

1 State of Arkansas
2 80th General Assembly
3 Regular Session, 1995

A Bill

SENATE BILL 598

4 By: Senators Malone, Todd, Russ, Scott, and Hunter

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For An Act To Be Entitled

"THE PROBATE CODE PROCEDURES ACT."

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Subtitle

"RELATING TO AFFAIRS OF DECEDENTS,
ESTATES AND CONSTITUTING A PORTION OF
THE UNIFORM PROBATE CODE."

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

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Article I

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GENERAL PROVISIONS, DEFINITIONS AND PROBATE JURISDICTION OF COURT

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Part 1

SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS

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Section 28-1-101. Short Title.

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

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

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

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

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

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

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

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

3 Unless displaced by the particular provisions of this Code, the
4 principles of law and equity supplement its provisions.

5

6 Section 28-1-104. Severability.

7 If any provision of this Code or the application thereof to any person
8 or circumstances is held invalid, the invalidity shall not affect other
9 provisions or applications of the Code which can be given effect without the
10 invalid provision or application, and to this end the provisions of this Code
11 are declared to be severable.

12

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

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

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

19 Whenever fraud has been perpetrated in connection with any proceeding
20 or in any statement filed under this Code or if fraud is used to avoid or
21 circumvent the provisions or purposes of this Code, any person injured
22 thereby may obtain appropriate relief against the perpetrator of the fraud or
23 restitution from any person (other than a bona fide purchaser) benefitting
24 from the fraud, whether innocent or not. Any proceeding must be commenced
25 within 2 years after the discovery of the fraud, but no proceeding may be
26 brought against one not a perpetrator of the fraud later than 5 years after
27 the time of commission of the fraud. This section has no bearing on remedies
28 relating to fraud practiced on a decedent during his lifetime which affects
29 the succession of his estate.

30

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

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

34 (1) Death occurs when an individual is determined to be dead under §
35 20-17-101.

1 DEFINITIONS

2 Section 28-1-201. General Definitions.

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

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

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

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

26 (4) "Beneficiary designation" refers to a governing instrument naming a
27 beneficiary of an insurance or annuity policy, of an account with POD
28 designation, of a security registered in beneficiary form (TOD), or of a
29 pension, profit-sharing, retirement, or similar benefit plan, or other
30 nonprobate transfer at death.

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

35 (6) "Claims," in respect to estates of decedents and protected persons,

1 includes liabilities of the decedent or protected person, whether arising in
2 contract, in tort, or otherwise, and liabilities of the estate which arise at
3 or after the death of the decedent or after the appointment of a conservator,
4 including funeral expenses and expenses of administration. The term does not
5 include estate or inheritance taxes, or demands or disputes regarding title
6 of a decedent or protected person to specific assets alleged to be included
7 in the estate.

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

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

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

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

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

23 (12) "Disability" means cause for a protective order as described in
24 *Section 28-65-101*.

25 (13) "Distributee" means any person who has received property of a
26 decedent from his or her personal representative other than as a creditor or
27 purchaser. A testamentary trustee is a distributee only to the extent of
28 distributed assets or increment thereto remaining in his or her hands. A
29 beneficiary of a testamentary trust to whom the trustee has distributed
30 property received from a personal representative is a distributee of the
31 personal representative. For the purposes of this provision, "testamentary
32 trustee" includes a trustee to whom assets are transferred by will, to the
33 extent of the devised assets.

34 (14) "Estate" includes the property of the decedent, trust, or other
35 person whose affairs are subject to this Code as originally constituted and

1 as it exists from time to time during administration.

2 (15) "Exempt property" means that property of a decedent's estate which
3 *is exempt under law from the actions of decedent's creditors.*

4 (16) "Fiduciary" includes a personal representative, guardian,
5 conservator, and trustee.

6 (17) "Foreign personal representative" means a personal representative
7 appointed by another jurisdiction.

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

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

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

19 (21) "Heirs," means persons, including the surviving spouse and the
20 state, who are entitled under the statutes of intestate succession to the
21 property of a decedent.

22 (22) "Incapacitated person" means an individual described in Section
23 28-65-101.

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

27 (24) "Interested person" includes heirs, devisees, children, spouses,
28 creditors, beneficiaries, and any others having a property right in or claim
29 against a trust estate or the estate of a decedent, ward, or protected
30 person. It also includes persons having priority for appointment as personal
31 representative, and other fiduciaries representing interested persons. The
32 meaning as it relates to particular persons may vary from time to time and
33 must be determined according to the particular purposes of, and matter
34 involved in, any proceeding.

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

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

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

8 (28) "Letters" includes letters testamentary, letters of guardianship,
9 letters of administration, and letters of conservatorship.

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

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

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

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

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

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

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

27 (36) "Personal representative" includes executor, administrator,
28 successor personal representative, special administrator, and persons who
29 perform substantially the same function under the law governing their status.
30 "General personal representative" excludes special administrator.

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

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

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

1 (40) "Protected person" is an incapacitated person as defined in
2 Sections 28-65-101 and 28-65-104.

3 (41) "Protective proceeding" means a proceeding described in *Title 28*,
4 Chapters 65, 66, and 67.

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

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

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

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

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

23 (47) "Successor personal representative" means a personal
24 representative, other than a special administrator, who is appointed to
25 succeed a previously appointed personal representative.

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

28 (49) "Supervised administration" refers to the proceedings described in
29 Article III, Part 5.

30 (50) "Survive" means that an individual has neither predeceased an
31 event, including the death of another individual, nor is deemed to have
32 predeceased an event under 28-10-101 through 28-10-105. The term includes
33 its derivatives, such as "survives," "survived," "survivor," "surviving."

34 (51) "Testacy proceeding" means a proceeding to establish a will or
35 determine intestacy.

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

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

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

18 (55) "Ward" means an individual described in Section 28-65-101.

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

23 PART 3

24 SCOPE, JURISDICTION AND COURTS

25 Section 28-1-301. Territorial Application.

26 Except as otherwise provided in this Code, this Code applies to (1) the
27 affairs and estates of decedents, missing persons, and persons to be
28 protected, domiciled in this state, (2) the property of nonresidents located
29 in this state or property coming into the control of a fiduciary who is
30 *subject to the laws of this state, and (3) survivorship and related accounts*
31 *in this state.*

32
33 Section 28-1-302. Subject Matter Jurisdiction.

34 (a) To the full extent permitted by the constitution, the Court has
35 jurisdiction over all subject matter relating to estates of decedents,

1 including construction of wills and determination of heirs and successors of
2 *decedents, and estates of protected persons.*

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

6

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

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

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

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

20

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

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

26

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

28 The Clerk of Court shall keep a record for each decedent involved in
29 any document which may be filed with the Court under this Code, including
30 petitions and applications, demands for notices or bonds, and of any orders
31 or responses relating thereto by the Registrar or Court, and establish and
32 maintain a system for indexing, filing or recording which is sufficient to
33 enable users of the records to obtain adequate information. Upon payment of
34 the fees required by law the clerk must issue certified copies of any
35 probated wills, letters issued to personal representatives, or any other

1 record or paper filed or recorded. Certificates relating to probated wills
2 must indicate whether the decedent was domiciled in this state and whether
3 the probate was formal or informal. Certificates relating to letters must
4 show the date of appointment.

5

6 Section 28-1-306. Jury Trial.

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

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

13

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

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

19

20 Section 28-1-308. Appeals.

21 Appellate review, including the right to appellate review,
22 interlocutory appeal, provisions as to time, manner, notice, appeal bond,
23 stays, scope of review, record on appeal, briefs, arguments and power of the
24 appellate court, is governed by the rules applicable to the appeals to the
25 Supreme Court in equity cases, except that in proceedings where jury trial
26 has been had as a matter of right, the rules applicable to the scope of
27 review in jury cases apply.

28

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

30 A judge of the Court must have the same qualifications as a judge of
31 the chancery court.

32

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

34 Except as otherwise specifically provided in this Code or by rule,
35 every document filed with the Court under this Code including applications,

1 petitions, and demands for notice, shall be deemed to include an oath,
2 affirmation, or statement to the effect that its representations are true as
3 far as the person executing or filing it knows or is informed, and penalties
4 for perjury may follow deliberate falsification therein.

5 PART 4

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

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

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

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

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

20 (3) if the address, or identity of any person is not known and
21 cannot be ascertained with reasonable diligence, by publishing at least once
22 a week for 2 consecutive weeks, a copy thereof in a newspaper having general
23 circulation in the county where the hearing is to be held, the last
24 publication of which is to be at least 10 days before the time set for the
25 hearing.

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

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

30

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

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

1 notice.

2

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

4 In formal proceedings involving trusts or estates of decedents, minors,
5 protected persons, or incapacitated persons, and in judicially supervised
6 settlements, the following apply:

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

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

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

16 (ii) To the extent there is no conflict of interest between them
17 or among persons represented, orders binding a conservator bind the person
18 whose estate he controls; orders binding a guardian bind the ward if no
19 conservator of his estate has been appointed; orders binding a trustee bind
20 beneficiaries of the trust in proceedings to probate a will establishing or
21 adding to a trust, to review the acts or accounts of a prior fiduciary and in
22 proceedings involving creditors or other third parties; and orders binding a
23 personal representative bind persons interested in the undistributed assets
24 of a decedent's estate in actions or proceedings by or against the estate.
25 If there is no conflict of interest and no conservator or guardian has been
26 appointed, a parent may represent his minor child.

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

31 (3) Notice is required as follows:

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

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

5 (4) At any point in a proceeding, a court may appoint a guardian ad
6 litem to represent the interest of a minor, an incapacitated, unborn, or
7 unascertained person, or a person whose identity or address is unknown, if
8 the Court determines that representation of the interest otherwise would be
9 inadequate. If not precluded by conflict of interests, a guardian ad litem
10 may be appointed to represent several persons or interests. The Court shall
11 set out its reasons for appointing a guardian ad litem as a part of the
12 record of the proceeding.

13

14

ARTICLE III

15

PROBATE OF WILLS AND ADMINISTRATION

16

PART 1

17

GENERAL PROVISIONS

18 Section 28-3-101. Devolution of Estate at Death; Restrictions.

19 The power of a person to leave property by will, and the rights of
20 creditors, devisees, and heirs to his property are subject to the
21 restrictions and limitations contained in this Code to facilitate the prompt
22 settlement of estates. Upon the death of a person, his real and personal
23 property devolves to the persons to whom it is devised by his last will or to
24 those indicated as substitutes for them in cases involving lapse,
25 renunciation, or other circumstances affecting the devolution of testate
26 estate, or in the absence of testamentary disposition, to his heirs, or to
27 those indicated as substitutes for them in cases involving renunciation or
28 other circumstances affecting devolution of intestate estates, subject to
29 homestead allowance, exempt property and family allowance, to rights of
30 creditors, elective share of the surviving spouse, and to administration.

31

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

33 Except as provided in Section 28-3-1201, to be effective to prove the
34 transfer of any property or to nominate an executor, a will must be declared
35 to be valid by an order of informal probate by the Registrar, or an

1 adjudication of probate by the Court.

2

3 Section 28-3-103. Necessity of Appointment For Administration.

4 Except as otherwise provided in Article IV, to acquire the powers and
5 undertake the duties and liabilities of a personal representative of a
6 decedent, a person must be appointed by order of the Court or Registrar,
7 qualify and be issued letters. Administration of an estate is commenced by
8 the issuance of letters.

9

10 Section 28-3-104. Claims Against Decedent; Necessity of
11 Administration.

12 No proceeding to enforce a claim against the estate of a decedent or
13 his successors may be revived or commenced before the appointment of a
14 personal representative. After the appointment and until distribution, all
15 proceedings and actions to enforce a claim against the estate are governed by
16 the procedure prescribed by this Article. After distribution a creditor
17 whose claim has not been barred may recover from the distributees as provided
18 in Section 28-3-1004 or from a former personal representative individually
19 liable as provided in Section 28-3-1005. This section has no application to
20 a proceeding by a secured creditor of the decedent to enforce his right to
21 his security except as to any deficiency judgment which might be sought
22 therein.

23

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

26 Persons interested in decedents' estates may apply to the Registrar for
27 determination in the informal proceedings provided in this Article, and may
28 petition the Court for orders in formal proceedings within the Court's
29 jurisdiction including but not limited to those described in this Article.
30 The Court has exclusive jurisdiction of formal proceedings to determine how
31 decedents' estates subject to the laws of this state are to be administered,
32 expended and distributed. The Court has concurrent jurisdiction of any other
33 action or proceeding concerning a succession or to which an estate, through a
34 personal representative, may be a party, including actions to determine title
35 to property alleged to belong to the estate, and of any action or proceeding

1 in which property distributed by a personal representative or its value is
2 sought to be subjected to rights of creditors or successors of the decedent.

3

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

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

14

15 Section 28-3-107. Scope of Proceedings; Proceedings Independent;
16 Exception.

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

29

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

32 (a) No informal probate or appointment proceeding or formal testacy or
33 appointment proceeding, other than a proceeding to probate a will previously
34 probated at the testator's domicile and appointment proceedings relating to
35 an estate in which there has been a prior appointment, may be commenced more

1 than three years after the decedent's death, except:

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

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

13 (3) a proceeding to contest an informally probated will and to
14 secure appointment of the person with legal priority for appointment in the
15 event the contest is successful, may be commenced within the later of twelve
16 months from the informal probate or three years from the decedent's death;

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

24 (5) a formal testacy proceeding may be commenced at any time
25 after three years from the decedent's death for the purpose of establishing
26 an instrument to direct or control the ownership of property passing or
27 distributable after the decedent's death from one other than the decedent
28 when the property is to be appointed by the terms of the decedent's will or
29 is to pass or be distributed as a part of the decedent's estate or its
30 transfer is otherwise to be controlled by the terms of the decedent's will.

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

33 (c) In cases under subsection (a)(1) or (2), the date on which a
34 testacy or appointment proceeding is properly commenced shall be deemed to be
35 the date of the decedent's death for purposes of other limitations provisions

1 of this Code which relate to the date of death.

2

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

5 No statute of limitation running on a cause of action belonging to a
6 decedent which had not been barred as of the date of his death, shall apply
7 to bar a cause of action surviving the decedent's death sooner than four
8 months after death. A cause of action which, but for this section, would
9 have been barred less than four months after death, is barred after four
10 months unless tolled.

11

PART 2

12 VENUE FOR PROBATE AND ADMINISTRATION; PRIORITY TO ADMINISTER; DEMAND FOR
13 NOTICE

14 Section 28-3-201. Venue for First and Subsequent Estate Proceedings;
15 Location of Property.

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

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

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

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

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

30 (d) For the purpose of aiding determinations concerning location of
31 assets which may be relevant in cases involving non-domiciliaries, a debt,
32 other than one evidenced by investment or commercial paper or other
33 instrument in favor of a non-domiciliary is located where the debtor resides
34 or, if the debtor is a person other than an individual, at the place where it
35 has its principal office. Commercial paper, investment paper and other

1 instruments are located where the instrument is. An interest in property
2 held in trust is located where the trustee may be sued.

3

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

6 If conflicting claims as to the domicile of a decedent are made in a
7 formal testacy or appointment proceeding commenced in this state, and in a
8 testacy or appointment proceeding after notice pending at the same time in
9 another state, the Court of this state must stay, dismiss, or permit suitable
10 amendment in, the proceeding here unless it is determined that the local
11 proceeding was commenced before the proceeding elsewhere. The determination
12 of domicile in the proceeding first commenced must be accepted as
13 determinative in the proceeding in this state.

14

15 Section 28-3-203. Priority Among Persons Seeking Appointment as
16 Personal Representative.

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

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

21 (2) the surviving spouse of the decedent who is a devisee of the
22 decedent;

23 (3) other devisees of the decedent;

24 (4) the surviving spouse of the decedent;

25 (5) other heirs of the decedent;

26 (6) 45 days after the death of the decedent, any creditor.

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

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

34 (2) in case of objection to appointment of a person other than
35 one whose priority is determined by will by an heir or devisee appearing to

1 have a substantial interest in the estate, the Court may appoint a person who
2 is acceptable to heirs and devisees whose interests in the estate appear to
3 be worth in total more than half of the probable distributable value, or, in
4 default of this accord any suitable person.

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

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

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

24 (f) No person is qualified to serve as a personal representative who
25 is:

26 (1) under the age of 21;

27 (2) a person whom the Court finds unsuitable in formal
28 proceedings.

29 (g) A personal representative appointed by a court of the decedent's
30 domicile has priority over all other persons except where the decedent's will
31 nominates different persons to be personal representative in this state and
32 in the state of domicile. The domiciliary personal representative may
33 nominate another, who shall have the same priority as the domiciliary
34 personal representative.

35 (h) This section governs priority for appointment of a successor

1 personal representative but does not apply to the selection of a special
2 administrator.

3

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

6 Any person desiring notice of any order or filing pertaining to a
7 decedent's estate in which he has a financial or property interest, may file
8 a demand for notice with the Court at any time after the death of the
9 decedent stating the name of the decedent, the nature of his interest in the
10 estate, and the demandant's address or that of his attorney. The clerk shall
11 mail a copy of the demand to the personal representative if one has been
12 appointed. After filing of a demand, no order or filing to which the demand
13 relates shall be made or accepted without notice as prescribed in Section 28-
14 1-401 to the demandant or his attorney. The validity of an order which is
15 issued or filing which is accepted without compliance with this requirement
16 shall not be affected by the error, but the petitioner receiving the order or
17 the person making the filing may be liable for any damage caused by the
18 absence of notice. The requirement of notice arising from a demand under
19 this provision may be waived in writing by the demandant and shall cease upon
20 the termination of his interest in the estate.

