (iii) of Section 28-3-301(a)(2), and
3 (3) states whether the original of the last will of the decedent
4 is in the possession of the Court or accompanies the petition.

5 If the original will is neither in the possession of the Court nor
6 accompanies the petition and no authenticated copy of a will probated in
7 another jurisdiction accompanies the petition, the petition also must state
8 the contents of the will, and indicate that it is lost, destroyed, or
9 otherwise unavailable.

10 (b) A petition for adjudication of intestacy and appointment of an
11 administrator in intestacy must request a judicial finding and order that the
12 decedent left no will and determining the heirs, contain the statements
13 required by (1) and (4) of Section 28-3-301(a) and indicate whether
14 supervised administration is sought. A petition may request an order
15 determining intestacy and heirs without requesting the appointment of an
16 administrator, in which case, the statements required by subparagraph (ii) of
17 Section 28-3-301(a)(4) above may be omitted.

18

19 Section 28-3-403. Formal Testacy Proceedings; Notice of Hearing on
20 Petition.

21 (a) Upon commencement of a formal testacy proceeding, the Court shall
22 fix a time and place of hearing. Notice shall be given in the manner
23 prescribed by Section 28-1-401 by the petitioner to the persons herein
24 enumerated and to any additional person who has filed a demand for notice
25 under Section 28-3-204 of this Code.

26 Notice shall be given to the following persons: the surviving spouse,
27 children, and other heirs of the decedent, the devisees and executors named
28 in any will that is being, or has been, probated, or offered for informal or
29 formal probate in the county, or that is known by the petitioner to have been
30 probated, or offered for informal or formal probate elsewhere, and any
31 personal representative of the decedent whose appointment has not been
32 terminated. Notice may be given to other persons. In addition, the
33 petitioner shall give notice by publication to all unknown persons and to all
34 known persons whose addresses are unknown who have any interest in the
35 matters being litigated.

1 (b) If it appears by the petition or otherwise that the fact of the
2 death of the alleged decedent may be in doubt, or on the written demand of
3 any interested person, a copy of the notice of the hearing on said petition
4 shall be sent by registered mail to the alleged decedent at his last known
5 address. The Court shall direct the petitioner to report the results of, or
6 make and report back concerning, a reasonably diligent search for the alleged
7 decedent in any manner that may seem advisable, including any or all of the
8 following methods:

9 (1) by inserting in one or more suitable periodicals a notice
10 requesting information from any person having knowledge of the whereabouts of
11 the alleged decedent;

12 (2) by notifying law enforcement officials and public welfare
13 agencies in appropriate locations of the disappearance of the alleged
14 decedent;

15 (3) by engaging the services of an investigator.

16 The costs of any search so directed shall be paid by the petitioner if
17 there is no administration or by the estate of the decedent in case there is
18 administration.

19

20 Section 28-3-404. Formal Testacy Proceedings; Written Objections to
21 Probate.

22 Any party to a formal proceeding who opposes the probate of a will for
23 any reason shall state in his pleadings his objections to probate of the
24 will.

25

26 Section 28-3-405. Formal Testacy Proceedings; Uncontested Cases;
27 Hearings and Proof.

28 If a petition in a testacy proceeding is unopposed, the Court may order
29 probate or intestacy on the strength of the pleadings if satisfied that the
30 conditions of Section 28-3-409 have been met, or conduct a hearing in open
31 court and require proof of the matters necessary to support the order sought.

32 If evidence concerning execution of the will is necessary, the affidavit or
33 testimony of one of any attesting witnesses to the instrument is sufficient.

34 If the affidavit or testimony of an attesting witness is not available,
35 execution of the will may be proved by other evidence or affidavit.

1

2 Section 28-3-406. Formal Testacy Proceedings; Contested Cases;
3 Testimony of Attesting Witnesses.

4 (a) If evidence concerning execution of an attested will which is not
5 self-proved is necessary in contested cases, the testimony of at least one of
6 the attesting witnesses, if within the state, competent and able to testify,
7 is required. Due execution of an attested or unattested will may be proved
8 by other evidence.

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

15

16 Section 28-3-407. Formal Testacy Proceedings; Burdens in Contested
17 Cases.

18 In contested cases, petitioners who seek to establish intestacy have
19 the burden of establishing prima facie proof of death, venue, and heirship.
20 Proponents of a will have the burden of establishing prima facie proof of due
21 execution in all cases, and, if they are also petitioners, prima facie proof
22 of death and venue. Contestants of a will have the burden of establishing
23 lack of testamentary intent or capacity, undue influence, fraud, duress,
24 mistake or revocation. Parties have the ultimate burden of persuasion as to
25 matters with respect to which they have the initial burden of proof. If a
26 will is opposed by the petition for probate of a later will revoking the
27 former, it shall be determined first whether the later will is entitled to
28 probate, and if a will is opposed by a petition for a declaration of
29 intestacy, it shall be determined first whether the will is entitled to
30 probate.

31

32 Section 28-3-408. Formal Testacy Proceedings; Will Construction;
33 Effect of Final Order in Another Jurisdiction.

34 A final order of a court of another state determining testacy, the
35 validity or construction of a will, made in a proceeding involving notice to

1 and an opportunity for contest by all interested persons must be accepted as
2 determinative by the courts of this state if it includes, or is based upon, a
3 finding that the decedent was domiciled at his death in the state where the
4 order was made.

5

6 Section 28-3-409. Formal Testacy Proceedings; Order; Foreign Will.

7 After the time required for any notice has expired, upon proof of
8 notice, and after any hearing that may be necessary, if the Court finds that
9 the testator is dead, venue is proper and that the proceeding was commenced
10 within the limitation prescribed by Section 28-3-108, it shall determine the
11 decedent's domicile at death, his heirs and his state of testacy. Any will
12 found to be valid and unrevoked shall be formally probated. Termination of
13 any previous informal appointment of a personal representative, which may be
14 appropriate in view of the relief requested and findings, is governed by
15 Section 28-3-612. The petition shall be dismissed or appropriate amendment
16 allowed if the court is not satisfied that the alleged decedent is dead. A
17 will from a place which does not provide for probate of a will after death,
18 may be proved for probate in this state by a duly authenticated certificate
19 of its legal custodian that the copy introduced is a true copy and that the
20 will has become effective under the law of the other place.

21

22 Section 28-3-410. Formal Testacy Proceedings; Probate of More Than
23 One Instrument.

24 If two or more instruments are offered for probate before a final order
25 is entered in a formal testacy proceeding, more than one instrument may be
26 probated if neither expressly revokes the other or contains provisions which
27 work a total revocation by implication. If more than one instrument is
28 probated, the order shall indicate what provisions control in respect to the
29 nomination of an executor, if any. The order may, but need not, indicate how
30 any provisions of a particular instrument are affected by the other
31 instrument. After a final order in a testacy proceeding has been entered, no
32 petition for probate of any other instrument of the decedent may be
33 entertained, except incident to a petition to vacate or modify a previous
34 probate order and subject to the time limits of Section 28-3-412.

35

1 Section 28-3-411. Formal Testacy Proceedings; Partial Intestacy.

2 If it becomes evident in the course of a formal testacy proceeding
3 that, though one or more instruments are entitled to be probated, the
4 decedent's estate is or may be partially intestate, the Court shall enter an
5 order to that effect.

6

7 Section 28-3-412. Formal Testacy Proceedings; Effect of Order;
8 Vacation.

9 Subject to appeal and subject to vacation as provided in this section
10 and in Section 28-3-413, a formal testacy order under Sections 28-3-409 to
11 28-3-411, including an order that the decedent left no valid will and
12 determining heirs, is final as to all persons with respect to all issues
13 concerning the decedent's estate that the court considered or might have
14 considered incident to its rendition relevant to the question of whether the
15 decedent left a valid will, and to the determination of heirs, except that:

16 (1) The court shall entertain a petition for modification or vacation
17 of its order and probate of another will of the decedent if it is shown that
18 the proponents of the later-offered will: (i) were unaware of its existence
19 at the time of the earlier proceeding: or (ii) were unaware of the earlier
20 proceeding and were given no notice thereof, except by publication.

21 (2) If intestacy of all or part of the estate has been ordered, the
22 determination of heirs of the decedent may be reconsidered if it is shown
23 that one or more persons were omitted from the determination and it is also
24 shown that the persons were unaware of their relationship to the decedent,
25 were unaware of his death or were given no notice of any proceeding
26 concerning his estate, except by publication.

27 (3) A petition for vacation under paragraph (1) or (2) must be filed
28 prior to the earlier of the following time limits:

29 (i) if a personal representative has been appointed for the
30 estate, the time of entry of any order approving final distribution of the
31 estate, or, if the estate is closed by statement, six months after the filing
32 of the closing statement;

33 (ii) whether or not a personal representative has been appointed
34 for the estate of the decedent, the time prescribed by Section 28-3-108 when
35 it is no longer possible to initiate an original proceeding to probate a will

1 of the decedent; or

2 (iii) twelve months after the entry of the order sought to be
3 vacated.

4 (4) The order originally rendered in the testacy proceeding may be
5 modified or vacated, if appropriate under the circumstances, by the order of
6 probate of the later-offered will or the order redetermining heirs.

7 (5) The finding of the fact of death is conclusive as to the alleged
8 decedent only if notice of the hearing on the petition in the formal testacy
9 proceeding was sent by registered or certified mail addressed to the alleged
10 decedent at his last known address and the court finds that a search under
11 Section 28-3-403(b) was made.

12 If the alleged decedent is not dead, even if notice was sent and search
13 was made, he may recover estate assets in the hands of the personal
14 representative. In addition to any remedies available to the alleged
15 decedent by reason of any fraud or intentional wrongdoing, the alleged
16 decedent may recover any estate or its proceeds from distributees that is in
17 their hands, or the value of distributions received by them, to the extent
18 that any recovery from distributees is equitable in view of all of the
19 circumstances.

20

21 Section 28-3-413. Formal Testacy Proceedings; Vacation of Order For
22 Other Cause.

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

25

26 Section 28-3-414. Formal Proceedings Concerning Appointment of
27 Personal Representative.

28 (a) A formal proceeding for adjudication regarding the priority or
29 qualification of one who is an applicant for appointment as personal
30 representative, or of one who previously has been appointed personal
31 representative in informal proceedings, if an issue concerning the testacy of
32 the decedent is or may be involved, is governed by Section 28-3-402, as well
33 as by this section. In other cases, the petition shall contain or adopt the
34 statements required by Section 28-3-301(1) and describe the question relating
35 to priority or qualification of the personal representative which is to be

1 resolved. If the proceeding precedes any appointment of a personal
2 representative, it shall stay any pending informal appointment proceedings as
3 well as any commenced thereafter. If the proceeding is commenced after
4 appointment, the previously appointed personal representative, after receipt
5 of notice thereof, shall refrain from exercising any power of administration
6 except as necessary to preserve the estate or unless the Court orders
7 otherwise.

8 (b) After notice to interested persons, including all persons
9 interested in the administration of the estate as successors under the
10 applicable assumption concerning testacy, any previously appointed personal
11 representative and any person having or claiming priority for appointment as
12 personal representative, the Court shall determine who is entitled to
13 appointment under Section 28-3-203, make a proper appointment and, if
14 appropriate, terminate any prior appointment found to have been improper as
15 provided in cases of removal under Section 28-3-611.

16 PART 5

17 SUPERVISED ADMINISTRATION

18 Section 28-3-501. Supervised Administration; Nature of Proceeding.

19 Supervised administration is a single in rem proceeding to secure
20 complete administration and settlement of a decedent's estate under the
21 continuing authority of the Court which extends until entry of an order
22 approving distribution of the estate and discharging the personal
23 representative or other order terminating the proceeding. A supervised
24 personal representative is responsible to the Court, as well as to the
25 interested parties, and is subject to directions concerning the estate made
26 by the Court on its own motion or on the motion of any interested party.
27 Except as otherwise provided in this Part, or as otherwise ordered by the
28 Court, a supervised personal representative has the same duties and powers as
29 a personal representative who is not supervised.

30
31 Section 28-3-502. Supervised Administration; Petition; Order.

32 A petition for supervised administration may be filed by any interested
33 person or by a personal representative at any time or the prayer for
34 supervised administration may be joined with a petition in a testacy or
35 appointment proceeding. If the testacy of the decedent and the priority and

1 qualification of any personal representative have not been adjudicated
2 previously, the petition for supervised administration shall include the
3 matters required of a petition in a formal testacy proceeding and the notice
4 requirements and procedures applicable to a formal testacy proceeding apply.
5 If not previously adjudicated, the Court shall adjudicate the testacy of the
6 decedent and questions relating to the priority and qualifications of the
7 personal representative in any case involving a request for supervised
8 administration, even though the request for supervised administration may be
9 denied. After notice to interested persons, the Court shall order supervised
10 administration of a decedent's estate: (1) if the decedent's will directs
11 supervised administration, it shall be ordered unless the Court finds that
12 circumstances bearing on the need for supervised administration have changed
13 since the execution of the will and that there is no necessity for supervised
14 administration; (2) if the decedent's will directs unsupervised
15 administration, supervised administration shall be ordered only upon a
16 finding that it is necessary for protection of persons interested in the
17 estate; or (3) in other cases if the Court finds that supervised
18 administration is necessary under the circumstances.

19

20 Section 28-3-503. Supervised Administration; Effect on Other
21 Proceedings.

22 (a) The pendency of a proceeding for supervised administration of a
23 decedent's estate stays action on any informal application then pending or
24 thereafter filed.

25 (b) If a will has been previously probated in informal proceedings, the
26 effect of the filing of a petition for supervised administration is as
27 provided for formal testacy proceedings by Section 28-3-401.

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

33

34 Section 28-3-504. Supervised Administration; Powers of Personal
35 Representative.

1 Unless restricted by the Court, a supervised personal representative
2 has, without interim orders approving exercise of a power, all powers of
3 personal representatives under this Code, but he shall not exercise his power
4 to make any distribution of the estate without prior order of the Court. Any
5 other restriction on the power of a personal representative which may be
6 ordered by the Court must be endorsed on his letters of appointment and,
7 unless so endorsed, is ineffective as to persons dealing in good faith with
8 the personal representative.

9

10 Section 28-3-505. Supervised Administration; Interim Orders;
11 Distribution and Closing Orders.

12 Unless otherwise ordered by the Court, supervised administration is
13 terminated by order in accordance with time restrictions, notices and
14 contents of orders prescribed for proceedings under Section 28-3-1001.
15 Interim orders approving or directing partial distributions or granting other
16 relief may be issued by the Court at any time during the pendency of a
17 supervised administration on the application of the personal representative
18 or any interested person.

19

PART 6

20 PERSONAL REPRESENTATIVE; APPOINTMENT, CONTROL AND TERMINATION OF AUTHORITY

21 Section 28-3-601. Qualification.

22 Prior to receiving letters, a personal representative shall qualify by
23 filing with the appointing Court any required bond and a statement of
24 acceptance of the duties of the office.

25

26 Section 28-3-602. Acceptance of Appointment; Consent to Jurisdiction.

27 By accepting appointment, a personal representative submits personally
28 to the jurisdiction of the Court in any proceeding relating to the estate
29 that may be instituted by any interested person. Notice of any proceeding
30 shall be delivered to the personal representative, or mailed to him by
31 ordinary first class mail at his address as listed in the application or
32 petition for appointment or as thereafter reported to the Court and to his
33 address as then known to the petitioner.

34

35 Section 28-3-603. Bond Not Required Without Court Order, Exceptions.

1 No bond is required of a personal representative appointed in informal
2 proceedings, except (1) upon the appointment of a special administrator; (2)
3 when an executor or other personal representative is appointed to administer
4 an estate under a will containing an express requirement of bond or (3) when
5 bond is required under Section 28-3-605. Bond may be required by court order
6 at the time of appointment of a personal representative appointed in any
7 formal proceeding except that bond is not required of a personal
8 representative appointed in formal proceedings if the will relieves the
9 personal representative of bond, unless bond has been requested by an
10 interested party and the Court is satisfied that it is desirable. Bond
11 required by any will may be dispensed with in formal proceedings upon
12 determination by the Court that it is not necessary. No bond is required of
13 any personal representative who, pursuant to statute, has deposited cash or
14 collateral with an agency of this state to secure performance of his duties.

15

16 Section 28-3-604. Bond Amount; Security; Procedure; Reduction.

17 If bond is required and the provisions of the will or order do not
18 specify the amount, unless stated in his application or petition, the person
19 qualifying shall file a statement under oath with the Registrar indicating
20 his best estimate of the value of the personal estate of the decedent and of
21 the income expected from the personal and real estate during the next year,
22 and he shall execute and file a bond with the Registrar, or give other
23 suitable security, in an amount not less than the estimate. The Registrar
24 shall determine that the bond is duly executed by a corporate surety, or one
25 or more individual sureties whose performance is secured by pledge of
26 personal property, mortgage on real property or other adequate security. The
27 Registrar may permit the amount of the bond to be reduced by the value of
28 assets of the estate deposited with a domestic financial institution (as
29 defined in Section 28-6-101) in a manner that prevents their unauthorized
30 disposition. On petition of the personal representative or another
31 interested person the Court may excuse a requirement of bond, increase or
32 reduce the amount of the bond, release sureties, or permit the substitution
33 of another bond with the same or different sureties.

34

35 Section 28-3-605. Demand For Bond by Interested Person.

1 Any person apparently having an interest in the estate worth in excess
2 of \$1000, or any creditor having a claim in excess of \$1000, may make a
3 written demand that a personal representative give bond. The demand must be
4 filed with the Registrar and a copy mailed to the personal representative, if
5 appointment and qualification have occurred. Thereupon, bond is required,
6 but the requirement ceases if the person demanding bond ceases to be
7 interested in the estate, or if bond is excused as provided in Section 28-
8 3-603 or 28-3-604. After he has received notice and until the filing of the
9 bond or cessation of the requirement of bond, the personal representative
10 shall refrain from exercising any powers of his office except as necessary to
11 preserve the estate. Failure of the personal representative to meet a
12 requirement of bond by giving suitable bond within 30 days after receipt of
13 notice is cause for his removal and appointment of a successor personal
14 representative.

15

16 Section 28-3-606. Terms and Conditions of Bonds.

17 (a) The following requirements and provisions apply to any bond
18 required by this Part:

19 (1) Bonds shall name the state as obligee for the benefit of the
20 persons interested in the estate and shall be conditioned upon the faithful
21 discharge by the fiduciary of all duties according to law.

22 (2) Unless otherwise provided by the terms of the approved bond,
23 sureties are jointly and severally liable with the personal representative
24 and with each other. The address of sureties shall be stated in the bond.

25 (3) By executing an approved bond of a personal representative,
26 the surety consents to the jurisdiction of the probate court which issued
27 letters to the primary obligor in any proceedings pertaining to the fiduciary
28 duties of the personal representative and naming the surety as a party.
29 Notice of any proceeding shall be delivered to the surety or mailed to him by
30 registered or certified mail at his address as listed with the court where
31 the bond is filed and to his address as then known to the petitioner.

32 (4) On petition of a successor personal representative, any other
33 personal representative of the same decedent, or any interested person, a
34 proceeding in the Court may be initiated against a surety for breach of the
35 obligation of the bond of the personal representative.

1 (5) The bond of the personal representative is not void after the
2 first recovery but may be proceeded against from time to time until the whole
3 penalty is exhausted.

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

7

8 Section 28-3-607. Order Restraining Personal Representative.

9 (a) On petition of any person who appears to have an interest in the
10 estate, the Court by temporary order may restrain a personal representative
11 from performing specified acts of administration, disbursement, or
12 distribution, or exercise of any powers or discharge of any duties of his
13 office, or make any other order to secure proper performance of his duty, if
14 it appears to the Court that the personal representative otherwise may take
15 some action which would jeopardize unreasonably the interest of the applicant
16 or of some other interested person. Persons with whom the personal
17 representative may transact business may be made parties.

18 (b) The matter shall be set for hearing within 10 days unless the
19 parties otherwise agree. Notice as the Court directs shall be given to the
20 personal representative and his attorney of record, if any, and to any other
21 parties named defendant in the petition.

22

23 Section 28-3-608. Termination of Appointment; General.

24 Termination of appointment of a personal representative occurs as
25 indicated in Sections 28-3-609 to 28-3-612, inclusive. Termination ends the
26 right and power pertaining to the office of personal representative as
27 conferred by this Code or any will, except that a personal representative, at
28 any time prior to distribution or until restrained or enjoined by court
29 order, may perform acts necessary to protect the estate and may deliver the
30 assets to a successor representative. Termination does not discharge a
31 personal representative from liability for transactions or omissions
32 occurring before termination, or relieve him of the duty to preserve assets
33 subject to his control, to account therefor and to deliver the assets.
34 Termination does not affect the jurisdiction of the Court over the personal
35 representative, but terminates his authority to represent the estate in any

1 pending or future proceeding.

2

3 Section 28-3-609. Termination of Appointment; Death or Disability.

4 The death of a personal representative or the appointment of a
5 conservator for the estate of a personal representative, terminates his
6 appointment. Until appointment and qualification of a successor or special
7 representative to replace the deceased or protected representative, the
8 representative of the estate of the deceased or protected personal
9 representative, if any, has the duty to protect the estate possessed and
10 being administered by his decedent or ward at the time his appointment
11 terminates, has the power to perform acts necessary for protection and shall
12 account for and deliver the estate assets to a successor or special personal
13 representative upon his appointment and qualification.

14

15 Section 28-3-610. Termination of Appointment; Voluntary.

16 (a) An appointment of a personal representative terminates as provided
17 in Section 28-3-1003, one year after the filing of a closing statement.

18 (b) An order closing an estate as provided in Section 28-3-1001 or 28-
19 3-1002 terminates an appointment of a personal representative.

20 (c) A personal representative may resign his position by filing a
21 written statement of resignation with the Registrar after he has given at
22 least 15 days written notice to the persons known to be interested in the
23 estate. If no one applies or petitions for appointment of a successor
24 representative within the time indicated in the notice, the filed statement
25 of resignation is ineffective as a termination of appointment and in any
26 event is effective only upon the appointment and qualification of a successor
27 representative and delivery of the assets to him.

28

29 Section 28-3-611. Termination of Appointment by Removal; Cause;
30 Procedure.

31 (a) A person interested in the estate may petition for removal of a
32 personal representative for cause at any time. Upon filing of the petition,
33 the Court shall fix a time and place for hearing. Notice shall be given by
34 the petitioner to the personal representative, and to other persons as the
35 Court may order. Except as otherwise ordered as provided in Section 28-

1 3-607, after receipt of notice of removal proceedings, the personal
2 representative shall not act except to account, to correct maladministration
3 or preserve the estate. If removal is ordered, the Court also shall direct
4 by order the disposition of the assets remaining in the name of, or under the
5 control of, the personal representative being removed.

6 (b) Cause for removal exists when removal would be in the best
7 interests of the estate, or if it is shown that a personal representative or
8 the person seeking his appointment intentionally misrepresented material
9 facts in the proceedings leading to his appointment, or that the personal
10 representative has disregarded an order of the Court, has become incapable of
11 discharging the duties of his office, or has mismanaged the estate or failed
12 to perform any duty pertaining to the office. Unless the decedent's will
13 directs otherwise, a personal representative appointed at the decedent's
14 domicile, incident to securing appointment of himself or his nominee as
15 ancillary personal representative, may obtain removal of another who was
16 appointed personal representative in this state to administer local assets.

