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2 81st General Assembly
3 Regular Session, 1997

A Bill

HOUSE BILL 1127

4
5 By: Representatives Vess and Ferrell
6 By: Senator Russ

For An Act To Be Entitled

"THE UNIFORM PROBATE CODE."

Subtitle

"THE UNIFORM PROBATE CODE."

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

Article I

GENERAL PROVISIONS, DEFINITIONS AND PROBATE JURISDICTION OF COURT

Part 1

SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS

Section 28-1-101. Short Title.

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

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

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

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

(1) to simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors and incapacitated persons;

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

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

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

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

1

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 subject
15 matter and no part of it shall be deemed impliedly repealed by subsequent
16 legislation if it can reasonably be avoided.

17

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

19 Whenever fraud has been perpetrated in connection with any proceeding or
20 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 thereby
22 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 § 20-
35 17-101.

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

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

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

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

18 (6) In the absence of evidence disputing the time of death stated on a
19 document described in paragraph (2) or (3), a document described in paragraph
20 (2) or (3) that states a time of death 120 hours or more after the time of
21 death of another individual, however the time of death of the other individual
22 is determined, establishes by clear and convincing evidence that the
23 individual survived the other individual by 120 hours.

24

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

26 For the purpose of granting consent or approval with regard to the acts
27 or accounts of a personal representative or trustee, including relief from
28 liability or penalty for failure to post bond, to register a trust, or to
29 perform other duties, and for purposes of consenting to modification or
30 termination of a trust or to deviation from its terms, the sole holder or all
31 co-holders of a presently exercisable general power of appointment, including
32 one in the form of a power of amendment or revocation, are deemed to act for
33 beneficiaries to the extent their interests (as objects, takers in default, or
34 otherwise) are subject to the power.

35

PART 2

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 of
6 a decedent or protected person to specific assets alleged to be included in
7 the estate.

8 (7) "Court" means the Probate Court in this State having jurisdiction in
9 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 of
13 all generations, with the relationship of parent and child at each generation
14 being determined by the definition of child and parent contained in this Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (26) "Joint tenants with the right of survivorship" and "community

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (41) "Protective proceeding" means a proceeding described in Section 28-

1 5-103.

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

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

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

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

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

19 (47) "Successor personal representative" means a personal
20 representative, other than a special administrator, who is appointed to
21 succeed a previously appointed personal representative.

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

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

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

30 (51) "Testacy proceeding" means a proceeding to establish a will or
31 determine intestacy.

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

33 (53) "Trust" includes an express trust, private or charitable, with
34 additions thereto, wherever and however created. The term also includes a
35 trust created or determined by judgment or decree under which the trust is to

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

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

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

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

19 PART 3

20 SCOPE, JURISDICTION AND COURTS

21 Section 28-1-301. Territorial Application.

22 Except as otherwise provided in this Code, this Code applies to (1) the
 23 affairs and estates of decedents, missing persons, and persons to be
 24 protected, domiciled in this state, (2) the property of nonresidents located
 25 in this state or property coming into the control of a fiduciary who is
 26 subject to the laws of this state, (3) incapacitated persons and minors in
 27 this state, (4) survivorship and related accounts in this state, and (5)
 28 trusts subject to administration in this state.

29
 30 Section 28-1-302. Subject Matter Jurisdiction.

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

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

4 (c) The Court has jurisdiction over protective proceedings and
 5 guardianship proceedings.

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

9

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

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

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

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

23

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

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

29

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

31 The probate clerk shall keep a record for each decedent, ward, protected
 32 person or trust involved in any document which may be filed with the Court
 33 under this Code, including petitions and applications, demands for notices or
 34 bonds, trust registrations, and of any orders or responses relating thereto by
 35 the Registrar or Court, and establish and maintain a system for indexing,

1 filing or recording which is sufficient to enable users of the records to
2 obtain adequate information. Upon payment of the fees required by law the
3 probate clerk must issue certified copies of any probated wills, letters
4 issued to personal representatives, or any other record or paper filed or
5 recorded. Certificates relating to probated wills must indicate whether the
6 decedent was domiciled in this state and whether the probate was formal or
7 informal. Certificates relating to letters must show the date of appointment.

8

9 Section 28-1-306. Jury Trial.

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

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

16

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

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

22

23 Section 28-1-308. Appeals.

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

31

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

33 A judge of the Court must have the same qualifications as a judge of the
34 chancery court.

35

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

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

8 PART 4

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

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

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

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

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

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

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

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

32

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

34 A person, including a guardian ad litem, conservator, or other
 35 fiduciary, may waive notice by a writing signed by him or his attorney and

1 filed in the proceeding. A person for whom a guardianship or other protective
2 order is sought, a ward, or a protected person may not waive notice.

3

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

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

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

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

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

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

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

32 (3) Notice is required as follows:

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

1 and to another who may bind him.

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

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

14 ARTICLE II

15 INTESTACY, WILLS, AND DONATIVE TRANSFERS

16 PART 1

17 INTESTATE SUCCESSION

18 ARTICLE 2

19 Section 28-2-101. Intestate Estate.

20 (a) Any part of a decedent's estate not effectively disposed of by will
 21 passes by intestate succession to the decedent's heirs as prescribed in this
 22 Code, except as modified by the decedent's will.

23 (b) A decedent by will may expressly exclude or limit the right of an
 24 individual or class to succeed to property of the decedent passing by
 25 intestate succession. If that individual or a member of that class survives
 26 the decedent, the share of the decedent's intestate estate to which that
 27 individual or class would have succeeded passes as if that individual or each
 28 member of that class had disclaimed his or her intestate share.

29

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

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

32 (1) the entire intestate estate if:

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

34 or

35 (ii) all of the decedent's surviving descendants are also

1 descendants of the surviving spouse and there is no other descendant of the
 2 surviving spouse who survives the decedent;

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

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

10 (4) the first \$100,000, plus one-half of any balance of the intestate
 11 estate, if one or more of the decedent's surviving descendants are not
 12 descendants of the surviving spouse;

13 (5) the first \$50,000, plus one-third of any balance of the intestate
 14 estate if,

15 (i) the surviving spouse has been married to decedent for less
 16 than three years before decedent's death,

17 (ii) none of the decedent's surviving descendants are also
 18 descendants of the surviving spouse, and

19 (iii) the intestate is survived by descendants or parents.

20

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

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

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

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

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

31 (4) if there is no surviving descendant, parent, or descendant of a
 32 parent, but the decedent is survived by one or more grandparents or
 33 descendants of grandparents, half of the estate passes to the decedent's
 34 paternal grandparents equally if both survive, or to the surviving paternal
 35 grandparent, or to the descendants of the decedent's paternal grandparents or

1 either of them if both are deceased, the descendants taking by representation;
2 and the other half passes to the decedent's maternal relatives in the same
3 manner; but if there is no surviving grandparent or descendant of a
4 grandparent on either the paternal or the maternal side, the entire estate
5 passes to the decedent's relatives on the other side in the same manner as the
6 half.

7

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

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

17

18 Section 28-2-105. No Taker.

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

21

22 Section 28-2-106. Representation.

23 (a) Definitions. In this section:

24 (1) "Deceased descendant," "deceased parent," or "deceased
25 grandparent" means a descendant, parent, or grandparent who either predeceased
26 the decedent or is deemed to have predeceased the decedent under Section 28-
27 2-104.

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

31 (b) Decedent's Descendants. If, under Section 28-2-103(1), a
32 decedent's intestate estate or a part thereof passes "by representation" to
33 the decedent's descendants, the estate or part thereof is divided into as many
34 equal shares as there are (i) surviving descendants in the generation nearest
35 to the decedent which contains one or more surviving descendants and (ii)

1 deceased descendants in the same generation who left surviving descendants, if
2 any. Each surviving descendant in the nearest generation is allocated one
3 share. The remaining shares, if any, are combined and then divided in the
4 same manner among the surviving descendants of the deceased descendants as if
5 the surviving descendants who were allocated a share and their surviving
6 descendants had predeceased the decedent.

7 (c) Descendants of Parents or Grandparents. If, under Section 28-
8 2-103(3) or (4), a decedent's intestate estate or a part thereof passes "by
9 representation" to the descendants of the decedent's deceased parents or
10 either of them or to the descendants of the decedent's deceased paternal or
11 maternal grandparents or either of them, the estate or part thereof is divided
12 into as many equal shares as there are (i) surviving descendants in the
13 generation nearest the deceased parents or either of them, or the deceased
14 grandparents or either of them, that contains one or more surviving
15 descendants and (ii) deceased descendants in the same generation who left
16 surviving descendants, if any. Each surviving descendant in the nearest
17 generation is allocated one share. The remaining shares, if any, are combined
18 and then divided in the same manner among the surviving descendants of the
19 deceased descendants as if the surviving descendants who were allocated a
20 share and their surviving descendants had predeceased the decedent.

21

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

23 Relatives of the half blood inherit the same share they would inherit if
24 they were of the whole blood.

25

26 Section 28-2-108. Afterborn Heirs.

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

29

30 Section 28-2-109. Advancements.

31 (a) If an individual dies intestate as to all or a portion of his or her
32 estate, property the decedent gave during the decedent's lifetime to an
33 individual who, at the decedent's death, is an heir is treated as an
34 advancement against the heir's intestate share only if (i) the decedent
35 declared in a writing or the heir acknowledged in writing that the gift is an

1 advancement or (ii) the decedent's writing or the heir's written
2 acknowledgment otherwise indicates that the gift is to be taken into account
3 in computing the division and distribution of the decedent's intestate estate.

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

7 (c) If the recipient of the property fails to survive the decedent, the
8 property is not taken into account in computing the division and distribution
9 of the decedent's intestate estate, unless the decedent's writing provides
10 otherwise.

11

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

13 A debt owed to a decedent is not charged against the intestate share of
14 any individual except the debtor. If the debtor fails to survive the
15 decedent, the debt is not taken into account in computing the intestate share
16 of the debtor's descendants.

17

18 Section 28-2-111. Alienage.

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

21

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

23 The estates of dower and curtesy are abolished.

24

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

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

29

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

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

35 (b) An adopted individual is the child of his or her adopting parent or

1 parents and not of his or her natural parents, but adoption of a child by the
 2 spouse of either natural parent has no effect on

3 (i) the relationship between the child and that natural parent or

4 (ii) the right of the child or a descendant of the child to
 5 inherit from or through the other natural parent.

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

9 PART 2

10 ELECTIVE SHARE OF SURVIVING SPOUSE

11 Section 28-2-201. Definitions.

12 In this Part:

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

16 (2) "Fractional interest in property held in joint tenancy with the
 17 right of survivorship," whether the fractional interest is unilaterally
 18 severable or not, means the fraction, the numerator of which is one and the
 19 denominator of which, if the decedent was a joint tenant, is one plus the
 20 number of joint tenants who survive the decedent and which, if the decedent
 21 was not a joint tenant, is the number of joint tenants.

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

25 (4) "Nonadverse party" means a person who does not have a substantial
 26 beneficial interest in the trust or other property arrangement that would be
 27 adversely affected by the exercise or nonexercise of the power that he or she
 28 possesses respecting the trust or other property arrangement. A person having
 29 a general power of appointment over property is deemed to have a beneficial
 30 interest in the property.

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

33 (6) "Presently exercisable general power of appointment" means a power
 34 of appointment under which, at the time in question, the decedent, whether or
 35 not he or she then had the capacity to exercise the power, held a power to

1 create a present or future interest in himself or herself, his or her
 2 creditors, his or her estate, or creditors of his or her estate, and includes
 3 a power to revoke or invade the principal of a trust or other property
 4 arrangement.

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

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

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

10 (10) "Transfer," as it relates to a transfer by or of the decedent,
 11 includes (A) an exercise or release of a presently exercisable general power
 12 of appointment held by the decedent, (B) a lapse at death of a presently
 13 exercisable general power of appointment held by the decedent, and (C) an
 14 exercise, release, or lapse of a general power of appointment that the
 15 decedent created in himself or herself and of a power described in Section 28-
 16 2-205(2)(ii) that the decedent conferred on a nonadverse party.