21

PART 3

22 INFORMAL PROBATE AND APPOINTMENT PROCEEDINGS; SUCCESSION WITHOUT
23 ADMINISTRATION

24 Section 28-3-301. Informal Probate or Appointment Proceedings;
25 Application; Contents.

26 (a) Applications for informal probate or informal appointment shall be
27 directed to the Registrar, and verified by the applicant to be accurate and
28 complete to the best of his knowledge and belief as to the following
29 information:

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

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

34 (ii) the name, and date of death of the decedent, his age,
35 and the county and state of his domicile at the time of death, and the names

1 and addresses of the spouse, children, heirs and devisees and the ages of any
2 who are minors so far as known or ascertainable with reasonable diligence by
3 the applicant;

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

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

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

13 (vi) that the time limit for informal probate or
14 appointment as provided in this Article has not expired either because 3
15 years or less have passed since the decedent's death, or, if more than 3
16 years from death have passed, circumstances as described by Section 28-3-108
17 authorizing tardy probate or appointment have occurred.

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

20 (i) that the original of the decedent's last will is in the
21 possession of the court, or accompanies the application, or that an
22 authenticated copy of a will probated in another jurisdiction accompanies the
23 application;

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

26 (iii) that after the exercise of reasonable diligence, the
27 applicant is unaware of any instrument revoking the will, and that the
28 applicant believes that the instrument which is the subject of the
29 application is the decedent's last will.

30 (3) An application for informal appointment of a personal
31 representative to administer an estate under a will shall describe the will
32 by date of execution and state the time and place of probate or the pending
33 application or petition for probate. The application for appointment shall
34 adopt the statements in the application or petition for probate and state the
35 name, address and priority for appointment of the person whose appointment is

1 sought.

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

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

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

11 (5) An application for appointment of a personal representative
12 to succeed a personal representative appointed under a different testacy
13 status shall refer to the order in the most recent testacy proceeding, state
14 the name and address of the person whose appointment is sought and of the
15 person whose appointment will be terminated if the application is granted,
16 and describe the priority of the applicant.

17 (6) An application for appointment of a personal representative
18 to succeed a personal representative who has tendered a resignation as
19 provided in 28-3-610(c), or whose appointment has been terminated by death or
20 removal, shall adopt the statements in the application or petition which led
21 to the appointment of the person being succeeded except as specifically
22 changed or corrected, state the name and address of the person who seeks
23 appointment as successor, and describe the priority of the applicant.

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

28

29 Section 28-3-302. Informal Probate; Duty of Registrar; Effect of
30 Informal Probate.

31 Upon receipt of an application requesting informal probate of a will,
32 the Registrar, upon making the findings required by Section 28-3-303 shall
33 issue a written statement of informal probate if at least 120 hours have
34 elapsed since the decedent's death. Informal probate is conclusive as to all
35 persons until superseded by an order in a formal testacy proceeding. No

1 defect in the application or procedure relating thereto which leads to
2 informal probate of a will renders the probate void.

3

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

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

7 (1) the application is complete;

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

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

13 (4) on the basis of the statements in the application, venue is
14 proper;

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

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

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

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

25 (c) A will which appears to have the required signatures and which
26 contains an attestation clause showing that requirements of execution under
27 *Section 28-25-102, and 28-25-103 have been met shall be probated without*
28 further proof. In other cases, the Registrar may assume execution if the
29 will appears to have been properly executed, or he may accept a sworn
30 statement or affidavit of any person having knowledge of the circumstances of
31 execution, whether or not the person was a witness to the will.

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

1 probated.

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

8

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

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

14

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

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

21

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

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

28 (b) If an informal probate is granted, within 30 days thereafter the
29 applicant shall give written information of the probate to the heirs and
30 devisees. The information shall include the name and address of the
31 applicant, the name and location of the court granting the informal probate,
32 and the date of the probate. The information shall be delivered or sent by
33 ordinary mail to each of the heirs and devisees whose address is reasonably
34 available to the applicant. No duty to give information is incurred if a
35 personal representative is appointed who is required to give the written

1 information required by Section 28-3-705. An applicant's failure to give
2 information as required by this section is a breach of his duty to the heirs
3 and devisees but does not affect the validity of the probate.

4

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

7 (a) Upon receipt of an application for informal appointment of a
8 personal representative other than a special administrator as provided in
9 Section 28-3-614, if at least 120 hours have elapsed since the decedent's
10 death, the Registrar, after making the findings required by Section 28-3-308,
11 shall appoint the applicant subject to qualification and acceptance;
12 provided, that if the decedent was a non-resident, the Registrar shall delay
13 the order of appointment until 30 days have elapsed since death unless the
14 personal representative appointed at the decedent's domicile is the
15 applicant, or unless the decedent's will directs that his estate be subject
16 to the laws of this state.

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

22

23 Section 28-3-308. Informal Appointment Proceedings; Proof and
24 Findings Required.

25 (a) In informal appointment proceedings, the Registrar must determine
26 whether:

27 (1) the application for informal appointment of a personal
28 representative 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) any will to which the requested appointment relates has been
2 formally or informally probated; but this requirement does not apply to the
3 appointment of a special administrator;

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

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

7 (b) Unless Section 28-3-612 controls, the application must be denied if
8 it indicates that a personal representative who has not filed a written
9 statement of resignation as provided in Section 28-3-610(c) has been
10 appointed in this or another county of this state, that (unless the applicant
11 is the domiciliary personal representative or his nominee) the decedent was
12 not domiciled in this state and that a personal representative whose
13 appointment has not been terminated has been appointed by a Court in the
14 state of domicile, or that other requirements of this section have not been
15 met.

16

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

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

24

25 Section 28-3-310. Informal Appointment Proceedings; Notice
26 Requirements.

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

32

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

34 If an application for informal appointment indicates the existence of a
35 possible unrevoked testamentary instrument which may relate to property

1 subject to the laws of this state, and which is not filed for probate in this
2 court, the Registrar shall decline the application.

3

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

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

12

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

14 (a) An application to become universal successors by the heirs of an
15 intestate or the residuary devisees under a will must be directed to the
16 Registrar, signed by each applicant, and verified to be accurate and complete
17 to the best of the applicant's knowledge and belief as follows:

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

22 (2) An application by residuary devisees under a will must be
23 combined with a petition for informal probate if the will has not been
24 admitted to probate in this State and must contain the statements required by
25 Section 28-3-301(a)(1) and (2). If the will has been probated in this State,
26 an application by residuary devisees must contain the statements required by
27 Section 28-3-301(a)(2)(iii). An application by residuary devisees must state
28 that the applicants constitute the residuary devisees of the decedent other
29 than any minors and incapacitated, protected, or unascertained persons. If
30 the estate is partially intestate, all of the heirs other than minors and
31 incapacitated, protected, or unascertained persons must join as applicants.

32 (b) The application must state whether letters of administration are
33 outstanding, whether a petition for appointment of a personal representative
34 of the decedent is pending in any court of this State, and that the
35 applicants waive their right to seek appointment of a personal

1 representative.

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

8

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

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

11 (1) the application is complete in accordance with Section 28-
12 3-313;

13 (2) all necessary persons have joined and have verified that the
14 statements contained therein are true, to the best knowledge and belief of
15 each;

16 (3) venue is proper;

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

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

21 (6) the application requests informal probate of a will, the
22 application and findings conform with Sections 28-3-301(a)(2) and 28-
23 3-303(a)(c)(d) and (e) so the will is admitted to probate; and

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

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

28 (c) Except as provided in Section 28-3-322, the Registrar shall deny
29 the application if any creditor, heir, or devisee who is qualified by Section
30 28-3-605 to demand bond files an objection.

31

32 Section 28-3-315. Universal Succession; Duty of Registrar; Effect of
33 Statement of Universal Succession.

34 Upon receipt of an application under Section 28-3-313, if at least 120
35 hours have elapsed since the decedent's death, the Registrar, upon granting

1 the application, shall issue a written statement of universal succession
2 describing the estate as set forth in the application and stating that the
3 applicants (i) are the universal successors to the assets of the estate as
4 provided in Section 28-3-312, (ii) have assumed liability for the obligations
5 of the decedent, and (iii) have acquired the powers and liabilities of
6 universal successors. The statement of universal succession is evidence of
7 the universal successors' title to the assets of the estate. Upon its
8 issuance, the powers and liabilities of universal successors provided in
9 Sections 28-3-316 through 28-3-322 attach and are assumed by the applicants.

10

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

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

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

15 The universal successors shall proceed expeditiously to settle and
16 distribute the estate without adjudication but if necessary may invoke the
17 jurisdiction of the court to resolve questions concerning the estate.

18 (2) Universal successors have the same powers as distributees from a
19 personal representative under Sections 28-3-908 and 28-3-909 and third
20 persons with whom they deal are protected as provided in Section 28-3-910.

21 (3) For purposes of collecting assets in another state whose law does
22 not provide for universal succession, universal successors have the same
23 standing and power as personal representatives or distributees in this State.

24

25 Section 28-3-317. Universal Succession; Universal Successors'
26 Liability to Creditors, Other Heirs, Devisees and Persons Entitled to
27 Decedent's Property; Liability of Other Persons Entitled to Property.

28 (a) In the proportions and subject to limits expressed in Section 28-
29 3-321, universal successors assume all liabilities of the decedent that were
30 not discharged by reason of death and liability for all taxes, claims against
31 the decedent or the estate, and charges properly incurred after death for the
32 preservation of the estate, to the extent those items, if duly presented,
33 would be valid claims against the decedent's estate.

34 (b) In the proportions and subject to the limits expressed in Section
35 28-3-321, universal successors are personally liable to other heirs,

1 devisees, and persons entitled to property of the decedent for the assets or
2 amounts that would be due those heirs, were the estate administered, but no
3 allowance having priority over devisees may be claimed for attorney's fees or
4 charges for preservation of the estate in excess of reasonable amounts
5 properly incurred.

6 (c) Universal successors are entitled to their interests in the estate
7 as heirs or devisees subject to priority and abatement pursuant to Section
8 28-3-902 and to agreement pursuant to Section 28-3-912.

9 (d) Other heirs, devisees, and persons to whom assets have been
10 distributed have the same powers and liabilities as distributees under
11 Sections 28-3-908, 28-3-909, and 28-3-910.

12 (e) Absent breach of fiduciary obligations or express undertaking, a
13 fiduciary's liability is limited to the assets received by the fiduciary.

14

15 Section 28-3-318. Universal Succession; Universal Successors'
16 Submission to Jurisdiction; When Heirs or Devisees May Not Seek
17 Administration.

18 (a) Upon issuance of the statement of universal succession, the
19 universal successors become subject to the personal jurisdiction of the
20 courts of this state in any proceeding that may be instituted relating to the
21 estate or to any liability assumed by them.

22 (b) Any heir or devisee who voluntarily joins in an application under
23 Section 28-3-313 may not subsequently seek appointment of a personal
24 representative.

25

26 Section 28-3-319. Universal Succession; Duty of Universal Successors;
27 Information to Heirs and Devisees.

28 Not later than thirty days after issuance of the statement of universal
29 succession, each universal successor shall inform the heirs and devisees who
30 did not join in the application of the succession without administration.
31 The information must be delivered or be sent by ordinary mail to each of the
32 heirs and devisees whose address is reasonably available to the universal
33 successors. The information must include the names and addresses of the
34 universal successors, indicate that it is being sent to persons who have or
35 may have some interest in the estate, and describe the court where the

1 application and statement of universal succession has been filed. The
2 failure of a universal successor to give this information is a breach of duty
3 to the persons concerned but does not affect the validity of the approval of
4 succession without administration or the powers or liabilities of the
5 universal successors. A universal successor may inform other persons of the
6 succession without administration by delivery or by ordinary first class
7 mail.

8
9 Section 28-3-320. Universal Succession; Universal Successors'
10 Liability For Restitution to Estate.

11 If a personal representative is subsequently appointed, universal
12 successors are personally liable for restitution of any property of the
13 estate to which they are not entitled as heirs or devisees of the decedent
14 and their liability is the same as a distributee under Section 28-3-909,
15 subject to the provisions of Sections 28-3-317 and 28-3-321 and the
16 limitations of Section 28-3-1006.

17
18 Section 28-3-321. Universal Succession; Liability of Universal
19 Successors for Claims, Expenses, Intestate Shares and Devises.

20 The liability of universal successors is subject to any defenses that
21 would have been available to the decedent. Other than liability arising from
22 fraud, conversion, or other wrongful conduct of a universal successor, the
23 personal liability of each universal successor to any creditor, claimant,
24 other heir, devisee, or person entitled to decedent's property may not exceed
25 the proportion of the claim that the universal successor's share bears to the
26 share of all heirs and residuary devisees.

27
28 Section 28-3-322. Universal Succession; Remedies of Creditors, Other
29 Heirs, Devisees or Persons Entitled to Decedent's Property.

30 In addition to remedies otherwise provided by law, any creditor, heir,
31 devisee, or person entitled to decedent's property qualified under Section
32 28-3-605, may demand bond of universal successors. If the demand for bond
33 precedes the granting of an application for universal succession, it must be
34 treated as an objection under Section 28-3-314(c) unless it is withdrawn, the
35 claim satisfied, or the applicants post bond in an amount sufficient to

1 protect the demandant. If the demand for bond follows the granting of an
2 application for universal succession, the universal successors, within 10
3 days after notice of the demand, upon satisfying the claim or posting bond
4 sufficient to protect the demandant, may disqualify the demandant from
5 seeking administration of the estate.

6 PART 4

7 FORMAL TESTACY AND APPOINTMENT PROCEEDINGS

8 Section 28-3-401. Formal Testacy Proceedings; Nature; When
9 Commenced.

10 A formal testacy proceeding is litigation to determine whether a
11 decedent left a valid will. A formal testacy proceeding may be commenced by
12 an interested person filing a petition as described in Section 28-3-402(a) in
13 which he requests that the Court, after notice and hearing, enter an order
14 probating a will, or a petition to set aside an informal probate of a will or
15 to prevent informal probate of a will which is the subject of a pending
16 application, or a petition in accordance with Section 28-3-402(b) for an
17 order that the decedent died intestate.

18 A petition may seek formal probate of a will without regard to whether
19 the same or a conflicting will has been informally probated. A formal
20 testacy proceeding may, but need not, involve a request for appointment of a
21 personal representative.

22 During the pendency of a formal testacy proceeding, the Registrar shall
23 not act upon any application for informal probate of any will of the decedent
24 or any application for informal appointment of a personal representative of
25 the decedent.

26 Unless a petition in a formal testacy proceeding also requests
27 confirmation of the previous informal appointment, a previously appointed
28 personal representative, after receipt of notice of the commencement of a
29 formal probate proceeding, must refrain from exercising his power to make any
30 further distribution of the estate during the pendency of the formal
31 proceeding. A petitioner who seeks the appointment of a different personal
32 representative in a formal proceeding also may request an order restraining
33 the acting personal representative from exercising any of the powers of his
34 office and requesting the appointment of a special administrator. In the
35 absence of a request, or if the request is denied, the commencement of a

1 formal proceeding has no effect on the powers and duties of a previously
2 appointed personal representative other than those relating to distribution.

3

4 Section 28-3-402. Formal Testacy or Appointment Proceedings;
5 Petition; Contents.

6 (a) Petitions for formal probate of a will, or for adjudication of
7 intestacy with or without request for appointment of a personal
8 representative, must be directed to the Court, request a judicial order after
9 notice and hearing and contain further statements as indicated in this
10 section. A petition for formal probate of a will

11 (1) requests an order as to the testacy of the decedent in
12 relation to a particular instrument which may or may not have been informally
13 probated and determining the heirs,

14 (2) contains the statements required for informal applications as
15 stated in the six subparagraphs under Section 28-3-301(a)(1), the statements
16 required by subparagraphs (ii) and (iii) of Section 28-3-301(a)(2), and

17 (3) states whether the original of the last will of the decedent
18 is in the possession of the Court or accompanies the petition.

19 If the original will is neither in the possession of the Court nor
20 accompanies the petition and no authenticated copy of a will probated in
21 another jurisdiction accompanies the petition, the petition also must state
22 the contents of the will, and indicate that it is lost, destroyed, or
23 otherwise unavailable.

24 (b) A petition for adjudication of intestacy and appointment of an
25 administrator in intestacy must request a judicial finding and order that the
26 decedent left no will and determining the heirs, contain the statements
27 required by (1) and (4) of Section 28-3-301(a) and indicate whether
28 supervised administration is sought. A petition may request an order
29 determining intestacy and heirs without requesting the appointment of an
30 administrator, in which case, the statements required by subparagraph (ii) of
31 Section 28-3-301(a)(4) above may be omitted.

32

33 Section 28-3-403. Formal Testacy Proceedings; Notice of Hearing on
34 Petition.

35 (a) Upon commencement of a formal testacy proceeding, the Court shall

1 fix a time and place of hearing. Notice shall be given in the manner
2 prescribed by Section 28-1-401 by the petitioner to the persons herein
3 enumerated and to any additional person who has filed a demand for notice
4 under Section 28-3-204 of this Code.

5 Notice shall be given to the following persons: the surviving spouse,
6 children, and other heirs of the decedent, the devisees and executors named
7 in any will that is being, or has been, probated, or offered for informal or
8 formal probate in the county, or that is known by the petitioner to have been
9 probated, or offered for informal or formal probate elsewhere, and any
10 personal representative of the decedent whose appointment has not been
11 terminated. Notice may be given to other persons. In addition, the
12 petitioner shall give notice by publication to all unknown persons and to all
13 known persons whose addresses are unknown who have any interest in the
14 matters being litigated.