17

18 Section 28-3-612. Termination of Appointment; Change of Testacy
19 Status.

20 Except as otherwise ordered in formal proceedings, the probate of a
21 will subsequent to the appointment of a personal representative in intestacy
22 or under a will which is superseded by formal probate of another will, or the
23 vacation of an informal probate of a will subsequent to the appointment of
24 the personal representative thereunder, does not terminate the appointment of
25 the personal representative although his powers may be reduced as provided in
26 Section 28-3-401. Termination occurs upon appointment in informal or formal
27 appointment proceedings of a person entitled to appointment under the later
28 assumption concerning testacy. If no request for new appointment is made
29 within 30 days after expiration of time for appeal from the order in formal
30 testacy proceedings, or from the informal probate, changing the assumption
31 concerning testacy, the previously appointed personal representative upon
32 request may be appointed personal representative under the subsequently
33 probated will, or as in intestacy as the case may be.

34

35 Section 28-3-613. Successor Personal Representative.

1 Parts 3 and 4 of this Article govern proceedings for appointment of a
2 personal representative to succeed one whose appointment has been terminated.
3 After appointment and qualification, a successor personal representative may
4 be substituted in all actions and proceedings to which the former personal
5 representative was a party, and no notice, process or claim which was given
6 or served upon the former personal representative need be given to or served
7 upon the successor in order to preserve any position or right the person
8 giving the notice or filing the claim may thereby have obtained or preserved
9 with reference to the former personal representative. Except as otherwise
10 ordered by the Court, the successor personal representative has the powers
11 and duties in respect to the continued administration which the former
12 personal representative would have had if his appointment had not been
13 terminated.

14

15 Section 28-3-614. Special Administrator; Appointment.

16 A special administrator may be appointed:

17 (1) informally by the Registrar on the application of any interested
18 person when necessary to protect the estate of a decedent prior to the
19 appointment of a general personal representative or if a prior appointment
20 has been terminated as provided in Section 28-3-609;

21 (2) in a formal proceeding by order of the Court on the petition of any
22 interested person and finding, after notice and hearing, that appointment is
23 necessary to preserve the estate or to secure its proper administration
24 including its administration in circumstances where a general personal
25 representative cannot or should not act. If it appears to the Court that an
26 emergency exists, appointment may be ordered without notice.

27

28 Section 28-3-615. Special Administrator; Who May Be Appointed.

29 (a) If a special administrator is to be appointed pending the probate
30 of a will which is the subject of a pending application or petition for
31 probate, the person named executor in the will shall be appointed if
32 available, and qualified.

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

35

1 Section 28-3-616. Special Administrator; Appointed Informally;
2 Powers and Duties.

3 A special administrator appointed by the Registrar in informal
4 proceedings pursuant to Section 28-3-614(1) has the duty to collect and
5 manage the assets of the estate, to preserve them, to account therefor and to
6 deliver them to the general personal representative upon his qualification.
7 The special administrator has the power of a personal representative under
8 the Code necessary to perform his duties.

9

10 Section 28-3-617. Special Administrator; Formal Proceedings; Power
11 and Duties.

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

17

18 Section 28-3-618. Termination of Appointment; Special Administrator.

19 The appointment of a special administrator terminates in accordance
20 with the provisions of the order of appointment or on the appointment of a
21 general personal representative. In other cases, the appointment of a
22 special administrator is subject to termination as provided in Sections 28-
23 3-608 through 28-3-611.

24

PART 7

25

DUTIES AND POWERS OF PERSONAL REPRESENTATIVES

26

Section 28-3-701. Time of Accrual of Duties and Powers.

27

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

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35

Section 28-3-702. 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.

Section 28-3-703. 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 28-7-302. 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 Code, 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 Code, 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, 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

1 as described elsewhere in this Code.

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

7

8 Section 28-3-704. Personal Representative to Proceed Without Court
9 Order; Exception.

10 A personal representative shall proceed expeditiously with the
11 settlement and distribution of a decedent's estate and, except as otherwise
12 specified or ordered in regard to a supervised personal representative, do so
13 without adjudication, order, or direction of the Court, but he may invoke the
14 jurisdiction of the Court, in proceedings authorized by this Code, to resolve
15 questions concerning the estate or its administration.

16

17 Section 28-3-705. Duty of Personal Representative; Information to
18 Heirs and Devisees.

19 Not later than 30 days after his appointment every personal
20 representative, except any special administrator, shall give information of
21 his appointment to the heirs and devisees, including, if there has been no
22 formal testacy proceeding and if the personal representative was appointed on
23 the assumption that the decedent died intestate, the devisees in any will
24 mentioned in the application for appointment of a personal representative.
25 The information shall be delivered or sent by ordinary mail to each of the
26 heirs and devisees whose address is reasonably available to the personal
27 representative. The duty does not extend to require information to persons
28 who have been adjudicated in a prior formal testacy proceeding to have no
29 interest in the estate. The information shall include the name and address
30 of the personal representative, indicate that it is being sent to persons who
31 have or may have some interest in the estate being administered, indicate
32 whether bond has been filed, and describe the court where papers relating to
33 the estate are on file. The information shall state that the estate is being
34 administered by the personal representative under the Arkansas Probate Code
35 without supervision by the Court but that recipients are entitled to

1 information regarding the administration from the personal representative and
2 can petition the Court in any matter relating to the estate, including
3 distribution of assets and expenses of administration. The personal
4 representative's failure to give this information is a breach of his duty to
5 the persons concerned but does not affect the validity of his appointment,
6 his powers or other duties. A personal representative may inform other
7 persons of his appointment by delivery or ordinary first class mail.

8

9 Section 28-3-706. Duty of Personal Representative; Inventory and
10 Appraisalment.

11 Within 3 months after his appointment, a personal representative, who
12 is not a special administrator or a successor to another representative who
13 has previously discharged this duty, shall prepare and file or mail an
14 inventory of property owned by the decedent at the time of his death, listing
15 it with reasonable detail, and indicating as to each listed item, its fair
16 market value as of the date of the decedent's death, and the type and amount
17 of any encumbrance that may exist with reference to any item.

18 The personal representative shall send a copy of the inventory to
19 interested persons who request it. He may also file the original of the
20 inventory with the court.

21

22 Section 28-3-707. Employment of Appraisers.

23 The personal representative may employ a qualified and disinterested
24 appraiser to assist him in ascertaining the fair market value as of the date
25 of the decedent's death of any asset the value of which may be subject to
26 reasonable doubt. Different persons may be employed to appraise different
27 kinds of assets included in the estate. The names and addresses of any
28 appraiser shall be indicated on the inventory with the item or items he
29 appraised.

30

31 Section 28-3-708. Duty of Personal Representative; Supplementary
32 Inventory.

33 If any property not included in the original inventory comes to the
34 knowledge of a personal representative or if the personal representative
35 learns that the value or description indicated in the original inventory for

1 any item is erroneous or misleading, he shall make a supplementary inventory
2 or appraisement showing the market value as of the date of the decedent's
3 death of the new item or the revised market value or descriptions, and the
4 appraisers or other data relied upon, if any, and file it with the Court if
5 the original inventory was filed, or furnish copies thereof or information
6 thereof to persons interested in the new information.

7

8 Section 28-3-709. Duty of Personal Representative; Possession of
9 Estate.

10 Except as otherwise provided by a decedent's will, every personal
11 representative has a right to, and shall take possession or control of, the
12 decedent's property, except that any real property or tangible personal
13 property may be left with or surrendered to the person presumptively entitled
14 thereto unless or until, in the judgment of the personal representative,
15 possession of the property by him will be necessary for purposes of
16 administration. The request by a personal representative for delivery of any
17 property possessed by an heir or devisee is conclusive evidence, in any
18 action against the heir or devisee for possession thereof, that the
19 possession of the property by the personal representative is necessary for
20 purposes of administration. The personal representative shall pay taxes on,
21 and take all steps reasonably necessary for the management, protection and
22 preservation of, the estate in his possession. He may maintain an action to
23 recover possession of property or to determine the title thereto.

24

25 Section 28-3-710. Power to Avoid Transfers.

26 The property liable for the payment of unsecured debts of a decedent
27 includes all property transferred by him by any means which is in law void or
28 voidable as against his creditors, and subject to prior liens, the right to
29 recover this property, so far as necessary for the payment of unsecured debts
30 of the decedent, is exclusively in the personal representative.

31

32 Section 28-3-711. Powers of Personal Representatives; In General.

33 Until termination of his appointment a personal representative has the
34 same power over the title to property of the estate that an absolute owner
35 would have, in trust however, for the benefit of the creditors and others

1 interested in the estate. This power may be exercised without notice,
2 hearing, or order of court.

3

4 Section 28-3-712. Improper Exercise of Power; Breach of Fiduciary
5 Duty.

6 If the exercise of power concerning the estate is improper, the
7 personal representative is liable to interested persons for damage or loss
8 resulting from breach of his fiduciary duty to the same extent as a trustee
9 of an express trust. The rights of purchasers and others dealing with a
10 personal representative shall be determined as provided in Sections 28-3-713
11 and 28-3-714.

12

13 Section 28-3-713. Sale, Encumbrance or Transaction Involving Conflict
14 of Interest; Voidable; Exceptions.

15 Any sale or encumbrance to the personal representative, his spouse,
16 agent or attorney, or any corporation or trust in which he has a substantial
17 beneficial interest, or any transaction which is affected by a substantial
18 conflict of interest on the part of the personal representative, is voidable
19 by any person interested in the estate except one who has consented after
20 fair disclosure, unless

21 (1) the will or a contract entered into by the decedent expressly
22 authorized the transaction; or

23 (2) the transaction is approved by the Court after notice to interested
24 persons.

25

26 Section 28-3-714. Persons Dealing with Personal Representative;
27 Protection.

28 A person who in good faith either assists a personal representative or
29 deals with him for value is protected as if the personal representative
30 properly exercised his power. The fact that a person knowingly deals with a
31 personal representative does not alone require the person to inquire into the
32 existence of a power or the propriety of its exercise. Except for
33 restrictions on powers of supervised personal representatives which are
34 endorsed on letters as provided in Section 28-3-504, no provision in any will
35 or order of court purporting to limit the power of a personal representative

1 is effective except as to persons with actual knowledge thereof. A person is
2 not bound to see to the proper application of estate assets paid or delivered
3 to a personal representative. The protection here expressed extends to
4 instances in which some procedural irregularity or jurisdictional defect
5 occurred in proceedings leading to the issuance of letters, including a case
6 in which the alleged decedent is found to be alive. The protection here
7 expressed is not by substitution for that provided by comparable provisions
8 of the laws relating to commercial transactions and laws simplifying
9 transfers of securities by fiduciaries.

10

11 Section 28-3-715. Transactions Authorized for Personal
12 Representatives; Exceptions.

13 Except as restricted or otherwise provided by the will or by an order
14 in a formal proceeding and subject to the priorities stated in Section 28-
15 3-902, a personal representative, acting reasonably for the benefit of the
16 interested persons, may properly:

17 (1) retain assets owned by the decedent pending distribution or
18 liquidation including those in which the representative is personally
19 interested or which are otherwise improper for trust investment;

20 (2) receive assets from fiduciaries, or other sources;

21 (3) perform, compromise or refuse performance of the decedent's
22 contracts that continue as obligations of the estate, as he may determine
23 under the circumstances. In performing enforceable contracts by the decedent
24 to convey or lease land, the personal representative, among other possible
25 courses of action, may:

26 (i) execute and deliver a deed of conveyance for cash payment of
27 all sums remaining due on the purchaser's note for the sum remaining due
28 secured by a mortgage or deed of trust on the land; or

29 (ii) deliver a deed in escrow with directions that the proceeds,
30 when paid in accordance with the escrow agreement, be paid to the successors
31 of the decedent, as designated in the escrow agreement;

32 (4) satisfy written charitable pledges of the decedent irrespective of
33 whether the pledges constituted binding obligations of the decedent or were
34 properly presented as claims, if in the judgment of the personal
35 representative the decedent would have wanted the pledges completed under the

1 circumstances;

2 (5) if funds are not needed to meet debts and expenses currently
3 payable and are not immediately distributable, deposit or invest liquid
4 assets of the estate, including moneys received from the sale of other
5 assets, in federally insured interest-bearing accounts, readily marketable
6 secured loan arrangements or other prudent investments which would be
7 reasonable for use by trustees generally;

8 (6) acquire or dispose of an asset, including land in this or another
9 state, for cash or on credit, at public or private sale; and manage, develop,
10 improve, exchange, partition, change the character of, or abandon an estate
11 asset;

12 (7) make ordinary or extraordinary repairs or alterations in buildings
13 or other structures, demolish any improvements, raze existing or erect new
14 party walls or buildings;

15 (8) subdivide, develop or dedicate land to public use; make or obtain
16 the vacation of plats and adjust boundaries; or adjust differences in
17 valuation on exchange or partition by giving or receiving considerations; or
18 dedicate easements to public use without consideration;

19 (9) enter for any purpose into a lease as lessor or lessee, with or
20 without option to purchase or renew, for a term within or extending beyond
21 the period of administration;

22 (10) enter into a lease or arrangement for exploration and removal of
23 minerals or other natural resources or enter into a pooling or unitization
24 agreement;

25 (11) abandon property when, in the opinion of the personal
26 representative, it is valueless, or is so encumbered, or is in condition that
27 it is of no benefit to the state;

28 (12) vote stocks or other securities in person or by general or limited
29 proxy;

30 (13) pay calls, assessments, and other sums chargeable or accruing
31 against or on account of securities, unless barred by the provisions relating
32 to claims;

33 (14) hold a security in the name of a nominee or in other form without
34 disclosure of the interest of the estate but the personal representative is
35 liable for any act of the nominee in connection with the security so held;

1 (15) insure the assets of the estate against damage, loss and liability
2 and himself against liability as to third persons;

3 (16) borrow money with or without security to be repaid from the estate
4 assets or otherwise; and advance money for the protection of the estate;

5 (17) effect a fair and reasonable compromise with any debtor or
6 obligor, or extend, renew or in any manner modify the terms of any obligation
7 owing to the estate. If the personal representative holds a mortgage, pledge
8 or other lien upon property of another person, he may, in lieu of
9 foreclosure, accept a conveyance or transfer of encumbered assets from the
10 owner thereof in satisfaction of the indebtedness secured by lien;

11 (18) pay taxes, assessments, compensation of the personal
12 representative, and other expenses incident to the administration of the
13 estate;

14 (19) sell or exercise stock subscription or conversion rights;
15 consent, directly or through a committee or other agent, to the
16 reorganization, consolidation, merger, dissolution, or liquidation of a
17 corporation or other business enterprise;

18 (20) allocate items of income or expense to either estate income or
19 principal, as permitted or provided by law;

20 (21) employ persons, including attorneys, auditors, investment
21 advisors, or agents, even if they are associated with the personal
22 representative, to advise or assist the personal representative in the
23 performance of his administrative duties; act without independent
24 investigation upon their recommendations; and instead of acting personally,
25 employ one or more agents to perform any act of administration, whether or
26 not discretionary;

27 (22) prosecute or defend claims, or proceedings in any jurisdiction for
28 the protection of the estate and of the personal representative in the
29 performance of his duties;

30 (23) sell, mortgage, or lease any real or personal property of the
31 estate or any interest therein for cash, credit, or for part cash and part
32 credit, and with or without security for unpaid balances;

33 (24) continue any unincorporated business or venture in which the
34 decedent was engaged at the time of his death (i) in the same business form
35 for a period of not more than 4 months from the date of appointment of a

1 general personal representative if continuation is a reasonable means of
2 preserving the value of the business including good will, (ii) in the same
3 business form for any additional period of time that may be approved by order
4 of the Court in a formal proceeding to which the persons interested in the
5 estate are parties; or (iii) throughout the period of administration if the
6 business is incorporated by the personal representative and if none of the
7 probable distributees of the business who are competent adults object to its
8 incorporation and retention in the estate;

9 (25) incorporate any business or venture in which the decedent was
10 engaged at the time of his death;

11 (26) provide for exoneration of the personal representative from
12 personal liability in any contract entered into on behalf of the estate;

13 (27) satisfy and settle claims and distribute the estate as provided in
14 this Code.

15

16 Section 28-3-716. Powers and Duties of Successor Personal
17 Representative.

18 A successor personal representative has the same power and duty as the
19 original personal representative to complete the administration and
20 distribution of the estate, as expeditiously as possible, but he shall not
21 exercise any power expressly made personal to the executor named in the will.

22

23 Section 28-3-717. Co-representatives; When Joint Action Required.

24 If two or more persons are appointed co-representatives and unless the
25 will provides otherwise, the concurrence of all is required on all acts
26 connected with the administration and distribution of the estate. This
27 restriction does not apply when any co-representative receives and receipts
28 for property due the estate, when the concurrence of all cannot readily be
29 obtained in the time reasonably available for emergency action necessary to
30 preserve the estate, or when a co-representative has been delegated to act
31 for the others. Persons dealing with a co-representative if actually unaware
32 that another has been appointed to serve with him or if advised by the
33 personal representative with whom they deal that he has authority to act
34 alone for any of the reasons mentioned herein, are as fully protected as if
35 the person with whom they dealt had been the sole personal representative.

1

2 Section 28-3-718. Powers of Surviving Personal Representative.

3 Unless the terms of the will otherwise provide, every power exercisable
4 by personal co-representatives may be exercised by the one or more remaining
5 after the appointment of one or more is terminated, and if one of 2 or more
6 nominated as co-executors is not appointed, those appointed may exercise all
7 the powers incident to the office.

8

9 Section 28-3-719. Compensation of Personal Representative.

10 A personal representative is entitled to reasonable compensation for
11 his services. If a will provides for compensation of the personal
12 representative and there is no contract with the decedent regarding
13 compensation, he may renounce the provision before qualifying and be entitled
14 to reasonable compensation. A personal representative also may renounce his
15 right to all or any part of the compensation. A written renunciation of fee
16 may be filed with the Court.

17

18 Section 28-3-720. Expenses in Estate Litigation.

19 If any personal representative or person nominated as personal
20 representative defends or prosecutes any proceeding in good faith, whether
21 successful or not he is entitled to receive from the estate his necessary
22 expenses and disbursements including reasonable attorneys' fees incurred.

23

24 Section 28-3-721. Proceedings for Review of Employment of Agents and
25 Compensation of Personal Representatives and Employees of Estate.

26 After notice to all interested persons or on petition of an interested
27 person or on appropriate motion if administration is supervised, the
28 propriety of employment of any person by a personal representative including
29 any attorney, auditor, investment advisor or other specialized agent or
30 assistant, the reasonableness of the compensation of any person so employed,
31 or the reasonableness of the compensation determined by the personal
32 representative for his own services, may be reviewed by the Court. Any
33 person who has received excessive compensation from an estate for services
34 rendered may be ordered to make appropriate refunds.

35

PART 8

1 CREDITORS' CLAIMS

2 Section 28-3-801. Notice to Creditors.

3 (a) Unless notice has already been given under this section, a personal
4 representative upon appointment shall publish a notice to creditors once a
5 week for two successive weeks in a newspaper of general circulation in the
6 county announcing the appointment and the personal representative's address
7 and notifying creditors of the estate to present their claims within four
8 months after the date of the first publication of the notice or be forever
9 barred.

10 (b) A personal representative may give written notice by mail or other
11 delivery to a creditor, notifying the creditor to present his or her claim
12 within four months after the published notice, if given as provided in
13 subsection (a), or within 60 days after the mailing or other delivery of the
14 notice, whichever is later, or be forever barred. Written notice must be the
15 notice described in subsection (a) above or a similar notice.

16 (c) The personal representative is not liable to a creditor or to a
17 successor of the decedent for giving or failing to give notice under this
18 section.

19

20 Section 28-3-802. Statutes of Limitations.

21 (a) Unless an estate is insolvent, the personal representative, with
22 the consent of all successors whose interests would be affected, may waive
23 any defense of limitations available to the estate. If the defense is not
24 waived, no claim barred by a statute of limitations at the time of the
25 decedent's death may be allowed or paid.

26 (b) The running of a statute of limitations measured from an event
27 other than death or the giving of notice to creditors is suspended for four
28 months after the decedent's death, but resumes thereafter as to claims not
29 barred by other sections.

30 (c) For purposes of a statute of limitations, the presentation of a
31 claim pursuant to Section 28-3-804 is equivalent to commencement of a
32 proceeding on the claim.

33

34 Section 28-3-803. Limitations on Presentation of Claims.

35 (a) All claims against a decedent's estate which arose before the death

1 of the decedent, including claims of the state and any subdivision thereof,
2 whether due or to become due, absolute or contingent, liquidated or
3 unliquidated, founded on contract, tort, or other legal basis, if not barred
4 earlier by another statute of limitations or non-claim statute, are barred
5 against the estate, the personal representative, and the heirs and devisees
6 of the decedent, unless presented within the earlier of the following:

7 (1) one year after the decedent's death; or

8 (2) the time provided by Section 28-3-801(b) for creditors who
9 are given actual notice, and within the time provided in 28-3-801(a) for all
10 creditors barred by publication.

11 (b) A claim described in subsection (a) which is barred by the
12 non-claim statute of the decedent's domicile before the giving of notice to
13 creditors in this State is barred in this State.

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

20 (1) a claim based on a contract with the personal representative,
21 within four months after performance by the personal representative is due;
22 or

23 (2) any other claim, within the later of four months after it
24 arises, or the time specified in subsection (a)(1).

25 (d) Nothing in this section affects or prevents:

26 (1) any proceeding to enforce any mortgage, pledge, or other lien
27 upon property of the estate;

28 (2) to the limits of the insurance protection only, any
29 proceeding to establish liability of the decedent or the personal
30 representative for which he is protected by liability insurance; or

31 (3) collection of compensation for services rendered and
32 reimbursement for expenses advanced by the personal representative or by the
33 attorney or accountant for the personal representative of the estate.

34

35 Section 28-3-804. Manner of Presentation of Claims.

1 Claims against a decedent's estate may be presented as follows:

2 (1) The claimant may deliver or mail to the personal representative a
3 written statement of the claim indicating its basis, the name and address of
4 the claimant, and the amount claimed, or may file a written statement of the
5 claim, in the form prescribed by rule, with the clerk of the Court. The
6 claim is deemed presented on the first to occur of receipt of the written
7 statement of claim by the personal representative, or the filing of the claim
8 with the Court. If a claim is not yet due, the date when it will become due
9 shall be stated. If the claim is contingent or unliquidated, the nature of
10 the uncertainty shall be stated. If the claim is secured, the security shall
11 be described. Failure to describe correctly the security, the nature of any
12 uncertainty, and the due date of a claim not yet due does not invalidate the
13 presentation made.

14 (2) The claimant may commence a proceeding against the personal
15 representative in any Court where the personal representative may be
16 subjected to jurisdiction, to obtain payment of his claim against the estate,
17 but the commencement of the proceeding must occur within the time limited for
18 presenting the claim. No presentation of claim is required in regard to
19 matters claimed in proceedings against the decedent which were pending at the
20 time of his death.

21 (3) If a claim is presented under subsection (1), no proceeding thereon
22 may be commenced more than 60 days after the personal representative has
23 failed a notice of disallowance; but, in the case of a claim which is not
24 presently due or which is contingent or unliquidated, the personal
25 representative may consent to an extension of the 60-day period, or to avoid
26 injustice the Court, on petition, may order an extension of the 60-day
27 period, but in no event shall the extension run beyond the applicable statute
28 of limitations.

29

30 Section 28-3-805. Classification of Claims.

31 (a) If the applicable assets of the estate are insufficient to pay all
32 claims in full, the personal representative shall make payment in the
33 following order:

34 (1) costs and expenses of administration;

35 (2) reasonable funeral expenses;

- 1 (3) debts and taxes with preference under federal law;
- 2 (4) reasonable and necessary medical and hospital expenses of the
- 3 last illness of the decedent, including compensation of persons attending
- 4 him;
- 5 (5) debts and taxes with preference under other laws of this
- 6 state;
- 7 (6) all other claims.