17

18 Section 28-2-202. Elective Share.

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

25 If the decedent and the spouse were married:

26 The elective-share

27 to each other:

percentage is:

28 Less than 1 year	Supplemental Amount Only.
29 1 year but less than 2 years	3% of the augmented estate.
30 2 years but less than 3 years	6% of the augmented estate.
31 3 years but less than 4 years	9% of the augmented estate.
32 4 years but less than 5 years	12% of the augmented estate.
33 5 years but less than 6 years	15% of the augmented estate.
34 6 years but less than 7 years	18% of the augmented estate.
35 7 years but less than 8 years	21% of the augmented estate.

1	8 years but less than 9 years	24% of the augmented estate.
2	9 years but less than 10 years	27% of the augmented estate.
3	10 years but less than 11 years	30% of the augmented estate.
4	11 years but less than 12 years	34% of the augmented estate.
5	12 years but less than 13 years	38% of the augmented estate.
6	13 years but less than 14 years	42% of the augmented estate.
7	14 years but less than 15 years	46% of the augmented estate.
8	15 years or more	50% of the augmented estate.

9 (b) Supplemental Elective-Share Amount. If the sum of the amounts
10 described in Sections 28-2-207, 28-2-209(a)(1), and that part of the
11 elective-share amount payable from the decedent's probate estate and
12 nonprobate transfers to others under Section 28-2-209(b) and (c) is less than
13 \$50,000, the surviving spouse is entitled to a supplemental elective-share
14 amount equal to \$50,000, minus the sum of the amounts described in those
15 sections. The supplemental elective-share amount is payable from the
16 decedent's probate estate and from recipients of the decedent's nonprobate
17 transfers to others in the order of priority set forth in Section 28-2-209(b)
18 and (c).

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

24 (d) Non-Domiciliary. The right, if any, of the surviving spouse of a
25 decedent who dies domiciled outside this State to take an elective share in
26 property in this State is governed by the law of the decedent's domicile at
27 death.

28

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

30 Subject to Section 28-2-208, the value of the augmented estate, to the
31 extent provided in Sections 28-2-204, 28-2-205, 28-2-206, and 28-2-207,
32 consists of the sum of the values of all property, whether real or personal;
33 movable or immovable, tangible or intangible, wherever situated, that
34 constitute the decedent's net probate estate, the decedent's nonprobate
35 transfers to others, the decedent's nonprobate transfers to the surviving

1 spouse, and the surviving spouse's property and nonprobate transfers to
2 others.

3

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

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

8

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

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

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

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

23 (ii) The decedent's fractional interest in property held by the
24 decedent in joint tenancy with the right of survivorship. The amount included
25 is the value of the decedent's fractional interest, to the extent the
26 fractional interest passed by right of survivorship at the decedent's death to
27 a surviving joint tenant other than the decedent's surviving spouse.

28 (iii) The decedent's ownership interest in property or accounts
29 held in POD, TOD, or co-ownership registration with the right of survivorship.
30 The amount included is the value of the decedent's ownership interest, to the
31 extent the decedent's ownership interest passed at the decedent's death to or
32 for the benefit of any person other than the decedent's estate or surviving
33 spouse.

34 (iv) Proceeds of insurance, including accidental death benefits,
35 on the life of the decedent, if the decedent owned the insurance policy

1 immediately before death or if and to the extent the decedent alone and
2 immediately before death held a presently exercisable general power of
3 appointment over the policy or its proceeds. The amount included is the value
4 of the proceeds, to the extent they were payable at the decedent's death to or
5 for the benefit of any person other than the decedent's estate or surviving
6 spouse.

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

9 (i) Any irrevocable transfer in which the decedent retained the
10 right to the possession or enjoyment of, or to the income from, the property
11 if and to the extent the decedent's right terminated at or continued beyond
12 the decedent's death. The amount included is the value of the fraction of the
13 property to which the decedent's right related, to the extent the fraction of
14 the property passed outside probate to or for the benefit of any person other
15 than the decedent's estate or surviving spouse.

16 (ii) Any transfer in which the decedent created a power over
17 income or property, exercisable by the decedent alone or in conjunction with
18 any other person, or exercisable by a nonadverse party, to or for the benefit
19 of the decedent, creditors of the decedent, the decedent's estate, or
20 creditors of the decedent's estate. The amount included with respect to a
21 power over property is the value of the property subject to the power, and the
22 amount included with respect to a power over income is the value of the
23 property that produces or produced the income, to the extent the power in
24 either case was exercisable at the decedent's death to or for the benefit of
25 any person other than the decedent's surviving spouse or to the extent the
26 property passed at the decedent's death, by exercise, release, lapse, in
27 default, or otherwise, to or for the benefit of any person other than the
28 decedent's estate or surviving spouse. If the power is a power over both
29 income and property and the preceding sentence produces different amounts, the
30 amount included is the greater amount.

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

34 (i) Any property that passed as a result of the termination of a
35 right or interest in, or power over, property that would have been included in

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

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

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

26

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

29 Excluding property passing to the surviving spouse under the federal
30 Social Security system, the value of the augmented estate includes the value
31 of the decedent's nonprobate transfers to the decedent's surviving spouse,
32 which consist of all property that passed outside probate at the decedent's
33 death from the decedent to the surviving spouse by reason of the decedent's
34 death, including:

35 (1) the decedent's fractional interest in property held as a joint

1 tenant with the right of survivorship, to the extent that the decedent's
2 fractional interest passed to the surviving spouse as surviving joint tenant,
3 (2) the decedent's ownership interest in property or accounts held in
4 co-ownership registration with the right of survivorship, to the extent the
5 decedent's ownership interest passed to the surviving spouse as surviving
6 co-owner, and

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

11

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

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

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

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

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

24 (iii) property that passed to the surviving spouse by reason
25 of the decedent's death, but not including the spouse's right to homestead
26 allowance, family allowance, exempt property, or payments under the federal
27 Social Security system; and

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

32 (b) Time of Valuation. Property included under this section is valued
33 at the decedent's death, taking the fact that the decedent predeceased the
34 spouse into account, but, for purposes of subsection (a)(1)(i) and (ii), the
35 values of the spouse's fractional and ownership interests are determined

1 immediately before the decedent's death if the decedent was then a joint
2 tenant or a co-owner of the property or accounts. For purposes of subsection
3 (a)(2), proceeds of insurance that would have been included in the spouse's
4 nonprobate transfers to others under Section 28-2-205(1)(iv) are not valued as
5 if he or she were deceased.

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

9

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

11 (a) Exclusions. The value of any property is excluded from the
12 decedent's nonprobate transfers to others (i) to the extent the decedent
13 received adequate and full consideration in money or money's worth for a
14 transfer of the property or (ii) if the property was transferred with the
15 written joinder of, or if the transfer was consented to in writing by, the
16 surviving spouse.

17 (b) Valuation. The value of property:

18 (1) included in the augmented estate under Section 28-2-205, 28-
19 2-206, or 28-2-207 is reduced in each category by enforceable claims against
20 the included property; and

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

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

32

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

34 (a) Elective-Share Amount Only. In a proceeding for an elective share,
35 the following are applied first to satisfy the elective-share amount and to

1 reduce or eliminate any contributions due from the decedent's probate estate
2 and recipients of the decedent's nonprobate transfers to others:

3 (1) amounts included in the augmented estate under Section 28-
4 2-204 which pass or have passed to the surviving spouse by testate or
5 intestate succession and amounts included in the augmented estate under
6 Section 28-2-206; and

7 (2) amounts included in the augmented estate under Section 28-
8 2-207 up to the applicable percentage thereof. For the purposes of this
9 subsection, the "applicable percentage" is twice the elective-share percentage
10 set forth in the schedule in Section 28-2-202(a) appropriate to the length of
11 time the spouse and the decedent were married to each other.

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

26 (c) Unsatisfied Balance of Elective-Share and Supplemental
27 Elective-Share Amounts. If, after the application of subsections (a) and (b),
28 the elective-share or supplemental elective-share amount is not fully
29 satisfied, the remaining portion of the decedent's nonprobate transfers to
30 others is so applied that liability for the unsatisfied balance of the
31 elective-share or supplemental elective-share amount is equitably apportioned
32 among the recipients of the remaining portion of the decedent's nonprobate
33 transfers to others in proportion to the value of their interests therein.

34

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

1 (a) Only original recipients of the decedent's nonprobate transfers to
2 others, and the donees of the recipients of the decedent's nonprobate
3 transfers to others, to the extent the donees have the property or its
4 proceeds, are liable to make a proportional contribution toward satisfaction
5 of the surviving spouse's elective-share or supplemental elective-share
6 amount. A person liable to make contribution may choose to give up the
7 proportional part of the decedent's nonprobate transfers to him or her or to
8 pay the value of the amount for which he or she is liable.

9 (b) If any section or part of any section of this Part is preempted by
10 federal law with respect to a payment, an item of property, or any other
11 benefit included in the decedent's nonprobate transfers to others, a person
12 who, not for value, receives the payment, item of property, or any other
13 benefit is obligated to return the payment, item of property, or benefit, or
14 is personally liable for the amount of the payment or the value of that item
15 of property or benefit, as provided in Section 28-2-209, to the person who
16 would have been entitled to it were that section or part of that section not
17 preempted.

18

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

20 (a) Except as provided in subsection (b), the election must be made by
21 filing in the court and mailing or delivering to the personal representative,
22 if any, a petition for the elective share within nine months after the date of
23 the decedent's death, or within six months after the probate of the decedent's
24 will, whichever limitation later expires. The surviving spouse must give
25 notice of the time and place set for hearing to persons interested in the
26 estate and to the distributees and recipients of portions of the augmented
27 estate whose interests will be adversely affected by the taking of the
28 elective share. Except as provided in subsection (b), the decedent's
29 nonprobate transfers to others are not included within the augmented estate
30 for the purpose of computing the elective-share, if the petition is filed more
31 than nine months after the decedent's death.

32 (b) Within nine months after the decedent's death, the surviving spouse
33 may petition the court for an extension of time for making an election. If,
34 within nine months after the decedent's death, the spouse gives notice of the
35 petition to all persons interested in the decedent's nonprobate transfers to

1 others, the court for cause shown by the surviving spouse may extend the time
2 for election. If the court grants the spouse's petition for an extension, the
3 decedent's nonprobate transfers to others are not excluded from the augmented
4 estate for the purpose of computing the elective-share and supplemental
5 elective-share amounts, if the spouse makes an election by filing in the court
6 and mailing or delivering to the personal representative, if any, a petition
7 for the elective share within the time allowed by the extension.

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

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

23 (e) An order or judgment of the court may be enforced as necessary in
24 suit for contribution or payment in other courts of this State or other
25 jurisdictions.

26

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

29 (a) Surviving Spouse Must Be Living at Time of Election. The right of
30 election may be exercised only by a surviving spouse who is living when the
31 petition for the elective share is filed in the court under Section 28-
32 2-211(a). If the election is not exercised by the surviving spouse
33 personally, it may be exercised on the surviving spouse's behalf by his or her
34 conservator, guardian, or agent under the authority of a power of attorney.

35 (b) Incapacitated Surviving Spouse. If the election is exercised on

1 behalf of a surviving spouse who is an incapacitated person, that portion of
2 the elective-share and supplemental elective-share amounts due from the
3 decedent's probate estate and recipients of the decedent's nonprobate
4 transfers to others under Section 28-2-209(b) and (c) must be placed in a
5 custodial trust for the benefit of the surviving spouse under the provisions
6 of the Arkansas Custodial Trust Act, except as modified below. For the
7 purposes of this subsection, an election on behalf of a surviving spouse by an
8 agent under a durable power of attorney is presumed to be on behalf of a
9 surviving spouse who is an incapacitated person. For purposes of the
10 custodial trust established by this subsection, (i) the electing guardian,
11 conservator, or agent is the custodial trustee, (ii) the surviving spouse is
12 the beneficiary, and (iii) the custodial trust is deemed to have been created
13 by the decedent spouse by written transfer that takes effect at the decedent
14 spouse's death and that directs the custodial trustee to administer the
15 custodial trust as for an incapacitated beneficiary.

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

20 (1) Neither an incapacitated beneficiary nor anyone acting on
21 behalf of an incapacitated beneficiary has a power to terminate the custodial
22 trust; but if the beneficiary regains capacity, the beneficiary then acquires
23 the power to terminate the custodial trust by delivering to the custodial
24 trustee a writing signed by the beneficiary declaring the termination. If not
25 previously terminated, the custodial trust terminates on the death of the
26 beneficiary.