15 (b) If it appears by the petition or otherwise that the fact of the
16 death of the alleged decedent may be in doubt, or on the written demand of
17 any interested person, a copy of the notice of the hearing on said petition
18 shall be sent by registered mail to the alleged decedent at his last known
19 address. The Court shall direct the petitioner to report the results of, or
20 make and report back concerning, a reasonably diligent search for the alleged
21 decedent in any manner that may seem advisable, including any or all of the
22 following methods:

23 (1) by inserting in one or more suitable periodicals a notice
24 requesting information from any person having knowledge of the whereabouts of
25 the alleged decedent;

26 (2) by notifying law enforcement officials and public welfare
27 agencies in appropriate locations of the disappearance of the alleged
28 decedent;

29 (3) by engaging the services of an investigator.

30 The costs of any search so directed shall be paid by the petitioner if
31 there is no administration or by the estate of the decedent in case there is
32 administration.

33

34 Section 28-3-404. Formal Testacy Proceedings; Written Objections to
35 Probate.

1 Any party to a formal proceeding who opposes the probate of a will for
2 any reason shall state in his pleadings his objections to probate of the
3 will.

4

5 Section 28-3-405. Formal Testacy Proceedings; Uncontested Cases;
6 Hearings and Proof.

7 If a petition in a testacy proceeding is unopposed, the Court may order
8 probate or intestacy on the strength of the pleadings if satisfied that the
9 conditions of Section 28-3-409 have been met, or conduct a hearing in open
10 court and require proof of the matters necessary to support the order sought.

11 If evidence concerning execution of the will is necessary, the affidavit or
12 testimony of one of any attesting witnesses to the instrument is sufficient.

13 If the affidavit or testimony of an attesting witness is not available,
14 execution of the will may be proved by other evidence or affidavit.

15

16 Section 28-3-406. Formal Testacy Proceedings; Contested Cases;
17 Testimony of Attesting Witnesses.

18 (a) If evidence concerning execution of an attested will which is not
19 self-proved is necessary in contested cases, the testimony of at least one of
20 the attesting witnesses, if within the state, competent and able to testify,
21 is required. Due execution of an attested or unattested will may be proved
22 by other evidence.

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

29

30 Section 28-3-407. Formal Testacy Proceedings; Burdens in Contested
31 Cases.

32 In contested cases, petitioners who seek to establish intestacy have
33 the burden of establishing prima facie proof of death, venue, and heirship.
34 Proponents of a will have the burden of establishing prima facie proof of due
35 execution in all cases, and, if they are also petitioners, prima facie proof

1 of death and venue. Contestants of a will have the burden of establishing
2 lack of testamentary intent or capacity, undue influence, fraud, duress,
3 mistake or revocation. Parties have the ultimate burden of persuasion as to
4 matters with respect to which they have the initial burden of proof. If a
5 will is opposed by the petition for probate of a later will revoking the
6 former, it shall be determined first whether the later will is entitled to
7 probate, and if a will is opposed by a petition for a declaration of
8 intestacy, it shall be determined first whether the will is entitled to
9 probate.

10

11 Section 28-3-408. Formal Testacy Proceedings; Will Construction;
12 Effect of Final Order in Another Jurisdiction.

13 A final order of a court of another state determining testacy, the
14 validity or construction of a will, made in a proceeding involving notice to
15 and an opportunity for contest by all interested persons must be accepted as
16 determinative by the courts of this state if it includes, or is based upon, a
17 finding that the decedent was domiciled at his death in the state where the
18 order was made.

19

20 Section 28-3-409. Formal Testacy Proceedings; Order; Foreign Will.

21 After the time required for any notice has expired, upon proof of
22 notice, and after any hearing that may be necessary, if the Court finds that
23 the testator is dead, venue is proper and that the proceeding was commenced
24 within the limitation prescribed by Section 28-3-108, it shall determine the
25 decedent's domicile at death, his heirs and his state of testacy. Any will
26 found to be valid and unrevoked shall be formally probated. Termination of
27 any previous informal appointment of a personal representative, which may be
28 appropriate in view of the relief requested and findings, is governed by
29 Section 28-3-612. The petition shall be dismissed or appropriate amendment
30 allowed if the court is not satisfied that the alleged decedent is dead. A
31 will from a place which does not provide for probate of a will after death,
32 may be proved for probate in this state by a duly authenticated certificate
33 of its legal custodian that the copy introduced is a true copy and that the
34 will has become effective under the law of the other place.

35

1 Section 28-3-410. Formal Testacy Proceedings; Probate of More Than
2 One Instrument.

3 If two or more instruments are offered for probate before a final order
4 is entered in a formal testacy proceeding, more than one instrument may be
5 probated if neither expressly revokes the other or contains provisions which
6 work a total revocation by implication. If more than one instrument is
7 probated, the order shall indicate what provisions control in respect to the
8 nomination of an executor, if any. The order may, but need not, indicate how
9 any provisions of a particular instrument are affected by the other
10 instrument. After a final order in a testacy proceeding has been entered, no
11 petition for probate of any other instrument of the decedent may be
12 entertained, except incident to a petition to vacate or modify a previous
13 probate order and subject to the time limits of Section 28-3-412.

14

15 Section 28-3-411. Formal Testacy Proceedings; Partial Intestacy.

16 If it becomes evident in the course of a formal testacy proceeding
17 that, though one or more instruments are entitled to be probated, the
18 decedent's estate is or may be partially intestate, the Court shall enter an
19 order to that effect.

20

21 Section 28-3-412. Formal Testacy Proceedings; Effect of Order;
22 Vacation.

23 Subject to appeal and subject to vacation as provided in this section
24 and in Section 28-3-413, a formal testacy order under Sections 28-3-409 to
25 28-3-411, including an order that the decedent left no valid will and
26 determining heirs, is final as to all persons with respect to all issues
27 concerning the decedent's estate that the court considered or might have
28 considered incident to its rendition relevant to the question of whether the
29 decedent left a valid will, and to the determination of heirs, except that:

30 (1) The court shall entertain a petition for modification or vacation
31 of its order and probate of another will of the decedent if it is shown that
32 the proponents of the later-offered will: (i) were unaware of its existence
33 at the time of the earlier proceeding: or (ii) were unaware of the earlier
34 proceeding and were given no notice thereof, except by publication.

35 (2) If intestacy of all or part of the estate has been ordered, the

1 determination of heirs of the decedent may be reconsidered if it is shown
2 that one or more persons were omitted from the determination and it is also
3 shown that the persons were unaware of their relationship to the decedent,
4 were unaware of his death or were given no notice of any proceeding
5 concerning his estate, except by publication.

6 (3) A petition for vacation under paragraph (1) or (2) must be filed
7 prior to the earlier of the following time limits:

8 (i) if a personal representative has been appointed for the
9 estate, the time of entry of any order approving final distribution of the
10 estate, or, if the estate is closed by statement, six months after the filing
11 of the closing statement;

12 (ii) whether or not a personal representative has been appointed
13 for the estate of the decedent, the time prescribed by Section 28-3-108 when
14 it is no longer possible to initiate an original proceeding to probate a will
15 of the decedent; or

16 (iii) twelve months after the entry of the order sought to be
17 vacated.

18 (4) The order originally rendered in the testacy proceeding may be
19 modified or vacated, if appropriate under the circumstances, by the order of
20 probate of the later-offered will or the order redetermining heirs.

21 (5) The finding of the fact of death is conclusive as to the alleged
22 decedent only if notice of the hearing on the petition in the formal testacy
23 proceeding was sent by registered or certified mail addressed to the alleged
24 decedent at his last known address and the court finds that a search under
25 Section 28-3-403(b) was made.

26 If the alleged decedent is not dead, even if notice was sent and search
27 was made, he may recover estate assets in the hands of the personal
28 representative. In addition to any remedies available to the alleged
29 decedent by reason of any fraud or intentional wrongdoing, the alleged
30 decedent may recover any estate or its proceeds from distributees that is in
31 their hands, or the value of distributions received by them, to the extent
32 that any recovery from distributees is equitable in view of all of the
33 circumstances.

34

35 Section 28-3-413. Formal Testacy Proceedings; Vacation of Order For

1 Other Cause.

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

4

5 Section 28-3-414. Formal Proceedings Concerning Appointment of
6 Personal Representative.

7 (a) A formal proceeding for adjudication regarding the priority or
8 qualification of one who is an applicant for appointment as personal
9 representative, or of one who previously has been appointed personal
10 representative in informal proceedings, if an issue concerning the testacy of
11 the decedent is or may be involved, is governed by Section 28-3-402, as well
12 as by this section. In other cases, the petition shall contain or adopt the
13 statements required by Section 28-3-301(1) and describe the question relating
14 to priority or qualification of the personal representative which is to be
15 resolved. If the proceeding precedes any appointment of a personal
16 representative, it shall stay any pending informal appointment proceedings as
17 well as any commenced thereafter. If the proceeding is commenced after
18 appointment, the previously appointed personal representative, after receipt
19 of notice thereof, shall refrain from exercising any power of administration
20 except as necessary to preserve the estate or unless the Court orders
21 otherwise.

22 (b) After notice to interested persons, including all persons
23 interested in the administration of the estate as successors under the
24 applicable assumption concerning testacy, any previously appointed personal
25 representative and any person having or claiming priority for appointment as
26 personal representative, the Court shall determine who is entitled to
27 appointment under Section 28-3-203, make a proper appointment and, if
28 appropriate, terminate any prior appointment found to have been improper as
29 provided in cases of removal under Section 28-3-611.

30

PART 5

31

SUPERVISED ADMINISTRATION

32 Section 28-3-501. Supervised Administration; Nature of Proceeding.

33 Supervised administration is a single in rem proceeding to secure
34 complete administration and settlement of a decedent's estate under the
35 continuing authority of the Court which extends until entry of an order

1 approving distribution of the estate and discharging the personal
2 representative or other order terminating the proceeding. A supervised
3 personal representative is responsible to the Court, as well as to the
4 interested parties, and is subject to directions concerning the estate made
5 by the Court on its own motion or on the motion of any interested party.
6 Except as otherwise provided in this Part, or as otherwise ordered by the
7 Court, a supervised personal representative has the same duties and powers as
8 a personal representative who is not supervised.

9

10 Section 28-3-502. Supervised Administration; Petition; Order.

11 A petition for supervised administration may be filed by any interested
12 person or by a personal representative at any time or the prayer for
13 supervised administration may be joined with a petition in a testacy or
14 appointment proceeding. If the testacy of the decedent and the priority and
15 qualification of any personal representative have not been adjudicated
16 previously, the petition for supervised administration shall include the
17 matters required of a petition in a formal testacy proceeding and the notice
18 requirements and procedures applicable to a formal testacy proceeding apply.
19 If not previously adjudicated, the Court shall adjudicate the testacy of the
20 decedent and questions relating to the priority and qualifications of the
21 personal representative in any case involving a request for supervised
22 administration, even though the request for supervised administration may be
23 denied. After notice to interested persons, the Court shall order supervised
24 administration of a decedent's estate: (1) if the decedent's will directs
25 supervised administration, it shall be ordered unless the Court finds that
26 circumstances bearing on the need for supervised administration have changed
27 since the execution of the will and that there is no necessity for supervised
28 administration; (2) if the decedent's will directs unsupervised
29 administration, supervised administration shall be ordered only upon a
30 finding that it is necessary for protection of persons interested in the
31 estate; or (3) in other cases if the Court finds that supervised
32 administration is necessary under the circumstances.

33

34 Section 28-3-503. Supervised Administration; Effect on Other
35 Proceedings.

1 (a) The pendency of a proceeding for supervised administration of a
2 decedent's estate stays action on any informal application then pending or
3 thereafter filed.

4 (b) If a will has been previously probated in informal proceedings, the
5 effect of the filing of a petition for supervised administration is as
6 provided for formal testacy proceedings by Section 28-3-401.

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

12

13 Section 28-3-504. Supervised Administration; Powers of Personal
14 Representative.

15 Unless restricted by the Court, a supervised personal representative
16 has, without interim orders approving exercise of a power, all powers of
17 personal representatives under this Code, but he shall not exercise his power
18 to make any distribution of the estate without prior order of the Court. Any
19 other restriction on the power of a personal representative which may be
20 ordered by the Court must be endorsed on his letters of appointment and,
21 unless so endorsed, is ineffective as to persons dealing in good faith with
22 the personal representative.

23

24 Section 28-3-505. Supervised Administration; Interim Orders;
25 Distribution and Closing Orders.

26 Unless otherwise ordered by the Court, supervised administration is
27 terminated by order in accordance with time restrictions, notices and
28 contents of orders prescribed for proceedings under Section 28-3-1001.
29 Interim orders approving or directing partial distributions or granting other
30 relief may be issued by the Court at any time during the pendency of a
31 supervised administration on the application of the personal representative
32 or any interested person.

33

PART 6

34 PERSONAL REPRESENTATIVE; APPOINTMENT, CONTROL AND TERMINATION OF AUTHORITY

35 Section 28-3-601. Qualification.

1 Prior to receiving letters, a personal representative shall qualify by
2 filing with the appointing Court any required bond and a statement of
3 acceptance of the duties of the office.

4

5 Section 28-3-602. Acceptance of Appointment; Consent to Jurisdiction.

6 By accepting appointment, a personal representative submits personally
7 to the jurisdiction of the Court in any proceeding relating to the estate
8 that may be instituted by any interested person. Notice of any proceeding
9 shall be delivered to the personal representative, or mailed to him by
10 ordinary first class mail at his address as listed in the application or
11 petition for appointment or as thereafter reported to the Court and to his
12 address as then known to the petitioner.

13

14 Section 28-3-603. Bond Not Required Without Court Order, Exceptions.

15 No bond is required of a personal representative appointed in informal
16 proceedings, except (1) upon the appointment of a special administrator; (2)
17 when an executor or other personal representative is appointed to administer
18 an estate under a will containing an express requirement of bond or (3) when
19 bond is required under Section 28-3-605. Bond may be required by court order
20 at the time of appointment of a personal representative appointed in any
21 formal proceeding except that bond is not required of a personal
22 representative appointed in formal proceedings if the will relieves the
23 personal representative of bond, unless bond has been requested by an
24 interested party and the Court is satisfied that it is desirable. Bond
25 required by any will may be dispensed with in formal proceedings upon
26 determination by the Court that it is not necessary. No bond is required of
27 any personal representative who, pursuant to statute, has deposited cash or
28 collateral with an agency of this state to secure performance of his duties.

29

30 Section 28-3-604. Bond Amount; Security; Procedure; Reduction.

31 If bond is required and the provisions of the will or order do not
32 specify the amount, unless stated in his application or petition, the person
33 qualifying shall file a statement under oath with the Registrar indicating
34 his best estimate of the value of the personal estate of the decedent and of
35 the income expected from the personal and real estate during the next year,

1 and he shall execute and file a bond with the Registrar, or give other
2 suitable security, in an amount not less than the estimate. The Registrar
3 shall determine that the bond is duly executed by a corporate surety, or one
4 or more individual sureties whose performance is secured by pledge of
5 personal property, mortgage on real property or other adequate security. The
6 Registrar may permit the amount of the bond to be reduced by the value of
7 assets of the estate deposited with a domestic financial institution in a
8 manner that prevents their unauthorized disposition. On petition of the
9 personal representative or another interested person the Court may excuse a
10 requirement of bond, increase or reduce the amount of the bond, release
11 sureties, or permit the substitution of another bond with the same or
12 different sureties.

13

14 Section 28-3-605. Demand For Bond by Interested Person.

15 Any person apparently having an interest in the estate worth in excess
16 of \$1000, or any creditor having a claim in excess of \$1000, may make a
17 written demand that a personal representative give bond. The demand must be
18 filed with the Registrar and a copy mailed to the personal representative, if
19 appointment and qualification have occurred. Thereupon, bond is required,
20 but the requirement ceases if the person demanding bond ceases to be
21 interested in the estate, or if bond is excused as provided in Section 28-
22 3-603 or 28-3-604. After he has received notice and until the filing of the
23 bond or cessation of the requirement of bond, the personal representative
24 shall refrain from exercising any powers of his office except as necessary to
25 preserve the estate. Failure of the personal representative to meet a
26 requirement of bond by giving suitable bond within 30 days after receipt of
27 notice is cause for his removal and appointment of a successor personal
28 representative.

29

30 Section 28-3-606. Terms and Conditions of Bonds.

31 (a) The following requirements and provisions apply to any bond
32 required by this Part:

33 (1) Bonds shall name the state as obligee for the benefit of the
34 persons interested in the estate and shall be conditioned upon the faithful
35 discharge by the fiduciary of all duties according to law.

1 (2) Unless otherwise provided by the terms of the approved bond,
2 sureties are jointly and severally liable with the personal representative
3 and with each other. The address of sureties shall be stated in the bond.

4 (3) By executing an approved bond of a personal representative,
5 the surety consents to the jurisdiction of the probate court which issued
6 letters to the primary obligor in any proceedings pertaining to the fiduciary
7 duties of the personal representative and naming the surety as a party.
8 Notice of any proceeding shall be delivered to the surety or mailed to him by
9 registered or certified mail at his address as listed with the court where
10 the bond is filed and to his address as then known to the petitioner.

11 (4) On petition of a successor personal representative, any other
12 personal representative of the same decedent, or any interested person, a
13 proceeding in the Court may be initiated against a surety for breach of the
14 obligation of the bond of the personal representative.

15 (5) The bond of the personal representative is not void after the
16 first recovery but may be proceeded against from time to time until the whole
17 penalty is exhausted.