8 (b) No preference shall be given in the payment of any claim over any

9 other claim of the same class, and a claim due and payable shall not be

10 entitled to a preference over claims not due.

11

12 Section 28-3-806. Allowance of Claims.

13 (a) As to claims presented in the manner described in Section 28-3-804

14 within the time limit prescribed in 3-803, the personal representative may

15 mail a notice to any claimant stating that the claim has been disallowed.

16 If, after allowing or disallowing a claim, the personal representative

17 changes his decision concerning the claim, he shall notify the claimant. The

18 personal representative may not change a disallowance of a claim after the

19 time for the claimant to file a petition for allowance or to commence a

20 proceeding on the claim has run and the claim has been barred. Every claim

21 which is disallowed in whole or in part by the personal representative is

22 barred so far as not allowed unless the claimant files a petition for

23 allowance in the Court or commences a proceeding against the personal

24 representative not later than 60 days after the mailing of the notice of

25 disallowance or partial allowance if the notice warns the claimant of the

26 impending bar. Failure of the personal representative to mail notice to a

27 claimant of action on his claim for 60 days after the time for original

28 presentation of the claim has expired has the effect of a notice of

29 allowance.

30 (b) After allowing or disallowing a claim the personal representative

31 may change the allowance or disallowance as hereafter provided. The personal

32 representative may prior to payment change the allowance to a disallowance in

33 whole or in part, but not after allowance by a court order or judgment or an

34 order directing payment of the claim. He shall notify the claimant of the

35 change to disallowance, and the disallowed claim is then subject to bar as

1 provided in subsection (a). The personal representative may change a
2 disallowance to an allowance, in whole or in part, until it is barred under
3 subsection (a); after it is barred, it may be allowed and paid only if the
4 estate is solvent and all successors whose interests would be affected
5 consent.

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

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

17 (e) Unless otherwise provided in any judgment in another court entered
18 against the personal representative, allowed claims bear interest at the
19 legal rate for the period commencing 60 days after the time for original
20 presentation of the claim has expired unless based on a contract making a
21 provision for interest, in which case they bear interest in accordance with
22 that provision.

23

24 Section 28-3-807. Payment of Claims.

25 (a) Upon the expiration of the earlier of the time limitations provided
26 in Section 28-3-803 for the presentation of claims, the personal
27 representative shall proceed to pay the claims allowed against the estate in
28 the order of priority prescribed, after making provision for homestead,
29 family and support allowances, for claims already presented that have not yet
30 been allowed or whose allowance has been appealed, and for unbarred claims
31 that may yet be presented, including costs and expenses of administration.
32 By petition to the Court in a proceeding for the purpose, or by appropriate
33 motion if the administration is supervised, a claimant whose claim has been
34 allowed but not paid may secure an order directing the personal
35 representative to pay the claim to the extent funds of the estate are

1 available to pay it.

2 (b) The personal representative at any time may pay any just claim that
3 has not been barred, with or without formal presentation, but is personally
4 liable to any other claimant whose claim is allowed and who is injured by its
5 payment if:

6 (1) payment was made before the expiration of the time limit
7 stated in subsection (a) and the personal representative failed to require
8 the payee to give adequate security for the refund of any of the payment
9 necessary to pay other claimants; or

10 (2) payment was made, due to negligence or willful fault of the
11 personal representative, in such manner as to deprive the injured claimant of
12 priority.

13

14 Section 28-3-808. Individual Liability of Personal Representative.

15 (a) Unless otherwise provided in the contract, a personal
16 representative is not individually liable on a contract properly entered into
17 in his fiduciary capacity in the course of administration of the estate
18 unless he fails to reveal his representative capacity and identify the estate
19 in the contract.

20 (b) A personal representative is individually liable for obligations
21 arising from ownership or control of the estate or for torts committed in the
22 course of administration of the estate only if he is personally at fault.

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

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

32

33 Section 28-3-809. Secured Claims.

34 Payment of a secured claim is upon the basis of the amount allowed if
35 the creditor surrenders his security; otherwise payment is upon the basis of

1 one of the following:

2 (1) if the creditor exhausts his security before receiving payment,
3 upon the amount of the claim allowed less the fair value of the security; or

4 (2) if the creditor does not have the right to exhaust his security or
5 has not done so, upon the amount of the claim allowed less the value of the
6 security determined by converting it into money according to the terms of the
7 agreement pursuant to which the security was delivered to the creditor, or by
8 the creditor and personal representative by agreement, arbitration,
9 compromise or litigation.

10

11 Section 28-3-810. Claims Not Due and Contingent or Unliquidated
12 Claims.

13 (a) If a claim which will become due at a future time or a contingent
14 or unliquidated claim becomes due or certain before the distribution of the
15 estate, and if the claim has been allowed or established by a proceeding, it
16 is paid in the same manner as presently due and absolute claims of the same
17 class.

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

21 (1) if the claimant consents, he may be paid the present or
22 agreed value of the claim, taking any uncertainty into account;

23 (2) arrangement for future payment, or possible payment, on the
24 happening of the contingency or on liquidation may be made by creating a
25 trust, giving a mortgage, obtaining a bond or security from a distributee, or
26 otherwise.

27

28 Section 28-3-811. Counterclaims.

29 In allowing a claim the personal representative may deduct any
30 counterclaim which the estate has against the claimant. In determining a
31 claim against an estate a Court shall reduce the amount allowed by the amount
32 of any counterclaims and, if the counterclaims exceed the claim, render a
33 judgment against the claimant in the amount of the excess. A counterclaim,
34 liquidated or unliquidated, may arise from a transaction other than that upon
35 which the claim is based. A counterclaim may give rise to relief exceeding

1 in amount or different in kind from that sought in the claim.

2

3 Section 28-3-812. Execution and Levies Prohibited.

4 No execution may issue upon nor may any levy be made against any
5 property of the estate under any judgment against a decedent or a personal
6 representative, but this section shall not be construed to prevent the
7 enforcement of mortgages, pledges or liens upon real or personal property in
8 an appropriate proceeding.

9

10 Section 28-3-813. Compromise of Claims.

11 When a claim against the estate has been presented in any manner, the
12 personal representative may, if it appears for the best interest of the
13 estate, compromise the claim, whether due or not due, absolute or contingent,
14 liquidated or unliquidated.

15

16 Section 28-3-814. Encumbered Assets.

17 If any assets of the estate are encumbered by mortgage, pledge, lien,
18 or other security interest, the personal representative may pay the
19 encumbrance or any part thereof, renew or extend any obligation secured by
20 the encumbrance or convey or transfer the assets to the creditor in
21 satisfaction of his lien, in whole or in part, whether or not the holder of
22 the encumbrance has presented a claim, if it appears to be for the best
23 interest of the estate. Payment of an encumbrance does not increase the
24 share of the distributee entitled to the encumbered assets unless the
25 distributee is entitled to exoneration.

26

27 Section 28-3-815. Administration in More Than One State; Duty of
28 Personal Representative.

29 (a) All assets of estates being administered in this state are subject
30 to all claims, allowances and charges existing or established against the
31 personal representative wherever appointed.

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

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

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

18

19 Section 28-3-816. Final Distribution to Domiciliary Representative.

20 The estate of a non-resident decedent being administered by a personal
21 representative appointed in this state shall, if there is a personal
22 representative of the decedent's domicile willing to receive it, be
23 distributed to the domiciliary personal representative for the benefit of the
24 successors of the decedent unless (1) by virtue of the decedent's will, if
25 any, and applicable choice of law rules, the successors are identified
26 pursuant to the local law of this state without reference to the local law of
27 the decedent's domicile; (2) the personal representative of this state,
28 after reasonable inquiry, is unaware of the existence or identity of a
29 domiciliary personal representative; or (3) the Court orders otherwise in a
30 proceeding for a closing order under Section 28-3-1001 or incident to the
31 closing of a supervised administration. In other cases, distribution of the
32 estate of a decedent shall be made in accordance with the other Parts of this
33 Article.

34

PART 9

35

SPECIAL PROVISIONS RELATING TO DISTRIBUTION

1 Section 28-3-901. Successors' Rights if No Administration.

2 In the absence of administration, the heirs and devisees are entitled
3 to the estate in accordance with the terms of a probated will or the laws of
4 intestate succession. Devisees may establish title by the probated will to
5 devised property. Persons entitled to property by homestead allowance,
6 exemption or intestacy may establish title thereto by proof of the decedent's
7 ownership, his death, and their relationship to the decedent. Successors
8 take subject to all charges incident to administration, including the claims
9 of creditors and allowances of surviving spouse and dependent children, and
10 subject to the rights of others resulting from abatement, retainer,
11 advancement, and ademption.

12

13 Section 28-3-902. Distribution; Order in Which Assets Appropriated;
14 Abatement.

15 (a) Except as provided in subsection (b) and except as provided in
16 connection with the share of the surviving spouse who elects to take an
17 elective share, shares of distributees abate, without any preference or
18 priority as between real and personal property, in the following order: (1)
19 property not disposed of by the will; (2) residuary devises; (3) general
20 devises; (4) specific devises. For purposes of abatement, a general devise
21 charged on any specific property or fund is a specific devise to the extent
22 of the value of the property on which it is charged, and upon the failure or
23 insufficiency of the property on which it is charged, a general devise to the
24 extent of the failure or insufficiency. Abatement within each classification
25 is in proportion to the amounts of property each of the beneficiaries would
26 have received if full distribution of the property had been made in
27 accordance with the terms of the will.

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

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

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Section 28-3-903. Right of Retainer.

The amount of a non-contingent 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.

Section 28-3-904. Interest on General Pecuniary Devise.

General pecuniary devises bear interest at the legal rate beginning one year after the first appointment of a personal representative until payment, unless a contrary intent is indicated by the will.

Section 28-3-905. 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.

Section 28-3-906. 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 28-2-403 shall receive the items selected.

(2) Any homestead or family allowance or devise of a stated sum of money may be satisfied 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

1 prior to distribution, or if there was no sale on that day, at the median
2 between amounts bid and offered at the close of that day. Assets consisting
3 of sums owed the decedent or the estate by solvent debtors as to which there
4 is no known dispute or defense are valued at the sum due with accrued
5 interest or discounted to the date of distribution. For assets which do not
6 have readily ascertainable values, a valuation as of a date not more than 30
7 days prior to the date of distribution, if otherwise reasonable, controls.
8 For purposes of facilitating distribution, the personal representative may
9 ascertain the value of the assets as of the time of the proposed distribution
10 in any reasonable way, including the employment of qualified appraisers, even
11 if the assets may have been previously appraised.

12 (4) The residuary estate shall be distributed in any equitable
13 manner.

14 (b) After the probable charges against the estate are known, the
15 personal representative may mail or deliver a proposal for distribution to
16 all persons who have a right to object to the proposed distribution. The
17 right of any distributee to object to the proposed distribution on the basis
18 of the kind or value of asset he is to receive, if not waived earlier in
19 writing, terminates if he fails to object in writing received by the personal
20 representative within 30 days after mailing or delivery of the proposal.

21

22 Section 28-3-907. Distribution in Kind; Evidence.

23 If distribution in kind is made, the personal representative shall
24 execute an instrument or deed of distribution assigning, transferring or
25 releasing the assets to the distributee as evidence of the distributee's
26 title to the property.

27

28 Section 28-3-908. Distribution; Right or Title of Distributee.

29 Proof that a distributee has received an instrument or deed of
30 distribution of assets in kind, or payment in distribution, from a personal
31 representative, is conclusive evidence that the distributee has succeeded to
32 the interest of the estate in the distributed assets, as against all persons
33 interested in the estate, except that the personal representative may recover
34 the assets or their value if the distribution was improper.

35

1 Section 28-3-909. Improper Distribution; Liability of Distributee.

2 Unless the distribution or payment no longer can be questioned because
3 of adjudication, estoppel, or limitation, a distributee of property
4 improperly distributed or paid, or a claimant who was improperly paid, is
5 liable to return the property improperly received and its income since
6 distribution if he has the property. If he does not have the property, then
7 he is liable to return the value as of the date of disposition of the
8 property improperly received and its income and gain received by him.

9

10 Section 28-3-910. Purchasers from Distributees Protected.

11 If property distributed in kind or a security interest therein is
12 acquired for value by a purchaser from or lender to a distributee who has
13 received an instrument or deed of distribution from the personal
14 representative, or is so acquired by a purchaser from or lender to a
15 transferee from such distributee, the purchaser or lender takes title free of
16 rights of any interested person in the estate and incurs no personal
17 liability to the estate, or to any interested person, whether or not the
18 distribution was proper or supported by court order or the authority of the
19 personal representative was terminated before execution of the instrument or
20 deed. This section protects a purchaser from or lender to a distributee who,
21 as personal representative, has executed a deed of distribution to himself,
22 as well as a purchaser from or lender to any other distributee or his
23 transferee. To be protected under this provision, a purchaser or lender need
24 not inquire whether a personal representative acted properly in making the
25 distribution in kind, even if the personal representative and the distributee
26 are the same person, or whether the authority of the personal representative
27 had terminated before the distribution. Any recorded instrument described in
28 this section on which a state documentary stamp is affixed pursuant to §§ 26-
29 60-101 through 26-60-112 shall be prima facie evidence that such transfer was
30 made for value.

31

32 Section 28-3-911. Partition for Purpose of Distribution.

33 When two or more heirs or devisees are entitled to distribution of
34 undivided interests in any real or personal property of the estate, the
35 personal representative or one or more of the heirs or devisees may petition

1 the Court prior to the formal or informal closing of the estate, to make
2 partition. After notice to the interested heirs or devisees, the Court shall
3 partition the property in the same manner as provided by the law for civil
4 actions of partition. The Court may direct the personal representative to
5 sell any property which cannot be partitioned without prejudice to the owners
6 and which cannot conveniently be allotted to any one party.

7

8 Section 28-3-912. Private Agreements Among Successors to Decedent
9 Binding on Personal Representative.

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

24

25 Section 28-3-913. Distributions to Trustee.

26 (a) Before distributing to a trustee, the personal representative may
27 require that the trust be registered if the state in which it is to be
28 administered provides for registration and that the trustee inform the
29 beneficiaries as provided in Section 28-7-303.

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

35 (c) No inference of negligence on the part of the personal

1 representative shall be drawn from his failure to exercise the authority
2 conferred by subsections (a) and (b).

3

4 Section 28-3-914. Disposition of Unclaimed Assets.

5 (a) If an heir, devisee or claimant cannot be found, the personal
6 representative shall distribute the share of the missing person to his
7 conservator, if any, otherwise to the state treasurer to become a part of the
8 state escheat fund.

9 (b) The money received by state treasurer shall be paid to the person
10 entitled on proof of his right thereto or, if the state treasurer refuses or
11 fails to pay, the person may petition the Court which appointed the personal
12 representative, whereupon the Court upon notice to the state treasurer may
13 determine the person entitled to the money and order the treasurer to pay it
14 to him. No interest is allowed thereon and the heir, devisee or claimant
15 shall pay all costs and expenses incident to the proceeding. If no petition
16 is made to the court within 8 years after payment to the state treasurer, the
17 right of recovery is barred.

18

19 Section 28-3-915. Distribution to Person Under Disability.

20 (a) A personal representative may discharge his obligation to
21 distribute to any person under legal disability by distributing in a manner
22 expressly provided in the will.

23 (b) Unless contrary to an express provision in the will, the personal
24 representative may discharge his obligation to distribute to a minor or
25 person under other disability as authorized by Section 28-5-101 or any other
26 statute. If the personal representative knows that a conservator has been
27 appointed or that a proceeding for appointment of a conservator is pending,
28 the personal representative is authorized to distribute only to the
29 conservator.

30 (c) If the heir or devisee is under disability other than minority, the
31 personal representative is authorized to distribute to:

32 (1) an attorney in fact who has authority under a power of
33 attorney to receive property for that person; or

34 (2) the spouse, parent or other close relative with whom the
35 person under disability resides if the distribution is of amounts not

1 exceeding \$10,000 a year, or property not exceeding \$10,000 in value, unless
2 the court authorizes a larger amount or greater value.

3 Persons receiving money or property for the disabled person are
4 obligated to apply the money or property to the support of that person, but
5 may not pay themselves except by way of reimbursement for out-of-pocket
6 expenses for goods and services necessary for the support of the disabled
7 person. Excess sums must be preserved for future support of the disabled
8 person. The personal representative is not responsible for the proper
9 application of money or property distributed pursuant to this subsection.

10

11 Section 28-3-916. Apportionment of Estate Taxes.

12 (a) For purposes of this section:

13 (1) "estate" means the gross estate of a decedent as determined
14 for the purpose of federal estate tax and the estate tax payable to this
15 state;

16 (2) "person" means any individual, partnership, association,
17 joint stock company, corporation, government, political subdivision,
18 governmental agency, or local governmental agency;

19 (3) "person interested in the estate" means any person entitled
20 to receive, or who has received, from a decedent or by reason of the death of
21 a decedent any property or interest therein included in the decedent's
22 estate. It includes a personal representative, conservator, and trustee;

23 (4) "state" means any state, territory, or possession of the
24 United States, the District of Columbia, and the Commonwealth of Puerto Rico;

25 (5) "tax" means the federal estate tax and the additional
26 inheritance tax imposed by any state and interest and penalties imposed in
27 addition to the tax;

28 (6) "fiduciary" means personal representative or trustee.

29 (b) Except as provided in subsection (i) and, unless the will otherwise
30 provides, the tax shall be apportioned among all persons interested in the
31 estate. The apportionment is to be made in the proportion that the value of
32 the interest of each person interested in the estate bears to the total value
33 of the interests of all persons interested in the estate. The values used in
34 determining the tax are to be used for that purpose. If the decedent's will
35 directs a method of apportionment of tax different from the method described

1 in this Code, the method described in the will controls.

2 (c) (1) The Court in which venue lies for the administration of the
3 estate of a decedent, on petition for the purpose may determine the
4 apportionment of the tax.

5 (2) If the Court finds that it is inequitable to apportion
6 interest and penalties in the manner provided in subsection (b), because of
7 special circumstances, it may direct apportionment thereof in the manner it
8 finds equitable.

9 (3) If the Court finds that the assessment of penalties and
10 interest assessed in relation to the tax is due to delay caused by the
11 negligence of the fiduciary, the Court may charge him with the amount of the
12 assessed penalties and interest.

13 (4) In any action to recover from any person interested in the
14 estate the amount of the tax apportioned to the person in accordance with
15 this Code the determination of the Court in respect thereto shall be prima
16 facie correct.

17 (d) (1) The personal representative or other person in possession of
18 the property of the decedent required to pay the tax may withhold from any
19 property distributable to any person interested in the estate, upon its
20 distribution to him, the amount of tax attributable to his interest. If the
21 property in possession of the personal representative or other person
22 required to pay the tax and distributable to any person interested in the
23 estate is insufficient to satisfy the proportionate amount of the tax
24 determined to be due from the person, the personal representative or other
25 person required to pay the tax may recover the deficiency from the person
26 interested in the estate. If the property is not in the possession of the
27 personal representative or the other person required to pay the tax, the
28 personal representative or the other person required to pay the tax may
29 recover from any person interested in the estate the amount of the tax
30 apportioned to the person in accordance with this Act.

31 (2) If property held by the personal representative is
32 distributed prior to final apportionment of the tax, the distributee shall
33 provide a bond or other security for the apportionment liability in the form
34 and amount prescribed by the personal representative.

35 (e) (1) In making an apportionment, allowances shall be made for any

1 exemptions granted, any classification made of persons interested in the
2 estate and for any deductions and credits allowed by the law imposing the
3 tax.

4 (2) Any exemption or deduction allowed by reason of the
5 relationship of any person to the decedent or by reason of the purposes of
6 the gift inures to the benefit of the person bearing such relationship or
7 receiving the gift; but if an interest is subject to a prior present
8 interest which is not allowable as a deduction, the tax apportionable against
9 the present interest shall be paid from principal.

10 (3) Any deduction for property previously taxed and any credit
11 for gift taxes or death taxes of a foreign country paid by the decedent or
12 his estate inures to the proportionate benefit of all persons liable to
13 apportionment.

14 (4) Any credit for inheritance, succession or estate taxes or
15 taxes in the nature thereof applicable to property or interests includable in
16 the estate, inures to the benefit of the persons or interests chargeable with
17 the payment thereof to the extent proportionately that the credit reduces the
18 tax.

19 (5) To the extent that property passing to or in trust for a
20 surviving spouse or any charitable, public or similar purpose is not an
21 allowable deduction for purposes of the tax solely by reason of an
22 inheritance tax or other death tax imposed upon and deductible from the
23 property, the property is not included in the computation provided for in
24 subsection (b) hereof, and to that extent no apportionment is made against
25 the property. The sentence immediately preceding does not apply to any case
26 if the result would be to deprive the estate of a deduction otherwise
27 allowable under Section 2053(d) of the Internal Revenue Code of 1954, as
28 amended, of the United States, relating to deduction for state death taxes on
29 transfers for public, charitable, or religious uses.

30 (f) No interest in income and no estate for years or for life or other
31 temporary interest in any property or fund is subject to apportionment as
32 between the temporary interest and the remainder. The tax on the temporary
33 interest and the tax, if any, on the remainder is chargeable against the
34 corpus of the property or funds subject to the temporary interest and
35 remainder.

1 (g) Neither the personal representative nor other person required to
2 pay the tax is under any duty to institute any action to recover from any
3 person interested in the estate the amount of the tax apportioned to the
4 person until the expiration of the 3 months next following final
5 determination of the tax. A personal representative or other person required
6 to pay the tax who institutes the action within a reasonable time after the 3
7 months' period is not subject to any liability or surcharge because any
8 portion of the tax apportioned to any person interested in the estate was
9 collectible at a time following the death of the decedent but thereafter
10 became uncollectible. If the personal representative or other person
11 required to pay the tax cannot collect from any person interested in the
12 estate the amount of the tax apportioned to the person, the amount not
13 recoverable shall be equitably apportioned among the other persons interested
14 in the estate who are subject to apportionment.

15 (h) A personal representative acting in another state or a person
16 required to pay the tax domiciled in another state may institute an action in
17 the courts of this state and may recover a proportionate amount of the
18 federal estate tax, of an estate tax payable to another state or of a death
19 duty due by a decedent's estate to another state, from a person interested in
20 the estate who is either domiciled in this state or who owns property in this
21 state subject to attachment or execution. For the purposes of the action the
22 determination of apportionment by the Court having jurisdiction of the
23 administration of the decedent's estate in the other state is prima facie
24 correct.

25 (i) If the liabilities of persons interested in the estate as
26 prescribed by this act differ from those which result under the Federal
27 Estate tax law, the liabilities imposed by the federal law will control and
28 the balance of this Section shall apply as if the resulting liabilities had
29 been prescribed herein.

30 PART 10

31 CLOSING ESTATES

32 Section 28-3-1001. Formal Proceedings Terminating Administration;
33 Testate or Intestate; Order of General Protection.

34 (a) A personal representative or any interested person may petition for
35 an order of complete settlement of the estate. The personal representative

1 may petition at any time, and any other interested person may petition after
2 one year from the appointment of the original personal representative except
3 that no petition under this section may be entertained until the time for
4 presenting claims which arose prior to the death of the decedent has expired.
5 The petition may request the Court to determine testacy, if not previously
6 determined, to consider the final account or compel or approve an accounting
7 and distribution, to construe any will or determine heirs and adjudicate the
8 final settlement and distribution of the estate. After notice to all
9 interested persons and hearing the Court may enter an order or orders, on
10 appropriate conditions, determining the persons entitled to distribution of
11 the estate, and, as circumstances require, approving settlement and directing
12 or approving distribution of the estate and discharging the personal
13 representative from further claim or demand of any interested person.