27 (2) If the beneficiary is incapacitated, the custodial trustee
28 shall expend so much or all of the custodial trust property as the custodial
29 trustee considers advisable for the use and benefit of the beneficiary and
30 individuals who were supported by the beneficiary when the beneficiary became
31 incapacitated, or who are legally entitled to support by the beneficiary.
32 Expenditures may be made in the manner, when, and to the extent that the
33 custodial trustee determines suitable and proper, without court order but with
34 regard to other support, income, and property of the beneficiary and benefits
35 of medical or other forms of assistance from any state or federal government

1 or governmental agency for which the beneficiary must qualify on the basis of
2 need.

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

10

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

12 (a) The right of election of a surviving spouse and the rights of the
13 surviving spouse to homestead allowance, exempt property, and family
14 allowance, or any of them, may be waived, wholly or partially, before or after
15 marriage, by a written contract, agreement, or waiver signed by the surviving
16 spouse.

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

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

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

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

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

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

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

31 (d) Unless it provides to the contrary, a waiver of "all rights," or
32 equivalent language, in the property or estate of a present or prospective
33 spouse or a complete property settlement entered into after or in anticipation
34 of separation or divorce is a waiver of all rights of elective share,
35 homestead allowance, exempt property, and family allowance by each spouse in

1 the property of the other and a renunciation by each of all benefits that
2 would otherwise pass to him or her from the other by intestate succession or
3 by virtue of any will executed before the waiver or property settlement.

4

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

6 (a) Although under Section 28-2-205 a payment, item of property, or
7 other benefit is included in the decedent's nonprobate transfers to others, a
8 payor or other third party is not liable for having made a payment or
9 transferred an item of property or other benefit to a beneficiary designated
10 in a governing instrument, or for having taken any other action in good faith
11 reliance on the validity of a governing instrument, upon request and
12 satisfactory proof of the decedent's death, before the payor or other third
13 party received written notice from the surviving spouse or spouse's
14 representative of an intention to file a petition for the elective share or
15 that a petition for the elective share has been filed. A payor or other third
16 party is liable for payments made or other actions taken after the payor or
17 other third party received written notice of an intention to file a petition
18 for the elective share or that a petition for the elective share has been
19 filed.

20 (b) A written notice of intention to file a petition for the elective
21 share or that a petition for the elective share has been filed must be mailed
22 to the payor's or other third party's main office or home by registered or
23 certified mail, return receipt requested, or served upon the payor or other
24 third party in the same manner as a summons in a civil action. Upon receipt
25 of written notice of intention to file a petition for the elective share or
26 that a petition for the elective share has been filed, a payor or other third
27 party may pay any amount owed or transfer or deposit any item of property held
28 by it to or with the court having jurisdiction of the probate proceedings
29 relating to the decedent's estate, or if no proceedings have been commenced,
30 to or with the court having jurisdiction of probate proceedings relating to
31 decedents' estates located in the county of the decedent's residence. The
32 court shall hold the funds or item of property, and, upon its determination
33 under Section 28-2-211(d), shall order disbursement in accordance with the
34 determination. If no petition is filed in the court within the specified time
35 under Section 28-2-211(a) or, if filed, the demand for an elective share is

1 withdrawn under Section 28-2-211(c), the court shall order disbursement to the
 2 designated beneficiary. Payments or transfers to the court or deposits made
 3 into court discharge the payor or other third party from all claims for
 4 amounts so paid or the value of property so transferred or deposited.

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

9 PART 3

10 SPOUSE AND CHILDREN UNPROVIDED FOR IN WILLS

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

12 (a) If a testator's surviving spouse married the testator after the
 13 testator executed his or her will, the surviving spouse is entitled to
 14 receive, as an intestate share, no less than the value of the share of the
 15 estate he or she would have received if the testator had died intestate as to
 16 that portion of the testator's estate, if any, that neither is devised to a
 17 child of the testator who was born before the testator married the surviving
 18 spouse and who is not a child of the surviving spouse nor is devised to a
 19 descendant of such a child or passes under Sections 28-2-603 or 28-2-604 to
 20 such a child or to a descendant of such a child, unless:

21 (1) it appears from the will or other evidence that the will was
 22 made in contemplation of the testator's marriage to the surviving spouse;

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

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

29 (b) In satisfying the share provided by this section, devises made by
 30 the will to the testator's surviving spouse, if any, are applied first, and
 31 other devises, other than a devise to a child of the testator who was born
 32 before the testator married the surviving spouse and who is not a child of the
 33 surviving spouse or a devise or substitute gift under Section 28-2-603 or 28-
 34 2-604 to a descendant of such a child, abate as provided in Section 28-3-902.

35

1 Section 28-2-302. Omitted Children.

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

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

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

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

19 (ii) The omitted after-born or after-adopted child is
20 entitled to receive the share of the testator's estate, as limited in
21 subparagraph (i), that the child would have received had the testator included
22 all omitted after-born and after-adopted children with the children to whom
23 devises were made under the will and had given an equal share of the estate to
24 each child.

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

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

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

35 (1) it appears from the will that the omission was intentional;

1 decedent's estate or would have been but for the homestead provision of the
2 constitution.

3

4 Section 28-2-403. Exempt Property.

5 In addition to the homestead allowance, the decedent's surviving spouse
6 is entitled from the estate to a value, not exceeding \$10,000 in excess of any
7 security interests therein, in household furniture, automobiles, furnishings,
8 appliances, and personal effects. If there is no surviving spouse, the
9 decedent's children are entitled jointly to the same value. If encumbered
10 chattels are selected and the value in excess of security interests, plus that
11 of other exempt property, is less than \$10,000, or if there is not \$10,000
12 worth of exempt property in the estate, the spouse or children are entitled to
13 other assets of the estate, if any, to the extent necessary to make up the
14 \$10,000 value. Rights to exempt property and assets needed to make up a
15 deficiency of exempt property have priority over all claims against the
16 estate, but the right to any assets to make up a deficiency of exempt property
17 abates as necessary to permit earlier payment of homestead allowance and
18 family allowance. These rights are in addition to any benefit or share
19 passing to the surviving spouse or children by the decedent's will, unless
20 otherwise provided, by intestate succession, or by way of elective share.

21

22 Section 28-2-404. Family Allowance.

23 (a) In addition to the right to homestead allowance and exempt property,
24 the decedent's surviving spouse and minor children whom the decedent was
25 obligated to support and children who were in fact being supported by the
26 decedent are entitled to a reasonable allowance in money out of the estate for
27 their maintenance during the period of administration, which allowance may not
28 continue for longer than one year if the estate is inadequate to discharge
29 allowed claims. The allowance may be paid as a lump sum or in periodic
30 installments. It is payable to the surviving spouse, if living, for the use
31 of the surviving spouse and minor and dependent children; otherwise to the
32 children, or persons having their care and custody. If a minor child or
33 dependent child is not living with the surviving spouse, the allowance may be
34 made partially to the child or his or her guardian or other person having the
35 child's care and custody, and partially to the spouse, as their needs may

1 appear. The family allowance is exempt from and has priority over all claims
2 except the homestead allowance.

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

8

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

10 (a) If the estate is otherwise sufficient, property specifically devised
11 may not be used to satisfy rights to homestead allowance or exempt property.
12 Subject to this restriction, the surviving spouse, guardians of minor
13 children, or children who are adults may select property of the estate as
14 homestead allowance and exempt property. The personal representative may make
15 those selections if the surviving spouse, the children, or the guardians of
16 the minor children are unable or fail to do so within a reasonable time or
17 there is no guardian of a minor child. The personal representative may
18 execute an instrument or deed of distribution to establish the ownership of
19 property taken as homestead allowance or exempt property. The personal
20 representative may determine the family allowance in a lump sum not exceeding
21 \$18,000 or periodic installments not exceeding \$1,500 per month for one year,
22 and may disburse funds of the estate in payment of the family allowance and
23 any part of the homestead allowance payable in cash. The personal
24 representative or an interested person aggrieved by any selection,
25 determination, payment, proposed payment, or failure to act under this section
26 may petition the court for appropriate relief, which may include a family
27 allowance other than that which the personal representative determined or
28 could have determined.

29 (b) If the right to an elective share is exercised on behalf of a
30 surviving spouse who is an incapacitated person, the personal representative
31 may add any unexpended portions payable under the homestead allowance, exempt
32 property, and family allowance to the trust established under Section 28-
33 2-212(b).

34

PART 5

35

WILLS, WILL CONTRACTS, AND CUSTODY AND DEPOSIT OF WILLS

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

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

4

5 Section 28-2-502. Execution; Witnessed Wills; Holographic Wills.

6 (a) Except as provided in subsection (b) and in Sections 28-2-503, 28-
7 2-506, and 28-2-513, a will must be:

8 (1) in writing;

9 (2) signed by the testator or in the testator's name by some other
10 individual in the testator's conscious presence and at the testator's request;
11 and

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

16 (b) A will that does not comply with subsection (a) is valid as a
17 holographic will, whether or not witnessed, if the signature and the entire
18 body of the will are in the testator's handwriting. The will may be
19 established by the evidence of at least two (2) credible disinterested
20 witnesses to the handwriting and signature of the testator, notwithstanding
21 there may be no attesting witnesses to the will.

22 (c) Intent that the document constitute the testator's will can be
23 established by extrinsic evidence, including, for holographic wills, portions
24 of the document that are not in the testator's handwriting.

25

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

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

35

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

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

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

14 _____
15 Testator

16 We, _____, _____, the witnesses, sign our names to this instrument,
17 being first duly sworn, and do hereby declare to the undersigned authority
18 that the testator signs and executes this instrument as [his] [her] will and
19 that [he] [she] signs it willingly (or willingly directs another to sign for
20 [him] [her]), and that each of us, in the presence and hearing of the
21 testator, hereby signs this will as witness to the testator's signing, and
22 that to the best of our knowledge the testator is eighteen years of age or
23 older, of sound mind, and under no constraint or undue influence.

24
25 _____
26 Witness

27 _____
28 Witness

29 The State of _____
30 County of _____

31 Subscribed, sworn to and acknowledged before me by _____, the
32 testator, and subscribed and sworn to before me by _____, and _____,
33 witness, this ____ day of _____.

34
35 (Seal)

1 (Signed) _____

2

3 _____

4 (Official capacity of officer)

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

11 The State of _____

12 County of _____

13 We, _____, _____, and _____, the testator and the witnesses,
14 respectively, whose names are signed to the attached or foregoing instrument,
15 being first duly sworn, do hereby declare to the undersigned authority that
16 the testator signed and executed the instrument as the testator's will and
17 that [he] [she] had signed willingly (or willingly directed another to sign
18 for [him] [her]), and that [he] [she] executed it as [his] [her] free and
19 voluntary act for the purposes therein expressed, and that each of the
20 witnesses, in the presence and hearing of the testator, signed the will as
21 witness and that to the best of [his] [her] knowledge the testator was at that
22 time eighteen years or age or older, of sound mind, and under no constraint or
23 undue influence.

24

25 _____

26 Testator

27 _____

28 Witness

29 _____

30 Witness

31 Subscribed, sworn to and acknowledged before me by _____, the
32 testator, and subscribed and sworn to before me by _____, and _____,
33 witnesses, this ____ day of _____.

34 (Seal)

35

1 (Signed) _____

2 _____

3 (Official capacity of officer)

4 (c) A signature affixed to a self-proving affidavit attached to a will
5 is considered a signature affixed to the will, if necessary to prove the
6 will's due execution.

7

8 Section 28-2-505. Who May Witness.

9 (a) An individual generally competent to be a witness may act as a
10 witness to a will.

11 (b) The signing of a will by an interested witness does not invalidate
12 the will or any provision of it.

13

14 Section 28-2-506. Choice of Law as to Execution.

15 A written will is valid if executed in compliance with Section 28-2-502
16 or 28-2-503 or if its execution complies with the law at the time of execution
17 of the place where the will is executed, or of the law of the place where at
18 the time of execution or at the time of death the testator is domiciled, has a
19 place of abode, or is a national.