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

21

22 Section 28-3-607. Order Restraining Personal Representative.

23 (a) On petition of any person who appears to have an interest in the
24 estate, the Court by temporary order may restrain a personal representative
25 from performing specified acts of administration, disbursement, or
26 distribution, or exercise of any powers or discharge of any duties of his
27 office, or make any other order to secure proper performance of his duty, if
28 it appears to the Court that the personal representative otherwise may take
29 some action which would jeopardize unreasonably the interest of the applicant
30 or of some other interested person. Persons with whom the personal
31 representative may transact business may be made parties.

32 (b) The matter shall be set for hearing within 10 days unless the
33 parties otherwise agree. Notice as the Court directs shall be given to the
34 personal representative and his attorney of record, if any, and to any other
35 parties named defendant in the petition.

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Section 28-3-608. Termination of Appointment; General.

Termination of appointment of a personal representative occurs as indicated in Sections 28-3-609 to 28-3-612, inclusive. Termination ends the right and power pertaining to the office of personal representative as conferred by this Code or any will, except that a personal representative, at any time prior to distribution or until restrained or enjoined by court order, may perform acts necessary to protect the estate and may deliver the assets to a successor representative. Termination does not discharge a personal representative from liability for transactions or omissions occurring before termination, or relieve him of the duty to preserve assets subject to his control, to account therefor and to deliver the assets. Termination does not affect the jurisdiction of the Court over the personal representative, but terminates his authority to represent the estate in any pending or future proceeding.

Section 28-3-609. Termination of Appointment; Death or Disability.

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

Section 28-3-610. Termination of Appointment; Voluntary.

- (a) An appointment of a personal representative terminates as provided in Section 28-3-1003, one year after the filing of a closing statement.
- (b) An order closing an estate as provided in Section 28-3-1001 or 28-3-1002 terminates an appointment of a personal representative.
- (c) A personal representative may resign his position by filing a written statement of resignation with the Registrar after he has given at

1 least 15 days written notice to the persons known to be interested in the
2 estate. If no one applies or petitions for appointment of a successor
3 representative within the time indicated in the notice, the filed statement
4 of resignation is ineffective as a termination of appointment and in any
5 event is effective only upon the appointment and qualification of a successor
6 representative and delivery of the assets to him.

7

8 Section 28-3-611. Termination of Appointment by Removal; Cause;
9 Procedure.

10 (a) A person interested in the estate may petition for removal of a
11 personal representative for cause at any time. Upon filing of the petition,
12 the Court shall fix a time and place for hearing. Notice shall be given by
13 the petitioner to the personal representative, and to other persons as the
14 Court may order. Except as otherwise ordered as provided in Section 28-
15 3-607, after receipt of notice of removal proceedings, the personal
16 representative shall not act except to account, to correct maladministration
17 or preserve the estate. If removal is ordered, the Court also shall direct
18 by order the disposition of the assets remaining in the name of, or under the
19 control of, the personal representative being removed.

20 (b) Cause for removal exists when removal would be in the best
21 interests of the estate, or if it is shown that a personal representative or
22 the person seeking his appointment intentionally misrepresented material
23 facts in the proceedings leading to his appointment, or that the personal
24 representative has disregarded an order of the Court, has become incapable of
25 discharging the duties of his office, or has mismanaged the estate or failed
26 to perform any duty pertaining to the office. Unless the decedent's will
27 directs otherwise, a personal representative appointed at the decedent's
28 domicile, incident to securing appointment of himself or his nominee as
29 ancillary personal representative, may obtain removal of another who was
30 appointed personal representative in this state to administer local assets.

31

32 Section 28-3-612. Termination of Appointment; Change of Testacy
33 Status.

34 Except as otherwise ordered in formal proceedings, the probate of a
35 will subsequent to the appointment of a personal representative in intestacy

1 or under a will which is superseded by formal probate of another will, or the
2 vacation of an informal probate of a will subsequent to the appointment of
3 the personal representative thereunder, does not terminate the appointment of
4 the personal representative although his powers may be reduced as provided in
5 Section 28-3-401. Termination occurs upon appointment in informal or formal
6 appointment proceedings of a person entitled to appointment under the later
7 assumption concerning testacy. If no request for new appointment is made
8 within 30 days after expiration of time for appeal from the order in formal
9 testacy proceedings, or from the informal probate, changing the assumption
10 concerning testacy, the previously appointed personal representative upon
11 request may be appointed personal representative under the subsequently
12 probated will, or as in intestacy as the case may be.

13

14 Section 28-3-613. Successor Personal Representative.

15 Parts 3 and 4 of this Article govern proceedings for appointment of a
16 personal representative to succeed one whose appointment has been terminated.
17 After appointment and qualification, a successor personal representative may
18 be substituted in all actions and proceedings to which the former personal
19 representative was a party, and no notice, process or claim which was given
20 or served upon the former personal representative need be given to or served
21 upon the successor in order to preserve any position or right the person
22 giving the notice or filing the claim may thereby have obtained or preserved
23 with reference to the former personal representative. Except as otherwise
24 ordered by the Court, the successor personal representative has the powers
25 and duties in respect to the continued administration which the former
26 personal representative would have had if his appointment had not been
27 terminated.

28

29 Section 28-3-614. Special Administrator; Appointment.

30 A special administrator may be appointed:

31 (1) informally by the Registrar on the application of any interested
32 person when necessary to protect the estate of a decedent prior to the
33 appointment of a general personal representative or if a prior appointment
34 has been terminated as provided in Section 28-3-609;

35 (2) in a formal proceeding by order of the Court on the petition of any

1 interested person and finding, after notice and hearing, that appointment is
2 necessary to preserve the estate or to secure its proper administration
3 including its administration in circumstances where a general personal
4 representative cannot or should not act. If it appears to the Court that an
5 emergency exists, appointment may be ordered without notice.

6

7 Section 28-3-615. Special Administrator; Who May Be Appointed.

8 (a) If a special administrator is to be appointed pending the probate
9 of a will which is the subject of a pending application or petition for
10 probate, the person named executor in the will shall be appointed if
11 available, and qualified.

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

14

15 Section 28-3-616. Special Administrator; Appointed Informally;
16 Powers and Duties.

17 A special administrator appointed by the Registrar in informal
18 proceedings pursuant to Section 28-3-614(1) has the duty to collect and
19 manage the assets of the estate, to preserve them, to account therefor and to
20 deliver them to the general personal representative upon his qualification.
21 The special administrator has the power of a personal representative under
22 the Code necessary to perform his duties.

23

24 Section 28-3-617. Special Administrator; Formal Proceedings; Power
25 and Duties.

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

31

32 Section 28-3-618. Termination of Appointment; Special Administrator.

33 The appointment of a special administrator terminates in accordance
34 with the provisions of the order of appointment or on the appointment of a
35 general personal representative. In other cases, the appointment of a

1 special administrator is subject to termination as provided in Sections 28-
2 3-608 through 28-3-611.

3 PART 7

4 DUTIES AND POWERS OF PERSONAL REPRESENTATIVES

5 Section 28-3-701. Time of Accrual of Duties and Powers.

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

15
16 Section 28-3-702. Priority Among Different Letters.

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

24
25 Section 28-3-703. General Duties; Relation and Liability to Persons
26 Interested in Estate; Standing to Sue.

27 (a) A personal representative is a fiduciary who shall observe the
28 standards of care applicable to trustees. A personal representative is under
29 a duty to settle and distribute the estate of the decedent in accordance with
30 the terms of any probated and effective will and this Code, and as
31 expeditiously and efficiently as is consistent with the best interests of the
32 estate. He shall use the authority conferred upon him by this Code, the
33 terms of the will, if any, and any order in proceedings to which he is party
34 for the best interests of successors to the estate.

35 (b) A personal representative shall not be surcharged for acts of

1 administration or distribution if the conduct in question was authorized at
2 the time. Subject to other obligations of administration, an informally
3 probated will is authority to administer and distribute the estate according
4 to its terms. An order of appointment of a personal representative, whether
5 issued in informal or formal proceedings, is authority to distribute
6 apparently intestate assets to the heirs of the decedent if, at the time of
7 distribution, the personal representative is not aware of a pending testacy
8 proceeding, a proceeding to vacate an order entered in an earlier testacy
9 proceeding, a formal proceeding questioning his appointment or fitness to
10 continue, or a supervised administration proceeding. Nothing in this section
11 affects the duty of the personal representative to administer and distribute
12 the estate in accordance with the rights of claimants, the surviving spouse,
13 any minor and dependent children and any pretermitted child of the decedent
14 as described elsewhere in this Code.

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

20

21 Section 28-3-704. Personal Representative to Proceed Without Court
22 Order; Exception.

23 A personal representative shall proceed expeditiously with the
24 settlement and distribution of a decedent's estate and, except as otherwise
25 specified or ordered in regard to a supervised personal representative, do so
26 without adjudication, order, or direction of the Court, but he may invoke the
27 jurisdiction of the Court, in proceedings authorized by this Code, to resolve
28 questions concerning the estate or its administration.

29

30 Section 28-3-705. Duty of Personal Representative; Information to
31 Heirs and Devisees.

32 Not later than 30 days after his appointment every personal
33 representative, except any special administrator, shall give information of
34 his appointment to the heirs and devisees, including, if there has been no
35 formal testacy proceeding and if the personal representative was appointed on

1 the assumption that the decedent died intestate, the devisees in any will
2 mentioned in the application for appointment of a personal representative.
3 The information shall be delivered or sent by ordinary mail to each of the
4 heirs and devisees whose address is reasonably available to the personal
5 representative. The duty does not extend to require information to persons
6 who have been adjudicated in a prior formal testacy proceeding to have no
7 interest in the estate. The information shall include the name and address
8 of the personal representative, indicate that it is being sent to persons who
9 have or may have some interest in the estate being administered, indicate
10 whether bond has been filed, and describe the court where papers relating to
11 the estate are on file. The information shall state that the estate is being
12 administered by the personal representative under the Arkansas Probate Code
13 without supervision by the Court but that recipients are entitled to
14 information regarding the administration from the personal representative and
15 can petition the Court in any matter relating to the estate, including
16 distribution of assets and expenses of administration. The personal
17 representative's failure to give this information is a breach of his duty to
18 the persons concerned but does not affect the validity of his appointment,
19 his powers or other duties. A personal representative may inform other
20 persons of his appointment by delivery or ordinary first class mail.

21

22 Section 28-3-706. Duty of Personal Representative; Inventory and
23 Appraisalment.

24 Within 3 months after his appointment, a personal representative, who
25 is not a special administrator or a successor to another representative who
26 has previously discharged this duty, shall prepare and file or mail an
27 inventory of property owned by the decedent at the time of his death, listing
28 it with reasonable detail, and indicating as to each listed item, its fair
29 market value as of the date of the decedent's death, and the type and amount
30 of any encumbrance that may exist with reference to any item.

31 The personal representative shall send a copy of the inventory to
32 interested persons who request it. He may also file the original of the
33 inventory with the court.

34

35 Section 28-3-707. Employment of Appraisers.

1 The personal representative may employ a qualified and disinterested
2 appraiser to assist him in ascertaining the fair market value as of the date
3 of the decedent's death of any asset the value of which may be subject to
4 reasonable doubt. Different persons may be employed to appraise different
5 kinds of assets included in the estate. The names and addresses of any
6 appraiser shall be indicated on the inventory with the item or items he
7 appraised.

8

9 Section 28-3-708. Duty of Personal Representative; Supplementary
10 Inventory.

11 If any property not included in the original inventory comes to the
12 knowledge of a personal representative or if the personal representative
13 learns that the value or description indicated in the original inventory for
14 any item is erroneous or misleading, he shall make a supplementary inventory
15 or appraisal showing the market value as of the date of the decedent's
16 death of the new item or the revised market value or descriptions, and the
17 appraisers or other data relied upon, if any, and file it with the Court if
18 the original inventory was filed, or furnish copies thereof or information
19 thereof to persons interested in the new information.

20

21 Section 28-3-709. Duty of Personal Representative; Possession of
22 Estate.

23 Except as otherwise provided by a decedent's will, every personal
24 representative has a right to, and shall take possession or control of, the
25 decedent's property, except that any real property or tangible personal
26 property may be left with or surrendered to the person presumptively entitled
27 thereto unless or until, in the judgment of the personal representative,
28 possession of the property by him will be necessary for purposes of
29 administration. The request by a personal representative for delivery of any
30 property possessed by an heir or devisee is conclusive evidence, in any
31 action against the heir or devisee for possession thereof, that the
32 possession of the property by the personal representative is necessary for
33 purposes of administration. The personal representative shall pay taxes on,
34 and take all steps reasonably necessary for the management, protection and
35 preservation of, the estate in his possession. He may maintain an action to

1 recover possession of property or to determine the title thereto.

2

3 Section 28-3-710. Power to Avoid Transfers.

4 The property liable for the payment of unsecured debts of a decedent
5 includes all property transferred by him by any means which is in law void or
6 voidable as against his creditors, and subject to prior liens, the right to
7 recover this property, so far as necessary for the payment of unsecured debts
8 of the decedent, is exclusively in the personal representative.

9

10 Section 28-3-711. Powers of Personal Representatives; In General.

11 Until termination of his appointment a personal representative has the
12 same power over the title to property of the estate that an absolute owner
13 would have, in trust however, for the benefit of the creditors and others
14 interested in the estate. This power may be exercised without notice,
15 hearing, or order of court.

16

17 Section 28-3-712. Improper Exercise of Power; Breach of Fiduciary
18 Duty.

19 If the exercise of power concerning the estate is improper, the
20 personal representative is liable to interested persons for damage or loss
21 resulting from breach of his fiduciary duty to the same extent as a trustee
22 of an express trust. The rights of purchasers and others dealing with a
23 personal representative shall be determined as provided in Sections 28-3-713
24 and 28-3-714.

25

26 Section 28-3-713. Sale, Encumbrance or Transaction Involving Conflict
27 of Interest; Voidable; Exceptions.

28 Any sale or encumbrance to the personal representative, his spouse,
29 agent or attorney, or any corporation or trust in which he has a substantial
30 beneficial interest, or any transaction which is affected by a substantial
31 conflict of interest on the part of the personal representative, is voidable
32 by any person interested in the estate except one who has consented after
33 fair disclosure, unless

34 (1) the will or a contract entered into by the decedent expressly
35 authorized the transaction; or

1 (2) the transaction is approved by the Court after notice to interested
2 persons.

3

4 Section 28-3-714. Persons Dealing with Personal Representative;
5 Protection.

6 A person who in good faith either assists a personal representative or
7 deals with him for value is protected as if the personal representative
8 properly exercised his power. The fact that a person knowingly deals with a
9 personal representative does not alone require the person to inquire into the
10 existence of a power or the propriety of its exercise. Except for
11 restrictions on powers of supervised personal representatives which are
12 endorsed on letters as provided in Section 28-3-504, no provision in any will
13 or order of court purporting to limit the power of a personal representative
14 is effective except as to persons with actual knowledge thereof. A person is
15 not bound to see to the proper application of estate assets paid or delivered
16 to a personal representative. The protection here expressed extends to
17 instances in which some procedural irregularity or jurisdictional defect
18 occurred in proceedings leading to the issuance of letters, including a case
19 in which the alleged decedent is found to be alive. The protection here
20 expressed is not by substitution for that provided by comparable provisions
21 of the laws relating to commercial transactions and laws simplifying
22 transfers of securities by fiduciaries.