14 (b) If one or more heirs or devisees were omitted as parties in, or
15 were not given notice of, a previous formal testacy proceeding, the Court, on
16 proper petition for an order of complete settlement of the estate under this
17 section, and after notice to the omitted or unnotified persons and other
18 interested parties determined to be interested on the assumption that the
19 previous order concerning testacy is conclusive as to those given notice of
20 the earlier proceeding, may determine testacy as it affects the omitted
21 persons and confirm or alter the previous order of testacy as it affects all
22 interested persons as appropriate in the light of the new proofs. In the
23 absence of objection by an omitted or unnotified person, evidence received in
24 the original testacy proceeding shall constitute prima facie proof of due
25 execution of any will previously admitted to probate, or of the fact that the
26 decedent left no valid will if the prior proceedings determined this fact.

27

28 Section 28-3-1002. Formal Proceedings Terminating Testate
29 Administration; Order Construing Will Without Adjudicating Testacy.

30 A personal representative administering an estate under an informally
31 probated will or any devisee under an informally probated will may petition
32 for an order of settlement of the estate which will not adjudicate the
33 testacy status of the decedent. The personal representative may petition at
34 any time, and a devisee may petition after one year, from the appointment of
35 the original personal representative, except that no petition under this

1 section may be entertained until the time for presenting claims which arose
2 prior to the death of the decedent has expired. The petition may request the
3 Court to consider the final account or compel or approve an accounting and
4 distribution, to construe the will and adjudicate final settlement and
5 distribution of the estate. After notice to all devisees and the personal
6 representative and hearing, the Court may enter an order or orders, on
7 appropriate conditions, determining the persons entitled to distribution of
8 the estate under the will, and, as circumstances require, approving
9 settlement and directing or approving distribution of the estate and
10 discharging the personal representative from further claim or demand of any
11 devisee who is a party to the proceeding and those he represents. If it
12 appears that a part of the estate is intestate, the proceedings shall be
13 dismissed or amendments made to meet the provisions of Section 28-3-1001.

14

15 Section 28-3-1003. Closing Estates; By Sworn Statement of Personal
16 Representative.

17 (a) Unless prohibited by order of the Court and except for estates
18 being administered in supervised administration proceedings, a personal
19 representative may close an estate by filing with the court no earlier than
20 six months after the date of original appointment of a general personal
21 representative for the estate, a verified statement stating that the personal
22 representatives or a previous personal representative, has:

23 (1) determined that the time limited for presentation of
24 creditors' claims has expired.

25 (2) fully administered the estate of the decedent by making
26 payment, settlement, or other disposition of all claims that were presented,
27 expenses of administration and estate, inheritance and other death taxes,
28 except as specified in the statement, and that the assets of the estate have
29 been distributed to the persons entitled. If any claims remain undischarged,
30 the statement must state whether the personal representative has distributed
31 the estate subject to possible liability with the agreement of the
32 distributees or state in detail other arrangements that have been made to
33 accommodate outstanding liabilities; and

34 (3) sent a copy of the statement to all distributees of the
35 estate and to all creditors or other claimants of whom the personal

1 representative is aware whose claims are neither paid nor barred and has
2 furnished a full account in writing of the personal representative's
3 administration to the distributees whose interests are affected thereby.

4 (b) If no proceedings involving the personal representative are pending
5 in the Court one year after the closing statement is filed, the appointment
6 of the personal representative terminates.

7

8 Section 28-3-1004. Liability of Distributees to Claimants.

9 After assets of an estate have been distributed and subject to Section
10 28-3-1006, an undischarged claim not barred may be prosecuted in a proceeding
11 against one or more distributees. No distributee shall be liable to
12 claimants for amounts received as exempt property, homestead or family
13 allowances, or for amounts in excess of the value of his distribution as of
14 the time of distribution. As between distributees, each shall bear the cost
15 of satisfaction of unbarred claims as if the claim had been satisfied in the
16 course of administration. Any distributee who shall have failed to notify
17 other distributees of the demand made upon him by the claimant in sufficient
18 time to permit them to join in any proceeding in which the claim was asserted
19 against him loses his right of contribution against other distributees.

20

21 Section 28-3-1005. Limitations on Proceedings Against Personal
22 Representative.

23 Unless previously barred by adjudication and except as provided in the
24 closing statement, the rights of successors and of creditors whose claims
25 have not otherwise been barred against the personal representative for breach
26 of fiduciary duty are barred unless a proceeding to assert the same is
27 commenced within 6 months after the filing of the closing statement. The
28 rights thus barred do not include rights to recover from a personal
29 representative for fraud, misrepresentation, or inadequate disclosure related
30 to the settlement of the decedent's estate.

31

32 Section 28-3-1006. Limitations on Actions and Proceedings Against
33 Distributees.

34 Unless previously adjudicated in a formal testacy proceeding or in a
35 proceeding settling the accounts of a personal representative or otherwise

1 barred, the claim of a claimant to recover from a distributee who is liable
2 to pay the claim, and the right of an heir or devisee, or of a successor
3 personal representative acting in their behalf, to recover property
4 improperly distributed or its value from any distributee is forever barred at
5 the later of three years after the decedent's death or one year after the
6 time of its distribution thereof, but all claims of creditors of the
7 decedent, are barred one year after the decedent's death. This section does
8 not bar an action to recover property or value received as a result of fraud.

9
10 Section 28-3-1007. Certificate Discharging Liens Securing Fiduciary
11 Performance.

12 After his appointment has terminated, the personal representative, his
13 sureties, or any successor of either, upon the filing of a verified
14 application showing, so far as is known by the applicant, that no action
15 concerning the estate is pending in any court, is entitled to receive a
16 certificate from the Registrar that the personal representative appears to
17 have fully administered the estate in question. The certificate evidences
18 discharge of any lien on any property given to secure the obligation of the
19 personal representative in lieu of bond or any surety, but does not preclude
20 action against the personal representative or the surety.

21
22 Section 28-3-1008. Subsequent Administration.

23 If other property of the estate is discovered after an estate has been
24 settled and the personal representative discharged or after one year after a
25 closing statement has been filed, the Court upon petition of any interested
26 person and upon notice as it directs may appoint the same or a successor
27 personal representative to administer the subsequently discovered estate. If
28 a new appointment is made, unless the Court orders otherwise, the provisions
29 of this Code apply as appropriate; but no claim previously barred may be
30 asserted in the subsequent administration.

31 PART 11

32 COMPROMISE OF CONTROVERSIES

33 Section 28-3-1101. Effect of Approval of Agreements Involving Trusts,
34 Inalienable Interests, or Interests of Third Persons.

35 A compromise of any controversy as to admission to probate of any

1 instrument offered for formal probate as the will of a decedent, the
2 construction, validity, or effect of any governing instrument, the rights or
3 interests in the estate of the decedent, of any successor, or the
4 administration of the estate, if approved in a formal proceeding in the Court
5 for that purpose, is binding on all the parties thereto including those
6 unborn, unascertained or who could not be located. An approved compromise is
7 binding even though it may affect a trust or an inalienable interest. A
8 compromise does not impair the rights of creditors or of taxing authorities
9 who are not parties to it.

10

11 Section 28-3-1102. Procedure for Securing Court Approval of
12 Compromise.

13 The procedure for securing court approval of a compromise is as
14 follows:

15 (1) The terms of the compromise shall be set forth in an agreement in
16 writing which shall be executed by all competent persons and parents acting
17 for any minor child having beneficial interests or having claims which will
18 or may be affected by the compromise. Execution is not required by any
19 person whose identity cannot be ascertained or whose whereabouts is unknown
20 and cannot reasonably be ascertained.

21 (2) Any interested person, including the personal representative, if
22 any, or a trustee, then may submit the agreement to the Court for its
23 approval and for execution by the personal representative, the trustee of
24 every affected testamentary trust, and other fiduciaries and representatives.

25 (3) After notice to all interested persons or their representatives,
26 including the personal representative of any estate and all affected trustees
27 of trusts, the Court, if it finds that the contest or controversy is in good
28 faith and that the effect of the agreement upon the interests of persons
29 represented by fiduciaries or other representatives is just and reasonable,
30 shall make an order approving the agreement and directing all fiduciaries
31 subject to its jurisdiction to execute the agreement. Minor children
32 represented only by their parents may be bound only if their parents join
33 with other competent persons in execution of the compromise. Upon the making
34 of the order and the execution of the agreement, all further disposition of
35 the estate is in accordance with the terms of the agreement.

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PART 12

COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT AND SUMMARY ADMINISTRATION
PROCEDURE FOR SMALL ESTATES

Section 28-3-1201. Collection of Personal Property by Affidavit.

(a) Thirty days after the death of a decedent, 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 value of the entire estate, wherever located, less liens and encumbrances, does not exceed \$5,000;
- (2) 30 days have elapsed since the death of the decedent;
- (3) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and
- (4) the claiming successor is entitled to payment or delivery of the property.

(b) A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subsection (a).

Section 28-3-1202. 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,

1 delivery, transfer or issuance is made is answerable and accountable therefor
2 to any personal representative of the estate or to any other person having a
3 superior right.

4

5 Section 28-3-1203. Small Estates; Summary Administration Procedure.

6 If it appears from the inventory and appraisal that the value of the
7 entire estate, less liens and encumbrances, does not exceed homestead
8 allowance, exempt property, family allowance, costs and expenses of
9 administration, reasonable funeral expenses, and reasonable and necessary
10 medical and hospital expenses of the last illness of the decedent, the
11 personal representative, without giving notice to creditors, may immediately
12 disburse and distribute the estate to the persons entitled thereto and file a
13 closing statement as provided in Section 28-3-1204.

14

15 Section 28-3-1204. Small Estates; Closing by Sworn Statement of
16 Personal Representative.

17 (a) Unless prohibited by order of the Court and except for estates
18 being administered by supervised personal representatives, a personal
19 representative may close an estate administered under the summary procedures
20 of Section 28-3-1203 by filing with the Court, at any time after disbursement
21 and distribution of the estate, a verified statement stating that:

22 (1) to the best knowledge of the personal representative, the
23 value of the entire estate, less liens and encumbrances, did not exceed
24 homestead allowance, exempt property, family allowance, costs and expenses of
25 administration, reasonable funeral expenses, and reasonable, necessary
26 medical and hospital expenses of the last illness of the decedent;

27 (2) the personal representative has fully administered the estate
28 by disbursing and distributing it to the persons entitled thereto; and

29 (3) the personal representative has sent a copy of the closing
30 statement to all distributees of the estate and to all creditors or other
31 claimants of whom he is aware whose claims are neither paid nor barred and
32 has furnished a full account in writing of his administration to the
33 distributees whose interests are affected.

34 (b) If no actions or proceedings involving the personal representative
35 are pending in the Court one year after the closing statement is filed, the

1 appointment of the personal representative terminates.

2 (c) A closing statement filed under this section has the same effect as
3 one filed under Section 28-3-1003.

4 ARTICLE IV

5 FOREIGN PERSONAL REPRESENTATIVES; ANCILLARY ADMINISTRATION

6 PART 1

7 DEFINITIONS

8 Section 28-4-101. Definitions.

9 In this Article

10 (1) "local administration" means administration by a personal
11 representative appointed in this state pursuant to appointment proceedings
12 described in Article III.

13 (2) "local personal representative" includes any personal
14 representative appointed in this state pursuant to appointment proceedings
15 described in Article III and excludes foreign personal representatives who
16 acquire the power of a local personal representative pursuant to Section 28-
17 4-205.

18 (3) "resident creditor" means a person domiciled in, or doing business
19 in this state, who is, or could be, a claimant against an estate of a
20 non-resident decedent.

21 PART 2

22 POWERS OF FOREIGN PERSONAL REPRESENTATIVES

23 Section 28-4-201. Payment of Debt and Delivery of Property to
24 Domiciliary Foreign Personal Representative Without Local Administration.

25 At any time after the expiration of sixty days from the death of a
26 nonresident decedent, any person indebted to the estate of the nonresident
27 decedent or having possession or control of personal property, or of an
28 instrument evidencing a debt, obligation, stock or chose in action belonging
29 to the estate of the nonresident decedent may pay the debt, deliver the
30 personal property, or the instrument evidencing the debt, obligation, stock
31 or chose in action, to the domiciliary foreign personal representative of the
32 nonresident decedent upon being presented with proof of his appointment and
33 an affidavit made by or on behalf of the representative stating:

34 (1) the date of the death of the nonresident decedent,

35 (2) that no local administration, or application or petition therefor,

1 is pending in this state,

2 (3) that the domiciliary foreign personal representative is entitled to
3 payment or delivery.

4

5 Section 28-4-202. Payment or Delivery Discharges.

6 Payment or delivery made in good faith on the basis of the proof of
7 authority and affidavit releases the debtor or person having possession of
8 the personal property to the same extent as if payment or delivery had been
9 made to a local personal representative.

10

11 Section 28-4-203. Resident Creditor Notice.

12 Payment or delivery under Section 28-4-201 may not be made if a
13 resident creditor of the nonresident decedent has notified the debtor of the
14 nonresident decedent or the person having possession of the personal property
15 belonging to the nonresident decedent that the debt should not be paid nor
16 the property delivered to the domiciliary foreign personal representative.

17

18 Section 28-4-204. Proof of Authority-Bond.

19 If no local administration or application or petition therefor is
20 pending in this state, a domiciliary foreign personal representative may file
21 with a Court in this State in a county in which property belonging to the
22 decedent is located, authenticated copies of his appointment and of any
23 official bond he has given.

24

25 Section 28-4-205. Powers.

26 A domiciliary foreign personal representative who has complied with
27 Section 28-4-204 may exercise as to assets in this state all powers of a
28 local personal representative and may maintain actions and proceedings in
29 this state subject to any conditions imposed upon nonresident parties
30 generally.

31

32 Section 28-4-206. Power of Representatives in Transition.

33 The power of a domiciliary foreign personal representative under
34 Section 28-4-201 or 28-4-205 shall be exercised only if there is no
35 administration or application therefor pending in this state. An application

1 or petition for local administration of the estate terminates the power of
2 the foreign personal representative to act under Section 28-4-205, but the
3 local Court may allow the foreign personal representative to exercise limited
4 powers to preserve the estate. No person who, before receiving actual notice
5 of a pending local administration, has changed his position in reliance upon
6 the powers of a foreign personal representative shall be prejudiced by reason
7 of the application or petition for, or grant of, local administration. The
8 local personal representative is subject to all duties and obligations which
9 have accrued by virtue of the exercise of the powers by the foreign personal
10 representative and may be substituted for him in any action or proceedings in
11 this state.

12

13 Section 28-4-207. Ancillary and Other Local Administrations;
14 Provisions Governing.

15 In respect to a nonresident decedent, the provisions of Article III of
16 this Code govern (1) proceedings, if any, in a Court of this state for
17 probate of the will, appointment, removal, supervision, and discharge of the
18 local personal representative, and any other order concerning the estate;
19 and (2) the status, powers, duties and liabilities of any local personal
20 representative and the rights of claimants, purchasers, distributees and
21 others in regard to a local administration.

22

PART 3

23

JURISDICTION OVER FOREIGN REPRESENTATIVES

24 Section 28-4-301. Jurisdiction by Act of Foreign Personal
25 Representative.

26 A foreign personal representative submits personally to the
27 jurisdiction of the Courts of this state in any proceeding relating to the
28 estate by (1) filing authenticated copies of his appointment as provided in
29 Section 28-4-204, (2) receiving payment of money or taking delivery of
30 personal property under Section 28-4-201, or (3) doing any act as a personal
31 representative in this state which would have given the state jurisdiction
32 over him as an individual. Jurisdiction under (2) is limited to the money or
33 value of personal property collected.

34

35 Section 28-4-302. Jurisdiction by Act of Decedent.

1 In addition to jurisdiction conferred by Section 28-4-301, a foreign
2 personal representative is subject to the jurisdiction of the courts of this
3 state to the same extent that his decedent was subject to jurisdiction
4 immediately prior to death.

5

6 Section 28-4-303. Service on Foreign Personal Representative.

7 (a) Service of process may be made upon the foreign personal
8 representative by registered or certified mail, addressed to his last
9 reasonably ascertainable address, requesting a return receipt signed by
10 addressee only. Notice by ordinary first class mail is sufficient if
11 registered or certified mail service to the addressee is unavailable.
12 Service may be made upon a foreign personal representative in the manner in
13 which service could have been made under other laws of this state on either
14 the foreign personal representative or his decedent immediately prior to
15 death.

16 (b) If service is made upon a foreign personal representative as
17 provided in subsection (a), he shall be allowed at least 30 days within which
18 to appear or respond.

19

PART 4

20

JUDGMENTS AND PERSONAL REPRESENTATIVE

21

22 Section 28-4-401. Effect of Adjudication For or Against Personal
23 Representative.

24 An adjudication rendered in any jurisdiction in favor of or against any
25 personal representative of the estate is as binding on the local personal
26 representative as if he were a party to the adjudication.

27

ARTICLE V

28

PROTECTION OF PERSONS UNDER DISABILITY AND THEIR PROPERTY

29

PART 1

30

GENERAL PROVISIONS AND DEFINITIONS

31

32 Section 28-5-101. Facility of Payment or Delivery.

33

34 (a) Any person under a duty to pay or deliver money or personal
35 property to a minor may perform the duty, in amounts not exceeding \$5,000 a
36 year, by paying or delivering the money or property to:

37

38 (1) the minor if 18 or more years of age or married;

39

40 (2) any person having the care and custody of the minor with whom

1 the minor resides;

2 (3) a guardian of the minor; or

3 (4) a financial institution incident to a deposit in a state or
4 federally insured savings account or certificate in the sole name of the
5 minor with notice of the deposit to the minor.

6 (b) This section does not apply if the person making payment or
7 delivery knows that a conservator has been appointed or proceedings for
8 appointment of a conservator of the estate of the minor are pending.

9 (c) Persons, other than the minor or any financial institution,
10 receiving money or property for a minor, are obligated to apply the money to
11 the support and education of the minor, but may not pay themselves except by
12 way of reimbursement for out-of-pocket expenses for goods and services
13 necessary for the minor's support. Any excess sums must be preserved for
14 future support and education of the minor and any balance not so used and any
15 property received for the minor must be turned over to the minor when
16 majority is attained. A person who pays or delivers money or property in
17 accordance with provisions of this section is not responsible for the proper
18 application thereof.

19

20 Section 28-5-102. Delegation of Powers by Parent or Guardian.

21 A parent or guardian of a minor or incapacitated person, by a
22 properly executed power of attorney, may delegate to another person, for a
23 period not exceeding 6 months, any power regarding care, custody or property
24 of the minor child or ward, except the power to consent to marriage or
25 adoption of a minor ward.

26

27 Section 28-5-103. General Definitions.

28 As used in Parts 1, 2, 3 and 4 of this Article:

29 (1) "Claims," in respect to a protected person, includes liabilities of
30 the protected person, whether arising in contract, tort, or otherwise, and
31 liabilities of the estate which arise at or after the appointment of a
32 conservator, including expenses of administration.

33 (2) "Court" means the probate court.

34 (3) "Conservator" means a person who is appointed by a Court to manage
35 the estate of a protected person and includes a limited conservator described

1 in Section 28-5-419(a).

2 (4) "Disability" means cause for a protective order as described in
3 Section 28-5-401.

4 (5) "Estate" includes the property of the person whose affairs are
5 subject to this Article.

6 (6) "Guardian" means a person who has qualified as a guardian of a
7 minor or incapacitated person pursuant to parental or spousal nomination or
8 court appointment and includes a limited guardian as described in Sections
9 28-5-209(e) and 28-5-306(c), but excludes one who is merely a guardian ad
10 litem.

11 (7) "Incapacitated person" means any person who is impaired by reason
12 of mental illness, mental deficiency, physical illness or disability, chronic
13 use of drugs, chronic intoxication, or other cause (except minority) to the
14 extent of lacking sufficient understanding or capacity to make or communicate
15 responsible decisions.

16 (8) "Lease" includes an oil, gas, or other mineral lease.

17 (9) "Letters" includes letters of guardianship and letters of
18 conservatorship.

19 (10) "Minor" means a person who is under 21 years of age.

20 (11) "Mortgage" means any conveyance, agreement, or arrangement in
21 which property is used as collateral.

22 (12) "Organization" includes a corporation, business trust, estate,
23 trust, partnership, association, 2 or more persons having a joint or common
24 interest, government, governmental subdivision or agency, or any other legal
25 entity.

26 (13) "Parent" includes any person entitled to take, or who would be
27 entitled to take if the child died without a will, as a parent by intestate
28 succession from the child whose relationship is in question and excludes any
29 person who is only a stepparent, foster parent, or grandparent.

30 (14) "Person" means an individual or an organization.

31 (15) "Petition" means a written request to the Court for an order after
32 notice.

33 (16) "Proceeding" includes action at law and suit in equity.

34 (17) "Property" includes both real and personal property or any
35 interest therein and means anything that may be the subject of ownership.

1 (18) "Protected person" means a minor or other person for whom a
2 conservator has been appointed or other protective order has been made as
3 provided in Sections 28-5-407 and 28-5-408.

4 (19) "Protective proceeding" means a proceeding under the provisions of
5 Part 4 of this Article.

6 (20) "Security" includes any note, stock, treasury stock, bond,
7 debenture, evidence of indebtedness, certificate of interest or participation
8 in an oil, gas, or mining title or lease or in payments out of production
9 under such a title or lease, collateral trust certificate, transferable
10 share, voting trust certificate or, in general, any interest or instrument
11 commonly known as a security, or any certificate of interest or
12 participation, any temporary or interim certificate, receipt or certificate
13 of deposit for, or any warrant or right to subscribe to or purchase any of
14 the foregoing.

15 (21) "Visitor" means a person appointed in a guardianship or protective
16 proceeding who is trained in law, nursing, or social work, is an officer,
17 employee, or special appointee of the Court, and has no personal interest in
18 the proceeding.

19 (22) "Ward" means a person for whom a guardian has been appointed. A
20 "minor ward" is a minor for whom a guardian has been appointed solely because
21 of minority.

22

23 Section 28-5-104. Request for Notice; Interested Person.

24 Upon payment of any required fee, an interested person who desires to
25 be notified before any order is made in a guardianship proceeding, including
26 any proceeding subsequent to the appointment of a guardian under Section 28-
27 5-312, or in a protective proceeding under Section 28-5-401, may file a
28 request for notice with the clerk of the court in which the proceeding is
29 pending. The clerk shall mail a copy of the request to the guardian and to
30 the conservator if one has been appointed. A request is not effective unless
31 it contains a statement showing the interest of the person making it and the
32 address of that person or an attorney to whom notice is to be given. The
33 request is effective only as to proceedings occurring after the filing. Any
34 governmental agency paying or planning to pay benefits to the person to be
35 protected is an interested person in protective proceedings.

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PART 2
GUARDIANS OF MINORS

Section 28-5-201. Appointment and Status of Guardian of Minor.

A person may become a guardian of a minor by parental appointment or upon appointment by the Court. The guardianship status continues until terminated, without regard to the location from time to time of the guardian or minor ward.

Section 28-5-202. Parental Appointment of Guardian for Minor.

(a) The parent of an unmarried minor may appoint a guardian for the minor by will, or other writing signed by the parent and attested by at least 2 witnesses.

(b) Subject to the right of the minor under Section 28-5-203, if both parents are dead or incapacitated or the surviving parent has no parental rights or has been adjudged to be incapacitated, a parental appointment becomes effective when the guardian's acceptance is filed in the Court in which a nominating instrument is probated, or, in the case of a non-testamentary nominating instrument, in the Court at the place where the minor resides or is present. If both parents are dead, an effective appointment by the parent who died later has priority.