20

21 Section 28-2-507. Revocation by Writing or by Act.

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

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

25 (2) by performing a revocatory act on the will, if the testator
26 performed the act with the intent and for the purpose of revoking the will or
27 part or if another individual performed the act in the testator's conscious
28 presence and by the testator's direction. For purposes of this paragraph,
29 "revocatory act on the will" includes burning , tearing, canceling,
30 obliterating, or destroying the will or any part of it. A burning, tearing,
31 or canceling is a "revocatory act on the will," whether or not the burn, tear,
32 or cancellation touched any of the words on the will.

33 (b) If a subsequent will does not expressly revoke a previous will, the
34 execution of the subsequent will wholly revokes the previous will by
35 inconsistency if the testator intended the subsequent will to replace rather

1 than supplement the previous will.

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

7 (d) The testator is presumed to have intended a subsequent will to
8 supplement rather than replace a previous will if the subsequent will does not
9 make a complete disposition of the testator's estate. If this presumption
10 arises and is not rebutted by clear and convincing evidence, the subsequent
11 will revokes the previous will only to the extent the subsequent will is
12 inconsistent with the previous will; each will is fully operative on the
13 testator's death to the extent they are not inconsistent.

14

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

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

18

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

20 (a) If a subsequent will that wholly revoked a previous will is
21 thereafter revoked by a revocatory act under Section 28-2-507(a)(2), the
22 previous will remains revoked unless it is revived. The previous will is
23 revived if it is evident from the circumstances of the revocation of the
24 subsequent will or from the testator's contemporary or subsequent declarations
25 that the testator intended the previous will to take effect as executed.

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

32 (c) If a subsequent will that revoked a previous will in whole or in
33 part is thereafter revoked by another, later, will, the previous will remains
34 revoked in whole or in part, unless it or its revoked part is revived. The
35 previous will or its revoked part is revived to the extent it appears from the

1 terms of the later will that the testator intended the previous will to take
2 effect.

3

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

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

8

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

10 (a) A will may validly devise property to the trustee of a trust
11 established or to be established (i) during the testator's lifetime by the
12 testator, by the testator and some other person, or by some other person,
13 including a funded or unfunded life insurance trust, although the settlor has
14 reserved any or all rights of ownership of the insurance contracts, or (ii) at
15 the testator's death by the testator's devise to the trustee, if the trust is
16 identified in the testator's will and its terms are set forth in a written
17 instrument, other than a will, executed before, concurrently with, or after
18 the execution of the testator's will or in another individual's will if that
19 other individual has predeceased the testator, regardless of the existence,
20 size, or character of the corpus of the trust. The devise is not invalid
21 because the trust is amendable or revocable, or because the trust was amended
22 after the execution of the will or the testator's death.

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

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

32

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

34 A will may dispose of property by reference to acts and events that have
35 significance apart from their effect upon the dispositions made by the will,

1 whether they occur before or after the execution of the will or before or
2 after the testator's death. The execution or revocation of another
3 individual's will is such an event.

4

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

7 Whether or not the provisions relating to holographic wills apply, a
8 will may refer to a written statement or list to dispose of items of tangible
9 personal property not otherwise specifically disposed of by the will, other
10 than money. To be admissible under this section as evidence of the intended
11 disposition, the writing must be signed by the testator and must describe the
12 items and the devisees with reasonable certainty. The writing may be referred
13 to as one to be in existence at the time of the testator's death; it may be
14 prepared before or after the execution of the will; it may be altered by the
15 testator after its preparation; and it may be a writing that has no
16 significance apart from its effect on the dispositions made by the will.

17

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

19 A contract to make a will or devise, or not to revoke a will or devise,
20 or to die intestate, if executed after the effective date of this Article, may
21 be established only by (i) provisions of a will stating material provisions of
22 the contract, (ii) an express reference in a will to a contract and extrinsic
23 evidence proving the terms of the contract, or (iii) a writing signed by the
24 decedent evidencing the contract. The execution of a joint will or mutual
25 wills does not create a presumption of a contract not to revoke the will or
26 wills.

27

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

29 (a) Deposit of Will. A will may be deposited by the person making it,
30 or by some person for him, with the probate court of the county of his
31 residence, to be safely kept until delivered or disposed of as hereinafter
32 provided. The probate clerk, on being paid the fee of two dollars (\$2.00)
33 shall receive and keep the will, and give a certificate of deposit for it.

34 (b) How Enclosed. Every will intended to be deposited as aforesaid
35 shall be enclosed in a sealed wrapper, which shall have endorsed thereon "Will

1 of," followed by the name of the testator. The probate clerk shall endorse
2 thereon the day when and the person by whom it was delivered. The wrapper may
3 also be endorsed with the name of the person to whom the will is to be
4 delivered after the death of the testator. It shall not be opened or read
5 until delivered to a person entitled to receive it, or otherwise disposed of
6 as hereinafter provided.

7 (c) To Whom Delivered. During the lifetime of the testator, the will
8 shall be delivered only to him, or to some person authorized by him by an
9 order in writing duly signed by him and acknowledged before an officer
10 authorized to administer oaths or attested by the signatures of two (2)
11 persons competent to witness the will. After his death, the probate clerk
12 shall notify the person named in the endorsement on the wrapper of the will,
13 if there is a person so named, and deliver it to him.

14 (d) When Will to Be Opened. If the will is not delivered to a person
15 named in the endorsement on the wrapper, it shall be publicly opened in the
16 court within thirty (30) days after notice of the testator's death, and be
17 retained by the court until offered for probate. Notice shall be given to the
18 executor, if any, named therein and to such other persons as the court may
19 designate. If the proper venue is in another court, the will shall be
20 transmitted to such court, but, before such transmission, a true copy shall be
21 made and retained in the court in which the will was deposited.

22

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

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

32

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

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

1 unenforceable if probable cause exists for instituting proceedings.

2 PART 6

3 RULES OF CONSTRUCTION APPLICABLE ONLY TO WILLS

4 Section 28-2-601. Scope.

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

7

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

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

12

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

14 (a) Definitions. In this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (3) In this subsection:

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

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

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

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

35

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

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

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

8

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

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

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

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

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

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

26

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

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

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

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

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

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

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

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

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

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

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

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

35

1 Section 28-2-607. Nonexoneration.

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

5

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

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

15

16 Section 28-2-609. Ademption by Satisfaction.

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

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

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

31

PART 7

32 RULES OF CONSTRUCTION APPLICABLE TO WILLS AND OTHER GOVERNING INSTRUMENTS

33 Section 28-2-701. Scope.

34 In the absence of a finding of a contrary intention, the rules of
35 construction in this Part control the construction of a governing instrument.

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

4

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

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

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

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

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

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

34 (2) the governing instrument expressly indicates that an
35 individual is not required to survive an event, including the death of another

1 individual, by any specified period or expressly requires the individual to
2 survive the event by a specified period; but survival of the event or the
3 specified period must be established by clear and convincing evidence;

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

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

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

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

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

1 disbursement in accordance with the determination. Payments, transfers, or
2 deposits made to or with the court discharge the payor or other third party
3 from all claims for the value of amounts paid to or items of property
4 transferred to or deposited with the court.

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

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

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

26

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

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

35

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

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

9

10 Section 28-2-705. Class Gifts Construed to Accord With Intestate
11 Succession.

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

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

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

32

33 Section 28-2-706. Life Insurance; Retirement Plan; Account With POD
34 Designation; Transfer-on-Death Registration; Deceased Beneficiary.

35 (a) Definitions. In this section:

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

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

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

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

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

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

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

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

34 (2) Except as provided in paragraph (4), if the beneficiary
35 designation is in the form of a class gift, other than a beneficiary

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

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

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

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

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

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

35 (3) In this subsection:

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

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

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

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

18 (d) Protection of Payors.

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

27 (2) The written notice of the claim must be mailed to the payor's
28 main office or home by registered or certified mail, return receipt requested,
29 or served upon the payor in the same manner as a summons in a civil action.
30 Upon receipt of written notice of the claim, a payor may pay any amount owed
31 by it to the court having jurisdiction of the probate proceedings relating to
32 the decedent's estate or, if no proceedings have been commenced, to the court
33 having jurisdiction of probate proceedings relating to decedents' estates
34 located in the county of the decedent's residence. The court shall hold the
35 funds and, upon its determination under this section, shall order disbursement

1 in accordance with the determination. Payment made to the court discharges
2 the payor from all claims for the amounts paid.

3 (e) Protection of Bona Fide Purchasers; Personal Liability of
4 Recipient.

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

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

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

27 (a) Definitions. In this section:

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

1 are to pass under the residuary clause.

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

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

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

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

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

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

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

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

31 (2) Except as provided in paragraph (4), if the future interest is
32 in the form of a class gift, other than a future interest to "issue,"
33 "descendants," "heirs of the body," "heirs," "next of kin," "relatives," or
34 "family," or a class described by language of similar import, a substitute
35 gift is created in the surviving descendants of any deceased beneficiary. The

1 property to which the beneficiaries would have been entitled had all of them
2 survived the distribution date passes to the surviving beneficiaries and the
3 surviving descendants of the deceased beneficiaries. Each surviving
4 beneficiary takes the share to which he or she would have been entitled had
5 the deceased beneficiaries survived the distribution date. Each deceased
6 beneficiary's surviving descendants who are substituted for the deceased
7 beneficiary take by representation the share to which the deceased beneficiary
8 would have been entitled had the deceased beneficiary survived the
9 distribution date. For the purposes of this paragraph, "deceased beneficiary"
10 means a class member who failed to survive the distribution date and left one
11 or more surviving descendants.

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

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

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

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

31 (2) If there is a younger-generation future interest, the property
32 passes under the younger-generation substitute gift and not under the primary
33 substitute gift.

34 (3) In this subsection:

35 (i) "Primary future interest" means the future interest that

1 would have taken effect had all the deceased beneficiaries of the alternative
2 future interests who left surviving descendants survived the distribution
3 date.

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

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

13 (iv) "Younger-generation substitute gift" means the
14 substitute gift created with respect to the younger-generation future
15 interest.

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

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

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

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

31 (1) the property passes under the donor's gift-in-default clause,
32 if any, which clause is treated as creating a future interest under the terms
33 of a trust; and

34 (2) if no taker is produced by the application of paragraph (1),
35 the property passes as provided in subsection (d). For purposes of subsection

1 (d), "transferor" means the donor if the power was a nongeneral power and
2 means the donee if the power was a general power.

3

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

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

13

14 Section 28-2-709. Representation; Per Capita at Each Generation; Per
15 Stirpes.

16 (a) Definitions. In this section:

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

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

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

28 (b) Representation; Per Capita at Each Generation. If an applicable
29 statute or a governing instrument calls for property to be distributed "by
30 representation" or "per capita at each generation," the property is divided
31 into as many equal shares as there are (i) surviving descendants in the
32 generation nearest to the designated ancestor which contains one or more
33 surviving descendants (ii) and deceased descendants in the same generation who
34 left surviving descendants, if any. Each surviving descendant in the nearest
35 generation is allocated one share. The remaining shares, if any, are combined

1 and then divided in the same manner among the surviving descendants of the
2 deceased descendants as if the surviving descendants who were allocated a
3 share and their surviving descendants had predeceased the distribution date.

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

12 (d) Deceased Descendant With No Surviving Descendant Disregarded. For
13 the purposes of subsections (b) and (c), an individual who is deceased and
14 left no surviving descendant is disregarded, and an individual who leaves a
15 surviving ancestor who is a descendant of the designated ancestor is not
16 entitled to a share.

17

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

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

25

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

27 If an applicable statute or a governing instrument calls for a present
28 or future distribution to or creates a present or future interest in a
29 designated individual's "heirs," "heirs at law," "next of kin," "relatives,"
30 or "family," or language of similar import, the property passes to those
31 persons, including the state, and in such shares as would succeed to the
32 designated individual's intestate estate under the intestate succession law of
33 the designated individual's domicile if the designated individual died when
34 the disposition is to take effect in possession or enjoyment. If the
35 designated individual's surviving spouse is living but is remarried at the

1 time the disposition is to take effect in possession or enjoyment, the
2 surviving spouse is not an heir of the designated individual.