23

24 Section 28-3-715. Transactions Authorized for Personal
25 Representatives; Exceptions.

26 Except as restricted or otherwise provided by the will or by an order
27 in a formal proceeding and subject to the priorities stated in Section 28-
28 3-902, a personal representative, acting reasonably for the benefit of the
29 interested persons, may properly:

30 (1) retain assets owned by the decedent pending distribution or
31 liquidation including those in which the representative is personally
32 interested or which are otherwise improper for trust investment;

33 (2) receive assets from fiduciaries, or other sources;

34 (3) perform, compromise or refuse performance of the decedent's
35 contracts that continue as obligations of the estate, as he may determine

1 under the circumstances. In performing enforceable contracts by the decedent
2 to convey or lease land, the personal representative, among other possible
3 courses of action, may:

4 (i) execute and deliver a deed of conveyance for cash payment of
5 all sums remaining due on the purchaser's note for the sum remaining due
6 secured by a mortgage or deed of trust on the land; or

7 (ii) deliver a deed in escrow with directions that the proceeds,
8 when paid in accordance with the escrow agreement, be paid to the successors
9 of the decedent, as designated in the escrow agreement;

10 (4) satisfy written charitable pledges of the decedent irrespective of
11 whether the pledges constituted binding obligations of the decedent or were
12 properly presented as claims, if in the judgment of the personal
13 representative the decedent would have wanted the pledges completed under the
14 circumstances;

15 (5) if funds are not needed to meet debts and expenses currently
16 payable and are not immediately distributable, deposit or invest liquid
17 assets of the estate, including moneys received from the sale of other
18 assets, in federally insured interest-bearing accounts, readily marketable
19 secured loan arrangements or other prudent investments which would be
20 reasonable for use by trustees generally;

21 (6) acquire or dispose of an asset, including land in this or another
22 state, for cash or on credit, at public or private sale; and manage, develop,
23 improve, exchange, partition, change the character of, or abandon an estate
24 asset;

25 (7) make ordinary or extraordinary repairs or alterations in buildings
26 or other structures, demolish any improvements, raze existing or erect new
27 party walls or buildings;

28 (8) subdivide, develop or dedicate land to public use; make or obtain
29 the vacation of plats and adjust boundaries; or adjust differences in
30 valuation on exchange or partition by giving or receiving considerations; or
31 dedicate easements to public use without consideration;

32 (9) enter for any purpose into a lease as lessor or lessee, with or
33 without option to purchase or renew, for a term within or extending beyond
34 the period of administration;

35 (10) enter into a lease or arrangement for exploration and removal of

1 minerals or other natural resources or enter into a pooling or unitization
2 agreement;

3 (11) abandon property when, in the opinion of the personal
4 representative, it is valueless, or is so encumbered, or is in condition that
5 it is of no benefit to the state;

6 (12) vote stocks or other securities in person or by general or limited
7 proxy;

8 (13) pay calls, assessments, and other sums chargeable or accruing
9 against or on account of securities, unless barred by the provisions relating
10 to claims;

11 (14) hold a security in the name of a nominee or in other form without
12 disclosure of the interest of the estate but the personal representative is
13 liable for any act of the nominee in connection with the security so held;

14 (15) insure the assets of the estate against damage, loss and liability
15 and himself against liability as to third persons;

16 (16) borrow money with or without security to be repaid from the estate
17 assets or otherwise; and advance money for the protection of the estate;

18 (17) effect a fair and reasonable compromise with any debtor or
19 obligor, or extend, renew or in any manner modify the terms of any obligation
20 owing to the estate. If the personal representative holds a mortgage, pledge
21 or other lien upon property of another person, he may, in lieu of
22 foreclosure, accept a conveyance or transfer of encumbered assets from the
23 owner thereof in satisfaction of the indebtedness secured by lien;

24 (18) pay taxes, assessments, compensation of the personal
25 representative, and other expenses incident to the administration of the
26 estate;

27 (19) sell or exercise stock subscription or conversion rights;
28 consent, directly or through a committee or other agent, to the
29 reorganization, consolidation, merger, dissolution, or liquidation of a
30 corporation or other business enterprise;

31 (20) allocate items of income or expense to either estate income or
32 principal, as permitted or provided by law;

33 (21) employ persons, including attorneys, auditors, investment
34 advisors, or agents, even if they are associated with the personal
35 representative, to advise or assist the personal representative in the

1 performance of his administrative duties; act without independent
2 investigation upon their recommendations; and instead of acting personally,
3 employ one or more agents to perform any act of administration, whether or
4 not discretionary;

5 (22) prosecute or defend claims, or proceedings in any jurisdiction for
6 the protection of the estate and of the personal representative in the
7 performance of his duties;

8 (23) sell, mortgage, or lease any real or personal property of the
9 estate or any interest therein for cash, credit, or for part cash and part
10 credit, and with or without security for unpaid balances;

11 (24) continue any unincorporated business or venture in which the
12 decedent was engaged at the time of his death (i) in the same business form
13 for a period of not more than 4 months from the date of appointment of a
14 general personal representative if continuation is a reasonable means of
15 preserving the value of the business including good will, (ii) in the same
16 business form for any additional period of time that may be approved by order
17 of the Court in a formal proceeding to which the persons interested in the
18 estate are parties; or (iii) throughout the period of administration if the
19 business is incorporated by the personal representative and if none of the
20 probable distributees of the business who are competent adults object to its
21 incorporation and retention in the estate;

22 (25) incorporate any business or venture in which the decedent was
23 engaged at the time of his death;

24 (26) provide for exoneration of the personal representative from
25 personal liability in any contract entered into on behalf of the estate;

26 (27) satisfy and settle claims and distribute the estate as provided in
27 this Code.

28

29 Section 28-3-716. Powers and Duties of Successor Personal
30 Representative.

31 A successor personal representative has the same power and duty as the
32 original personal representative to complete the administration and
33 distribution of the estate, as expeditiously as possible, but he shall not
34 exercise any power expressly made personal to the executor named in the will.

35

1 Section 28-3-717. Co-representatives; When Joint Action Required.

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

14

15 Section 28-3-718. Powers of Surviving Personal Representative.

16 Unless the terms of the will otherwise provide, every power exercisable
17 by personal co-representatives may be exercised by the one or more remaining
18 after the appointment of one or more is terminated, and if one of 2 or more
19 nominated as co-executors is not appointed, those appointed may exercise all
20 the powers incident to the office.

21

22 Section 28-3-719. Compensation of Personal Representative.

23 A personal representative is entitled to reasonable compensation for
24 his services. If a will provides for compensation of the personal
25 representative and there is no contract with the decedent regarding
26 compensation, he may renounce the provision before qualifying and be entitled
27 to reasonable compensation. A personal representative also may renounce his
28 right to all or any part of the compensation. A written renunciation of fee
29 may be filed with the Court.

30

31 Section 28-3-720. Expenses in Estate Litigation.

32 If any personal representative or person nominated as personal
33 representative defends or prosecutes any proceeding in good faith, whether
34 successful or not he is entitled to receive from the estate his necessary
35 expenses and disbursements including reasonable attorneys' fees incurred.

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Section 28-3-721. Proceedings for Review of Employment of Agents and Compensation of Personal Representatives and Employees of Estate.

After notice to all interested persons or on petition of an interested person or on appropriate motion if administration is supervised, the propriety of employment of any person by a personal representative including any attorney, auditor, investment advisor or other specialized agent or assistant, the reasonableness of the compensation of any person so employed, or the reasonableness of the compensation determined by the personal representative for his own services, may be reviewed by the Court. Any person who has received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.

PART 8
CREDITORS' CLAIMS

Section 28-3-801. Notice to Creditors.

(a) Unless notice has already been given under this section, a personal representative upon appointment shall publish a notice to creditors once a week for two successive weeks in a newspaper of general circulation in the county announcing the appointment and the personal representative's address and notifying creditors of the estate to present their claims within four months after the date of the first publication of the notice or be forever barred.

(b) A personal representative may give written notice by mail or other delivery to a creditor, notifying the creditor to present his or her claim within four months after the published notice, if given as provided in subsection (a), or within 60 days after the mailing or other delivery of the notice, whichever is later, or be forever barred. Written notice must be the notice described in subsection (a) above or a similar notice.

(c) The personal representative is not liable to a creditor or to a successor of the decedent for giving or failing to give notice under this section.

Section 28-3-802. Statutes of Limitations.

(a) Unless an estate is insolvent, the personal representative, with the consent of all successors whose interests would be affected, may waive

1 any defense of limitations available to the estate. If the defense is not
2 waived, no claim barred by a statute of limitations at the time of the
3 decedent's death may be allowed or paid.

4 (b) The running of a statute of limitations measured from an event
5 other than death or the giving of notice to creditors is suspended for four
6 months after the decedent's death, but resumes thereafter as to claims not
7 barred by other sections.

8 (c) For purposes of a statute of limitations, the presentation of a
9 claim pursuant to Section 28-3-804 is equivalent to commencement of a
10 proceeding on the claim.

11

12 Section 28-3-803. Limitations on Presentation of Claims.

13 (a) All claims against a decedent's estate which arose before the death
14 of the decedent, including claims of the state and any subdivision thereof,
15 whether due or to become due, absolute or contingent, liquidated or
16 unliquidated, founded on contract, tort, or other legal basis, if not barred
17 earlier by another statute of limitations or non-claim statute, are barred
18 against the estate, the personal representative, and the heirs and devisees
19 of the decedent, unless presented within the earlier of the following:

20 (1) one year after the decedent's death; or

21 (2) the time provided by Section 28-3-801(b) for creditors who
22 are given actual notice, and within the time provided in 28-3-801(a) for all
23 creditors barred by publication.

24 (b) A claim described in subsection (a) which is barred by the
25 non-claim statute of the decedent's domicile before the giving of notice to
26 creditors in this State is barred in this State.

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

33 (1) a claim based on a contract with the personal representative,
34 within four months after performance by the personal representative is due;
35 or

1 (2) any other claim, within the later of four months after it
2 arises, or the time specified in subsection (a)(1).

3 (d) Nothing in this section affects or prevents:

4 (1) any proceeding to enforce any mortgage, pledge, or other lien
5 upon property of the estate;

6 (2) to the limits of the insurance protection only, any
7 proceeding to establish liability of the decedent or the personal
8 representative for which he is protected by liability insurance; or

9 (3) collection of compensation for services rendered and
10 reimbursement for expenses advanced by the personal representative or by the
11 attorney or accountant for the personal representative of the estate.

12

13 Section 28-3-804. Manner of Presentation of Claims.

14 Claims against a decedent's estate may be presented as follows:

15 (1) The claimant may deliver or mail to the personal representative a
16 written statement of the claim indicating its basis, the name and address of
17 the claimant, and the amount claimed, or may file a written statement of the
18 claim, in the form prescribed by rule, with the clerk of the Court. The
19 claim is deemed presented on the first to occur of receipt of the written
20 statement of claim by the personal representative, or the filing of the claim
21 with the Court. If a claim is not yet due, the date when it will become due
22 shall be stated. If the claim is contingent or unliquidated, the nature of
23 the uncertainty shall be stated. If the claim is secured, the security shall
24 be described. Failure to describe correctly the security, the nature of any
25 uncertainty, and the due date of a claim not yet due does not invalidate the
26 presentation made.

27 (2) The claimant may commence a proceeding against the personal
28 representative in any Court where the personal representative may be
29 subjected to jurisdiction, to obtain payment of his claim against the estate,
30 but the commencement of the proceeding must occur within the time limited for
31 presenting the claim. No presentation of claim is required in regard to
32 matters claimed in proceedings against the decedent which were pending at the
33 time of his death.

34 (3) If a claim is presented under subsection (1), no proceeding thereon
35 may be commenced more than 60 days after the personal representative has

1 failed a notice of disallowance; but, in the case of a claim which is not
2 presently due or which is contingent or unliquidated, the personal
3 representative may consent to an extension of the 60-day period, or to avoid
4 injustice the Court, on petition, may order an extension of the 60-day
5 period, but in no event shall the extension run beyond the applicable statute
6 of limitations.

7

8 Section 28-3-805. Classification of Claims.

9 (a) If the applicable assets of the estate are insufficient to pay all
10 claims in full, the personal representative shall make payment in the
11 following order:

12 (1) costs and expenses of administration;

13 (2) reasonable funeral expenses;

14 (3) debts and taxes with preference under federal law;

15 (4) reasonable and necessary medical and hospital expenses of the
16 last illness of the decedent, including compensation of persons attending
17 him;

18 (5) debts and taxes with preference under other laws of this
19 state;

20 (6) all other claims.

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

24

25 Section 28-3-806. Allowance of Claims.

26 (a) As to claims presented in the manner described in Section 28-3-804
27 within the time limit prescribed in 3-803, the personal representative may
28 mail a notice to any claimant stating that the claim has been disallowed.
29 If, after allowing or disallowing a claim, the personal representative
30 changes his decision concerning the claim, he shall notify the claimant. The
31 personal representative may not change a disallowance of a claim after the
32 time for the claimant to file a petition for allowance or to commence a
33 proceeding on the claim has run and the claim has been barred. Every claim
34 which is disallowed in whole or in part by the personal representative is
35 barred so far as not allowed unless the claimant files a petition for

1 allowance in the Court or commences a proceeding against the personal
2 representative not later than 60 days after the mailing of the notice of
3 disallowance or partial allowance if the notice warns the claimant of the
4 impending bar. Failure of the personal representative to mail notice to a
5 claimant of action on his claim for 60 days after the time for original
6 presentation of the claim has expired has the effect of a notice of
7 allowance.

8 (b) After allowing or disallowing a claim the personal representative
9 may change the allowance or disallowance as hereafter provided. The personal
10 representative may prior to payment change the allowance to a disallowance in
11 whole or in part, but not after allowance by a court order or judgment or an
12 order directing payment of the claim. He shall notify the claimant of the
13 change to disallowance, and the disallowed claim is then subject to bar as
14 provided in subsection (a). The personal representative may change a
15 disallowance to an allowance, in whole or in part, until it is barred under
16 subsection (a); after it is barred, it may be allowed and paid only if the
17 estate is solvent and all successors whose interests would be affected
18 consent.

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

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

30 (e) Unless otherwise provided in any judgment in another court entered
31 against the personal representative, allowed claims bear interest at the
32 legal rate for the period commencing 60 days after the time for original
33 presentation of the claim has expired unless based on a contract making a
34 provision for interest, in which case they bear interest in accordance with
35 that provision.

1

2 Section 28-3-807. Payment of Claims.

3 (a) Upon the expiration of the earlier of the time limitations provided
4 in Section 28-3-803 for the presentation of claims, the personal
5 representative shall proceed to pay the claims allowed against the estate in
6 the order of priority prescribed, after making provision for homestead,
7 family and support allowances, for claims already presented that have not yet
8 been allowed or whose allowance has been appealed, and for unbarred claims
9 that may yet be presented, including costs and expenses of administration.
10 By petition to the Court in a proceeding for the purpose, or by appropriate
11 motion if the administration is supervised, a claimant whose claim has been
12 allowed but not paid may secure an order directing the personal
13 representative to pay the claim to the extent funds of the estate are
14 available to pay it.

15 (b) The personal representative at any time may pay any just claim that
16 has not been barred, with or without formal presentation, but is personally
17 liable to any other claimant whose claim is allowed and who is injured by its
18 payment if:

19 (1) payment was made before the expiration of the time limit
20 stated in subsection (a) and the personal representative failed to require
21 the payee to give adequate security for the refund of any of the payment
22 necessary to pay other claimants; or

23 (2) payment was made, due to negligence or willful fault of the
24 personal representative, in such manner as to deprive the injured claimant of
25 priority.

26

27 Section 28-3-808. Individual Liability of Personal Representative.

28 (a) Unless otherwise provided in the contract, a personal
29 representative is not individually liable on a contract properly entered into
30 in his fiduciary capacity in the course of administration of the estate
31 unless he fails to reveal his representative capacity and identify the estate
32 in the contract.

33 (b) A personal representative is individually liable for obligations
34 arising from ownership or control of the estate or for torts committed in the
35 course of administration of the estate only if he is personally at fault.

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

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

10

11 Section 28-3-809. Secured Claims.

12 Payment of a secured claim is upon the basis of the amount allowed if
13 the creditor surrenders his security; otherwise payment is upon the basis of
14 one of the following:

15 (1) if the creditor exhausts his security before receiving payment,
16 upon the amount of the claim allowed less the fair value of the security; or

17 (2) if the creditor does not have the right to exhaust his security or
18 has not done so, upon the amount of the claim allowed less the value of the
19 security determined by converting it into money according to the terms of the
20 agreement pursuant to which the security was delivered to the creditor, or by
21 the creditor and personal representative by agreement, arbitration,
22 compromise or litigation.

23

24 Section 28-3-810. Claims Not Due and Contingent or Unliquidated
25 Claims.

26 (a) If a claim which will become due at a future time or a contingent
27 or unliquidated claim becomes due or certain before the distribution of the
28 estate, and if the claim has been allowed or established by a proceeding, it
29 is paid in the same manner as presently due and absolute claims of the same
30 class.

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

34 (1) if the claimant consents, he may be paid the present or
35 agreed value of the claim, taking any uncertainty into account;

1 (2) arrangement for future payment, or possible payment, on the
2 happening of the contingency or on liquidation may be made by creating a
3 trust, giving a mortgage, obtaining a bond or security from a distributee, or
4 otherwise.

5

6 Section 28-3-811. Counterclaims.

7 In allowing a claim the personal representative may deduct any
8 counterclaim which the estate has against the claimant. In determining a
9 claim against an estate a Court shall reduce the amount allowed by the amount
10 of any counterclaims and, if the counterclaims exceed the claim, render a
11 judgment against the claimant in the amount of the excess. A counterclaim,
12 liquidated or unliquidated, may arise from a transaction other than that upon
13 which the claim is based. A counterclaim may give rise to relief exceeding
14 in amount or different in kind from that sought in the claim.

15

16 Section 28-3-812. Execution and Levies Prohibited.

17 No execution may issue upon nor may any levy be made against any
18 property of the estate under any judgment against a decedent or a personal
19 representative, but this section shall not be construed to prevent the
20 enforcement of mortgages, pledges or liens upon real or personal property in
21 an appropriate proceeding.

22

23 Section 28-3-813. Compromise of Claims.

24 When a claim against the estate has been presented in any manner, the
25 personal representative may, if it appears for the best interest of the
26 estate, compromise the claim, whether due or not due, absolute or contingent,
27 liquidated or unliquidated.

28

29 Section 28-3-814. Encumbered Assets.

30 If any assets of the estate are encumbered by mortgage, pledge, lien,
31 or other security interest, the personal representative may pay the
32 encumbrance or any part thereof, renew or extend any obligation secured by
33 the encumbrance or convey or transfer the assets to the creditor in
34 satisfaction of his lien, in whole or in part, whether or not the holder of
35 the encumbrance has presented a claim, if it appears to be for the best

1 interest of the estate. Payment of an encumbrance does not increase the
2 share of the distributee entitled to the encumbered assets unless the
3 distributee is entitled to exoneration.

4

5 Section 28-3-815. Administration in More Than One State; Duty of
6 Personal Representative.

7 (a) All assets of estates being administered in this state are subject
8 to all claims, allowances and charges existing or established against the
9 personal representative wherever appointed.

10 (b) If the estate either in this state or as a whole is insufficient to
11 cover all family exemptions and allowances determined by the law of the
12 decedent's domicile, prior charges and claims, after satisfaction of the
13 exemptions, allowances and charges, each claimant whose claim has been
14 allowed either in this state or elsewhere in administrations of which the
15 personal representative is aware, is entitled to receive payment of an equal
16 proportion of his claim. If a preference or security in regard to a claim is
17 allowed in another jurisdiction but not in this state, the creditor so
18 benefited is to receive dividends from local assets only upon the balance of
19 his claim after deducting the amount of the benefit.