(c) A parental appointment effected by filing the guardian's acceptance under a will probated in the state of the testator's domicile is effective in this State.

(d) Upon acceptance of appointment, the guardian shall give written notice of acceptance to the minor and to the person having the minor's care or the minor's nearest adult relative.

Section 28-5-203. Objection by Minor of Fourteen or Older to Parental Appointment.

A minor 14 or more years of age who is the subject of a parental appointment may prevent the appointment or cause it to terminate by filing in the Court in which the nominating instrument is filed a written objection to the appointment before it is accepted or within 30 days after receiving notice of its acceptance. An objection may be withdrawn. An objection does not preclude appointment by the Court in a proper proceeding of the parental

1 nominee or any other suitable person.

2

3 Section 28-5-204. Court Appointment of Guardian of Minor; Conditions
4 for Appointment.

5 (a) The Court may appoint a guardian for an unmarried minor if all
6 parental rights have been terminated or suspended by circumstances or prior
7 Court order. A guardian appointed pursuant to Section 28-5-202 whose
8 appointment has not been prevented or nullified under Section 28-5-203 has
9 priority over any guardian who may be appointed by the Court, but the Court
10 may proceed with another appointment upon a finding that the parental nominee
11 has failed to accept the appointment within 30 days after notice of the
12 guardianship proceeding.

13 (b) If necessary, and on appropriate petition or application, the Court
14 may appoint a temporary guardian who shall have the full authority of a
15 general guardian of a minor, but the authority of a temporary guardian may
16 not last longer than 6 months. The appointment of a temporary guardian for a
17 minor may occur even though the conditions described in subsection (a) have
18 not been established.

19

20 Section 28-5-205. Venue.

21 The venue for guardianship proceedings for a minor is in the court at
22 the place where the minor resides or is present at the time the proceedings
23 are commenced.

24

25 Section 28-5-206. Procedure for Court-appointment of Guardian of
26 Minor.

27 (a) A minor or any person interested in the welfare of the minor may
28 petition for appointment of a guardian.

29 (b) After the filing of a petition, the Court shall set a date for
30 hearing, and the petitioner shall give notice of the time and place of
31 hearing the petition in the manner prescribed by Section 28-1-401 to:

32 (1) the minor, if 14 or more years of age and not the petitioner;

33 (2) any person alleged to have had the principal care and custody
34 of the minor during the 60 days preceding the filing of the petition; and

35 (3) any living parent of the minor.

1 (c) Upon hearing, if the Court finds that a qualified person seeks
2 appointment, venue is proper, the required notices have been given, the
3 conditions of Section 28-5-204(a) have been met, and the welfare and best
4 interest of the minor will be served by the requested appointment, it shall
5 make the appointment and issue letters. In other cases, the Court may
6 dismiss the proceedings or make any other disposition of the matter that will
7 serve the best interest of the minor.

8 (d) If the Court determines at any time in the proceeding that the
9 interests of the minor are or may be inadequately represented, it may appoint
10 an attorney to represent the minor, giving consideration to the preference of
11 the minor if the minor is 14 or more years of age.

12

13 Section 28-5-207. Court Appointment of Guardian of Minor;
14 Qualifications; Priority of Minor's Nominee.

15 The Court may appoint as guardian any person whose appointment would be
16 in the best interest of the minor. The Court shall appoint a person
17 nominated by the minor, if the minor is 14 or more years of age, unless the
18 Court finds the appointment contrary to the best interest of the minor.

19

20 Section 28-5-208. Consent to Service by Acceptance of Appointment;
21 Notice.

22 By accepting a parental or court appointment as guardian, a guardian
23 submits personally to the jurisdiction of the Court in any proceeding
24 relating to the guardianship that may be instituted by any interested person.
25 The petitioner shall cause notice of any proceeding to be delivered or
26 mailed to the guardian at the guardian's address listed in the Court records
27 and to the address then known to the petitioner. Letters of guardianship
28 must indicate whether the guardian was appointed by court order or parental
29 nomination.

30

31 Section 28-5-209. Powers and Duties of Guardian of Minor.

32 (a) A guardian of a minor ward has the powers and responsibilities of a
33 parent regarding the ward's support, care, and education, but a guardian is
34 not personally liable for the ward's expenses and is not liable to third
35 persons by reason of the relationship for acts of the ward.

1 (b) In particular and without qualifying the foregoing, a guardian
2 shall:

3 (1) become or remain personally acquainted with the ward and
4 maintain sufficient contact with the ward to know of the ward's capacities,
5 limitations, needs, opportunities, and physical and mental health;

6 (2) take reasonable care of the ward's personal effects and
7 commence protective proceedings if necessary to protect other property of the
8 ward;

9 (3) apply any available money of the ward to the ward's current
10 needs for support, care, and education;

11 (4) conserve any excess money of the ward for the ward's future
12 needs, but if a conservator has been appointed for the estate of the ward,
13 the guardian, at least quarterly, shall pay to the conservator money of the
14 ward to be conserved for the ward's future needs; and

15 (5) report the condition of the ward and of the ward's estate
16 that has been subject to the guardian's possession or control, as ordered by
17 the Court on petition of any person interested in the ward's welfare or as
18 required by Court rule.

19 (c) A guardian may:

20 (1) receive money payable for the support of the ward to the
21 ward's parent, guardian, or custodian under the terms of any statutory
22 benefit or insurance system or any private contract, devise, trust,
23 conservatorship, or custodianship, and money or property of the ward paid or
24 delivered pursuant to Section 28-5-101;

25 (2) if consistent with the terms of any order by a court of
26 competent jurisdiction relating to detention or commitment of the ward, take
27 custody of the person of the ward and establish the ward's place of abode
28 within or without this State;

29 (3) if no conservator for the estate of the ward has been
30 appointed, institute proceedings, including administrative proceedings, or
31 take other appropriate action to compel the performance by any person of a
32 duty to support the ward or to pay sums for the welfare of the ward;

33 (4) consent to medical or other professional care, treatment, or
34 advice for the ward without liability by reason of the consent for injury to
35 the ward resulting from the negligence or acts of third persons unless a

1 parent would have been liable in the circumstances;

2 (5) consent to the marriage or adoption of the ward; and

3 (6) if reasonable under all of the circumstances, delegate to the
4 ward certain responsibilities for decisions affecting the ward's well-being.

5 (d) A guardian is entitled to reasonable compensation for services as
6 guardian and to reimbursement for room, board and clothing personally
7 provided to the ward, but only as approved by order of the Court. If a
8 conservator, other than the guardian or one who is affiliated with the
9 guardian, has been appointed for the estate of the ward, reasonable
10 compensation and reimbursement to the guardian may be approved and paid by
11 the conservator without order of the Court controlling the guardian.

12 (e) In the interest of developing self-reliance on the part of a ward
13 or for other good cause, the Court, at the time of appointment or later, on
14 its own motion or on appropriate petition or motion of the minor or other
15 interested person, may limit the powers of a guardian otherwise conferred by
16 this section and thereby create a limited guardianship. Any limitation on
17 the statutory power of a guardian of a minor must be endorsed on the
18 guardian's letters or, in the case of a guardian by parental appointment,
19 must be reflected in letters that are issued at the time any limitation is
20 imposed. Following the same procedure, a limitation may be removed and
21 appropriate letters issued.

22

23 Section 28-5-210. Termination of Appointment of Guardian; General.

24 A guardian's authority and responsibility terminates upon the death,
25 resignation, or removal of the guardian or upon the minor's death, adoption,
26 marriage, or attainment of majority, but termination does not affect the
27 guardian's liability for prior acts or the obligation to account for funds
28 and assets of the ward. Resignation of a guardian does not terminate the
29 guardianship until it has been approved by the Court. A parental appointment
30 under an informally probated will terminates if the will is later denied
31 probate in a formal proceeding.

32

33 Section 28-5-211. Proceedings Subsequent to Appointment; Venue.

34 (a) The Court at the place where the ward resides has concurrent
35 jurisdiction with the Court that appointed the guardian or in which

1 acceptance of a parental appointment was filed over resignation, removal,
2 accounting, and other proceedings relating to the guardianship.

3 (b) If the Court at the place where the ward resides is neither the
4 appointing court nor the court in which acceptance of appointment is filed,
5 the court in which proceedings subsequent to appointment are commenced in all
6 appropriate cases shall notify the other court, in this or another state, and
7 after consultation with that court determine whether to retain jurisdiction
8 or transfer the proceedings to the other court, whichever is in the best
9 interest of the ward. A copy of any order accepting a resignation or
10 removing a guardian must be sent to the appointing court or the court in
11 which acceptance of appointment is filed.

12

13 Section 28-5-212. Resignation, Removal, and Other Post-appointment
14 Proceedings.

15 (a) Any person interested in the welfare of a ward or the ward, if 14
16 or more years of age, may petition for removal of a guardian on the ground
17 that removal would be in the best interest of the ward or for any other order
18 that is in the best interest of the ward. A guardian may petition for
19 permission to resign. A petition for removal or for permission to resign
20 may, but need not, include a request for appointment of a successor guardian.

21 (b) Notice of hearing on a petition for an order subsequent to
22 appointment of a guardian must be given to the ward, the guardian, and any
23 other person as ordered by the court.

24 (c) After notice and hearing on a petition for removal or for
25 permission to resign, the Court may terminate the guardianship and make any
26 further order that may be appropriate.

27 (d) If the Court determines at any time in the proceeding that the
28 interest of the ward is or may be inadequately represented, it may appoint an
29 attorney to represent the minor, giving consideration to the preference of
30 the minor if the minor is 14 or more years of age.

31

PART 3

32

GUARDIANS OF INCAPACITATED PERSONS

33 Section 28-5-301. Appointment of Guardian for Incapacitated Person by
34 Will or Other Writing.

35 (a) The parent of an unmarried incapacitated person may appoint by

1 will, or other writing signed by the parent and attested by at least 2
2 witnesses, a guardian of the incapacitated person. If both parents are dead
3 or the surviving parent is adjudged incapacitated, a parental appointment
4 becomes effective when, after having given 7 days prior written notice of
5 intention to do so to the incapacitated person and to the person having the
6 care of the person or to the nearest adult relative, the guardian files
7 acceptance of appointment in the court in which the will is informally or
8 formally probated, or in the case of a non-testamentary nominating
9 instrument, in the Court at the place where the incapacitated person resides
10 or is present. The notice shall state that the appointment may be terminated
11 by filing a written objection in the Court, as provided by subsection (d).
12 If both parents are dead, an effective appointment by the parent who died
13 later has priority.

14 (b) The spouse of a married incapacitated person may appoint by will,
15 or other writing signed by the spouse and attested by at least 2 witnesses, a
16 guardian of the incapacitated person. The appointment becomes effective
17 when, after having given 7 days prior written notice of intention to do so to
18 the incapacitated person and to the person having care of the incapacitated
19 person or to the nearest adult relative, the guardian files acceptance of
20 appointment in the Court in which the will is informally or formally probated
21 or, in the case of non-testamentary nominating instrument, in the Court at
22 the place where the incapacitated person resides or is present. The notice
23 shall state that the appointment may be terminated by filing a written
24 objection in the Court, as provided by subsection (d). An effective
25 appointment by a spouse has priority over an appointment by a parent.

26 (c) An appointment effected by filing the guardian's acceptance under a
27 will probated in the state of the decedent's domicile is effective in this
28 State.

29 (d) Upon the filing in the Court in which the will was probated or, in
30 the case of a non-testamentary nominating instrument, in the Court at the
31 place where the incapacitated person resides or is present, of written
32 objection to the appointment by the incapacitated person for whom a parental
33 or spousal appointment of guardian has been made, the appointment is
34 terminated. An objection does not prevent appointment by the Court in a
35 proper proceeding of the parental or spousal nominee or any other suitable

1 person upon an adjudication of incapacity in proceedings under the succeeding
2 sections of this Part.

3

4 Section 28-5-302. Venue.

5 The venue for guardianship proceedings for an incapacitated person is
6 in the place where the incapacitated person resides or is present at the time
7 the proceedings are commenced. If the incapacitated person is admitted to an
8 institution pursuant to order of a court of competent jurisdiction, venue is
9 also in the county in which that court is located.

10

11 Section 28-5-303. Procedure for Court-appointment of a Guardian of an
12 Incapacitated Person.

13 (a) An incapacitated person or any person interested in the welfare of
14 the incapacitated person may petition for appointment of a guardian, limited
15 or general.

16 (b) After the filing of a petition, the Court shall set a date for
17 hearing on the issue of incapacity so that notices may be given as required
18 by Section 28-5-304, and, unless the allegedly incapacitated person is
19 represented by counsel, appoint an attorney to represent the person in the
20 proceeding. The person so appointed may be granted the powers and duties of
21 a guardian ad litem. The person alleged to be incapacitated must be examined
22 by a physician or other qualified person appointed by the Court who shall
23 submit a report in writing to the Court. The person alleged to be
24 incapacitated also must be interviewed by a visitor sent by the Court. The
25 visitor also shall interview the person who appears to have caused the
26 petition to be filed and any person who is nominated to serve as guardian and
27 visit the present place of abode of the person alleged to be incapacitated
28 and the place it is proposed that the person will be detained or reside if
29 the appointment is made and submit a report in writing to the Court. The
30 Court may utilize the service of any public or charitable agency as an
31 additional visitor to evaluate the condition of the allegedly incapacitated
32 person and to make appropriate recommendations to the Court.

33 (c) A person alleged to be incapacitated is entitled to be present at
34 the hearing in person. The person is entitled to be represented by counsel,
35 to present evidence, to cross-examine witnesses, including the

1 Court-appointed physician or other qualified person and any visitor. The
2 issue may be determined at a closed hearing if the person alleged to be
3 incapacitated or counsel for the person so requests.

4 (d) Any person may apply for permission to participate in the
5 proceeding, and the Court may grant the request, with or without hearing,
6 upon determining that the best interest of the alleged incapacitated person
7 will be served thereby. The Court may attach appropriate conditions to the
8 permission.

9

10 Section 28-5-304. Notice in Guardianship Proceeding.

11 (a) In a proceeding for the appointment of a guardian of an
12 incapacitated person, and, if notice is required in a proceeding for
13 appointment of a temporary guardian, notice of hearing must be given to each
14 of the following:

15 (1) the person alleged to be incapacitated and spouse, or, if
16 none, adult children, or if none, parents;

17 (2) any person who is serving as guardian, conservator, or who
18 has the care and custody of the person alleged to be incapacitated;

19 (3) in case no other person is notified under paragraph (1), at
20 least one of the nearest adult relatives, if any can be found; and

21 (4) any other person as directed by the Court.

22 (b) Notice of hearing on a petition for an order subsequent to
23 appointment of a guardian must be given to the ward, the guardian and any
24 other person as ordered by the Court.

25 (c) Notice must be served personally on the alleged incapacitated
26 person. Notices to other persons as required by subsection (a)(1) must be
27 served personally if the person to be notified can be found within the state.
28 In all other cases, required notices must be given as provided in Section
29 28-1-401.

30 (d) The person alleged to be incapacitated may not waive notice.

31

32 Section 28-5-305. Who May Be Guardian; Priorities.

33 (a) Any qualified person may be appointed guardian of an incapacitated
34 person.

35 (b) Unless lack of qualification or other good cause dictates the

1 contrary, the Court shall appoint a guardian in accordance with the
2 incapacitated person's most recent nomination in a durable power of attorney.

3 (c) Except as provided in subsection (b), the following are entitled to
4 consideration for appointment in the order listed:

5 (1) the spouse of the incapacitated person or a person nominated
6 by will of a deceased spouse or by other writing signed by the spouse and
7 attested by at least 2 witnesses;

8 (2) an adult child of the incapacitated person;

9 (3) a parent of the incapacitated person, or a person nominated
10 by will of a deceased parent or by other writing signed by a parent and
11 attested by at least two witnesses;

12 (4) any relative of the incapacitated person with whom the person
13 has resided for more than 6 months prior to the filing of the petition; and

14 (5) a person nominated by the person who is caring for or paying
15 for the care of the incapacitated person.

16 (d) With respect to persons having equal priority, the Court shall
17 select the one it deems best qualified to serve. The Court, acting in the
18 best interest of the incapacitated person, may pass over a person having
19 priority and appoint a person having a lower priority or no priority.

20

21 Section 28-5-306. Findings; Order of Appointment.

22 (a) The Court shall exercise the authority conferred in this Part so as
23 to encourage the development of maximum self-reliance and independence of the
24 incapacitated person and make appointive and other orders only to the extent
25 necessitated by the incapacitated person's mental and adaptive limitations or
26 other conditions warranting the procedure.

27 (b) The Court may appoint a guardian as requested if it is satisfied
28 that the person for whom a guardian is sought is incapacitated and that the
29 appointment is necessary or desirable as a means of providing continuing care
30 and supervision of the person of the incapacitated person. The Court, on
31 appropriate findings, may (i) treat the petition as one for a protective
32 order under Section 28-5-401 and proceed accordingly, (ii) enter any other
33 appropriate order, or (iii) dismiss the proceedings.

34 (c) The Court, at the time of appointment or later, on its own motion
35 or on appropriate petition or motion of the incapacitated person or other

1 interested person, may limit the powers of a guardian otherwise conferred by
2 Parts 1, 2, 3 and 4 of this Article and thereby create a limited
3 guardianship. Any limitation on the statutory power of a guardian of an
4 incapacitated person must be endorsed on the guardian's letters or, in the
5 case of a guardian by parental or spousal appointment, must be reflected in
6 letters issued at the time any limitation is imposed. Following the same
7 procedure, a limitation may be removed or modified and appropriate letters
8 issued.

9

10 Section 28-5-307. Acceptance of Appointment; Consent to Jurisdiction.

11 By accepting appointment, a guardian submits personally to the
12 jurisdiction of the Court in any proceeding relating to the guardianship that
13 may be instituted by any interested person. Notice of any proceeding must be
14 delivered or mailed to the guardian at the address listed in the Court
15 records and at the address as then known to the petitioner.

16

17 Section 28-5-308. Emergency Orders; Temporary Guardians.

18 (a) If an incapacitated person has no guardian, an emergency exists,
19 and no other person appears to have authority to act in the circumstances, on
20 appropriate petition the Court may appoint a temporary guardian whose
21 authority may not extend beyond 15 days, and who may exercise those powers
22 granted in the order.

23 (b) If an appointed guardian is not effectively performing duties and
24 the Court further finds that the welfare of the incapacitated person requires
25 immediate action, it may appoint, with or without notice, a temporary
26 guardian for the incapacitated person having the powers of a general guardian
27 for a specified period not to exceed 6 months. The authority of any
28 permanent guardian previously appointed by the Court is suspended as long as
29 a temporary guardian has authority.

30 (c) The Court may remove a temporary guardian at any time. A temporary
31 guardian shall make any report the Court requires. In other respects the
32 provisions of Parts 1, 2, 3 and 4 of this Article concerning guardians apply
33 to temporary guardians.

34

35 Section 28-5-309. General Powers and Duties of Guardian.

1 Except as limited pursuant to Section 28-5-306(c), a guardian of an
2 incapacitated person is responsible for care, custody, and control of the
3 ward, but is not liable to third persons by reason of that responsibility for
4 acts of the ward. In particular and without qualifying the foregoing, a
5 guardian has the same duties, powers and responsibilities as a guardian for a
6 minor as described in Section 28-5-209(b), (c) and (d).

7

8 Section 28-5-310. Termination of Guardianship for Incapacitated
9 Person.

10 The authority and responsibility of a guardian of an incapacitated
11 person terminates upon the death of the guardian or ward, the determination
12 of incapacity of the guardian, or upon removal or resignation as provided in
13 Section 28-5-311. Testamentary appointment under an informally probated will
14 terminates if the will is later denied probate in a formal proceeding.
15 Termination does not affect a guardian's liability for prior acts or the
16 obligation to account for funds and assets of the ward.

17

18 Section 28-5-311. Removal or Resignation of Guardian; Termination of
19 Incapacity.

20 (a) On petition of the ward or any person interested in the ward's
21 welfare, the Court, after hearing, may remove a guardian if in the best
22 interest of the ward. On petition of the guardian, the Court, after hearing,
23 may accept a resignation.

24 (b) An order adjudicating incapacity may specify a minimum period, not
25 exceeding six months, during which a petition for an adjudication that the
26 ward is no longer incapacitated may not be filed without special leave.
27 Subject to that restriction, the ward or any person interested in the welfare
28 of the ward may petition for an order that the ward is no longer
29 incapacitated and for termination of the guardianship. A request for an
30 order may also be made informally to the Court and any person who knowingly
31 interferes with transmission of the request may be adjudged guilty of
32 contempt of court.

33 (c) Upon removal, resignation, or death of the guardian, or if the
34 guardian is determined to be incapacitated, the Court may appoint a successor
35 guardian and make any other appropriate order. Before appointing a successor

1 guardian, or ordering that a ward's incapacity has terminated, the Court
2 shall follow the same procedures to safeguard the rights of the ward that
3 apply to a petition for appointment of a guardian.

4

5 Section 28-5-312. Proceedings Subsequent to Appointment; Venue.

6 (a) The Court at the place where the ward resides has concurrent
7 jurisdiction with the Court that appointed the guardian or in which
8 acceptance of a parental or spousal appointment was filed over resignation,
9 removal, accounting, and other proceedings relating to the guardianship,
10 including proceedings to limit the authority previously conferred on a
11 guardian or to remove limitations previously imposed.

12 (b) If the Court at the place where the ward resides is not the Court
13 in which acceptance of appointment is filed, the Court in which proceedings
14 subsequent to appointment are commenced, in all appropriate cases, shall
15 notify the other Court, in this or another state, and after consultation with
16 that Court determine whether to retain jurisdiction or transfer the
17 proceedings to the other Court, whichever may be in the best interest of the
18 ward. A copy of any order accepting a resignation, removing a guardian, or
19 altering authority must be sent to the Court in which acceptance of
20 appointment is filed.

21

PART 4

22

PROTECTION OF PROPERTY OF PERSONS UNDER DISABILITY AND MINORS

23

Section 28-5-401. Protective Proceedings.

24

(a) Upon petition and after notice and hearing in accordance with the
25 provisions of this Part, the Court may appoint a conservator or make any
26 other protective order for cause as provided in this section.

27

(b) Appointment of a conservator or other protective order may be made
28 in relation to the estate and affairs of a minor if the Court determines that
29 a minor owns money or property requiring management or protection that cannot
30 otherwise be provided or has or may have business affairs that may be
31 jeopardized or prevented by minority, or that funds are needed for support
32 and education and that protection is necessary or desirable to obtain or
33 provide funds.

34

(c) Appointment of a conservator or other protective order may be made
35 in relation to the estate and affairs of a person if the Court determines

1 that (i) the person is unable to manage property and business affairs
2 effectively for such reasons as mental illness, mental deficiency, physical
3 illness or disability, chronic use of drugs, chronic intoxication,
4 confinement, detention by a foreign power, or disappearance; and (ii) the
5 person has property that will be wasted or dissipated unless property
6 management is provided or money is needed for the support, care, and welfare
7 of the person or those entitled to the person's support and that protection
8 is necessary or desirable to obtain or provide money.

9

10 Section 28-5-402. Protective Proceedings; Jurisdiction of Business
11 Affairs of Protected Persons.

12 After the service of notice in a proceeding seeking the appointment of
13 a conservator or other protective order and until termination of the
14 proceeding, the Court in which the petition is filed has:

15 (1) exclusive jurisdiction to determine the need for a conservator or
16 other protective order until the proceedings are terminated;

17 (2) exclusive jurisdiction to determine how the estate of the protected
18 person which is subject to the laws of this State must be managed, expended,
19 or distributed to or for the use of the protected person, the protected
20 person's dependents, or other claimants; and

21 (3) concurrent jurisdiction to determine the validity of claims against
22 the person or estate of the protected person and questions of title
23 concerning any estate asset.