3 PART 8

4 GENERAL PROVISIONS CONCERNING PROBATE AND NONPROBATE TRANSFERS

5 Section 28-2-801. Disclaimer of Property Interests.

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

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

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

32 (2) If a property or interest has devolved to the disclaimant
33 under a nontestamentary instrument or contract, the disclaimer must be
34 delivered or filed, if of a present interest, not later than nine months after
35 the effective date of the nontestamentary instrument or contract and, if of a

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

12 (3) A surviving joint tenant or tenant by the entireties may
13 disclaim as a separate interest any property or interest therein devolving to
14 him or her by right of survivorship. A surviving joint tenant or tenant by
15 the entireties may disclaim the entire interest in any property or interest
16 therein that is the subject of a joint tenancy or tenancy by the entireties
17 devolving to him or her, if the joint tenancy or tenancy by the entireties was
18 created by act of a deceased joint tenant or tenant by the entireties, the
19 survivor did not join in creating the joint tenancy or tenancy by the
20 entireties, and has not accepted a benefit under it.

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

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

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

28 (1) If property or an interest therein devolves to a disclaimant
29 under a testamentary instrument, under a power of appointment exercised by a
30 testamentary instrument, or under the laws of intestacy, and the decedent has
31 not provided for another disposition of that interest, should it be
32 disclaimed, or of disclaimed, or failed interests in general, the disclaimed
33 interest devolves as if the disclaimant had predeceased the decedent, but if
34 by law or under the testamentary instrument the descendants of the disclaimant
35 would share in the disclaimed interest by representation or otherwise were the

1 disclaimant to predecease the decedent, then the disclaimed interest passes by
2 representation, or passes as directed by the governing instrument, to the
3 descendants of the disclaimant who survive the decedent. A future interest
4 that takes effect in possession or enjoyment after the termination of the
5 estate or interest disclaimed takes effect as if the disclaimant had
6 predeceased the decedent. A disclaimer relates back for all purposes to the
7 date of death of the decedent.

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

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

27 (e) Waiver and Bar. The right to disclaim property or an interest
28 therein is barred by (i) an assignment, conveyance, encumbrance, pledge, or
29 transfer of the property or interest, or a contract therefor, (ii) a written
30 waiver of the right to disclaim, (iii) an acceptance of the property or
31 interest or a benefit under it or (iv) a sale of the property or interest
32 under judicial sale made before the disclaimer is made.

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

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

6

7 Section 28-2-802. Effect of Divorce, Annulment, and Decree of
8 Separation.

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

14 (b) For purposes of Parts 1, 2, 3, and 4 of this Article, and of Section
15 28-3-203, a surviving spouse does not include:

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

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

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

26

27 Section 28-2-803. Effect of Homicide on Intestate Succession, Wills,
28 Trusts, Joint Assets, Life Insurance, and Beneficiary Designations.

29 (a) Definitions. In this section:

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

33 (2) "Governing instrument" means a governing instrument executed
34 by the decedent.

35 (3) "Revocable," with respect to a disposition, appointment,

1 provision, or nomination, means one under which the decedent, at the time of
2 or immediately before death, was alone empowered, by law or under the
3 governing instrument, to cancel the designation, in favor of the killer,
4 whether or not the decedent was then empowered to designate himself or herself
5 in place of his or her killer and whether or not the decedent then had
6 capacity to exercise the power.

7 (b) Forfeiture of Statutory Benefits. An individual who feloniously
8 and intentionally kills the decedent forfeits all benefits under this Article
9 with respect to the decedent's estate, including an intestate share, an
10 elective share, an omitted spouse's or child's share, a homestead allowance,
11 exempt property, and a family allowance. If the decedent died intestate, the
12 decedent's intestate estate passes as if the killer disclaimed his or her
13 intestate share.

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

16 (1) revokes any revocable (i) disposition or appointment of
17 property made by the decedent to the killer in a governing instrument, (ii)
18 provision in a governing instrument conferring a general or nongeneral power
19 of appointment on the killer, and (iii) nomination of the killer in a
20 governing instrument, nominating or appointing the killer to serve in any
21 fiduciary or representative capacity, including a personal representative,
22 executor, trustee, or agent; and

23 (2) severs the interests of the decedent and killer in property
24 held by them at the time of the killing as joint tenants with the right of
25 survivorship, transforming the interests of the decedent and killer into
26 tenancies in common.

27 (d) Effect of Severance. A severance under subsection (c)(2) does not
28 affect any third-party interest in property acquired for value and in good
29 faith reliance on an apparent title by survivorship in the killer unless a
30 writing declaring the severance has been noted, registered, filed, or recorded
31 in records appropriate to the kind and location of the property which are
32 relied upon, in the ordinary course of transactions involving such property,
33 as evidence of ownership.

34 (e) Effect of Revocation. Provisions of a governing instrument are
35 given effect as if the killer disclaimed all provisions revoked by this

1 section or, in the case of a revoked nomination in a fiduciary or
2 representative capacity, as if the killer predeceased the decedent.

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

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

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

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

30 (2) Written notice of a claimed forfeiture or revocation under
31 paragraph (1) must be mailed to the payor's or other third party's main office
32 or home by registered or certified mail, return receipt requested, or served
33 upon the payor or other third party in the same manner as a summons in a civil
34 action. Upon receipt of written notice of a claimed forfeiture or revocation
35 under this section, a payor or other third party may pay any amount owed or

1 transfer or deposit any item of property held by it to or with the court
2 having jurisdiction of the probate proceedings relating to the decedent's
3 estate, or if no proceedings have been commenced, to or with the court having
4 jurisdiction of probate proceedings relating to decedents' estates located in
5 the county of the decedent's residence. The court shall hold the funds or
6 item of property and, upon its determination under this section, shall order
7 disbursement in accordance with the determination. Payments, transfers, or
8 deposits made to or with the court discharge the payor or other third party
9 from all claims for the value of amounts paid to or items of property
10 transferred to or deposited with the court.

11 (i) Protection of Bona Fide Purchasers; Personal Liability of
12 Recipient.

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

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

32

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

35 (a) Definitions. In this section:

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

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

9 (3) "Divorced individual" includes an individual whose marriage
10 has been annulled.

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

14 (5) "Relative of the divorced individual's former spouse" means an
15 individual who is related to the divorced individual's former spouse by blood,
16 adoption, or affinity and who, after the divorce or annulment, is not related
17 to the divorced individual by blood, adoption, or affinity.

18 (6) "Revocable," with respect to a disposition, appointment,
19 provision, or nomination, means one under which the divorced individual, at
20 the time of the divorce or annulment, was alone empowered, by law or under the
21 governing instrument, to cancel the designation in favor of his or her former
22 spouse or former spouse's relative, whether or not the divorced individual was
23 then empowered to designate himself or herself in place of his or her former
24 spouse or in place of his or her former spouse's relative and whether or not
25 the divorced individual then had the capacity to exercise the power.

26 (b) Revocation Upon Divorce. Except as provided by the express terms
27 of a governing instrument, a court order, or a contract relating to the
28 division of the marital estate made between the divorced individuals before or
29 after the marriage, divorce, or annulment, the divorce or annulment of a
30 marriage:

31 (1) revokes any revocable (i) disposition or appointment of
32 property made by a divorced individual to his or her former spouse in a
33 governing instrument and any disposition or appointment created by law or in a
34 governing instrument to a relative of the divorced individual's former spouse,
35 (ii) provision in a governing instrument conferring a general or nongeneral

1 power of appointment on the divorced individual's former spouse or on a
2 relative of the divorced individual's former spouse, and (iii) nomination in a
3 governing instrument, nominating a divorced individual's former spouse or a
4 relative of the divorced individual's former spouse to serve in any fiduciary
5 or representative capacity, including a personal representative, executor,
6 trustee, conservator, agent, or guardian; and

7 (2) severs the interests of the former spouses in property held by
8 them at the time of the divorce or annulment as joint tenants with the right
9 of survivorship, transforming the interests of the former spouses into
10 tenancies in common.

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

18 (d) Effect of Revocation. Provisions of a governing instrument are
19 given effect as if the former spouse and relatives of the former spouse
20 disclaimed all provisions revoked by this section or, in the case of a revoked
21 nomination in a fiduciary or representative capacity, as if the former spouse
22 and relatives of the former spouse died immediately before the divorce or
23 annulment.

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

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

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

31 (1) A payor or other third party is not liable for having made a
32 payment or transferred an item of property or any other benefit to a
33 beneficiary designated in a governing instrument affected by a divorce,
34 annulment, or remarriage, or for having taken any other action in good faith
35 reliance on the validity of the governing instrument, before the payor or

1 other third party received written notice of the divorce, annulment, or
2 remarriage. A payor or other third party is liable for a payment made or
3 other action taken after the payor or other third party received written
4 notice of a claimed forfeiture or revocation under this section.

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

21 (h) Protection of Bona Fide Purchasers; Personal Liability of
22 Recipient.

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

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

5 (e) Effect of Certain "Later-of" Type Language. If, in measuring a
6 period from the creation of a trust or other property arrangement, language in
7 a governing instrument (i) seeks to disallow the vesting or termination of any
8 interest or trust beyond, (ii) seeks to postpone the vesting or termination of
9 any interest or trust until, or (iii) seeks to operate in effect in any
10 similar fashion upon, the later of (A) the expiration of a period of time not
11 exceeding 21 years after the death of the survivor of specified lives in being
12 at the creation of the trust or other property arrangement or (B) the
13 expiration of a period of time that exceeds or might exceed 21 years after the
14 death of the survivor of lives in being at the creation of the trust or other
15 property arrangement, that language is inoperative to the extent it produces a
16 period of time that exceeds 21 years after the death of the survivor of the
17 specified lives.

18

19 Section 28-2-902. When Nonvested Property Interest or Power of
20 Appointment Created.

21 (a) Except as provided in subsections (b) and (c) and in Section 28-
22 2-905(a), the time of creation of a nonvested property interest or a power of
23 appointment is determined under general principles of property law.

24 (b) For purposes of Subpart 1 of this Part, if there is a person who
25 alone can exercise a power created by a governing instrument to become the
26 unqualified beneficial owner of (i) a nonvested property interest or (ii) a
27 property interest subject to a power of appointment described in Section 28-
28 2-901(b) or (c), the nonvested property interest or power of appointment is
29 created when the power to become the unqualified beneficial owner terminates.

30 (c) For purposes of Subpart 1 of this Part, a nonvested property
31 interest or a power of appointment arising from a transfer of property to a
32 previously funded trust or other existing property arrangement is created when
33 the nonvested property interest or power of appointment in the original
34 contribution was created.

35

1 Section 28-2-903. Reformation.

2 Upon the petition of an interested person, a court shall reform a
3 disposition in the manner that most closely approximates the transferor's
4 manifested plan of distribution and is within the 90 years allowed by Section
5 28-2-901(a)(2), 28-2-901(b)(2), or 28-2-901(c)(2) if:

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

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

11 (3) a nonvested property interest that is not validated by Section 28-
12 2-901(a)(1) can vest but not within 90 years after its creation.

13

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

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

17 (1) a nonvested property interest or a power of appointment arising out
18 of a nondonative transfer, except a nonvested property interest or a power of
19 appointment arising out of (i) a premarital or postmarital agreement, (ii) a
20 separation or divorce settlement, (iii) a spouse's election, (iv) a similar
21 arrangement arising out of a prospective, existing, or previous marital
22 relationship between the parties, (v) a contract to make or not to revoke a
23 will or trust, (vi) a contract to exercise or not to exercise a power of
24 appointment, (vii) a transfer in satisfaction of a duty of support, or (viii)
25 a reciprocal transfer;

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

29 (3) a power to appoint a fiduciary;

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

33 (5) a nonvested property interest held by a charity, government, or
34 governmental agency or subdivision, if the nonvested property interest is
35 preceded by an interest held by another charity, government, or governmental

1 agency or subdivision;

2 (6) a nonvested property interest in or a power of appointment with
3 respect to a trust or other property arrangement forming part of a pension,
4 profit-sharing, stock bonus, health, disability, death benefit, income
5 deferral, or other current or deferred benefit plan for one or more employees,
6 independent contractors, or their beneficiaries or spouses, to which
7 contributions are made for the purpose of distributing to or for the benefit
8 of the participants or their beneficiaries or spouses the property, income, or
9 principal in the trust or other property arrangement, except a nonvested
10 property interest or a power of appointment that is created by an election of
11 a participant or a beneficiary or spouse;

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

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

17

18 Section 28-2-905. Prospective Application.

19 (a) Except as extended by subsection (b), Subpart 1 of this Part applies
20 to a nonvested property interest or a power of appointment that is created on
21 or after the effective date of Subpart 1 of this Part. For purposes of this
22 section, a nonvested property interest or a power of appointment created by
23 the exercise of a power of appointment is created when the power is
24 irrevocably exercised or when a revocable exercise becomes irrevocable.