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

31

32 Section 28-3-816. Final Distribution to Domiciliary Representative.

33 The estate of a non-resident decedent being administered by a personal
34 representative appointed in this state shall, if there is a personal
35 representative of the decedent's domicile willing to receive it, be

1 distributed to the domiciliary personal representative for the benefit of the
2 successors of the decedent unless (1) by virtue of the decedent's will, if
3 any, and applicable choice of law rules, the successors are identified
4 pursuant to the local law of this state without reference to the local law of
5 the decedent's domicile; (2) the personal representative of this state,
6 after reasonable inquiry, is unaware of the existence or identity of a
7 domiciliary personal representative; or (3) the Court orders otherwise in a
8 proceeding for a closing order under Section 28-3-1001 or incident to the
9 closing of a supervised administration. In other cases, distribution of the
10 estate of a decedent shall be made in accordance with the other Parts of this
11 Article.

12 **PART 9**

13 **SPECIAL PROVISIONS RELATING TO DISTRIBUTION**

14 **Section 28-3-901. Successors' Rights if No Administration.**

15 In the absence of administration, the heirs and devisees are entitled
16 to the estate in accordance with the terms of a probated will or the laws of
17 intestate succession. Devisees may establish title by the probated will to
18 devised property. Persons entitled to property by homestead allowance,
19 exemption or intestacy may establish title thereto by proof of the decedent's
20 ownership, his death, and their relationship to the decedent. Successors
21 take subject to all charges incident to administration, including the claims
22 of creditors and allowances of surviving spouse and dependent children, and
23 subject to the rights of others resulting from abatement, retainer,
24 advancement, and ademption.

25

26 **Section 28-3-902. Distribution; Order in Which Assets Appropriated;**
27 **Abatement.**

28 (a) Except as provided in subsection (b) and except as provided in
29 connection with the share of the surviving spouse who elects to take an
30 elective share, shares of distributees abate, without any preference or
31 priority as between real and personal property, in the following order: (1)
32 property not disposed of by the will; (2) residuary devises; (3) general
33 devises; (4) specific devises. For purposes of abatement, a general devise
34 charged on any specific property or fund is a specific devise to the extent
35 of the value of the property on which it is charged, and upon the failure or

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

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

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

14

15 Section 28-3-903. Right of Retainer.

16 The amount of a non-contingent indebtedness of a successor to the
17 estate if due, or its present value if not due, shall be offset against the
18 successor's interest; but the successor has the benefit of any defense which
19 would be available to him in a direct proceeding for recovery of the debt.

20

21 Section 28-3-904. Interest on General Pecuniary Devise.

22 General pecuniary devises bear interest at the legal rate beginning one
23 year after the first appointment of a personal representative until payment,
24 unless a contrary intent is indicated by the will.

25

26 Section 28-3-905. Penalty Clause for Contest.

27 A provision in a will purporting to penalize any interested person for
28 contesting the will or instituting other proceedings relating to the estate
29 is unenforceable if probable cause exists for instituting proceedings.

30

31 Section 28-3-906. Distribution in Kind; Valuation; Method.

32 (a) Unless a contrary intention is indicated by the will, the
33 distributable assets of a decedent's estate shall be distributed in kind to
34 the extent possible through application of the following provisions:

35 (1) A specific devisee is entitled to distribution of the thing

1 devised to him, and a spouse or child who has selected particular assets of
2 an estate as provided in Section 28-39-101 shall receive the items selected.

3 (2) Any homestead or family allowance or devise of a stated sum
4 of money may be satisfied in kind provided

5 (i) the person entitled to the payment has not demanded
6 payment in cash;

7 (ii) the property distributed in kind is valued at fair
8 market value as of the date of its distribution, and

9 (iii) no residuary devisee has requested that the asset in
10 question remain a part of the residue of the estate.

11 (3) For the purpose of valuation under paragraph (2) securities
12 regularly traded on recognized exchanges, if distributed in kind, are valued
13 at the price for the last sale of like securities traded on the business day
14 prior to distribution, or if there was no sale on that day, at the median
15 between amounts bid and offered at the close of that day. Assets consisting
16 of sums owed the decedent or the estate by solvent debtors as to which there
17 is no known dispute or defense are valued at the sum due with accrued
18 interest or discounted to the date of distribution. For assets which do not
19 have readily ascertainable values, a valuation as of a date not more than 30
20 days prior to the date of distribution, if otherwise reasonable, controls.
21 For purposes of facilitating distribution, the personal representative may
22 ascertain the value of the assets as of the time of the proposed distribution
23 in any reasonable way, including the employment of qualified appraisers, even
24 if the assets may have been previously appraised.

25 (4) The residuary estate shall be distributed in any equitable
26 manner.

27 (b) After the probable charges against the estate are known, the
28 personal representative may mail or deliver a proposal for distribution to
29 all persons who have a right to object to the proposed distribution. The
30 right of any distributee to object to the proposed distribution on the basis
31 of the kind or value of asset he is to receive, if not waived earlier in
32 writing, terminates if he fails to object in writing received by the personal
33 representative within 30 days after mailing or delivery of the proposal.

34

35 Section 28-3-907. Distribution in Kind; Evidence.

1 If distribution in kind is made, the personal representative shall
2 execute an instrument or deed of distribution assigning, transferring or
3 releasing the assets to the distributee as evidence of the distributee's
4 title to the property.

5

6 Section 28-3-908. Distribution; Right or Title of Distributee.

7 Proof that a distributee has received an instrument or deed of
8 distribution of assets in kind, or payment in distribution, from a personal
9 representative, is conclusive evidence that the distributee has succeeded to
10 the interest of the estate in the distributed assets, as against all persons
11 interested in the estate, except that the personal representative may recover
12 the assets or their value if the distribution was improper.

13

14 Section 28-3-909. Improper Distribution; Liability of Distributee.

15 Unless the distribution or payment no longer can be questioned because
16 of adjudication, estoppel, or limitation, a distributee of property
17 improperly distributed or paid, or a claimant who was improperly paid, is
18 liable to return the property improperly received and its income since
19 distribution if he has the property. If he does not have the property, then
20 he is liable to return the value as of the date of disposition of the
21 property improperly received and its income and gain received by him.

22

23 Section 28-3-910. Purchasers from Distributees Protected.

24 If property distributed in kind or a security interest therein is
25 acquired for value by a purchaser from or lender to a distributee who has
26 received an instrument or deed of distribution from the personal
27 representative, or is so acquired by a purchaser from or lender to a
28 transferee from such distributee, the purchaser or lender takes title free of
29 rights of any interested person in the estate and incurs no personal
30 liability to the estate, or to any interested person, whether or not the
31 distribution was proper or supported by court order or the authority of the
32 personal representative was terminated before execution of the instrument or
33 deed. This section protects a purchaser from or lender to a distributee who,
34 as personal representative, has executed a deed of distribution to himself,
35 as well as a purchaser from or lender to any other distributee or his

1 transferee. To be protected under this provision, a purchaser or lender need
2 not inquire whether a personal representative acted properly in making the
3 distribution in kind, even if the personal representative and the distributee
4 are the same person, or whether the authority of the personal representative
5 had terminated before the distribution. Any recorded instrument described in
6 this section on which a state documentary stamp is affixed pursuant to §§ 26-
7 60-101 through 26-60-112 shall be prima facie evidence that such transfer was
8 made for value.

9

10 Section 28-3-911. Partition for Purpose of Distribution.

11 When two or more heirs or devisees are entitled to distribution of
12 undivided interests in any real or personal property of the estate, the
13 personal representative or one or more of the heirs or devisees may petition
14 the Court prior to the formal or informal closing of the estate, to make
15 partition. After notice to the interested heirs or devisees, the Court shall
16 partition the property in the same manner as provided by the law for civil
17 actions of partition. The Court may direct the personal representative to
18 sell any property which cannot be partitioned without prejudice to the owners
19 and which cannot conveniently be allotted to any one party.

20

21 Section 28-3-912. Private Agreements Among Successors to Decedent
22 Binding on Personal Representative.

23 Subject to the rights of creditors and taxing authorities, competent
24 successors may agree among themselves to alter the interests, shares, or
25 amounts to which they are entitled under the will of the decedent, or under
26 the laws of intestacy, in any way that they provide in a written contract
27 executed by all who are affected by its provisions. The personal
28 representative shall abide by the terms of the agreement subject to his
29 obligation to administer the estate for the benefit of creditors, to pay all
30 taxes and costs of administration, and to carry out the responsibilities of
31 his office for the benefit of any successors of the decedent who are not
32 parties. Personal representatives of decedents' estates are not required to
33 see to the performance of trusts if the trustee thereof is another person who
34 is willing to accept the trust. Accordingly, trustees of a testamentary
35 trust are successors for the purposes of this section. Nothing herein

1 relieves trustees of any duties owed to beneficiaries of trusts.

2

3 Section 28-3-913. Distributions to Trustee.

4 (a) Before distributing to a trustee, the personal representative may
5 require that the trust be registered if the state in which it is to be
6 administered provides for registration and that the trustee inform the
7 *beneficiaries of the terms of the trust and relevant information about the*
8 *assets of the trust.*

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

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

17

18 Section 28-3-914. Disposition of Unclaimed Assets.

19 (a) If an heir, devisee or claimant cannot be found, the personal
20 representative shall distribute the share of the missing person to his
21 conservator, if any, otherwise to the state treasurer to become a part of the
22 state escheat fund.

23 (b) The money received by state treasurer shall be paid to the person
24 entitled on proof of his right thereto or, if the state treasurer refuses or
25 fails to pay, the person may petition the Court which appointed the personal
26 representative, whereupon the Court upon notice to the state treasurer may
27 determine the person entitled to the money and order the treasurer to pay it
28 to him. No interest is allowed thereon and the heir, devisee or claimant
29 shall pay all costs and expenses incident to the proceeding. If no petition
30 is made to the court within 8 years after payment to the state treasurer, the
31 right of recovery is barred.

32

33 Section 28-3-915. Distribution to Person Under Disability.

34 (a) A personal representative may discharge his obligation to
35 distribute to any person under legal disability by distributing in a manner

1 expressly provided in the will.

2 (b) Unless contrary to an express provision in the will, the personal
3 representative may discharge his obligation to distribute to a minor or
4 person under other disability as authorized by Section 28-65-502 or any other
5 statute. If the personal representative knows that a conservator has been
6 appointed or that a proceeding for appointment of a conservator is pending,
7 the personal representative is authorized to distribute only to the
8 conservator.

9 (c) If the heir or devisee is under disability other than minority, the
10 personal representative is authorized to distribute to:

11 (1) an attorney in fact who has authority under a power of
12 attorney to receive property for that person; or

13 (2) the spouse, parent or other close relative with whom the
14 person under disability resides if the distribution is of amounts not
15 exceeding \$10,000 a year, or property not exceeding \$10,000 in value, unless
16 the court authorizes a larger amount or greater value.

17 Persons receiving money or property for the disabled person are
18 obligated to apply the money or property to the support of that person, but
19 may not pay themselves except by way of reimbursement for out-of-pocket
20 expenses for goods and services necessary for the support of the disabled
21 person. Excess sums must be preserved for future support of the disabled
22 person. The personal representative is not responsible for the proper
23 application of money or property distributed pursuant to this subsection.

24

25 Section 28-3-916. Apportionment of Estate Taxes.

26 (a) For purposes of this section:

27 (1) "estate" means the gross estate of a decedent as determined
28 for the purpose of federal estate tax and the estate tax payable to this
29 state;

30 (2) "person" means any individual, partnership, association,
31 joint stock company, corporation, government, political subdivision,
32 governmental agency, or local governmental agency;

33 (3) "person interested in the estate" means any person entitled
34 to receive, or who has received, from a decedent or by reason of the death of
35 a decedent any property or interest therein included in the decedent's

1 estate. It includes a personal representative, conservator, and trustee;

2 (4) "state" means any state, territory, or possession of the
3 United States, the District of Columbia, and the Commonwealth of Puerto Rico;

4 (5) "tax" means the federal estate tax and the additional
5 inheritance tax imposed by any state and interest and penalties imposed in
6 addition to the tax;

7 (6) "fiduciary" means personal representative or trustee.

8 (b) Except as provided in subsection (i) and, unless the will otherwise
9 provides, the tax shall be apportioned among all persons interested in the
10 estate. The apportionment is to be made in the proportion that the value of
11 the interest of each person interested in the estate bears to the total value
12 of the interests of all persons interested in the estate. The values used in
13 determining the tax are to be used for that purpose. If the decedent's will
14 directs a method of apportionment of tax different from the method described
15 in this Code, the method described in the will controls.

16 (c) (1) The Court in which venue lies for the administration of the
17 estate of a decedent, on petition for the purpose may determine the
18 apportionment of the tax.

19 (2) If the Court finds that it is inequitable to apportion
20 interest and penalties in the manner provided in subsection (b), because of
21 special circumstances, it may direct apportionment thereof in the manner it
22 finds equitable.

23 (3) If the Court finds that the assessment of penalties and
24 interest assessed in relation to the tax is due to delay caused by the
25 negligence of the fiduciary, the Court may charge him with the amount of the
26 assessed penalties and interest.

27 (4) In any action to recover from any person interested in the
28 estate the amount of the tax apportioned to the person in accordance with
29 this Code the determination of the Court in respect thereto shall be prima
30 facie correct.

31 (d) (1) The personal representative or other person in possession of
32 the property of the decedent required to pay the tax may withhold from any
33 property distributable to any person interested in the estate, upon its
34 distribution to him, the amount of tax attributable to his interest. If the
35 property in possession of the personal representative or other person

1 required to pay the tax and distributable to any person interested in the
2 estate is insufficient to satisfy the proportionate amount of the tax
3 determined to be due from the person, the personal representative or other
4 person required to pay the tax may recover the deficiency from the person
5 interested in the estate. If the property is not in the possession of the
6 personal representative or the other person required to pay the tax, the
7 personal representative or the other person required to pay the tax may
8 recover from any person interested in the estate the amount of the tax
9 apportioned to the person in accordance with this Act.

10 (2) If property held by the personal representative is
11 distributed prior to final apportionment of the tax, the distributee shall
12 provide a bond or other security for the apportionment liability in the form
13 and amount prescribed by the personal representative.

14 (e) (1) In making an apportionment, allowances shall be made for any
15 exemptions granted, any classification made of persons interested in the
16 estate and for any deductions and credits allowed by the law imposing the
17 tax.

18 (2) Any exemption or deduction allowed by reason of the
19 relationship of any person to the decedent or by reason of the purposes of
20 the gift inures to the benefit of the person bearing such relationship or
21 receiving the gift; but if an interest is subject to a prior present
22 interest which is not allowable as a deduction, the tax apportionable against
23 the present interest shall be paid from principal.

24 (3) Any deduction for property previously taxed and any credit
25 for gift taxes or death taxes of a foreign country paid by the decedent or
26 his estate inures to the proportionate benefit of all persons liable to
27 apportionment.

28 (4) Any credit for inheritance, succession or estate taxes or
29 taxes in the nature thereof applicable to property or interests includable in
30 the estate, inures to the benefit of the persons or interests chargeable with
31 the payment thereof to the extent proportionately that the credit reduces the
32 tax.

33 (5) To the extent that property passing to or in trust for a
34 surviving spouse or any charitable, public or similar purpose is not an
35 allowable deduction for purposes of the tax solely by reason of an

1 inheritance tax or other death tax imposed upon and deductible from the
2 property, the property is not included in the computation provided for in
3 subsection (b) hereof, and to that extent no apportionment is made against
4 the property. The sentence immediately preceding does not apply to any case
5 if the result would be to deprive the estate of a deduction otherwise
6 allowable under Section 2053(d) of the Internal Revenue Code of 1954, as
7 amended, of the United States, relating to deduction for state death taxes on
8 transfers for public, charitable, or religious uses.

9 (f) No interest in income and no estate for years or for life or other
10 temporary interest in any property or fund is subject to apportionment as
11 between the temporary interest and the remainder. The tax on the temporary
12 interest and the tax, if any, on the remainder is chargeable against the
13 corpus of the property or funds subject to the temporary interest and
14 remainder.

15 (g) Neither the personal representative nor other person required to
16 pay the tax is under any duty to institute any action to recover from any
17 person interested in the estate the amount of the tax apportioned to the
18 person until the expiration of the 3 months next following final
19 determination of the tax. A personal representative or other person required
20 to pay the tax who institutes the action within a reasonable time after the 3
21 months' period is not subject to any liability or surcharge because any
22 portion of the tax apportioned to any person interested in the estate was
23 collectible at a time following the death of the decedent but thereafter
24 became uncollectible. If the personal representative or other person
25 required to pay the tax cannot collect from any person interested in the
26 estate the amount of the tax apportioned to the person, the amount not
27 recoverable shall be equitably apportioned among the other persons interested
28 in the estate who are subject to apportionment.

29 (h) A personal representative acting in another state or a person
30 required to pay the tax domiciled in another state may institute an action in
31 the courts of this state and may recover a proportionate amount of the
32 federal estate tax, of an estate tax payable to another state or of a death
33 duty due by a decedent's estate to another state, from a person interested in
34 the estate who is either domiciled in this state or who owns property in this
35 state subject to attachment or execution. For the purposes of the action the

1 determination of apportionment by the Court having jurisdiction of the
2 administration of the decedent's estate in the other state is prima facie
3 correct.

4 (i) If the liabilities of persons interested in the estate as
5 prescribed by this act differ from those which result under the Federal
6 Estate tax law, the liabilities imposed by the federal law will control and
7 the balance of this Section shall apply as if the resulting liabilities had
8 been prescribed herein.

9 PART 10

10 CLOSING ESTATES

11 Section 28-3-1001. Formal Proceedings Terminating Administration;
12 Testate or Intestate; Order of General Protection.