24

25 Section 28-5-403. Venue.

26 Venue for proceedings under this Part is:

27 (1) in the Court at the place in this State where the person to be
28 protected resides whether or not a guardian has been appointed in another
29 place; or

30 (2) if the person to be protected does not reside in this State, in the
31 Court at any place where property of the person is located.

32

33 Section 28-5-404. Original Petition for Appointment or Protective
34 Order.

35 (a) The person to be protected or any person who is interested in the

1 estate, affairs, or welfare of the person, including a parent, guardian,
2 custodian, or any person who would be adversely affected by lack of effective
3 management of the person's property and business affairs may petition for the
4 appointment of a conservator or for other appropriate protective order.

5 (b) The petition must set forth to the extent known the interest of the
6 petitioner; the name, age, residence, and address of the person to be
7 protected; the name and address of the guardian, if any; the name and
8 address of the nearest relative known to the petitioner; a general statement
9 of the person's property with an estimate of the value thereof, including any
10 compensation, insurance, pension, or allowance to which the person is
11 entitled; and the reason why appointment of a conservator or other
12 protective order is necessary. If the appointment of a conservator is
13 requested, the petition must also set forth the name and address of the
14 person whose appointment is sought and the basis of the claim to priority for
15 appointment.

16

17 Section 28-5-405. Notice.

18 (a) On a petition for appointment of a conservator or other protective
19 order, the requirements for notice described in Section 28-5-304 apply, but
20 (i) if the person to be protected has disappeared or is otherwise situated so
21 as to make personal service of notice impracticable, notice to the person
22 must be given by publication as provided in Section 28-1-401, and (ii) if the
23 person to be protected is a minor, the provisions of Section 28-5-206 also
24 apply.

25 (b) Notice of hearing on a petition for an order subsequent to
26 appointment of a conservator or other protective order must be given to the
27 protected person, any conservator of the protected person's estate, and any
28 other person as ordered by the Court.

29

30 Section 28-5-406. Procedure Concerning Hearing and Order on Original
31 Petition.

32 (a) Upon receipt of a petition for appointment of a conservator or
33 other protective order because of minority, the Court shall set a date for
34 hearing. If the Court determines at any time in the proceeding that the
35 interests of the minor are or may be inadequately represented, it may appoint

1 an attorney to represent the minor, giving consideration to the choice of the
2 minor if 14 or more years of age. An attorney appointed by the Court to
3 represent a minor may be granted the powers and duties of a guardian ad
4 litem.

5 (b) Upon receipt of a petition for appointment of a conservator or
6 other protective order for reasons other than minority, the Court shall set a
7 date for hearing. Unless the person to be protected has chosen counsel, the
8 Court shall appoint an attorney to represent the person who may be granted
9 the powers and duties of a guardian ad litem. If the alleged disability is
10 mental illness, mental deficiency, physical illness or disability, chronic
11 use of drugs, or chronic intoxication, the Court may direct that the person
12 to be protected be examined by a physician designated by the Court,
13 preferably a physician who is not connected with any institution in which the
14 person is a patient or is detained. The Court may send a visitor to
15 interview the person to be protected. The visitor may be a guardian ad litem
16 or an officer or employee of the Court.

17 (c) The Court may utilize, as an additional visitor, the service of any
18 public or charitable agency to evaluate the condition of the person to be
19 protected and make appropriate recommendations to the Court.

20 (d) The person to be protected is entitled to be present at the hearing
21 in person. The person is entitled to be represented by counsel, to present
22 evidence, to cross-examine witnesses, including any Court-appointed physician
23 or other qualified person and any visitor. The issue may be determined at a
24 closed hearing if the person to be protected or counsel for the person so
25 requests.

26 (e) Any person may apply for permission to participate in the
27 proceeding and the Court may grant the request, with or without hearing, upon
28 determining that the best interest of the person to be protected will be
29 served thereby. The Court may attach appropriate conditions to the
30 permission.

31 (f) After hearing, upon finding that a basis for the appointment of a
32 conservator or other protective order has been established, the Court shall
33 make an appointment or other appropriate protective order.

34

35 Section 28-5-407. Permissible Court Orders.

1 (a) The Court shall exercise the authority conferred in this Part to
2 encourage the development of maximum self-reliance and independence of a
3 protected person and make protective orders only to the extent necessitated
4 by the protected person's mental and adaptive limitations and other
5 conditions warranting the procedure.

6 (b) The Court has the following powers that may be exercised directly
7 or through a conservator in respect to the estate and business affairs of a
8 protected person:

9 (1) While a petition for appointment of a conservator or other
10 protective order is pending and after preliminary hearing and without notice
11 to others, the Court may preserve and apply the property of the person to be
12 protected as may be required for the support of the person or dependents of
13 the person.

14 (2) After hearing and upon determining that a basis for an
15 appointment or other protective order exists with respect to a minor without
16 other disability, the Court has all those powers over the estate and business
17 affairs of the minor which are or may be necessary for the best interest of
18 the minor and members of the minor's immediate family.

19 (3) After hearing and upon determining that a basis for an
20 appointment or other protective order exists with respect to a person for
21 reasons other than minority, the Court, for the benefit of the person and
22 members of the person's immediate family, has all the powers over the estate
23 and business affairs which the person could exercise if present and not under
24 disability, except the power to make a will. Those powers include, but are
25 not limited to, power to make gifts; to convey or release contingent and
26 expectant interests in property, including marital property rights and any
27 right of survivorship incident to joint tenancy or tenancy by the entirety;
28 to exercise or release powers held by the protected person as trustee,
29 personal representative, custodian for minors, conservator, or donee of a
30 power of appointment; to enter into contracts; to create revocable or
31 irrevocable trusts of property of the estate which may extend beyond the
32 disability or life of the protected person; to exercise options of the
33 protected person to purchase securities or other property; to exercise
34 rights to elect options and change beneficiaries under insurance and annuity
35 policies and to surrender the policies for their cash value; to exercise any

1 right to an elective share in the estate of the person's deceased spouse and
2 to renounce or disclaim any interest by testate or intestate succession or by
3 inter vivos transfer.

4 (c) The Court may exercise or direct the exercise of the following
5 powers only if satisfied, after notice and hearing, that it is in the best
6 interest of the protected person, and that the person either is incapable of
7 consenting or has consented to the proposed exercise of power:

8 (1) to exercise or release powers of appointment of which the
9 protected person is donee;

10 (2) to renounce or disclaim interests;

11 (3) to make gifts in trust or otherwise exceeding 20 percent of
12 any year's income of the estate; and

13 (4) to change beneficiaries under insurance and annuity policies.

14 (d) A determination that a basis for appointment of a conservator or
15 other protective order exists has no effect on the capacity of the protected
16 person.

17

18 Section 28-5-408. Protective Arrangements and Single Transactions
19 Authorized.

20 (a) If it is established in a proper proceeding that a basis exists as
21 described in Section 28-5-401 for affecting the property and business affairs
22 of a person, the Court, without appointing a conservator, may authorize,
23 direct or ratify any transaction necessary or desirable to achieve any
24 security, service, or care arrangement meeting the foreseeable needs of the
25 protected person. Protective arrangements include payment, delivery,
26 deposit, or retention of funds or property; sale, mortgage, lease, or other
27 transfer of property; entry into an annuity contract, a contract for life
28 care, a deposit contract, or a contract for training and education; or
29 addition to or establishment of a suitable trust.

30 (b) If it is established in a proper proceeding that a basis exists as
31 described in Section 28-5-401 for affecting the property and business affairs
32 of a person, the Court, without appointing a conservator, may authorize,
33 direct, or ratify any contract, trust, or other transaction relating to the
34 protected person's property and business affairs if the Court determines that
35 the transaction is in the best interest of the protected person.

1 (c) Before approving a protective arrangement or other transaction
2 under this section, the Court shall consider the interests of creditors and
3 dependents of the protected person and, in view of the disability, whether
4 the protected person needs the continuing protection of a conservator. The
5 Court may appoint a special conservator to assist in the accomplishment of
6 any protective arrangement or other transaction authorized under this section
7 who shall have the authority conferred by the order and serve until
8 discharged by order after report to the Court of all matters done pursuant to
9 the order of appointment.

10

11 Section 28-5-409. Who May Be Appointed Conservator; Priorities.

12 (a) The Court may appoint an individual or a corporation with general
13 power to serve as trustee or conservator of the estate of a protected person.
14 The following are entitled to consideration for appointment in the order
15 listed:

16 (1) a conservator, guardian of property, or other like fiduciary
17 appointed or recognized by an appropriate court of any other jurisdiction in
18 which the protected person resides;

19 (2) an individual or corporation nominated by the protected
20 person 14 or more years of age and of sufficient mental capacity to make an
21 intelligent choice;

22 (3) the spouse of the protected person;

23 (4) an adult child of the protected person;

24 (5) a parent of the protected person, or a person nominated by
25 the will of a deceased parent;

26 (6) any relative of the protected person who has resided with the
27 protected person for more than 6 months before the filing of the petition;
28 and

29 (7) a person nominated by one who is caring for or paying
30 benefits to the protected person.

31 (b) A person in priorities (1), (3), (4), (5), or (6) may designate in
32 writing a substitute to serve instead and thereby transfer the priority to
33 the substitute. With respect to persons having equal priority, the Court
34 shall select the one it deems best qualified to serve. The Court, acting in
35 the best interest of the protected person, may pass over a person having

1 priority and appoint a person having a lower priority or no priority.

2

3 Section 28-5-410. Bond.

4 The Court may require a conservator to furnish a bond conditioned upon
5 faithful discharge of all duties of the trust according to law, with sureties
6 as it shall specify. Unless otherwise directed, the bond must be in the
7 amount of the aggregate capital value of the property of the estate in the
8 conservator's control, plus one year's estimated income, and minus the value
9 of securities deposited under arrangements requiring an order of the Court
10 for their removal and the value of any land which the fiduciary, by express
11 limitation of power, lacks power to sell or convey without Court
12 authorization. The Court, in lieu of sureties on a bond, may accept other
13 collateral for the performance of the bond, including a pledge of securities
14 or a mortgage of land.

15

16 Section 28-5-411. Terms and Requirements of Bonds.

17 (a) The following requirements and provisions apply to any bond
18 required under Section 28-5-410.

19 (1) Unless otherwise provided by the terms of the approved bond,
20 sureties are jointly and severally liable with the conservator and with each
21 other.

22 (2) By executing an approved bond of a conservator, the surety
23 consents to the jurisdiction of the Court that issued letters to the primary
24 obligor in any proceeding pertaining to the fiduciary duties of the
25 conservator and naming the surety as a party respondent. Notice of any
26 proceeding must be delivered to the surety or mailed by registered or
27 certified mail to the address listed with the Court at the place where the
28 bond is filed and to the address as then known to the petitioner.

29 (3) On petition of a successor conservator or any interested
30 person, a proceeding may be initiated against a surety for breach of the
31 obligation of the bond of the conservator.

32 (4) The bond of the conservator is not void after the first
33 recovery but may be proceeded against from time to time until the whole
34 penalty is exhausted.

35 (b) No proceeding may be commenced against the surety on any matter as

1 to which an action or proceeding against the primary obligor is barred by
2 adjudication or limitation.

3

4 Section 28-5-412. Effect of Acceptance of Appointment.

5 By accepting appointment, a conservator submits personally to the
6 jurisdiction of the Court in any proceeding relating to the estate which may
7 be instituted by any interested person. Notice of any proceeding must be
8 delivered to the conservator or mailed by registered or certified mail to the
9 address as listed in the petition for appointment or as thereafter reported
10 to the Court and to the address as then known to the petitioner.

11

12 Section 28-5-413. Compensation and Expenses.

13 If not otherwise compensated for services rendered, any visitor,
14 attorney, physician, conservator, or special conservator appointed in a
15 protective proceeding and any attorney whose services resulted in a
16 protective order or in an order that was beneficial to a protected person's
17 estate is entitled to reasonable compensation from the estate.

18

19 Section 28-5-414. Death, Resignation, or Removal of Conservator.

20 The Court may remove a conservator for good cause, upon notice and
21 hearing, or accept the resignation of a conservator. Upon the conservator's
22 death, resignation, or removal, the Court may appoint another conservator. A
23 conservator so appointed succeeds to the title and powers of the predecessor.

24

25 Section 28-5-415. Petitions for Orders Subsequent to Appointment.

26 (a) Any person interested in the welfare of a person for whom a
27 conservator has been appointed may file a petition in the appointing court
28 for an order:

29 (1) requiring bond or collateral or additional bond or
30 collateral, or reducing bond;

31 (2) requiring an accounting for the administration of the trust;

32 (3) directing distribution;

33 (4) removing the conservator and appointing a temporary or
34 successor conservator; or

35 (5) granting other appropriate relief.

1 (b) A conservator may petition the appointing court for instructions
2 concerning fiduciary responsibility.

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

5

6 Section 28-5-416. General Duty of Conservator.

7 A conservator, in relation to powers conferred by this Part, or
8 implicit in the title acquired by virtue of the proceeding, shall act as a
9 fiduciary and observe the standards of care applicable to trustees.

10

11 Section 28-5-417. Inventory and Records.

12 (a) Within 90 days after appointment, each conservator shall prepare
13 and file with the appointing Court a complete inventory of the estate subject
14 to the conservatorship together with an oath or affirmation that the
15 inventory is believed to be complete and accurate as far as information
16 permits. The conservator shall provide a copy thereof to the protected
17 person if practicable and the person has attained the age of 14 years and has
18 sufficient mental capacity to understand the arrangement. A copy also shall
19 be provided to any guardian or parent with whom the protected person resides.

20 (b) The conservator shall keep suitable records of the administration
21 and exhibit the same on request of any interested person.

22

23 Section 28-5-418. Accounts.

24 Each conservator shall account to the Court for administration of the
25 trust not less than annually unless the Court directs otherwise, upon
26 resignation or removal and at other times as the Court may direct. On
27 termination of the protected person's minority or disability, a conservator
28 shall account to the Court or to the formerly protected person or the
29 successors of that person. Subject to appeal or vacation within the time
30 permitted, an order after notice and hearing allowing an intermediate account
31 of a conservator adjudicates as to liabilities concerning the matters
32 considered in connection therewith; and an order, following notice and
33 hearing, allowing a final account adjudicates as to all previously unsettled
34 liabilities of the conservator to the protected person or the protected
35 person's successors relating to the conservatorship. In connection with any

1 account, the Court may require a conservator to submit to a physical check of
2 the estate, to be made in any manner the Court specifies.

3

4 Section 28-5-419. Conservators; Title By Appointment.

5 (a) The appointment of a conservator vests in the conservator title as
6 trustee to all property, or to the part thereof specified in the order, of
7 the protected person, presently held or thereafter acquired, including title
8 to any property theretofore held for the protected person by custodians or
9 attorneys-in-fact. An order specifying that only a part of the property of
10 the protected person vests in the conservator creates a limited
11 conservatorship.

12 (b) Except as otherwise provided herein, the interest of the protected
13 person in property vested in a conservator by this section is not
14 transferrable or assignable by the protected person. An attempted transfer
15 or assignment by the protected person, though ineffective to affect property
16 rights, may generate a claim for restitution or damages which, subject to
17 presentation and allowance, may be satisfied as provided in Section 28-5-427.

18 (c) Neither property vested in a conservator by this section nor the
19 interest of the protected person in that property is subject to levy,
20 garnishment, or similar process other than an order issued in the protective
21 proceeding made as provided in Section 28-5-427.

22

23 Section 28-5-420. Recording of Conservator's Letters.

24 (a) Letters of conservatorship are evidence of transfer of all assets,
25 or the part thereof specified in the letters, of a protected person to the
26 conservator. An order terminating a conservatorship is evidence of transfer
27 of all assets subjected to the conservatorship from the conservator to the
28 protected person, or to successors of the person.

29 (b) Subject to the requirements of general statutes governing the
30 filing or recordation of documents of title to land or other property,
31 letters of conservatorship and orders terminating conservatorships, may be
32 filed or recorded to give record notice of title as between the conservator
33 and the protected person.

34

35 Section 28-5-421. Sale, Encumbrance, or Transaction Involving Conflict

1 of Interest; Voidable; Exceptions.

2 Any sale or encumbrance to a conservator, the spouse, agent, attorney
3 of a conservator, or any corporation, trust, or other organization in which
4 the conservator has a substantial beneficial interest, or any other
5 transaction involving the estate being administered by the conservator which
6 is affected by a substantial conflict between fiduciary and personal
7 interests is voidable unless the transaction is approved by the Court after
8 notice as directed by the Court.

9

10 Section 28-5-422. Persons Dealing With Conservators; Protection.

11 (a) A person who in good faith either assists or deals with a
12 conservator for value in any transaction other than those requiring a Court
13 order as provided in Section 28-5-407 is protected as if the conservator
14 properly exercised the power. The fact that a person knowingly deals with a
15 conservator does not alone require the person to inquire into the existence
16 of a power or the propriety of its exercise, but restrictions on powers of
17 conservators which are endorsed on letters as provided in Section 28-5-425
18 are effective as to third persons. A person is not bound to see to the
19 proper application of estate assets paid or delivered to a conservator.

20 (b) The protection expressed in this section extends to any procedural
21 irregularity or jurisdictional defect occurred in proceedings leading to the
22 issuance of letters and is not a substitution for protection provided by
23 comparable provisions of the law relating to commercial transactions or to
24 simplifying transfers of securities by fiduciaries.

25

26 Section 28-5-423. Powers of Conservator in Administration.

27 (a) Subject to limitation provided in Section 28-5-425, a conservator
28 has all of the powers conferred in this section and any additional powers
29 conferred by law on trustees in this State. In addition, a conservator of
30 the estate of an unmarried minor under the age of 18 years, as to whom no one
31 has parental rights, has the duties and powers of a guardian of a minor
32 described in Section 28-5-209 until the minor attains the age of 18 years or
33 marries, but the parental rights so conferred on a conservator do not
34 preclude appointment of a guardian as provided in Part 2.

35 (b) A conservator without Court authorization or confirmation, may

1 invest and reinvest funds of the estate as would a trustee.

2 (c) A conservator, acting reasonably in efforts to accomplish the
3 purpose of the appointment, may act without Court authorization or
4 confirmation, to

5 (1) collect, hold, and retain assets of the estate including land
6 in another state, until judging that disposition of the assets should be
7 made, and the assets may be retained even though they include an asset in
8 which the conservator is personally interested;

9 (2) receive additions to the estate;

10 (3) continue or participate in the operation of any business or
11 other enterprise;

12 (4) acquire an undivided interest in an estate asset in which the
13 conservator, in any fiduciary capacity, holds an undivided interest;

14 (5) invest and reinvest estate assets in accordance with
15 subsection (b);

16 (6) deposit estate funds in a state or federally insured
17 financial institution, including one operated by the conservator;

18 (7) acquire or dispose of an estate asset, including land in
19 another state, for cash or on credit, at public or private sale, and manage,
20 develop, improve, exchange, partition, change the character of, or abandon an
21 estate asset;

22 (8) make ordinary or extraordinary repairs or alterations in
23 buildings or other structures; demolish any improvements; and raze existing
24 or erect new party walls or buildings;

25 (9) subdivide, develop, or dedicate land to public use; make or
26 obtain the vacation of plats and adjust boundaries; adjust differences in
27 valuation or exchange or partition by giving or receiving considerations;
28 and dedicate easements to public use without consideration;

29 (10) enter for any purpose into a lease as lessor or lessee with
30 or without option to purchase or renew for a term within or extending beyond
31 the term of the conservatorship;

32 (11) enter into a lease or arrangement for exploration and
33 removal of minerals or other natural resources or enter into a pooling or
34 unitization agreement;

35 (12) grant an option involving disposition of an estate asset and

- 1 take an option for the acquisition of any asset;
- 2 (13) vote a security, in person or by general or limited proxy;
- 3 (14) pay calls, assessments, and any other sums chargeable or
- 4 accruing against or on account of securities;
- 5 (15) sell or exercise stock-subscription or conversion rights;
- 6 (16) consent, directly or through a committee or other agent, to
- 7 the reorganization, consolidation, merger, dissolution, or liquidation of a
- 8 corporation or other business enterprise;
- 9 (17) hold a security in the name of a nominee or in other form
- 10 without disclosure of the conservatorship so that title to the security may
- 11 pass by delivery, but the conservator is liable for any act of the nominee in
- 12 connection with the stock so held;
- 13 (18) insure the assets of the estate against damage or loss and
- 14 the conservator against liability with respect to third persons;
- 15 (19) borrow money to be repaid from estate assets or otherwise;
- 16 advance money for the protection of the estate or the protected person and
- 17 for all expenses, losses, and liability sustained in the administration of
- 18 the estate or because of the holding or ownership of any estate assets, for
- 19 which the conservator has a lien on the estate as against the protected
- 20 person for advances so made;
- 21 (20) pay or contest any claim; settle a claim by or against the
- 22 estate or the protected person by compromise, arbitration, or otherwise; and
- 23 release, in whole or in part, any claim belonging to the estate to the extent
- 24 the claim is uncollectible;
- 25 (21) pay taxes, assessments, compensation of the conservator, and
- 26 other expenses incurred in the collection, care, administration, and
- 27 protection of the estate;
- 28 (22) allocate items of income or expense to either estate income
- 29 or principal, as provided by law, including creation of reserves out of
- 30 income for depreciation, obsolescence, or amortization, or for depletion in
- 31 mineral or timber properties;
- 32 (23) pay any sum distributable to a protected person or dependent
- 33 of the protected person by paying the sum to the distributee or by paying the
- 34 sum for the use of the distributee to the guardian of the distributee, or, if
- 35 none, to a relative or other person having custody of the distributee;

1 (24) employ persons, including attorneys, auditors, investment
2 advisors, or agents, even though they are associated with the conservator, to
3 advise or assist in the performance of administrative duties; act upon their
4 recommendation without independent investigation; and instead of acting
5 personally, employ one or more agents to perform any act of administration,
6 whether or not discretionary;

7 (25) prosecute or defend actions, claims, or proceedings in any
8 jurisdiction for the protection of estate assets and of the conservator in
9 the performance of fiduciary duties; and

10 (26) execute and deliver all instruments that will accomplish or
11 facilitate the exercise of the powers vested in the conservator.

12

13 Section 28-5-424. Distributive Duties and Powers of Conservator.

14 (a) A conservator may expend or distribute income or principal of the
15 estate without Court authorization or confirmation for the support,
16 education, care, or benefit of the protected person and dependents in
17 accordance with the following principles:

18 (1) The conservator shall consider recommendations relating to
19 the appropriate standard of support, education, and benefit for the protected
20 person or dependent made by a parent or guardian, if any. The conservator
21 may not be surcharged for sums paid to persons or organizations furnishing
22 support, education, or care to the protected person or a dependent pursuant
23 to the recommendations of a parent or guardian of the protected person unless
24 the conservator knows that the parent or guardian derives personal financial
25 benefit therefrom, including relief from any personal duty of support or the
26 recommendations are clearly not in the best interest of the protected person.

27 (2) The conservator shall expend or distribute sums reasonably
28 necessary for the support, education, care, or benefit of the protected
29 person and dependents with due regard to (i) the size of the estate, the
30 probable duration of the conservatorship, and the likelihood that the
31 protected person, at some future time, may be fully able to be wholly
32 self-sufficient and able to manage business affairs and the estate; (ii) the
33 accustomed standard of living of the protected person and dependents; and
34 (iii) other funds or sources used for the support of the protected person.