25 (b) If a nonvested property interest or a power of appointment was
26 created before the effective date of Subpart 1 of this Part and is determined
27 in a judicial proceeding, commenced on or after the effective date of Subpart
28 1 of this Part, to violate this State's rule against perpetuities as that rule
29 existed before the effective date of Subpart 1 of this Part, a court upon the
30 petition of an interested person may reform the disposition in the manner that
31 most closely approximates the transferor's manifested plan of distribution and
32 is within the limits of the rule against perpetuities applicable when the
33 nonvested property interest or power of appointment was created.

34

35 Section 28-2-906. Supersession Repeal.

1 an individual designated for that purpose in the trust instrument or, if none,
 2 by an individual appointed by a court upon application to it by an individual.

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

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

11 (7) If no trustee is designated or no designated trustee is
 12 willing or able to serve, a court shall name a trustee. A court may order the
 13 transfer of the property to another trustee, if required to assure that the
 14 intended use is carried out and if no successor trustee is designated in the
 15 trust instrument or if no designated successor trustee agrees to serve or is
 16 able to serve. A court may also make such other orders and determinations as
 17 shall be advisable to carry out the intent of the transferor and the purpose
 18 of this section.

19 PART 10

20 INTERNATIONAL WILL; INFORMATION REGISTRATION

21 Section 28-2-1001. Definitions.

22 In this Part:

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

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

30
 31 Section 28-2-1002. International Will; Validity.

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

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

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

5

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

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

10 (b) The testator shall declare in the presence of two witnesses and of a
11 person authorized to act in connection with international wills that the
12 document is his will and that he knows the contents thereof. The testator
13 need not inform the witnesses, or the authorized person, of the contents of
14 the will.

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

18 (d) When the testator is unable to sign, the absence of his signature
19 does not affect the validity of the international will if the testator
20 indicates the reason for his inability to sign and the authorized person makes
21 note thereof on the will. In these cases, it is permissible for any other
22 person present, including the authorized person or one of the witnesses, at
23 the direction of the testator to sign the testator's name for him, if the
24 authorized person makes note of this also on the will, but it is not required
25 that any person sign the testator's name for him.

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

28

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

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

35 (b) The date of the will shall be the date of its signature by the

1 authorized person. That date shall be noted at the end of the will by the
 2 authorized person.

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

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

9

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

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

16 CERTIFICATE

17 (Convention of October 26, 1973)

18 1. I, _____ (name, address and capacity), a person authorized
 19 to act in connection with international wills

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

21 3. (testator) _____

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

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

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

26 has declared that the attached document is his will and that he knows the
 27 contents thereof.

28 5. I furthermore certify that:

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

30 (1) the testator has signed the will or has acknowledged his
 31 signature previously affixed.

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

35 * and the signature has been affixed by _____ (name

1 and address)

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

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

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

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

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

11 12. PLACE OF EXECUTION

12 13. DATE

13 14. SIGNATURE and, if necessary, SEAL

14 * to be completed if appropriate

15

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

17 In the absence of evidence to the contrary, the certificate of the
18 authorized person shall be conclusive of the formal validity of the instrument
19 as a will under this Part. The absence or irregularity of a certificate shall
20 not affect the formal validity of a will under this Part.

21

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

23 The international will shall be subject to the ordinary rules of
24 revocation of wills.

25

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

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

31

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

34 Individuals who have been admitted to practice law before the courts of
35 this state and who are in good standing as active law practitioners in this

1 state, are hereby declared to be authorized persons in relation to
 2 international wills.

3

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

5 The Secretary of State shall establish a registry system by which
 6 authorized persons may register in a central information center, information
 7 regarding the execution of international wills, keeping that information in
 8 strictest confidence until the death of the maker and then making it available
 9 to any person desiring information about any will who presents a death
 10 certificate or other satisfactory evidence of the testator's death to the
 11 center. Information that may be received, preserved in confidence until
 12 death, and reported as indicated is limited to the name, social-security or
 13 any other individual-identifying number established by law, address, and date
 14 and place of birth of the testator, and the intended place of deposit or
 15 safekeeping of the instrument pending the death of the maker. The Secretary
 16 of State, at the request of the authorized person, may cause the information
 17 it receives about execution of any international will to be transmitted to the
 18 registry system of another jurisdiction as identified by the testator, if that
 19 other system adheres to rules protecting the confidentiality of the
 20 information similar to those established in this state.

21

22 ARTICLE III

23 PROBATE OF WILLS AND ADMINISTRATION

24

PART 1

25

GENERAL PROVISIONS

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

27 The power of a person to leave property by will, and the rights of
 28 creditors, devisees, and heirs to his property are subject to the restrictions
 29 and limitations contained in this Code to facilitate the prompt settlement of
 30 estates. Upon the death of a person, his real and personal property devolves
 31 to the persons to whom it is devised by his last will or to those indicated as
 32 substitutes for them in cases involving lapse, renunciation, or other
 33 circumstances affecting the devolution of testate estate, or in the absence of
 34 testamentary disposition, to his heirs, or to those indicated as substitutes
 35 for them in cases involving renunciation or other circumstances affecting

1 devolution of intestate estates, subject to homestead allowance, exempt
2 property and family allowance, to rights of creditors, elective share of the
3 surviving spouse, and to administration.

4

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

6 Except as provided in Section 28-3-1201, to be effective to prove the
7 transfer of any property or to nominate an executor, a will must be declared
8 to be valid by an order of informal probate by the Registrar, or an
9 adjudication of probate by the Court.

10

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

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

17

18 Section 28-3-104. Claims Against Decedent; Necessity of
19 Administration.

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

30

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

33 Persons interested in decedents' estates may apply to the Registrar for
34 determination in the informal proceedings provided in this Article, and may
35 petition the Court for orders in formal proceedings within the Court's

1 jurisdiction including but not limited to those described in this Article.
2 The Court has exclusive jurisdiction of formal proceedings to determine how
3 decedents' estates subject to the laws of this state are to be administered,
4 expended and distributed. The Court has concurrent jurisdiction of any other
5 action or proceeding concerning a succession or to which an estate, through a
6 personal representative, may be a party, including actions to determine title
7 to property alleged to belong to the estate, and of any action or proceeding
8 in which property distributed by a personal representative or its value is
9 sought to be subjected to rights of creditors or successors of the decedent.

10

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

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

21

22 Section 28-3-107. Scope of Proceedings; Proceedings Independent;
23 Exception.

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

1

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

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

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

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

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

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

31 (5) a formal testacy proceeding may be commenced at any time after
32 three years from the decedent's death for the purpose of establishing an
33 instrument to direct or control the ownership of property passing or
34 distributable after the decedent's death from one other than the decedent when
35 the property is to be appointed by the terms of the decedent's will or is to

1 pass or be distributed as a part of the decedent's estate or its transfer is
 2 otherwise to be controlled by the terms of the decedent's will.

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

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

9

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

11 No statute of limitation running on a cause of action belonging to a
 12 decedent which had not been barred as of the date of his death, shall apply to
 13 bar a cause of action surviving the decedent's death sooner than four months
 14 after death. A cause of action which, but for this section, would have been
 15 barred less than four months after death, is barred after four months unless
 16 tolled.

17

PART 2

18 VENUE FOR PROBATE AND ADMINISTRATION; PRIORITY TO ADMINISTER; DEMAND FOR
 19 NOTICE

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

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

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

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

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

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

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

9

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

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

20

21 Section 28-3-203. Priority Among Persons Seeking Appointment as
22 Personal Representative.

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

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

27 (2) the surviving spouse of the decedent who is a devisee of the
28 decedent;

29 (3) other devisees of the decedent;

30 (4) the surviving spouse of the decedent;

31 (5) other heirs of the decedent;

32 (6) 45 days after the death of the decedent, any creditor.

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

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

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

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

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

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

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

31 (1) under the age of 21;

32 (2) a person whom the Court finds unsuitable in formal
33 proceedings.

34 (g) A personal representative appointed by a court of the decedent's
35 domicile has priority over all other persons except where the decedent's will

1 nominates different persons to be personal representative in this state and in
 2 the state of domicile. The domiciliary personal representative may nominate
 3 another, who shall have the same priority as the domiciliary personal
 4 representative.

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

8

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

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

26

27

PART 3

28 INFORMAL PROBATE AND APPOINTMENT PROCEEDINGS; SUCCESSION WITHOUT
 29 ADMINISTRATION

30 Section 28-3-301. Informal Probate or Appointment Proceedings;
 31 Application; Contents.

32 (a) Applications for informal probate or informal appointment shall be
 33 directed to the Registrar, and verified by the applicant to be accurate and
 34 complete to the best of his knowledge and belief as to the following
 35 information:

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

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

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

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

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

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

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

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

26 (i) that the original of the decedent's last will is in the
27 possession of the court, or accompanies the application, or that an
28 authenticated copy of a will probated in another jurisdiction accompanies the
29 application;

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

32 (iii) that after the exercise of reasonable diligence, the
33 applicant is unaware of any instrument revoking the will, and that the
34 applicant believes that the instrument which is the subject of the application
35 is the decedent's last will.

1 (3) An application for informal appointment of a personal
2 representative to administer an estate under a will shall describe the will by
3 date of execution and state the time and place of probate or the pending
4 application or petition for probate. The application for appointment shall
5 adopt the statements in the application or petition for probate and state the
6 name, address and priority for appointment of the person whose appointment is
7 sought.

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

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

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

17 (5) An application for appointment of a personal representative to
18 succeed a personal representative appointed under a different testacy status
19 shall refer to the order in the most recent testacy proceeding, state the name
20 and address of the person whose appointment is sought and of the person whose
21 appointment will be terminated if the application is granted, and describe the
22 priority of the applicant.

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

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

34

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

1 Informal Probate.

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

9

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

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

13 (1) the application is complete;

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

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

18 (4) on the basis of the statements in the application, venue is
19 proper;

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

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

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

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

30 (c) A will which appears to have the required signatures and which
31 contains an attestation clause showing that requirements of execution under
32 Section 28-2-502, 28-2-503 or 28-2-506 have been met shall be probated without
33 further proof. In other cases, the Registrar may assume execution if the will
34 appears to have been properly executed, or he may accept a sworn statement or
35 affidavit of any person having knowledge of the circumstances of execution,

1 whether or not the person was a witness to the will.

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

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

13

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

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

19

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

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

26

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

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

33 (b) If an informal probate is granted, within 30 days thereafter the
34 applicant shall give written information of the probate to the heirs and
35 devisees. The information shall include the name and address of the

1 applicant, the name and location of the court granting the informal probate,
2 and the date of the probate. The information shall be delivered or sent by
3 ordinary mail to each of the heirs and devisees whose address is reasonably
4 available to the applicant. No duty to give information is incurred if a
5 personal representative is appointed who is required to give the written
6 information required by Section 28-3-705. An applicant's failure to give
7 information as required by this section is a breach of his duty to the heirs
8 and devisees but does not affect the validity of the probate.

9

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

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

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

27

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

30 (a) In informal appointment proceedings, the Registrar must determine
31 whether:

32 (1) the application for informal appointment of a personal
33 representative is complete;

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

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

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

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

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

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

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

19

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

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

27

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

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

35

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

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

6

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

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

15

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

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

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

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

35 (b) The application must state whether letters of administration are

1 outstanding, whether a petition for appointment of a personal representative
 2 of the decedent is pending in any court of this State, and that the applicants
 3 waive their right to seek appointment of a personal representative.

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

10

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

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

13 (1) the application is complete in accordance with Section 28-
 14 3-313;

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

18 (3) venue is proper;

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

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

23 (6) the application requests informal probate of a will, the
 24 application and findings conform with Sections 28-3-301(a)(2) and 28-
 25 3-303(a)(c)(d) and (e) so the will is admitted to probate; and

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

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

30 (c) Except as provided in Section 28-3-322, the Registrar shall deny the
 31 application if any creditor, heir, or devisee who is qualified by Section 28-
 32 3-605 to demand bond files an objection.