13 (a) A personal representative or any interested person may petition for
14 an order of complete settlement of the estate. The personal representative
15 may petition at any time, and any other interested person may petition after
16 one year from the appointment of the original personal representative except
17 that no petition under this section may be entertained until the time for
18 presenting claims which arose prior to the death of the decedent has expired.
19 The petition may request the Court to determine testacy, if not previously
20 determined, to consider the final account or compel or approve an accounting
21 and distribution, to construe any will or determine heirs and adjudicate the
22 final settlement and distribution of the estate. After notice to all
23 interested persons and hearing the Court may enter an order or orders, on
24 appropriate conditions, determining the persons entitled to distribution of
25 the estate, and, as circumstances require, approving settlement and directing
26 or approving distribution of the estate and discharging the personal
27 representative from further claim or demand of any interested person.

28 (b) If one or more heirs or devisees were omitted as parties in, or
29 were not given notice of, a previous formal testacy proceeding, the Court, on
30 proper petition for an order of complete settlement of the estate under this
31 section, and after notice to the omitted or unnotified persons and other
32 interested parties determined to be interested on the assumption that the
33 previous order concerning testacy is conclusive as to those given notice of
34 the earlier proceeding, may determine testacy as it affects the omitted
35 persons and confirm or alter the previous order of testacy as it affects all

1 interested persons as appropriate in the light of the new proofs. In the
2 absence of objection by an omitted or unnotified person, evidence received in
3 the original testacy proceeding shall constitute prima facie proof of due
4 execution of any will previously admitted to probate, or of the fact that the
5 decedent left no valid will if the prior proceedings determined this fact.

6
7 Section 28-3-1002. Formal Proceedings Terminating Testate
8 Administration; Order Construing Will Without Adjudicating Testacy.

9 A personal representative administering an estate under an informally
10 probated will or any devisee under an informally probated will may petition
11 for an order of settlement of the estate which will not adjudicate the
12 testacy status of the decedent. The personal representative may petition at
13 any time, and a devisee may petition after one year, from the appointment of
14 the original personal representative, except that no petition under this
15 section may be entertained until the time for presenting claims which arose
16 prior to the death of the decedent has expired. The petition may request the
17 Court to consider the final account or compel or approve an accounting and
18 distribution, to construe the will and adjudicate final settlement and
19 distribution of the estate. After notice to all devisees and the personal
20 representative and hearing, the Court may enter an order or orders, on
21 appropriate conditions, determining the persons entitled to distribution of
22 the estate under the will, and, as circumstances require, approving
23 settlement and directing or approving distribution of the estate and
24 discharging the personal representative from further claim or demand of any
25 devisee who is a party to the proceeding and those he represents. If it
26 appears that a part of the estate is intestate, the proceedings shall be
27 dismissed or amendments made to meet the provisions of Section 28-3-1001.

28
29 Section 28-3-1003. Closing Estates; By Sworn Statement of Personal
30 Representative.

31 (a) Unless prohibited by order of the Court and except for estates
32 being administered in supervised administration proceedings, a personal
33 representative may close an estate by filing with the court no earlier than
34 six months after the date of original appointment of a general personal
35 representative for the estate, a verified statement stating that the personal

1 representatives or a previous personal representative, has:

2 (1) determined that the time limited for presentation of
3 creditors' claims has expired.

4 (2) fully administered the estate of the decedent by making
5 payment, settlement, or other disposition of all claims that were presented,
6 expenses of administration and estate, inheritance and other death taxes,
7 except as specified in the statement, and that the assets of the estate have
8 been distributed to the persons entitled. If any claims remain undischarged,
9 the statement must state whether the personal representative has distributed
10 the estate subject to possible liability with the agreement of the
11 distributees or state in detail other arrangements that have been made to
12 accommodate outstanding liabilities; and

13 (3) sent a copy of the statement to all distributees of the
14 estate and to all creditors or other claimants of whom the personal
15 representative is aware whose claims are neither paid nor barred and has
16 furnished a full account in writing of the personal representative's
17 administration to the distributees whose interests are affected thereby.

18 (b) If no proceedings involving the personal representative are pending
19 in the Court one year after the closing statement is filed, the appointment
20 of the personal representative terminates.

21

22 Section 28-3-1004. Liability of Distributees to Claimants.

23 After assets of an estate have been distributed and subject to Section
24 28-3-1006, an undischarged claim not barred may be prosecuted in a proceeding
25 against one or more distributees. No distributee shall be liable to
26 claimants for amounts received as exempt property, homestead or family
27 allowances, or for amounts in excess of the value of his distribution as of
28 the time of distribution. As between distributees, each shall bear the cost
29 of satisfaction of unbarred claims as if the claim had been satisfied in the
30 course of administration. Any distributee who shall have failed to notify
31 other distributees of the demand made upon him by the claimant in sufficient
32 time to permit them to join in any proceeding in which the claim was asserted
33 against him loses his right of contribution against other distributees.

34

35 Section 28-3-1005. Limitations on Proceedings Against Personal

1 Representative.

2 Unless previously barred by adjudication and except as provided in the
3 closing statement, the rights of successors and of creditors whose claims
4 have not otherwise been barred against the personal representative for breach
5 of fiduciary duty are barred unless a proceeding to assert the same is
6 commenced within 6 months after the filing of the closing statement. The
7 rights thus barred do not include rights to recover from a personal
8 representative for fraud, misrepresentation, or inadequate disclosure related
9 to the settlement of the decedent's estate.

10

11 Section 28-3-1006. Limitations on Actions and Proceedings Against
12 Distributees.

13 Unless previously adjudicated in a formal testacy proceeding or in a
14 proceeding settling the accounts of a personal representative or otherwise
15 barred, the claim of a claimant to recover from a distributee who is liable
16 to pay the claim, and the right of an heir or devisee, or of a successor
17 personal representative acting in their behalf, to recover property
18 improperly distributed or its value from any distributee is forever barred at
19 the later of three years after the decedent's death or one year after the
20 time of its distribution thereof, but all claims of creditors of the
21 decedent, are barred one year after the decedent's death. This section does
22 not bar an action to recover property or value received as a result of fraud.

23

24 Section 28-3-1007. Certificate Discharging Liens Securing Fiduciary
25 Performance.

26 After his appointment has terminated, the personal representative, his
27 sureties, or any successor of either, upon the filing of a verified
28 application showing, so far as is known by the applicant, that no action
29 concerning the estate is pending in any court, is entitled to receive a
30 certificate from the Registrar that the personal representative appears to
31 have fully administered the estate in question. The certificate evidences
32 discharge of any lien on any property given to secure the obligation of the
33 personal representative in lieu of bond or any surety, but does not preclude
34 action against the personal representative or the surety.

35

1 Section 28-3-1008. Subsequent Administration.

2 If other property of the estate is discovered after an estate has been
3 settled and the personal representative discharged or after one year after a
4 closing statement has been filed, the Court upon petition of any interested
5 person and upon notice as it directs may appoint the same or a successor
6 personal representative to administer the subsequently discovered estate. If
7 a new appointment is made, unless the Court orders otherwise, the provisions
8 of this Code apply as appropriate; but no claim previously barred may be
9 asserted in the subsequent administration.

10 PART 11

11 COMPROMISE OF CONTROVERSIES

12 Section 28-3-1101. Effect of Approval of Agreements Involving Trusts,
13 Inalienable Interests, or Interests of Third Persons.

14 A compromise of any controversy as to admission to probate of any
15 instrument offered for formal probate as the will of a decedent, the
16 construction, validity, or effect of any governing instrument, the rights or
17 interests in the estate of the decedent, of any successor, or the
18 administration of the estate, if approved in a formal proceeding in the Court
19 for that purpose, is binding on all the parties thereto including those
20 unborn, unascertained or who could not be located. An approved compromise is
21 binding even though it may affect a trust or an inalienable interest. A
22 compromise does not impair the rights of creditors or of taxing authorities
23 who are not parties to it.

24

25 Section 28-3-1102. Procedure for Securing Court Approval of
26 Compromise.

27 The procedure for securing court approval of a compromise is as
28 follows:

29 (1) The terms of the compromise shall be set forth in an agreement in
30 writing which shall be executed by all competent persons and parents acting
31 for any minor child having beneficial interests or having claims which will
32 or may be affected by the compromise. Execution is not required by any
33 person whose identity cannot be ascertained or whose whereabouts is unknown
34 and cannot reasonably be ascertained.

35 (2) Any interested person, including the personal representative, if

1 any, or a trustee, then may submit the agreement to the Court for its
2 approval and for execution by the personal representative, the trustee of
3 every affected testamentary trust, and other fiduciaries and representatives.

4 (3) After notice to all interested persons or their representatives,
5 including the personal representative of any estate and all affected trustees
6 of trusts, the Court, if it finds that the contest or controversy is in good
7 faith and that the effect of the agreement upon the interests of persons
8 represented by fiduciaries or other representatives is just and reasonable,
9 shall make an order approving the agreement and directing all fiduciaries
10 subject to its jurisdiction to execute the agreement. Minor children
11 represented only by their parents may be bound only if their parents join
12 with other competent persons in execution of the compromise. Upon the making
13 of the order and the execution of the agreement, all further disposition of
14 the estate is in accordance with the terms of the agreement.

15 PART 12

16 COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT AND SUMMARY ADMINISTRATION
17 PROCEDURE FOR SMALL ESTATES

18 Section 28-3-1201. Collection of Personal Property by Affidavit.

19 (a) Thirty days after the death of a decedent, any person indebted to
20 the decedent or having possession of tangible personal property or an
21 instrument evidencing a debt, obligation, stock or chose in action belonging
22 to the decedent shall make payment of the indebtedness or deliver the
23 tangible personal property or an instrument evidencing a debt, obligation,
24 stock or chose in action to a person claiming to be the successor of the
25 decedent upon being presented an affidavit made by or on behalf of the
26 successor stating that:

27 (1) the value of the entire estate, wherever located, less liens
28 and encumbrances, does not exceed \$5,000;

29 (2) 30 days have elapsed since the death of the decedent;

30 (3) no application or petition for the appointment of a personal
31 representative is pending or has been granted in any jurisdiction; and

32 (4) the claiming successor is entitled to payment or delivery of
33 the property.

34 (b) A transfer agent of any security shall change the registered
35 ownership on the books of a corporation from the decedent to the successor or

1 successors upon the presentation of an affidavit as provided in subsection
2 (a).

3

4 Section 28-3-1202. Effect of Affidavit.

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

18

19 Section 28-3-1203. Small Estates; Summary Administration Procedure.

20 If it appears from the inventory and appraisal that the value of the
21 entire estate, less liens and encumbrances, does not exceed homestead
22 allowance, exempt property, family allowance, costs and expenses of
23 administration, reasonable funeral expenses, and reasonable and necessary
24 medical and hospital expenses of the last illness of the decedent, the
25 personal representative, without giving notice to creditors, may immediately
26 disburse and distribute the estate to the persons entitled thereto and file a
27 closing statement as provided in Section 28-3-1204.

28

29 Section 28-3-1204. Small Estates; Closing by Sworn Statement of
30 Personal Representative.

31 (a) Unless prohibited by order of the Court and except for estates
32 being administered by supervised personal representatives, a personal
33 representative may close an estate administered under the summary procedures
34 of Section 28-3-1203 by filing with the Court, at any time after disbursement
35 and distribution of the estate, a verified statement stating that:

1 POWERS OF FOREIGN PERSONAL REPRESENTATIVES

2 Section 28-4-201. Payment of Debt and Delivery of Property to
3 Domiciliary Foreign Personal Representative Without Local Administration.

4 At any time after the expiration of sixty days from the death of a
5 nonresident decedent, any person indebted to the estate of the nonresident
6 decedent or having possession or control of personal property, or of an
7 instrument evidencing a debt, obligation, stock or chose in action belonging
8 to the estate of the nonresident decedent may pay the debt, deliver the
9 personal property, or the instrument evidencing the debt, obligation, stock
10 or chose in action, to the domiciliary foreign personal representative of the
11 nonresident decedent upon being presented with proof of his appointment and
12 an affidavit made by or on behalf of the representative stating:

- 13 (1) the date of the death of the nonresident decedent,
14 (2) that no local administration, or application or petition therefor,
15 is pending in this state,
16 (3) that the domiciliary foreign personal representative is entitled to
17 payment or delivery.

18

19 Section 28-4-202. Payment or Delivery Discharges.

20 Payment or delivery made in good faith on the basis of the proof of
21 authority and affidavit releases the debtor or person having possession of
22 the personal property to the same extent as if payment or delivery had been
23 made to a local personal representative.

24

25 Section 28-4-203. Resident Creditor Notice.

26 Payment or delivery under Section 28-4-201 may not be made if a
27 resident creditor of the nonresident decedent has notified the debtor of the
28 nonresident decedent or the person having possession of the personal property
29 belonging to the nonresident decedent that the debt should not be paid nor
30 the property delivered to the domiciliary foreign personal representative.

31

32 Section 28-4-204. Proof of Authority-Bond.

33 If no local administration or application or petition therefor is
34 pending in this state, a domiciliary foreign personal representative may file
35 with a Court in this State in a county in which property belonging to the

1 decedent is located, authenticated copies of his appointment and of any
2 official bond he has given.

3

4 Section 28-4-205. Powers.

5 A domiciliary foreign personal representative who has complied with
6 Section 28-4-204 may exercise as to assets in this state all powers of a
7 local personal representative and may maintain actions and proceedings in
8 this state subject to any conditions imposed upon nonresident parties
9 generally.

10

11 Section 28-4-206. Power of Representatives in Transition.

12 The power of a domiciliary foreign personal representative under
13 Section 28-4-201 or 28-4-205 shall be exercised only if there is no
14 administration or application therefor pending in this state. An application
15 or petition for local administration of the estate terminates the power of
16 the foreign personal representative to act under Section 28-4-205, but the
17 local Court may allow the foreign personal representative to exercise limited
18 powers to preserve the estate. No person who, before receiving actual notice
19 of a pending local administration, has changed his position in reliance upon
20 the powers of a foreign personal representative shall be prejudiced by reason
21 of the application or petition for, or grant of, local administration. The
22 local personal representative is subject to all duties and obligations which
23 have accrued by virtue of the exercise of the powers by the foreign personal
24 representative and may be substituted for him in any action or proceedings in
25 this state.

26

27 Section 28-4-207. Ancillary and Other Local Administrations;
28 Provisions Governing.

29 In respect to a nonresident decedent, the provisions of Article III of
30 this Code govern (1) proceedings, if any, in a Court of this state for
31 probate of the will, appointment, removal, supervision, and discharge of the
32 local personal representative, and any other order concerning the estate;
33 and (2) the status, powers, duties and liabilities of any local personal
34 representative and the rights of claimants, purchasers, distributees and
35 others in regard to a local administration.

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PART 3

JURISDICTION OVER FOREIGN REPRESENTATIVES

Section 28-4-301. Jurisdiction by Act of Foreign Personal Representative.

A foreign personal representative submits personally to the jurisdiction of the Courts of this state in any proceeding relating to the estate by (1) filing authenticated copies of his appointment as provided in Section 28-4-204, (2) receiving payment of money or taking delivery of personal property under Section 28-4-201, or (3) doing any act as a personal representative in this state which would have given the state jurisdiction over him as an individual. Jurisdiction under (2) is limited to the money or value of personal property collected.

Section 28-4-302. Jurisdiction by Act of Decedent.

In addition to jurisdiction conferred by Section 28-4-301, a foreign personal representative is subject to the jurisdiction of the courts of this state to the same extent that his decedent was subject to jurisdiction immediately prior to death.

Section 28-4-303. Service on Foreign Personal Representative.

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

Service may be made upon a foreign personal representative in the manner in which service could have been made under other laws of this state on either the foreign personal representative or his decedent immediately prior to death.

(b) If service is made upon a foreign personal representative as provided in subsection (a), he shall be allowed at least 30 days within which to appear or respond.

PART 4

JUDGMENTS AND PERSONAL REPRESENTATIVE

Section 28-4-401. Effect of Adjudication For or Against Personal

1 Representative.

2 An adjudication rendered in any jurisdiction in favor of or against any
3 personal representative of the estate is as binding on the local personal
4 representative as if he were a party to the adjudication.

5
6

7 ARTICLE VI

8 NONPROBATE TRANSFERS ON DEATH

9 PART 1

10 PROVISIONS RELATING TO EFFECT OF DEATH

11 Section 28-6-101. Nonprobate Transfers on Death.

12 (a) A provision for a nonprobate transfer on death in an insurance
13 policy, contract of employment, bond, mortgage, promissory note, certificated
14 or uncertificated security, account agreement, custodial agreement, deposit
15 agreement, compensation plan, pension plan, individual retirement plan,
16 employee benefit plan, trust, conveyance, deed of gift, marital property
17 agreement, or other written instrument of a similar nature is
18 nontestamentary. This subsection includes a written provision that:

19 (1) money or other benefits due to, controlled by, or owned by a
20 decedent before death must be paid after the decedent's death to a person
21 whom the decedent designates either in the instrument or in a separate
22 writing, including a will, executed either before or at the same time as the
23 instrument, or later;

24 (2) money due or to become due under the instrument ceases to be
25 payable in the event of death of the promisee or the promisor before payment
26 or demand; or

27 (3) any property controlled by or owned by the decedent before
28 death which is the subject of the instrument passes to a person the decedent
29 designates either in the instrument or in a separate writing, including a
30 will, executed either before or at the same time as the instrument, or later.

31 (b) This section does not limit rights of creditors under other laws of
32 this State.

33 PART 2

34 MULTIPLE-PERSON ACCOUNTS

35 SUBPART 1

1 means receipt in the office or branch office of the financial institution in
2 which the account is established, but if the terms of the account require
3 notice at a particular place, in the place required.