35 (3) The conservator may expend funds of the estate for the

1 support of persons legally dependent on the protected person and others who
2 are members of the protected person's household who are unable to support
3 themselves, and who are in need of support.

4 (4) Funds expended under this subsection may be paid by the
5 conservator to any person, including the protected person, to reimburse for
6 expenditures that the conservator might have made, or in advance for services
7 to be rendered to the protected person if it is reasonable to expect the
8 services will be performed and advance payments are customary or reasonably
9 necessary under the circumstances.

10 (5) A conservator, in discharging the responsibilities conferred
11 by Court order and this Part, shall implement the principles described in
12 Section 28-5-407(a), to the extent possible.

13 (b) If the estate is ample to provide for the purposes implicit in the
14 distributions authorized by the preceding subsections, a conservator for a
15 protected person other than a minor has power to make gifts to charity and
16 other objects as the protected person might have been expected to make, in
17 amounts that do not exceed in total for any year 20 percent of the income
18 from the estate.

19 (c) When a minor who has not been adjudged disabled under Section 28-
20 5-401(c) attains majority, the conservator, after meeting all claims and
21 expenses of administration, shall pay over and distribute all funds and
22 properties to the formerly protected person as soon as possible.

23 (d) If satisfied that a protected person's disability, other than
24 minority, has ceased, the conservator, after meeting all claims and expenses
25 of administration, shall pay over and distribute all funds and properties to
26 the formerly protected person as soon as possible.

27 (e) If a protected person dies, the conservator shall deliver to the
28 Court for safekeeping any will of the deceased protected person which may
29 have come into the conservator's possession, inform the executor or
30 beneficiary named therein of the delivery, and retain the estate for delivery
31 to a duly appointed personal representative of the decedent or other persons
32 entitled thereto. If, 40 days after the death of the protected person, no
33 other person has been appointed personal representative and no application or
34 petition for appointment is before the Court, the conservator may apply to
35 exercise the powers and duties of a personal representative in order to be

1 able to proceed to administer and distribute the decedent's estate. Upon
2 application for an order granting the powers of a personal representative to
3 a conservator, after notice to any person nominated personal representative
4 by any will of which the applicant is aware, the Court may grant the
5 application upon determining that there is no objection and endorse the
6 letters of the conservator to note that the formerly protected person is
7 deceased and that the conservator has acquired all of the powers and duties
8 of a personal representative. The making and entry of an order under this
9 section has the effect of an order of appointment of a personal
10 representative as provided in Section 28-3-308 and Parts 6 through 10 of
11 Article III, but the estate in the name of the conservator, after
12 administration, may be distributed to the decedent's successors without prior
13 re-transfer to the conservator as personal representative.

14

15 Section 28-5-425. Enlargement or Limitation of Powers of Conservator.
16 Subject to the restrictions in Section 28-5-407(c), the Court may
17 confer on a conservator at the time of appointment or later, in addition to
18 the powers conferred by Sections 28-5-423 and 28-5-424, any power that the
19 Court itself could exercise under Sections 28-5-407(b)(2) and 28-5-407(b)(3).
20 The Court, at the time of appointment or later, may limit the powers of a
21 conservator otherwise conferred by Sections 28-5-423 and 28-5-424 or
22 previously conferred by the Court and may at any time remove or modify any
23 limitation. If the Court limits any power conferred on the conservator by
24 Section 28-5-423 or Section 28-5-424, or specifies, as provided in Section
25 28-5-419(a), that title to some but not all assets of the protected person
26 vest in the conservator, the limitation or specification of assets subject to
27 the conservatorship must be endorsed upon the letters of appointment.

28

29 Section 28-5-426. Preservation of Estate Plan; Right to Examine.
30 In (i) investing the estate, (ii) selecting assets of the estate for
31 distribution under subsections (a) and (b) of Section 28-5-424, and (iii)
32 utilizing powers of revocation or withdrawal available for the support of the
33 protected person and exercisable by the conservator or the Court, the
34 conservator and the Court shall take into account any estate plan of the
35 protected person known to them, including a will, any revocable trust of

1 which the person is settlor, and any contract, transfer, or joint ownership
2 arrangement originated by the protected person with provisions for payment or
3 transfer of benefits or interests at the person's death to another or others.
4 The conservator may examine the will of the protected person.

5

6 Section 28-5-427. Claims Against Protected Person; Enforcement.

7 (a) A conservator may pay or secure from the estate claims against the
8 estate or against the protected person arising before or after the
9 conservatorship upon their presentation and allowance in accordance with the
10 priorities stated in subsection (c). A claim may be presented by either of
11 the following methods:

12 (1) The claimant may deliver or mail to the conservator a written
13 statement of the claim indicating its basis, the name and mailing address of
14 the claimant, and the amount claimed; or

15 (2) The claimant may file a written statement of the claim, in
16 the form prescribed by rule, with the clerk of Court and deliver or mail a
17 copy of the statement to the conservator.

18 (b) A claim is deemed presented on the first to occur of receipt of the
19 written statement of claim by the conservator or the filing of the claim with
20 the Court. A presented claim is allowed if it is not disallowed by written
21 statement mailed by the conservator to the claimant within 60 days after its
22 presentation. The presentation of a claim tolls any statute of limitation
23 relating to the claim until 30 days after its disallowance.

24 (c) A claimant whose claim has not been paid may petition the Probate
25 Court for determination of the claim at any time before it is barred by the
26 applicable statute of limitation and, upon due proof, procure an order for
27 its allowance, payment, or security from the estate. If a proceeding is
28 pending against a protected person at the time of appointment of a
29 conservator or is initiated against the protected person thereafter, the
30 moving party shall give notice of the proceeding to the conservator if the
31 proceeding could result in creating a claim against the estate.

32 (d) If it appears that the estate in conservatorship is likely to be
33 exhausted before all existing claims are paid, the conservator shall
34 distribute the estate in money or in kind in payment of claims in the
35 following order:

- 1 (1) costs and expenses of administration;
- 2 (2) claims of the federal or state government having priority
- 3 under other laws;
- 4 (3) claims incurred by the conservator for care, maintenance, and
- 5 education, previously provided to the protected person or the protected
- 6 person's dependents;
- 7 (4) claims arising prior to the conservatorship;
- 8 (5) all other claims.
- 9 (e) No preference may be given in the payment of any claim over any
- 10 other claim of the same class, and a claim due and payable is not entitled to
- 11 a preference over claims not due; but if it appears that the assets of the
- 12 conservatorship are adequate to meet all existing claims, the Court, acting
- 13 in the best interest of the protected person, may order the conservator to
- 14 give a mortgage or other security on the conservatorship estate to secure
- 15 payment at some future date of any or all claims in class 5.

16

17 Section 28-5-428. Personal Liability of Conservator.

18 (a) Unless otherwise provided in the contract, a conservator is not

19 personally liable on a contract properly entered into in fiduciary capacity

20 in the course of administration of the estate unless the conservator fails to

21 reveal the representative capacity and identify the estate in the contract.

22 (b) The conservator is personally liable for obligations arising from

23 ownership or control of property of the estate or for torts committed in the

24 course of administration of the estate only if personally at fault.

25 (c) Claims based on (i) contracts entered into by a conservator in

26 fiduciary capacity, (ii) obligations arising from ownership or control of the

27 estate, or (iii) torts committed in the course of administration of the

28 estate, may be asserted against the estate by proceeding against the

29 conservator in fiduciary capacity, whether or not the conservator is

30 personally liable therefor.

31 (d) Any question of liability between the estate and the conservator

32 personally may be determined in a proceeding for accounting, surcharge, or

33 indemnification, or other appropriate proceeding or action.

34

35 Section 28-5-429. Termination of Proceedings.

1 The protected person, conservator, or any other interested person, may
2 petition the Court to terminate the conservatorship. A protected person
3 seeking termination is entitled to the same rights and procedures as in an
4 original proceeding for a protective order. The Court, upon determining
5 after notice and hearing that the minority or disability of the protected
6 person has ceased, shall terminate the conservatorship. Upon termination,
7 title to assets of the estate passes to the formerly protected person or to
8 successors. The order of termination must provide for expenses of
9 administration and direct the conservator to execute appropriate instruments
10 to evidence the transfer.

11

12 Section 28-5-430. Payment of Debt and Delivery of Property to Foreign
13 Conservator without Local Proceedings.

14 (a) Any person indebted to a protected person or having possession of
15 property or of an instrument evidencing a debt, stock, or chose in action
16 belonging to a protected person may pay or deliver it to a conservator,
17 guardian of the estate, or other like fiduciary appointed by a court of the
18 state of residence of the protected person upon being presented with proof of
19 appointment and an affidavit made by or on behalf of the fiduciary stating:

20 (1) that no protective proceeding relating to the protected
21 person is pending in this State; and

22 (2) that the foreign fiduciary is entitled to payment or to
23 receive delivery.

24 (b) If the person to whom the affidavit is presented is not aware of
25 any protective proceeding pending in this State, payment or delivery in
26 response to the demand and affidavit discharges the debtor or possessor.

27

28 Section 28-5-431. Foreign Conservator; Proof of Authority; Bond;
29 Powers.

30 If a conservator has not been appointed in this State and no petition
31 in a protective proceeding is pending in this State, a conservator appointed
32 in the state in which the protected person resides may file in a Court of
33 this State in a county in which property belonging to the protected person is
34 located, authenticated copies of letters of appointment and of any bond.
35 Thereafter, the domiciliary foreign conservator may exercise as to assets in

1 this State all powers of a conservator appointed in this State and may
2 maintain actions and proceedings in this State subject to any conditions
3 imposed upon non-resident parties generally.

4 PART 5

5 DURABLE POWER OF ATTORNEY

6 Section 28-5-501. Definition.

7 A durable power of attorney is a power of attorney by which a principal
8 designates another his attorney in fact in writing and the writing contains
9 the words "This power of attorney shall not be affected by subsequent
10 disability or incapacity of the principal, or lapse of time," or "This power
11 of attorney shall become effective upon the disability or incapacity of the
12 principal," or similar words showing the intent of the principal that the
13 authority conferred shall be exercisable notwithstanding the principal's
14 subsequent disability or incapacity, and, unless it states a time of
15 termination, notwithstanding the lapse of time since the execution of the
16 instrument.

17

18 Section 28-5-502. Durable Power of Attorney Not Affected By Lapse of
19 Time, Disability or Incapacity.

20 All acts done by an attorney in fact pursuant to a durable power of
21 attorney during any period of disability or incapacity of the principal have
22 the same effect and inure to the benefit of and bind the principal and his
23 successors in interest as if the principal were competent and not disabled.
24 Unless the instrument states a time of termination, the power is exercisable
25 notwithstanding the lapse of time since the execution of the instrument.

26

27 Section 28-5-503. Relation of Attorney in Fact to Court-appointed
28 Fiduciary.

29 (a) If, following execution of a durable power of attorney, a court of
30 the principal's domicile appoints a conservator, guardian of the estate, or
31 other fiduciary charged with the management of all of the principal's
32 property or all of his property except specified exclusions, the attorney in
33 fact is accountable to the fiduciary as well as to the principal. The
34 fiduciary has the same power to revoke or amend the power of attorney that
35 the principal would have had if he were not disabled or incapacitated.

1 (b) A principal may nominate, by a durable power of attorney, the
2 conservator, guardian of his estate, or guardian of his person for
3 consideration by the court if protective proceedings for the principal's
4 person or estate are thereafter commenced. The court shall make its
5 appointment in accordance with the principal's most recent nomination in a
6 durable power of attorney except for good cause or disqualification.

7

8 Section 28-5-504. Power of Attorney Not Revoked Until Notice.

9 (a) The death of a principal who has executed a written power of
10 attorney, durable or otherwise, does not revoke or terminate the agency as to
11 the attorney in fact or other person, who, without actual knowledge of the
12 death of the principal, acts in good faith under the power. Any action so
13 taken, unless otherwise invalid or unenforceable, binds successors in
14 interest of the principal.

15 (b) The disability or incapacity of a principal who has previously
16 executed a written power of attorney that is not a durable power does not
17 revoke or terminate the agency as to the attorney in fact or other person,
18 who, without actual knowledge of the disability or incapacity of the
19 principal, acts in good faith under the power. Any action so taken, unless
20 otherwise invalid or unenforceable, binds the principal and his successors in
21 interest.

22

23 Section 28-5-505. Proof of Continuance of Durable and Other Powers of
24 Attorney by Affidavit.

25 As to acts undertaken in good faith reliance thereon, an affidavit
26 executed by the attorney in fact under a power of attorney, durable or
27 otherwise, stating that he did not have at the time of exercise of the power
28 actual knowledge of the termination of the power by revocation or of the
29 principal's death, disability, or incapacity is conclusive proof of the
30 nonrevocation or nontermination of the power at that time. If the exercise
31 of the power of attorney requires execution and delivery of any instrument
32 that is recordable, the affidavit when authenticated for record is likewise
33 recordable. This section does not affect any provision in a power of
34 attorney for its termination by expiration of time or occurrence of an event
35 other than express revocation or a change in the principal's capacity.

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ARTICLE VI
NONPROBATE TRANSFERS ON DEATH

PART 1

PROVISIONS RELATING TO EFFECT OF DEATH

Section 28-6-101. Nonprobate Transfers on Death.

(a) A provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, conveyance, deed of gift, marital property agreement, or other written instrument of a similar nature is

nontestamentary. This subsection includes a written provision that:

(1) money or other benefits due to, controlled by, or owned by a decedent before death must be paid after the decedent's death to a person whom the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later;

(2) money due or to become due under the instrument ceases to be payable in the event of death of the promisee or the promisor before payment or demand; or

(3) any property controlled by or owned by the decedent before death which is the subject of the instrument passes to a person the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later.

(b) This section does not limit rights of creditors under other laws of this State.

PART 2

MULTIPLE-PERSON ACCOUNTS

SUBPART 1

DEFINITIONS AND GENERAL PROVISIONS

Section 28-6-201. Definitions.

In this part:

(1) "Account" means a contract of deposit between a depositor and a financial institution, and includes a checking account, savings account, certificate of deposit, and share account.

1 (2) "Agent" means a person authorized to make account transactions for
2 a party.

3 (3) "Beneficiary" means a person named as one to whom sums on deposit
4 in an account are payable on request after death of all parties or for whom a
5 party is named as trustee.

6 (4) "Financial institution" means an organization authorized to do
7 business under state or federal laws relating to financial institutions, and
8 includes a bank, trust company, savings bank, building and loan association,
9 savings and loan company or association, and credit union.

10 (5) "Multiple-party account" means an account payable on request to one
11 or more of two or more parties, whether or not a right of survivorship is
12 mentioned.

13 (6) "Party" means a person who, by the terms of an account, has a
14 present right, subject to request, to payment from the account other than as
15 a beneficiary or agent.

16 (7) "Payment" of sums on deposit includes withdrawal, payment to a
17 party or third person pursuant to check or other request, and a pledge of
18 sums on deposit by a party, or a set-off, reduction, or other disposition of
19 all or part of an account pursuant to a pledge.

20 (8) "POD designation" means the designation of (i) a beneficiary in an
21 account payable on request to one party during the party's lifetime and on
22 the party's death to one or more beneficiaries, or to one or more parties
23 during their lifetimes and on death of all of them to one or more
24 beneficiaries, or (ii) a beneficiary in an account in the name of one or more
25 parties as trustee for one or more beneficiaries if the relationship is
26 established by the terms of the account and there is no subject of the trust
27 other than the sums on deposit in the account, whether or not payment to the
28 beneficiary is mentioned.

29 (9) "Receive," as it relates to notice to a financial institution,
30 means receipt in the office or branch office of the financial institution in
31 which the account is established, but if the terms of the account require
32 notice at a particular place, in the place required.

33 (10) "Request" means a request for payment complying with all terms of
34 the account, including special requirements concerning necessary signatures
35 and regulations of the financial institution; but, for purposes of this

1 part, if terms of the account condition payment on advance notice, a request
2 for payment is treated as immediately effective and a notice of intent to
3 withdraw is treated as a request for payment.

4 (11) "Sums on deposit" means the balance payable on an account,
5 including interest and dividends earned, whether or not included in the
6 current balance, and any deposit life insurance proceeds added to the account
7 by reason of death of a party.

8 (12) "Terms of the account" includes the deposit agreement and other
9 terms and conditions, including the form, of the contract of deposit.

10

11 Section 28-6-202. Limitation on Scope of Part.

12 This part does not apply to (i) an account established for a
13 partnership, joint venture, or other organization for a business purpose,
14 (ii) an account controlled by one or more persons as an agent or trustee for
15 a corporation, unincorporated association, or charitable or civic
16 organization, or (iii) a fiduciary or trust account in which the relationship
17 is established other than by the terms of the account.

18

19 Section 28-6-203. Types of Account; Existing Accounts.

20 (a) An account may be for a single party or multiple parties. A
21 multiple-party account may be with or without a right of survivorship between
22 the parties. Subject to Section 28-6-212(c), either a single-party account
23 or a multiple-party account may have a POD designation, an agency
24 designation, or both.

25 (b) An account established before, on, or after the effective date of
26 this part, whether in the form prescribed in Section 28-6-204 or in any other
27 form, is either a single-party account or a multiple-party account, with or
28 without right of survivorship, and with or without a POD designation or an
29 agency designation, within the meaning of this part, and is governed by this
30 part.

31

32 Section 28-6-204. Forms.

33 (a) A contract of deposit that contains provisions in substantially the
34 following form establishes the type of account provided, and the account is
35 governed by the provisions of this part applicable to an account of that

1 type:

2 UNIFORM SINGLE-OR MULTIPLE-PARTY ACCOUNT FORM

3 PARTIES [Name One or More Parties]:

4 _____

5 OWNERSHIP [Select One And Initial]:

6 _____ SINGLE-PARTY ACCOUNT

7 _____ MULTIPLE-PARTY ACCOUNT

8 Parties own account in proportion to net contributions unless there is
9 clear and convincing evidence of a different intent.

10 RIGHTS AT DEATH [Select One And Initial]:

11 _____ SINGLE-PARTY ACCOUNT

12 At death of party, ownership passes as part of party's estate.

13 _____ SINGLE-PARTY ACCOUNT WITH POD (PAY ON DEATH) DESIGNATION

14 [Name One Or More Beneficiaries]:

15 _____

16 At death of party, ownership passes to POD beneficiaries and is not part
17 of party's estate.

18 _____ MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP

19 At death of party, ownership passes to surviving parties.

20 _____ MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP AND POD (PAY ON
21 DEATH) DESIGNATION

22 [Name One Or More Beneficiaries]:

23 _____

24 At death of last surviving party, ownership passes to POD beneficiaries
25 and is not part of last surviving party's estate.

26 _____ MULTIPLE-PARTY ACCOUNT WITHOUT RIGHT OF SURVIVORSHIP

27 At death of party, deceased party's ownership passes as part of deceased
28 party's estate.

29 AGENCY (POWER OF ATTORNEY) DESIGNATION [Optional]

30 Agents may make account transactions for parties but have no ownership
31 or rights at death unless named as POD beneficiaries.

32 [To Add Agency Designation To Account, Name One Or More Agents]:

33 _____

34 [Select One And Initial]:

35 _____ AGENCY DESIGNATION SURVIVES DISABILITY OR INCAPACITY OF PARTIES

1 _____ AGENCY DESIGNATION TERMINATES ON DISABILITY OR INCAPACITY OF
2 PARTIES

3 (b) A contract of deposit that does not contain provisions in
4 substantially the form provided in subsection (a) is governed by the
5 provisions of this part applicable to the type of account that most nearly
6 conforms to the depositor's intent.

7

8 Section 28-6-205. Designation of Agent.

9 (a) By a writing signed by all parties, the parties may designate as
10 agent of all parties on an account a person other than a party.

11 (b) Unless the terms of an agency designation provide that the
12 authority of the agent terminates on disability or incapacity of a party, the
13 agent's authority survives disability and incapacity. The agent may act for
14 a disabled or incapacitated party until the authority of the agent is
15 terminated.

16 (c) Death of the sole party or last surviving party terminates the
17 authority of an agent.

18

19 Section 28-6-206. Applicability of Part.

20 The provisions of Subpart 2 concerning beneficial ownership as between
21 parties or as between parties and beneficiaries apply only to controversies
22 between those persons and their creditors and other successors, and do not
23 apply to the right of those persons to payment as determined by the terms of
24 the account. Subpart 3 governs the liability and set-off rights of financial
25 institutions that make payments pursuant to it.

26

SUBPART 2

27

OWNERSHIP AS BETWEEN PARTIES AND OTHERS

28

Section 28-6-211. Ownership During Lifetime.

29 (a) In this section, "net contribution" of a party means the sum of all
30 deposits to an account made by or for the party, less all payments from the
31 account made to or for the party which have not been paid to or applied to
32 the use of another party and a proportionate share of any charges deducted
33 from the account, plus a proportionate share of any interest or dividends
34 earned, whether or not included in the current balance. The term includes
35 deposit life insurance proceeds added to the account by reason of death of

1 the party whose net contribution is in question.

2 (b) During the lifetime of all parties, an account belongs to the
3 parties in proportion to the net contribution of each to the sums on deposit,
4 unless there is clear and convincing evidence of a different intent. As
5 between parties married to each other, in the absence of proof otherwise, the
6 net contribution of each is presumed to be an equal amount.

7 (c) A beneficiary in an account having a POD designation has no right
8 to sums on deposit during the lifetime of any party.

9 (d) An agent in an account with an agency designation has no beneficial
10 right to sums on deposit.

11

12 Section 28-6-212. Rights at Death.

13 (a) Except as otherwise provided in this part, on death of a party sums
14 on deposit in a multiple-party account belong to the surviving party or
15 parties. If two or more parties survive and one is the surviving spouse of
16 the decedent, the amount to which the decedent, immediately before death, was
17 beneficially entitled under Section 28-6-211 belongs to the surviving spouse.
18 If two or more parties survive and none is the surviving spouse of the
19 decedent, the amount to which the decedent, immediately before death, was
20 beneficially entitled under Section 28-6-211 belongs to the surviving parties
21 in equal shares, and augments the proportion to which each survivor,
22 immediately before the decedent's death, was beneficially entitled under
23 Section 28-6-211, and the right of survivorship continues between the
24 surviving parties.

25 (b) In an account with a POD designation:

26 (1) On death of one of two or more parties, the rights in sums on
27 deposit are governed by subsection (a).

28 (2) On death of the sole party or the last survivor of two or
29 more parties, sums on deposit belong to the surviving beneficiary or
30 beneficiaries. If two or more beneficiaries survive, sums on deposit belong
31 to them in equal and undivided shares, and there is no right of survivorship
32 in the event of death of a beneficiary thereafter. If no beneficiary
33 survives, sums on deposit belong to the estate of the last surviving party.

34 (c) Sums on deposit in a single-party account without a POD
35 designation, or in a multiple-party account that, by the terms of the

1 account, is without right of survivorship, are not affected by death of a
2 party, but the amount to which the decedent, immediately before death, was
3 beneficially entitled under Section 28-6-211 is transferred as part of the
4 decedent's estate. A POD designation in a multiple-party account without
5 right of survivorship is ineffective. For purposes of this section,
6 designation of an account as a tenancy in common establishes that the account
7 is without right of survivorship.

8 (d) The ownership right of a surviving party or beneficiary, or of the
9 decedent's estate, in sums on deposit is subject to requests for payment made
10 by a party before the party's death, whether paid by the financial
11 institution before or after death, or unpaid. The surviving party or
12 beneficiary, or the decedent's estate, is liable to the payee of an unpaid
13 request for payment. The liability is limited to a proportionate share of
14 the amount transferred under this section, to the extent necessary to
15 discharge the request for payment.