33

34 Section 28-3-315. Universal Succession; Duty of Registrar; Effect of
 35 Statement of Universal Succession.

1 Upon receipt of an application under Section 28-3-313, if at least 120
2 hours have elapsed since the decedent's death, the Registrar, upon granting
3 the application, shall issue a written statement of universal succession
4 describing the estate as set forth in the application and stating that the
5 applicants (i) are the universal successors to the assets of the estate as
6 provided in Section 28-3-312, (ii) have assumed liability for the obligations
7 of the decedent, and (iii) have acquired the powers and liabilities of
8 universal successors. The statement of universal succession is evidence of
9 the universal successors' title to the assets of the estate. Upon its
10 issuance, the powers and liabilities of universal successors provided in
11 Sections 28-3-316 through 28-3-322 attach and are assumed by the applicants.
12

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

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

15 (1) Universal successors have full power of ownership to deal with the
16 assets of the estate subject to the limitations and liabilities in this Act.
17 The universal successors shall proceed expeditiously to settle and distribute
18 the estate without adjudication but if necessary may invoke the jurisdiction
19 of the court to resolve questions concerning the estate.

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

23 (3) For purposes of collecting assets in another state whose law does
24 not provide for universal succession, universal successors have the same
25 standing and power as personal representatives or distributees in this State.
26

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

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

1 (b) In the proportions and subject to the limits expressed in Section
2 28-3-321, universal successors are personally liable to other heirs, devisees,
3 and persons entitled to property of the decedent for the assets or amounts
4 that would be due those heirs, were the estate administered, but no allowance
5 having priority over devisees may be claimed for attorney's fees or charges
6 for preservation of the estate in excess of reasonable amounts properly
7 incurred.

8 (c) Universal successors are entitled to their interests in the estate
9 as heirs or devisees subject to priority and abatement pursuant to Section 28-
10 3-902 and to agreement pursuant to Section 28-3-912.

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

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

16

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

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

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

27

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

30 Not later than thirty days after issuance of the statement of universal
31 succession, each universal successor shall inform the heirs and devisees who
32 did not join in the application of the succession without administration. The
33 information must be delivered or be sent by ordinary mail to each of the heirs
34 and devisees whose address is reasonably available to the universal
35 successors. The information must include the names and addresses of the

1 universal successors, indicate that it is being sent to persons who have or
2 may have some interest in the estate, and describe the court where the
3 application and statement of universal succession has been filed. The failure
4 of a universal successor to give this information is a breach of duty to the
5 persons concerned but does not affect the validity of the approval of
6 succession without administration or the powers or liabilities of the
7 universal successors. A universal successor may inform other persons of the
8 succession without administration by delivery or by ordinary first class mail.

9

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

12 If a personal representative is subsequently appointed, universal
13 successors are personally liable for restitution of any property of the estate
14 to which they are not entitled as heirs or devisees of the decedent and their
15 liability is the same as a distributee under Section 28-3-909, subject to the
16 provisions of Sections 28-3-317 and 28-3-321 and the limitations of Section
17 28-3-1006.

18

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

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

28

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

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

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

7

8

PART 4

9

FORMAL TESTACY AND APPOINTMENT PROCEEDINGS

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

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

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

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

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

1 absence of a request, or if the request is denied, the commencement of a
 2 formal proceeding has no effect on the powers and duties of a previously
 3 appointed personal representative other than those relating to distribution.
 4

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

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

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

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

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

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

25 (b) A petition for adjudication of intestacy and appointment of an
 26 administrator in intestacy must request a judicial finding and order that the
 27 decedent left no will and determining the heirs, contain the statements
 28 required by (1) and (4) of Section 28-3-301(a) and indicate whether supervised
 29 administration is sought. A petition may request an order determining
 30 intestacy and heirs without requesting the appointment of an administrator, in
 31 which case, the statements required by subparagraph (ii) of Section 28-
 32 3-301(a)(4) above may be omitted.

33

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

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

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

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

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

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

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

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

34

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

1 Probate.

2 Any party to a formal proceeding who opposes the probate of a will for
3 any reason shall state in his pleadings his objections to probate of the 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 by
22 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 are
25 presumed subject to rebuttal without the testimony of any witness upon filing
26 the will and the acknowledgment and affidavits annexed or attached thereto,
27 unless there is proof of fraud or forgery affecting the acknowledgment or
28 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 the
33 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 of
33 its legal custodian that the copy introduced is a true copy and that the will
34 has become effective under the law of the other place.

35

1 Section 28-3-410. Formal Testacy Proceedings; Probate of More Than One
2 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 that,
17 though one or more instruments are entitled to be probated, the decedent's
18 estate is or may be partially intestate, the Court shall enter an order to
19 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 28-
25 3-411, including an order that the decedent left no valid will and determining
26 heirs, is final as to all persons with respect to all issues concerning the
27 decedent's estate that the court considered or might have considered incident
28 to its rendition relevant to the question of whether the decedent left a valid
29 will, and to the determination of heirs, except that:

30 (1) The court shall entertain a petition for modification or vacation of
31 its order and probate of another will of the decedent if it is shown that the
32 proponents of the later-offered will: (i) were unaware of its existence at
33 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 that
2 one or more persons were omitted from the determination and it is also shown
3 that the persons were unaware of their relationship to the decedent, were
4 unaware of his death or were given no notice of any proceeding concerning his
5 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 decedent
29 by reason of any fraud or intentional wrongdoing, the alleged decedent may
30 recover any estate or its proceeds from distributees that is in their hands,
31 or the value of distributions received by them, to the extent that any
32 recovery from distributees is equitable in view of all of the circumstances.

33

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

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

3

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

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

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

29

PART 5

30

SUPERVISED ADMINISTRATION

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

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

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

8

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

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

32

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

35 (a) The pendency of a proceeding for supervised administration of a

1 decedent's estate stays action on any informal application then pending or
 2 thereafter filed.

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

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

11

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

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

22

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

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

32

PART 6

33 PERSONAL REPRESENTATIVE; APPOINTMENT, CONTROL AND TERMINATION OF AUTHORITY

34 Section 28-3-601. Qualification.

35 Prior to receiving letters, a personal representative shall qualify by

1 filing with the appointing Court any required bond and a statement of
2 acceptance of the duties of the office.

3

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

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

12

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

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

28

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

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

1 security, in an amount not less than the estimate. The Registrar shall
2 determine that the bond is duly executed by a corporate surety, or one or more
3 individual sureties whose performance is secured by pledge of personal
4 property, mortgage on real property or other adequate security. The Registrar
5 may permit the amount of the bond to be reduced by the value of assets of the
6 estate deposited with a domestic financial institution (as defined in Section
7 28-6-101) in a manner that prevents their unauthorized disposition. On
8 petition of the personal representative or another interested person the Court
9 may excuse a requirement of bond, increase or reduce the amount of the bond,
10 release sureties, or permit the substitution of another bond with the same or
11 different sureties.

12

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

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

27

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

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

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

34 (2) Unless otherwise provided by the terms of the approved bond,
35 sureties are jointly and severally liable with the personal representative and

1 with each other. The address of sureties shall be stated in the bond.

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

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

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

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

19

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

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

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

34

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

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

14

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

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

26

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

28 (a) An appointment of a personal representative terminates as provided
29 in Section 28-3-1003, one year after the filing of a closing statement.

30 (b) An order closing an estate as provided in Section 28-3-1001 or 28-
31 3-1002 terminates an appointment of a personal representative.

32 (c) A personal representative may resign his position by filing a
33 written statement of resignation with the Registrar after he has given at
34 least 15 days written notice to the persons known to be interested in the
35 estate. If no one applies or petitions for appointment of a successor

1 representative within the time indicated in the notice, the filed statement of
2 resignation is ineffective as a termination of appointment and in any event is
3 effective only upon the appointment and qualification of a successor
4 representative and delivery of the assets to him.

5

6 Section 28-3-611. Termination of Appointment by Removal; Cause;
7 Procedure.

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

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

29

30 Section 28-3-612. Termination of Appointment; Change of Testacy
31 Status.

32 Except as otherwise ordered in formal proceedings, the probate of a will
33 subsequent to the appointment of a personal representative in intestacy or
34 under a will which is superseded by formal probate of another will, or the
35 vacation of an informal probate of a will subsequent to the appointment of the

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

11

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

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

25

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

27 A special administrator may be appointed:

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

32 (2) in a formal proceeding by order of the Court on the petition of any
33 interested person and finding, after notice and hearing, that appointment is
34 necessary to preserve the estate or to secure its proper administration
35 including its administration in circumstances where a general personal

1 representative cannot or should not act. If it appears to the Court that an
2 emergency exists, appointment may be ordered without notice.

3

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

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

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

11

12 Section 28-3-616. Special Administrator; Appointed Informally; Powers
13 and Duties.

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

20

21 Section 28-3-617. Special Administrator; Formal Proceedings; Power
22 and Duties.

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

28

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

30 The appointment of a special administrator terminates in accordance with
31 the provisions of the order of appointment or on the appointment of a general
32 personal representative. In other cases, the appointment of a special
33 administrator is subject to termination as provided in Sections 28-3-608
34 through 28-3-611.

35

PART 7

1 DUTIES AND POWERS OF PERSONAL REPRESENTATIVES

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

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

12

13 Section 28-3-702. Priority Among Different Letters.

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

21

22 Section 28-3-703. General Duties; Relation and Liability to Persons
23 Interested in Estate; Standing to Sue.

24 (a) In dealing with the estate assets, a personal representative shall
25 observe the standards of care that would be observed by a prudent man dealing
26 with the property of another, and if the personal representative has special
27 skills or is named personal representative on the basis of representations of
28 special skills or expertise, he is under a duty to use those skills. A
29 personal representative is under a duty to settle and distribute the estate of
30 the decedent in accordance with the terms of any probated and effective will
31 and this Code, and as expeditiously and efficiently as is consistent with the
32 best interests of the estate. He shall use the authority conferred upon him
33 by this Code, the terms of the will, if any, and any order in proceedings to
34 which he is party 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 as
14 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 state
18 and the courts of any other jurisdiction as his decedent had immediately prior
19 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 of
8 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, his
19 powers or other duties. A personal representative may inform other persons of
20 his appointment by delivery or ordinary first class mail.

21

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

24 Within 3 months after his appointment, a personal representative, who is
25 not a special administrator or a successor to another representative who has
26 previously discharged this duty, shall prepare and file or mail an inventory
27 of property owned by the decedent at the time of his death, listing it with
28 reasonable detail, and indicating as to each listed item, its fair market
29 value as of the date of the decedent's death, and the type and amount of any
30 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 action
31 against the heir or devisee for possession thereof, that the possession of the
32 property by the personal representative is necessary for purposes of
33 administration. The personal representative shall pay taxes on, and take all
34 steps reasonably necessary for the management, protection and preservation of,
35 the estate in his possession. He may maintain an action to recover possession

1 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 personal
20 representative is liable to interested persons for damage or loss resulting
21 from breach of his fiduciary duty to the same extent as a trustee of an
22 express trust. The rights of purchasers and others dealing with a personal
23 representative shall be determined as provided in Sections 28-3-713 and 28-
24 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 fair
33 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 of
21 the laws relating to commercial transactions and laws simplifying transfers of
22 securities by fiduciaries.