4 (10) "Request" means a request for payment complying with all terms of
5 the account, including special requirements concerning necessary signatures
6 and regulations of the financial institution; but, for purposes of this
7 part, if terms of the account condition payment on advance notice, a request
8 for payment is treated as immediately effective and a notice of intent to
9 withdraw is treated as a request for payment.

10 (11) "Sums on deposit" means the balance payable on an account,
11 including interest and dividends earned, whether or not included in the
12 current balance, and any deposit life insurance proceeds added to the account
13 by reason of death of a party.

14 (12) "Terms of the account" includes the deposit agreement and other
15 terms and conditions, including the form, of the contract of deposit.

16

17 Section 28-6-202. Limitation on Scope of Part.

18 This part does not apply to (i) an account established for a
19 partnership, joint venture, or other organization for a business purpose,
20 (ii) an account controlled by one or more persons as an agent or trustee for
21 a corporation, unincorporated association, or charitable or civic
22 organization, or (iii) a fiduciary or trust account in which the relationship
23 is established other than by the terms of the account.

24

25 Section 28-6-203. Types of Account; Existing Accounts.

26 (a) An account may be for a single party or multiple parties. A
27 multiple-party account may be with or without a right of survivorship between
28 the parties. Subject to Section 28-6-212(c), either a single-party account
29 or a multiple-party account may have a POD designation, an agency
30 designation, or both.

31 (b) An account established before, on, or after the effective date of
32 this part, whether in the form prescribed in Section 28-6-204 or in any other
33 form, is either a single-party account or a multiple-party account, with or
34 without right of survivorship, and with or without a POD designation or an
35 agency designation, within the meaning of this part, and is governed by this

1 part.

2

3 Section 28-6-204. Forms.

4 (a) A contract of deposit that contains provisions in substantially the
5 following form establishes the type of account provided, and the account is
6 governed by the provisions of this part applicable to an account of that
7 type:

8 UNIFORM SINGLE-OR MULTIPLE-PARTY ACCOUNT FORM

9 PARTIES [Name One or More Parties]:

10 _____

11 OWNERSHIP [Select One And Initial]:

12 _____ SINGLE-PARTY ACCOUNT

13 _____ MULTIPLE-PARTY ACCOUNT

14 Parties own account in proportion to net contributions unless there is
15 clear and convincing evidence of a different intent.

16 RIGHTS AT DEATH [Select One And Initial]:

17 _____ SINGLE-PARTY ACCOUNT

18 At death of party, ownership passes as part of party's estate.

19 _____ SINGLE-PARTY ACCOUNT WITH POD (PAY ON DEATH) DESIGNATION

20 [Name One Or More Beneficiaries]:

21 _____

22 At death of party, ownership passes to POD beneficiaries and is not part
23 of party's estate.

24 _____ MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP

25 At death of party, ownership passes to surviving parties.

26 _____ MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP AND POD (PAY ON
27 DEATH) DESIGNATION

28 [Name One Or More Beneficiaries]:

29 _____

30 At death of last surviving party, ownership passes to POD beneficiaries
31 and is not part of last surviving party's estate.

32 _____ MULTIPLE-PARTY ACCOUNT WITHOUT RIGHT OF SURVIVORSHIP

33 At death of party, deceased party's ownership passes as part of deceased
34 party's estate.

35 AGENCY (POWER OF ATTORNEY) DESIGNATION [Optional]

1 Agents may make account transactions for parties but have no ownership
2 or rights at death unless named as POD beneficiaries.

3 [To Add Agency Designation To Account, Name One Or More Agents]:

4 _____

5 [Select One And Initial]:

6 _____ AGENCY DESIGNATION SURVIVES DISABILITY OR INCAPACITY OF PARTIES

7 _____ AGENCY DESIGNATION TERMINATES ON DISABILITY OR INCAPACITY OF
8 PARTIES

9 (b) A contract of deposit that does not contain provisions in
10 substantially the form provided in subsection (a) is governed by the
11 provisions of this part applicable to the type of account that most nearly
12 conforms to the depositor's intent.

13

14 Section 28-6-205. Designation of Agent.

15 (a) By a writing signed by all parties, the parties may designate as
16 agent of all parties on an account a person other than a party.

17 (b) Unless the terms of an agency designation provide that the
18 authority of the agent terminates on disability or incapacity of a party, the
19 agent's authority survives disability and incapacity. The agent may act for
20 a disabled or incapacitated party until the authority of the agent is
21 terminated.

22 (c) Death of the sole party or last surviving party terminates the
23 authority of an agent.

24

25 Section 28-6-206. Applicability of Part.

26 The provisions of Subpart 2 concerning beneficial ownership as between
27 parties or as between parties and beneficiaries apply only to controversies
28 between those persons and their creditors and other successors, and do not
29 apply to the right of those persons to payment as determined by the terms of
30 the account. Subpart 3 governs the liability and set-off rights of financial
31 institutions that make payments pursuant to it.

32

SUBPART 2

33

OWNERSHIP AS BETWEEN PARTIES AND OTHERS

34

Section 28-6-211. Ownership During Lifetime.

35

(a) In this section, "net contribution" of a party means the sum of all

1 deposits to an account made by or for the party, less all payments from the
2 account made to or for the party which have not been paid to or applied to
3 the use of another party and a proportionate share of any charges deducted
4 from the account, plus a proportionate share of any interest or dividends
5 earned, whether or not included in the current balance. The term includes
6 deposit life insurance proceeds added to the account by reason of death of
7 the party whose net contribution is in question.

8 (b) During the lifetime of all parties, an account belongs to the
9 parties in proportion to the net contribution of each to the sums on deposit,
10 unless there is clear and convincing evidence of a different intent. As
11 between parties married to each other, in the absence of proof otherwise, the
12 net contribution of each is presumed to be an equal amount.

13 (c) A beneficiary in an account having a POD designation has no right
14 to sums on deposit during the lifetime of any party.

15 (d) An agent in an account with an agency designation has no beneficial
16 right to sums on deposit.

17

18 Section 28-6-212. Rights at Death.

19 (a) Except as otherwise provided in this part, on death of a party sums
20 on deposit in a multiple-party account belong to the surviving party or
21 parties. If two or more parties survive and one is the surviving spouse of
22 the decedent, the amount to which the decedent, immediately before death, was
23 beneficially entitled under Section 28-6-211 belongs to the surviving spouse.
24 If two or more parties survive and none is the surviving spouse of the
25 decedent, the amount to which the decedent, immediately before death, was
26 beneficially entitled under Section 28-6-211 belongs to the surviving parties
27 in equal shares, and augments the proportion to which each survivor,
28 immediately before the decedent's death, was beneficially entitled under
29 Section 28-6-211, and the right of survivorship continues between the
30 surviving parties.

31 (b) In an account with a POD designation:

32 (1) On death of one of two or more parties, the rights in sums on
33 deposit are governed by subsection (a).

34 (2) On death of the sole party or the last survivor of two or
35 more parties, sums on deposit belong to the surviving beneficiary or

1 beneficiaries. If two or more beneficiaries survive, sums on deposit belong
2 to them in equal and undivided shares, and there is no right of survivorship
3 in the event of death of a beneficiary thereafter. If no beneficiary
4 survives, sums on deposit belong to the estate of the last surviving party.

5 (c) Sums on deposit in a single-party account without a POD
6 designation, or in a multiple-party account that, by the terms of the
7 account, is without right of survivorship, are not affected by death of a
8 party, but the amount to which the decedent, immediately before death, was
9 beneficially entitled under Section 28-6-211 is transferred as part of the
10 decedent's estate. A POD designation in a multiple-party account without
11 right of survivorship is ineffective. For purposes of this section,
12 designation of an account as a tenancy in common establishes that the account
13 is without right of survivorship.

14 (d) The ownership right of a surviving party or beneficiary, or of the
15 decedent's estate, in sums on deposit is subject to requests for payment made
16 by a party before the party's death, whether paid by the financial
17 institution before or after death, or unpaid. The surviving party or
18 beneficiary, or the decedent's estate, is liable to the payee of an unpaid
19 request for payment. The liability is limited to a proportionate share of
20 the amount transferred under this section, to the extent necessary to
21 discharge the request for payment.

22

23 Section 28-6-213. Alteration of Rights.

24 (a) Rights at death under Section 28-6-212 are determined by the terms
25 of the account at the death of a party. The terms of the account may be
26 altered by written notice given by a party to the financial institution to
27 change the terms of the account or to stop or vary payment under the terms of
28 the account. The notice must be signed by a party and received by the
29 financial institution during the party's lifetime.

30 (b) A right of survivorship arising from the express terms of the
31 account, Section 28-6-212, or a POD designation, may not be altered by will.

32

33 Section 28-6-214. Accounts and Transfers Nontestamentary.

34 Except as provided in Part 2 of Article II (elective share of surviving
35 spouse) or as a consequence of, and to the extent directed by, Section 28-

1 6-215, a transfer resulting from the application of Section 28-6-212 is
2 effective by reason of the terms of the account involved and this part and is
3 not testamentary or subject to Articles I through IV (estate administration).

4

5 Section 28-6-215. Rights of Creditors and Others.

6 (a) If other assets of the estate are insufficient, a transfer
7 resulting from a right of survivorship or POD designation under this part is
8 not effective against the estate of a deceased party to the extent needed to
9 pay claims against the estate and statutory allowances to the surviving
10 spouse and children.

11 (b) A surviving party or beneficiary who receives payment from an
12 account after death of a party is liable to account to the personal
13 representative of the decedent for a proportionate share of the amount
14 received to which the decedent, immediately before death, was beneficially
15 entitled under Section 28-6-211, to the extent necessary to discharge the
16 claims and allowances described in subsection (a) remaining unpaid after
17 application of the decedent's estate. A proceeding to assert the liability
18 may not be commenced unless the personal representative has received a
19 written demand by the surviving spouse, a creditor, a child, or a person
20 acting for a child of the decedent. The proceeding must be commenced within
21 one year after death of the decedent.

22 (c) A surviving party or beneficiary against whom a proceeding to
23 account is brought may join as a party to the proceeding a surviving party or
24 beneficiary of any other account of the decedent.

25 (d) Sums recovered by the personal representative must be administered
26 as part of the decedent's estate. This section does not affect the
27 protection from claims of the personal representative or estate of a deceased
28 party provided in Section 28-6-226 for a financial institution that makes
29 payment in accordance with the terms of the account.

30

31 Section 28-6-216. Community Property and Tenancy by the Entireties.

32 (a) A deposit of community property in an account does not alter the
33 community character of the property or community rights in the property, but
34 a right of survivorship between parties married to each other arising from
35 the express terms of the account or Section 28-6-212 may not be altered by

1 will.

2 (b) This part does not affect the law governing tenancy by the
3 entireties.

4 SUBPART 3

5 PROTECTION OF FINANCIAL INSTITUTIONS

6 Section 28-6-221. Authority of Financial Institution.

7 A financial institution may enter into a contract of deposit for a
8 multiple-party account to the same extent it may enter into a contract of
9 deposit for a single-party account, and may provide for a POD designation and
10 an agency designation in either a single-party account or a multiple-party
11 account. A financial institution need not inquire as to the source of a
12 deposit to an account or as to the proposed application of a payment from an
13 account.

14
15 Section 28-6-222. Payment on Multiple-Party Account.

16 A financial institution, on request, may pay sums on deposit in a
17 multiple-party account to:

18 (1) one or more of the parties, whether or not another party is
19 disabled, incapacitated, or deceased when payment is requested and whether or
20 not the party making the request survives another party; or

21 (2) the personal representative, if any, or, if there is none,
22 the heirs or devisees of a deceased party if proof of death is presented to
23 the financial institution showing that the deceased party was the survivor of
24 all other persons named on the account either as a party or beneficiary,
25 unless the account is without right of survivorship under Section 28-6-212.

26
27 Section 28-6-223. Payment on POD Designation.

28 A financial institution, on request, may pay sums on deposit in an
29 account with a POD designation to:

30 (1) one or more of the parties, whether or not another party is
31 disabled, incapacitated, or deceased when the payment is requested and
32 whether or not a party survives another party;

33 (2) the beneficiary or beneficiaries, if proof of death is
34 presented to the financial institution showing that the beneficiary or
35 beneficiaries survived all persons named as parties; or

1 (3) the personal representative, if any, or, if there is none,
2 the heirs or devisees of a deceased party, if proof of death is presented to
3 the financial institution showing that the deceased party was the survivor of
4 all other persons named on the account either as a party or beneficiary.

5

6 Section 28-6-224. Payment to Designated Agent.

7 A financial institution, on request of an agent under an agency
8 designation for an account, may pay to the agent sums on deposit in the
9 account, whether or not a party is disabled, incapacitated, or deceased when
10 the request is made or received, and whether or not the authority of the
11 agent terminates on the disability or incapacity of a party.

12

13 Section 28-6-225. Payment to Minor.

14 If a financial institution is required or permitted to make payment
15 pursuant to this part to a minor designated as a beneficiary, payment may be
16 made pursuant to the Uniform Transfers to Minors Act.

17

18 Section 28-6-226. Discharge.

19 (a) Payment made pursuant to this part in accordance with the type of
20 account discharges the financial institution from all claims for amounts so
21 paid, whether or not the payment is consistent with the beneficial ownership
22 of the account as between parties, beneficiaries, or their successors.
23 Payment may be made whether or not a party, beneficiary, or agent is
24 disabled, incapacitated, or deceased when payment is requested, received, or
25 made.

26 (b) Protection under this section does not extend to payments made
27 after a financial institution has received written notice from a party, or
28 from the personal representative, surviving spouse, or heir or devisee of a
29 deceased party, to the effect that payments in accordance with the terms of
30 the account, including one having an agency designation, should not be
31 permitted, and the financial institution has had a reasonable opportunity to
32 act on it when the payment is made. Unless the notice is withdrawn by the
33 person giving it, the successor of any deceased party must concur in a
34 request for payment if the financial institution is to be protected under
35 this section. Unless a financial institution has been served with process in

1 an action or proceeding, no other notice or other information shown to have
2 been available to the financial institution affects its right to protection
3 under this section.

4 (c) A financial institution that receives written notice pursuant to
5 this section or otherwise has reason to believe that a dispute exists as to
6 the rights of the parties may refuse, without liability, to make payments in
7 accordance with the terms of the account.

8 (d) Protection of a financial institution under this section does not
9 affect the rights of parties in disputes between themselves or their
10 successors concerning the beneficial ownership of sums on deposit in accounts
11 or payments made from accounts.

12

13 Section 28-6-227. Set-Off.

14 Without qualifying any other statutory right to set-off or lien and
15 subject to any contractual provision, if a party is indebted to a financial
16 institution, the financial institution has a right to set-off against the
17 account. The amount of the account subject to set-off is the proportion to
18 which the party is, or immediately before death was, beneficially entitled
19 under Section 28-6-211 or, in the absence of proof of that proportion, an
20 equal share with all parties.

21

22 ARTICLE VIII

23 EFFECTIVE DATE AND REPEALER

24 Section 28-8-101. Time of Taking Effect; Provisions for Transition.

25 (a) This Code takes effect on January 1, 1996.

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

28 (1) the Code applies to governing instruments executed by
29 decedents dying thereafter;

30 (2) the Code applies to any proceedings in Court then pending or
31 thereafter commenced regardless of the time of the death of decedent except
32 to the extent that in the opinion of the Court the former procedure should be
33 made applicable in a particular case in the interest of justice or because of
34 infeasibility of application of the procedure of this Code;

35 (3) every personal representative holding an appointment on that

1 date, continues to hold the appointment but has only the powers conferred by
2 this Code and is subject to the duties imposed with respect to any act
3 occurring or done thereafter;

4 (4) an act done before the effective date in any proceeding and
5 any accrued right is not impaired by this Code. If a right is acquired,
6 extinguished or barred upon the expiration of a prescribed period of time
7 which has commenced to run by the provisions of any statute before the
8 effective date, the provisions shall remain in force with respect to that
9 right;

10 (5) any rule of construction or presumption provided in this Code
11 applies to governing instruments executed before the effective date unless
12 there is a clear indication of a contrary intent;

13 (6) a person holding office as judge of the Court on the
14 effective date of this Act may continue the office of judge of this Court and
15 may be selected for additional terms after the effective date of this Act
16 even though he does not meet the qualifications of a judge as provided in
17 Article I.

18

19 Section 28-8-102. Specific Repealer and Renumbering.

20 (a) The following provisions of the Arkansas Code are repealed:

21 §§ 28-1-101 through 28-1-103; §§ 28-1-109 and 110; §§ 28-1-112 through 28-1-
22 117; §§ 28-40-101 through 28-40-123; §§ 28-40-301 through 28-40-303; §§ 28-
23 41-101 through 28-41-104; §§ 28-42-101 through 28-42-111; §§ 28-48-101
24 through 28-48-109; §§ 28-48-201 through 28-48-209; §§ 28-49-101 through 28-
25 49-117; §§ 28-50-101 through 28-50-114; §§ 28-51-101 through 28-51-109; §§
26 28-51-201 through 28-51-203; §§ 28-51-301 through 28-51-309; §§ 28-52-101
27 through 28-52-110; §§ 28-53-101 through 28-53-119; § 23-32-1005; and § 23-37-
28 502.

29 (b) The following Code provisions are renumbered:

30 Old Number	New Number
31 § 28-1-104	§ 16-14-110
32 § 28-1-105	§ 16-14-111
33 § 28-1-106	§ 16-14-112
34 § 28-1-107	§ 16-14-113
35 § 28-1-108	§ 16-14-114