16

17 Section 28-6-213. Alteration of Rights.

18 (a) Rights at death under Section 28-6-212 are determined by the terms
19 of the account at the death of a party. The terms of the account may be
20 altered by written notice given by a party to the financial institution to
21 change the terms of the account or to stop or vary payment under the terms of
22 the account. The notice must be signed by a party and received by the
23 financial institution during the party's lifetime.

24 (b) A right of survivorship arising from the express terms of the
25 account, Section 28-6-212, or a POD designation, may not be altered by will.

26

27 Section 28-6-214. Accounts and Transfers Nontestamentary.

28 Except as provided in Part 2 of Article II (elective share of surviving
29 spouse) or as a consequence of, and to the extent directed by, Section 28-
30 6-215, a transfer resulting from the application of Section 28-6-212 is
31 effective by reason of the terms of the account involved and this part and is
32 not testamentary or subject to Articles I through IV (estate administration).

33

34 Section 28-6-215. Rights of Creditors and Others.

35 (a) If other assets of the estate are insufficient, a transfer

1 resulting from a right of survivorship or POD designation under this part is
2 not effective against the estate of a deceased party to the extent needed to
3 pay claims against the estate and statutory allowances to the surviving
4 spouse and children.

5 (b) A surviving party or beneficiary who receives payment from an
6 account after death of a party is liable to account to the personal
7 representative of the decedent for a proportionate share of the amount
8 received to which the decedent, immediately before death, was beneficially
9 entitled under Section 28-6-211, to the extent necessary to discharge the
10 claims and allowances described in subsection (a) remaining unpaid after
11 application of the decedent's estate. A proceeding to assert the liability
12 may not be commenced unless the personal representative has received a
13 written demand by the surviving spouse, a creditor, a child, or a person
14 acting for a child of the decedent. The proceeding must be commenced within
15 one year after death of the decedent.

16 (c) A surviving party or beneficiary against whom a proceeding to
17 account is brought may join as a party to the proceeding a surviving party or
18 beneficiary of any other account of the decedent.

19 (d) Sums recovered by the personal representative must be administered
20 as part of the decedent's estate. This section does not affect the
21 protection from claims of the personal representative or estate of a deceased
22 party provided in Section 28-6-226 for a financial institution that makes
23 payment in accordance with the terms of the account.

24

25 Section 28-6-216. Community Property and Tenancy by the Entireties.

26 (a) A deposit of community property in an account does not alter the
27 community character of the property or community rights in the property, but
28 a right of survivorship between parties married to each other arising from
29 the express terms of the account or Section 28-6-212 may not be altered by
30 will.

31 (b) This part does not affect the law governing tenancy by the
32 entireties.

33

SUBPART 3

34

PROTECTION OF FINANCIAL INSTITUTIONS

35

Section 28-6-221. Authority of Financial Institution.

1 A financial institution may enter into a contract of deposit for a
2 multiple-party account to the same extent it may enter into a contract of
3 deposit for a single-party account, and may provide for a POD designation and
4 an agency designation in either a single-party account or a multiple-party
5 account. A financial institution need not inquire as to the source of a
6 deposit to an account or as to the proposed application of a payment from an
7 account.

8

9 Section 28-6-222. Payment on Multiple-Party Account.

10 A financial institution, on request, may pay sums on deposit in a
11 multiple-party account to:

12 (1) one or more of the parties, whether or not another party is
13 disabled, incapacitated, or deceased when payment is requested and whether or
14 not the party making the request survives another party; or

15 (2) the personal representative, if any, or, if there is none,
16 the heirs or devisees of a deceased party if proof of death is presented to
17 the financial institution showing that the deceased party was the survivor of
18 all other persons named on the account either as a party or beneficiary,
19 unless the account is without right of survivorship under Section 28-6-212.

20

21 Section 28-6-223. Payment on POD Designation.

22 A financial institution, on request, may pay sums on deposit in an
23 account with a POD designation to:

24 (1) one or more of the parties, whether or not another party is
25 disabled, incapacitated, or deceased when the payment is requested and
26 whether or not a party survives another party;

27 (2) the beneficiary or beneficiaries, if proof of death is
28 presented to the financial institution showing that the beneficiary or
29 beneficiaries survived all persons named as parties; or

30 (3) the personal representative, if any, or, if there is none,
31 the heirs or devisees of a deceased party, if proof of death is presented to
32 the financial institution showing that the deceased party was the survivor of
33 all other persons named on the account either as a party or beneficiary.

34

35 Section 28-6-224. Payment to Designated Agent.

1 A financial institution, on request of an agent under an agency
2 designation for an account, may pay to the agent sums on deposit in the
3 account, whether or not a party is disabled, incapacitated, or deceased when
4 the request is made or received, and whether or not the authority of the
5 agent terminates on the disability or incapacity of a party.

6

7 Section 28-6-225. Payment to Minor.

8 If a financial institution is required or permitted to make payment
9 pursuant to this part to a minor designated as a beneficiary, payment may be
10 made pursuant to the Uniform Transfers to Minors Act.

11

12 Section 28-6-226. Discharge.

13 (a) Payment made pursuant to this part in accordance with the type of
14 account discharges the financial institution from all claims for amounts so
15 paid, whether or not the payment is consistent with the beneficial ownership
16 of the account as between parties, beneficiaries, or their successors.
17 Payment may be made whether or not a party, beneficiary, or agent is
18 disabled, incapacitated, or deceased when payment is requested, received, or
19 made.

20 (b) Protection under this section does not extend to payments made
21 after a financial institution has received written notice from a party, or
22 from the personal representative, surviving spouse, or heir or devisee of a
23 deceased party, to the effect that payments in accordance with the terms of
24 the account, including one having an agency designation, should not be
25 permitted, and the financial institution has had a reasonable opportunity to
26 act on it when the payment is made. Unless the notice is withdrawn by the
27 person giving it, the successor of any deceased party must concur in a
28 request for payment if the financial institution is to be protected under
29 this section. Unless a financial institution has been served with process in
30 an action or proceeding, no other notice or other information shown to have
31 been available to the financial institution affects its right to protection
32 under this section.

33 (c) A financial institution that receives written notice pursuant to
34 this section or otherwise has reason to believe that a dispute exists as to
35 the rights of the parties may refuse, without liability, to make payments in

1 accordance with the terms of the account.

2 (d) Protection of a financial institution under this section does not
3 affect the rights of parties in disputes between themselves or their
4 successors concerning the beneficial ownership of sums on deposit in accounts
5 or payments made from accounts.

6

7 Section 28-6-227. Set-Off.

8 Without qualifying any other statutory right to set-off or lien and
9 subject to any contractual provision, if a party is indebted to a financial
10 institution, the financial institution has a right to set-off against the
11 account. The amount of the account subject to set-off is the proportion to
12 which the party is, or immediately before death was, beneficially entitled
13 under Section 28-6-211 or, in the absence of proof of that proportion, an
14 equal share with all parties.

15

ARTICLE VII

16

TRUST ADMINISTRATION

17

PART 1

18

TRUST REGISTRATION

19

GENERAL COMMENT

20

Section 28-7-101. Duty to Register Trusts.

21

22 The trustee of a trust having its principal place of administration in
23 this state shall register the trust in the Court of this state at the
24 principal place of administration. Unless otherwise designated in the trust
25 instrument, the principal place of administration of a trust is the trustee's
26 usual place of business where the records pertaining to the trust are kept,
27 or at the trustee's residence if he has no such place of business. In the
28 case of co-trustees, the principal place of administration, if not otherwise
29 designated in the trust instrument, is (1) the usual place of business of the
30 corporate trustee if there is but one corporate co-trustee, or (2) the usual
31 place of business or residence of the individual trustee who is a
32 professional fiduciary if there is but one such person and no corporate
33 co-trustee, and otherwise (3) the usual place of business or residence of any
34 of the co-trustees as agreed upon by them. The duty to register under this
35 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

1 trustee cannot obtain release.

2

3 Section 28-7-102. Registration Procedures.

4 Registration shall be accomplished by filing a statement indicating the
5 name and address of the trustee in which it acknowledges the trusteeship.
6 The statement shall indicate whether the trust has been registered elsewhere.
7 The statement shall identify the trust: (1) in the case of a testamentary
8 trust, by the name of the testator and the date and place of domiciliary
9 probate; (2) in the case of a written inter vivos trust, by the name of each
10 settlor and the original trustee and the date of the trust instrument; or
11 (3) in the case of an oral trust, by information identifying the settlor or
12 other source of funds and describing the time and manner of the trust's
13 creation and the terms of the trust, including the subject matter,
14 beneficiaries and time of performance. If a trust has been registered
15 elsewhere, registration in this state is ineffective until the earlier
16 registration is released by order of the Court where prior registration
17 occurred, or an instrument executed by the trustee and all beneficiaries,
18 filed with the registration in this state.

19

20 Section 28-7-103. Effect of Registration.

21 (a) By registering a trust, or accepting the trusteeship of a
22 registered trust, the trustee submits personally to the jurisdiction of the
23 Court in any proceeding under Section 28-7-201 of this Code relating to the
24 trust that may be initiated by any interested person while the trust remains
25 registered. Notice of any proceeding shall be delivered to the trustee, or
26 mailed to him by ordinary first class mail at his address as listed in the
27 registration or as thereafter reported to the Court and to his address as
28 then known to the petitioner.

29 (b) To the extent of their interests in the trust, all beneficiaries of
30 a trust properly registered in this state are subject to the jurisdiction of
31 the court of registration for the purposes of proceedings under Section 28-
32 7-201, provided notice is given pursuant to Section 28-1-401.

33

34 Section 28-7-104. Effect of Failure to Register.

35 A trustee who fails to register a trust in a proper place as required

1 by this Part, for purposes of any proceedings initiated by a beneficiary of
2 the trust prior to registration, is subject to the personal jurisdiction of
3 any Court in which the trust could have been registered. In addition, any
4 trustee who, within 30 days after receipt of a written demand by a settlor or
5 beneficiary of the trust, fails to register a trust as required by this Part
6 is subject to removal and denial of compensation or to surcharge as the Court
7 may direct. A provision in the terms of the trust purporting to excuse the
8 trustee from the duty to register, or directing that the trust or trustee
9 shall not be subject to the jurisdiction of the Court, is ineffective.

10

11 Section 28-7-105. Registration, Qualification of Foreign Trustee.

12 A foreign corporate trustee is required to qualify as a foreign
13 corporation doing business in this state if it maintains the principal place
14 of administration of any trust within the state. A foreign co-trustee is not
15 required to qualify in this state solely because its co-trustee maintains the
16 principal place of administration in this state. Unless otherwise doing
17 business in this state, local qualification by a foreign trustee, corporate
18 or individual, is not required in order for the trustee to receive
19 distribution from a local estate or to hold, invest in, manage or acquire
20 property located in this state, or maintain litigation. Nothing in this
21 section affects a determination of what other acts require qualification as
22 doing business in this state.

23

PART 2

24

JURISDICTION OF COURT CONCERNING TRUSTS

25

Section 28-7-201. Court; Exclusive Jurisdiction of Trusts.

26

(a) The Court has exclusive jurisdiction of proceedings initiated by
27 interested parties concerning the internal affairs of trusts. Proceedings
28 which may be maintained under this section are those concerning the
29 administration and distribution of trusts, the declaration of rights and the
30 determination of other matters involving trustees and beneficiaries of
31 trusts. These include, but are not limited to, proceedings to:

32

(1) appoint or remove a trustee;

33

(2) review trustees' fees and to review and settle interim or
34 final accounts;

35

(3) ascertain beneficiaries, determine any question arising in

1 the administration or distribution of any trust including questions of
2 construction of trust instruments, to instruct trustees, and determine the
3 existence or nonexistence of any immunity, power, privilege, duty or right;
4 and

5 (4) release registration of a trust.

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

15

16 Section 28-7-202. Trust Proceedings; Venue.

17 Venue for proceedings under Section 28-7-201 involving registered
18 trusts is in the place of registration. Venue for proceedings under Section
19 28-7-201 involving trusts not registered in this state is in any place where
20 the trust properly could have been registered, and otherwise by the rules of
21 civil procedure.

22

23 Section 28-7-203. Trust Proceedings; Dismissal of Matters Relating to
24 Foreign Trusts.

25 The Court will not, over the objection of a party, entertain
26 proceedings under Section 28-7-201 involving a trust registered or having its
27 principal place of administration in another state, unless (1) when all
28 appropriate parties could not be bound by litigation in the courts of the
29 state where the trust is registered or has its principal place of
30 administration or (2) when the interests of justice otherwise would seriously
31 be impaired. The Court may condition a stay or dismissal of a proceeding
32 under this section on the consent of any party to jurisdiction of the state
33 in which the trust is registered or has its principal place of business, or
34 the Court may grant a continuance or enter any other appropriate order.

35

1 Section 28-7-204. Court; Concurrent Jurisdiction of Litigation
2 Involving Trusts and Third Parties.

3 The Court of the place in which the trust is registered has concurrent
4 jurisdiction with other courts of this state of actions and proceedings to
5 determine the existence or nonexistence of trusts created other than by will,
6 of actions by or against creditors or debtors of trusts, and of other actions
7 and proceedings involving trustees and third parties. Venue is determined by
8 the rules generally applicable to civil actions.

9

10 Section 28-7-205. Proceedings for Review of Employment of Agents and
11 Review of Compensation of Trustee and Employees of Trust.

12 On petition of an interested person, after notice to all interested
13 persons, the Court may review the propriety of employment of any person by a
14 trustee including any attorney, auditor, investment advisor or other
15 specialized agent or assistant, and the reasonableness of the compensation of
16 any person so employed, and the reasonableness of the compensation determined
17 by the trustee for his own services. Any person who has received excessive
18 compensation from a trust may be ordered to make appropriate refunds.

19

20 Section 28-7-206. Trust Proceedings; Initiation by Notice; Necessary
21 Parties.

22 Proceedings under Section 28-7-201 are initiated by filing a petition
23 in the Court and giving notice pursuant to Section 28-1-401 to interested
24 parties. The Court may order notification of additional persons. A decree
25 is valid as to all who are given notice of the proceeding though fewer than
26 all interested parties are notified.

27

PART 3

28

DUTIES AND LIABILITIES OF TRUSTEES

29

Section 28-7-301. General Duties Not Limited.

30

Except as specifically provided, the general duty of the trustee to
31 administer a trust expeditiously for the benefit of the beneficiaries is not
32 altered by this Code.

33

34

Section 28-7-302. Trustee's Standard of Care and Performance.

35

Except as otherwise provided by the terms of the trust, the trustee

1 shall observe the standards in dealing with the trust assets that would be
2 observed by a prudent man dealing with the property of another, and if the
3 trustee has special skills or is named trustee on the basis of
4 representations of special skills or expertise, he is under a duty to use
5 those skills.

6

7 Section 28-7-303. Duty to Inform and Account to Beneficiaries.

8 The trustee shall keep the beneficiaries of the trust reasonably
9 informed of the trust and its administration. In addition:

10 (a) Within 30 days after his acceptance of the trust, the trustee shall
11 inform in writing the current beneficiaries and if possible, one or more
12 persons who under Section 28-1-403 may represent beneficiaries with future
13 interests, of the Court in which the trust is registered and of his name and
14 address.

15 (b) Upon reasonable request, the trustee shall provide the beneficiary
16 with a copy of the terms of the trust which describe or affect his interest
17 and with relevant information about the assets of the trust and the
18 particulars relating to the administration.

19 (c) Upon reasonable request, a beneficiary is entitled to a statement
20 of the accounts of the trust annually and on termination of the trust or
21 change of the trustee.

22

23 Section 28-7-304. Duty to Provide Bond.

24 A trustee need not provide bond to secure performance of his duties
25 unless required by the terms of the trust, reasonably requested by a
26 beneficiary or found by the Court to be necessary to protect the interests of
27 the beneficiaries who are not able to protect themselves and whose interests
28 otherwise are not adequately represented. On petition of the trustee or
29 other interested person the Court may excuse a requirement of bond, reduce
30 the amount of the bond, release the surety, or permit the substitution of
31 another bond with the same or different sureties. If bond is required, it
32 shall be filed in the Court of registration or other appropriate Court in
33 amounts and with sureties and liabilities as provided in Sections 28-3-604
34 and 28-3-606 relating to bonds of personal representatives.

35

1 Section 28-7-305. Trustee's Duties; Appropriate Place of
2 Administration; Deviation.

3 A trustee is under a continuing duty to administer the trust at a place
4 appropriate to the purposes of the trust and to its sound, efficient
5 management. If the principal place of administration becomes inappropriate
6 for any reason, the Court may enter any order furthering efficient
7 administration and the interests of beneficiaries, including, if appropriate,
8 release of registration, removal of the trustee and appointment of a trustee
9 in another state. Trust provisions relating to the place of administration
10 and to changes in the place of administration or of trustee control unless
11 compliance would be contrary to efficient administration or the purposes of
12 the trust. Views of adult beneficiaries shall be given weight in determining
13 the suitability of the trustee and the place of administration.

14

15 Section 28-7-306. Personal Liability of Trustee to Third Parties.

16 (a) Unless otherwise provided in the contract, a trustee is not
17 personally liable on contracts properly entered into in his fiduciary
18 capacity in the course of administration of the trust estate unless he fails
19 to reveal his representative capacity and identify the trust estate in the
20 contract.

21 (b) A trustee is personally liable for obligations arising from
22 ownership or control of property of the trust estate or for torts committed
23 in the course of administration of the trust estate only if he is personally
24 at fault.

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

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

33

34 Section 28-7-307. Limitations on Proceedings Against Trustees After
35 Final Account.

1 Unless previously barred by adjudication, consent or limitation, any
2 claim against a trustee for breach of trust is barred as to any beneficiary
3 who has received a final account or other statement fully disclosing the
4 matter and showing termination of the trust relationship between the trustee
5 and the beneficiary unless a proceeding to assert the claim is commenced
6 within 6 months after receipt of the final account or statement. In any
7 event and notwithstanding lack of full disclosure a trustee who has issued a
8 final account or statement received by the beneficiary and has informed the
9 beneficiary of the location and availability of records for his examination
10 is protected after 3 years. A beneficiary is deemed to have received a final
11 account or statement if, being an adult, it is received by him personally or
12 if, being a minor or disabled person, it is received by his representative as
13 described in Section 28-1-403(1) and (2).

14 PART 4

15 POWERS OF TRUSTEES

16 GENERAL COMMENT

17 ARTICLE VIII

18 EFFECTIVE DATE AND REPEALER

19 Section 28-8-101. Time of Taking Effect; Provisions for Transition.

20 (a) This Code takes effect on January 1, 1996.

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

23 (1) the Code applies to governing instruments executed by
24 decedents dying thereafter;

25 (2) the Code applies to any proceedings in Court then pending or
26 thereafter commenced regardless of the time of the death of decedent except
27 to the extent that in the opinion of the Court the former procedure should be
28 made applicable in a particular case in the interest of justice or because of
29 infeasibility of application of the procedure of this Code;

30 (3) every personal representative including a person
31 administering an estate of a minor or incompetent holding an appointment on
32 that date, continues to hold the appointment but has only the powers
33 conferred by this Code and is subject to the duties imposed with respect to
34 any act occurring or done thereafter;

35 (4) an act done before the effective date in any proceeding and

1 any accrued right is not impaired by this Code. If a right is acquired,
2 extinguished or barred upon the expiration of a prescribed period of time
3 which has commenced to run by the provisions of any statute before the
4 effective date, the provisions shall remain in force with respect to that
5 right;

6 (5) any rule of construction or presumption provided in this Code
7 applies to governing instruments executed before the effective date unless
8 there is a clear indication of a contrary intent;

9 (6) a person holding office as judge of the Court on the
10 effective date of this Act may continue the office of judge of this Court and
11 may be selected for additional terms after the effective date of this Act
12 even though he does not meet the qualifications of a judge as provided in
13 Article I.

14

15 Section 28-8-102. Specific Repealer and Renumbering.

16 (a) The following provisions of the Arkansas Code are repealed:

17 §§ 28-1-101 through 28-1-103; §§ 28-1-109 and 110; §§ 28-1-112 through 28-1-
18 117; §§ 28-2-101 through 28-2-109; §§ 28-8-101 and 102; §§ 28-9-201 through
19 28-9-220; §§ 28-10-101 through 28-10-111; §§ 28-11-101 and 28-11-102; §§ 28-
20 11-201 through 28-11-204; §§ 28-11-301 through 28-11-307; §§ 28-11-401
21 through 28-11-405; §§ 28-24-101 and 28-24-102; §§ 28-25-101 through 28-25-
22 110; §§ 28-26-101 through 28-26-105; §§ 28-27-101 through 28-27-105; §§ 28-
23 39-101 through 28-39-105; §§ 28-39-301 through 28-39-309; §§ 28-39-401
24 through 28-39-407; §§ 28-40-101 through 28-40-123; §§ 28-40-301 through 28-
25 40-303; §§ 28-41-101 through 28-41-104; §§ 28-42-101 through 28-42-111; §§
26 28-48-101 through 28-48-109; §§ 28-48-201 through 28-48-209; §§ 28-49-101
27 through 28-49-117; §§ 28-50-101 through 28-50-114; §§ 28-51-101 through 28-
28 51-109; §§ 28-51-201 through 28-51-203; §§ 28-51-301 through 28-51-309; §§
29 28-52-101 through 28-52-110; §§ 28-53-101 through 28-53-119; §§ 28-65-101
30 through 28-65-109; §§ 28-65-201 through 28-65-220; §§ 28-65-301 through 28-
31 65-323; §§ 28-65-401 through 28-65-403; §§ 28-65-501 through 28-65-503; §§
32 28-65-601 through 28-65-603; §§ 28-67-101 through 28-67-111; § 28-68-101; §§
33 28-68-201 through 28-68-203; §§ 28-68-301 through 28-68-313; and §§ 28-72-101
34 through 28-72-104.

35 (b) The following Code provisions are renumbered:

| 1 | Old Number | New Number |
|----|-------------|-------------|
| 2 | § 28-1-104 | § 16-14-110 |
| 3 | § 28-1-105 | § 16-14-111 |
| 4 | § 28-1-106 | § 16-14-112 |
| 5 | § 28-1-107 | § 16-14-113 |
| 6 | § 28-1-108 | § 16-14-114 |
| 7 | § 28-1-111 | § 16-14-115 |
| 8 | § 28-14-101 | § 28-6-301 |
| 9 | § 28-14-102 | § 28-6-302 |
| 10 | § 28-14-103 | § 28-6-303 |
| 11 | § 28-14-104 | § 28-6-304 |
| 12 | § 28-14-105 | § 28-6-305 |
| 13 | § 28-14-106 | § 28-6-306 |
| 14 | § 28-14-107 | § 28-6-307 |
| 15 | § 28-14-108 | § 28-6-308 |
| 16 | § 28-14-109 | § 28-6-309 |
| 17 | § 28-14-110 | § 28-6-310 |
| 18 | § 28-14-111 | § 28-6-312 |
| 19 | § 28-14-112 | § 28-6-311 |

20

21 Section 28-8-103. All provisions of this act of a general and
22 permanent nature are amendatory to the Arkansas Code of 1987 Annotated and
23 the Arkansas Code Revision Commission shall incorporate the same in the Code.
24

25 Section 28-8-104. If any provision of this act or the application
26 thereof to any person or circumstance is held invalid, such invalidity shall
27 not affect other provisions or applications of the act which can be given
28 effect without the invalid provision or application, and to this end the
29 provisions of this act are declared to be severable.

30

31 Section 28-8-105. All laws and parts of laws in conflict with this act
32 are hereby repealed.

33

34

35

/s/ N. B. "Nap" Murphy, et al

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