23

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

26 Except as restricted or otherwise provided by the will or by an order in
27 a formal proceeding and subject to the priorities stated in Section 28-3-902,
28 a personal representative, acting reasonably for the benefit of the interested
29 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 payable
16 and are not immediately distributable, deposit or invest liquid assets of the
17 estate, including moneys received from the sale of other assets, in federally
18 insured interest-bearing accounts, readily marketable secured loan
19 arrangements or other prudent investments which would be reasonable for use by
20 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 the
34 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 obligor,
19 or extend, renew or in any manner modify the terms of any obligation owing to
20 the estate. If the personal representative holds a mortgage, pledge or other
21 lien upon property of another person, he may, in lieu of foreclosure, accept a
22 conveyance or transfer of encumbered assets from the owner thereof in
23 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; consent,
28 directly or through a committee or other agent, to the reorganization,
29 consolidation, merger, dissolution, or liquidation of a corporation or other
30 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 advisors,
34 or agents, even if they are associated with the personal representative, to
35 advise or assist the personal representative in the performance of his

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

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

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

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

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

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

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

27

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

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

34

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

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

13

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

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

20

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

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

29

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

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

35

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

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

12 PART 8

13 CREDITORS' CLAIMS

14 Section 28-3-801. Notice to Creditors.

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

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

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

31

32 Section 28-3-802. Statutes of Limitations.

33 (a) Unless an estate is insolvent, the personal representative, with the
34 consent of all successors whose interests would be affected, may waive any
35 defense of limitations available to the estate. If the defense is not waived,

1 no claim barred by a statute of limitations at the time of the decedent's
2 death may be allowed or paid.

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

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

10

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

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

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

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

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

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

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

34 or

35 (2) any other claim, within the later of four months after it

1 arises, or the time specified in subsection (a)(1).

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

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

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

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

11

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

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

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

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

33 (3) If a claim is presented under subsection (1), no proceeding thereon
34 may be commenced more than 60 days after the personal representative has
35 failed a notice of disallowance; but, in the case of a claim which is not

1 presently due or which is contingent or unliquidated, the personal
2 representative may consent to an extension of the 60-day period, or to avoid
3 injustice the Court, on petition, may order an extension of the 60-day period,
4 but in no event shall the extension run beyond the applicable statute of
5 limitations.

6

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

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

11 (1) costs and expenses of administration;

12 (2) reasonable funeral expenses;

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

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

16 (5) debts and taxes with preference under other laws of this
17 state;

18 (6) all other claims.

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

22

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

24 (a) As to claims presented in the manner described in Section 28-3-804
25 within the time limit prescribed in 3-803, the personal representative may
26 mail a notice to any claimant stating that the claim has been disallowed. If,
27 after allowing or disallowing a claim, the personal representative changes his
28 decision concerning the claim, he shall notify the claimant. The personal
29 representative may not change a disallowance of a claim after the time for the
30 claimant to file a petition for allowance or to commence a proceeding on the
31 claim has run and the claim has been barred. Every claim which is disallowed
32 in whole or in part by the personal representative is barred so far as not
33 allowed unless the claimant files a petition for allowance in the Court or
34 commences a proceeding against the personal representative not later than 60
35 days after the mailing of the notice of disallowance or partial allowance if

1 the notice warns the claimant of the impending bar. Failure of the personal
2 representative to mail notice to a claimant of action on his claim for 60 days
3 after the time for original presentation of the claim has expired has the
4 effect of a notice of allowance.

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

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

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

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

32

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

34 (a) Upon the expiration of the earlier of the time limitations provided
35 in Section 28-3-803 for the presentation of claims, the personal

1 representative shall proceed to pay the claims allowed against the estate in
2 the order of priority prescribed, after making provision for homestead, family
3 and support allowances, for claims already presented that have not yet been
4 allowed or whose allowance has been appealed, and for unbarred claims that may
5 yet be presented, including costs and expenses of administration. By petition
6 to the Court in a proceeding for the purpose, or by appropriate motion if the
7 administration is supervised, a claimant whose claim has been allowed but not
8 paid may secure an order directing the personal representative to pay the
9 claim to the extent funds of the estate are available to pay it.

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

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

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

21

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

23 (a) Unless otherwise provided in the contract, a personal representative
24 is not individually liable on a contract properly entered into in his
25 fiduciary capacity in the course of administration of the estate unless he
26 fails to reveal his representative capacity and identify the estate in the
27 contract.

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

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

1 individually liable therefor.

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

5

6 Section 28-3-809. Secured Claims.

7 Payment of a secured claim is upon the basis of the amount allowed if
8 the creditor surrenders his security; otherwise payment is upon the basis of
9 one of the following:

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

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

18

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

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

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

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

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

34

35 Section 28-3-811. Counterclaims.

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

9

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

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

16

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

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

22

23 Section 28-3-814. Encumbered Assets.

24 If any assets of the estate are encumbered by mortgage, pledge, lien, or
25 other security interest, the personal representative may pay the encumbrance
26 or any part thereof, renew or extend any obligation secured by the encumbrance
27 or convey or transfer the assets to the creditor in satisfaction of his lien,
28 in whole or in part, whether or not the holder of the encumbrance has
29 presented a claim, if it appears to be for the best interest of the estate.
30 Payment of an encumbrance does not increase the share of the distributee
31 entitled to the encumbered assets unless the distributee is entitled to
32 exoneration.

33

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

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

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

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

25

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

27 The estate of a non-resident decedent being administered by a personal
28 representative appointed in this state shall, if there is a personal
29 representative of the decedent's domicile willing to receive it, be
30 distributed to the domiciliary personal representative for the benefit of the
31 successors of the decedent unless (1) by virtue of the decedent's will, if
32 any, and applicable choice of law rules, the successors are identified
33 pursuant to the local law of this state without reference to the local law of
34 the decedent's domicile; (2) the personal representative of this state, after
35 reasonable inquiry, is unaware of the existence or identity of a domiciliary

1 personal representative; or (3) the Court orders otherwise in a proceeding
 2 for a closing order under Section 28-3-1001 or incident to the closing of a
 3 supervised administration. In other cases, distribution of the estate of a
 4 decedent shall be made in accordance with the other Parts of this Article.

5 PART 9

6 SPECIAL PROVISIONS RELATING TO DISTRIBUTION

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

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

18

19 Section 28-3-902. Distribution; Order in Which Assets Appropriated;
 20 Abatement.

21 (a) Except as provided in subsection (b) and except as provided in
 22 connection with the share of the surviving spouse who elects to take an
 23 elective share, shares of distributees abate, without any preference or
 24 priority as between real and personal property, in the following order: (1)
 25 property not disposed of by the will; (2) residuary devise; (3) general
 26 devise; (4) specific devise. For purposes of abatement, a general devise
 27 charged on any specific property or fund is a specific devise to the extent of
 28 the value of the property on which it is charged, and upon the failure or
 29 insufficiency of the property on which it is charged, a general devise to the
 30 extent of the failure or insufficiency. Abatement within each classification
 31 is in proportion to the amounts of property each of the beneficiaries would
 32 have received if full distribution of the property had been made in accordance
 33 with the terms of the will.

34 (b) If the will expresses an order of abatement, or if the testamentary
 35 plan or the express or implied purpose of the devise would be defeated by the

1 order of abatement stated in subsection (a), the shares of the distributees
2 abate as may be found necessary to give effect to the intention of the
3 testator.

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

7

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

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

13

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

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

18

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

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

23

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

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

28 (1) A specific devisee is entitled to distribution of the thing
29 devised to him, and a spouse or child who has selected particular assets of an
30 estate as provided in Section 28-2-403 shall receive the items selected.

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

33 (i) the person entitled to the payment has not demanded
34 payment in cash;

35 (ii) the property distributed in kind is valued at fair

1 market value as of the date of its distribution, and

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

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

18 (4) The residuary estate shall be distributed in any equitable
19 manner.

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

27

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

29 If distribution in kind is made, the personal representative shall
30 execute an instrument or deed of distribution assigning, transferring or
31 releasing the assets to the distributee as evidence of the distributee's title
32 to the property.

33

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

35 Proof that a distributee has received an instrument or deed of

1 distribution of assets in kind, or payment in distribution, from a personal
2 representative, is conclusive evidence that the distributee has succeeded to
3 the interest of the estate in the distributed assets, as against all persons
4 interested in the estate, except that the personal representative may recover
5 the assets or their value if the distribution was improper.

6

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

8 Unless the distribution or payment no longer can be questioned because
9 of adjudication, estoppel, or limitation, a distributee of property improperly
10 distributed or paid, or a claimant who was improperly paid, is liable to
11 return the property improperly received and its income since distribution if
12 he has the property. If he does not have the property, then he is liable to
13 return the value as of the date of disposition of the property improperly
14 received and its income and gain received by him.

15

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

17 If property distributed in kind or a security interest therein is
18 acquired for value by a purchaser from or lender to a distributee who has
19 received an instrument or deed of distribution from the personal
20 representative, or is so acquired by a purchaser from or lender to a
21 transferee from such distributee, the purchaser or lender takes title free of
22 rights of any interested person in the estate and incurs no personal liability
23 to the estate, or to any interested person, whether or not the distribution
24 was proper or supported by court order or the authority of the personal
25 representative was terminated before execution of the instrument or deed.
26 This section protects a purchaser from or lender to a distributee who, as
27 personal representative, has executed a deed of distribution to himself, as
28 well as a purchaser from or lender to any other distributee or his transferee.
29 To be protected under this provision, a purchaser or lender need not inquire
30 whether a personal representative acted properly in making the distribution in
31 kind, even if the personal representative and the distributee are the same
32 person, or whether the authority of the personal representative had terminated
33 before the distribution. Any recorded instrument described in this section on
34 which a state documentary stamp is affixed pursuant to §§ 26-60-101 through
35 26-60-112 shall be prima facie evidence that such transfer was made for value.

1

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

3 When two or more heirs or devisees are entitled to distribution of
4 undivided interests in any real or personal property of the estate, the
5 personal representative or one or more of the heirs or devisees may petition
6 the Court prior to the formal or informal closing of the estate, to make
7 partition. After notice to the interested heirs or devisees, the Court shall
8 partition the property in the same manner as provided by the law for civil
9 actions of partition. The Court may direct the personal representative to
10 sell any property which cannot be partitioned without prejudice to the owners
11 and which cannot conveniently be allotted to any one party.

12

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

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

29

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

31 (a) Before distributing to a trustee, the personal representative may
32 require that the trust be registered if the state in which it is to be
33 administered provides for registration and that the trustee keep the
34 beneficiaries of the trust reasonably informed of the trust and its
35 administration.

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

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

9

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

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

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

24

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

26 (a) A personal representative may discharge his obligation to distribute
27 to any person under legal disability by distributing in a manner expressly
28 provided in the will.

29 (b) Unless contrary to an express provision in the will, the personal
30 representative may discharge his obligation to distribute to a minor or person
31 under other disability as authorized by Section 28-5-101 or any other statute.
32 If the personal representative knows that a conservator has been appointed or
33 that a proceeding for appointment of a conservator is pending, the personal
34 representative is authorized to distribute only to the conservator.

35 (c) If the heir or devisee is under disability other than minority, the

1 personal representative is authorized to distribute to:

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

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

8 Persons receiving money or property for the disabled person are
9 obligated to apply the money or property to the support of that person, but
10 may not pay themselves except by way of reimbursement for out-of-pocket
11 expenses for goods and services necessary for the support of the disabled
12 person. Excess sums must be preserved for future support of the disabled
13 person. The personal representative is not responsible for the proper
14 application of money or property distributed pursuant to this subsection.

15

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

17 (a) For purposes of this section:

18 (1) "estate" means the gross estate of a decedent as determined
19 for the purpose of federal estate tax and the estate tax payable to this
20 state;

21 (2) "person" means any individual, partnership, association, joint
22 stock company, corporation, government, political subdivision, governmental
23 agency, or local governmental agency;

24 (3) "person interested in the estate" means any person entitled to
25 receive, or who has received, from a decedent or by reason of the death of a
26 decedent any property or interest therein included in the decedent's estate.
27 It includes a personal representative, conservator, and trustee;

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

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

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

34 (b) Except as provided in subsection (i) and, unless the will otherwise
35 provides, the tax shall be apportioned among all persons interested in the

1 estate. The apportionment is to be made in the proportion that the value of
2 the interest of each person interested in the estate bears to the total value
3 of the interests of all persons interested in the estate. The values used in
4 determining the tax are to be used for that purpose. If the decedent's will
5 directs a method of apportionment of tax different from the method described
6 in this Code, the method described in the will controls.

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

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

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

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

22 (d) (1) The personal representative or other person in possession of
23 the property of the decedent required to pay the tax may withhold from any
24 property distributable to any person interested in the estate, upon its
25 distribution to him, the amount of tax attributable to his interest. If the
26 property in possession of the personal representative or other person required
27 to pay the tax and distributable to any person interested in the estate is
28 insufficient to satisfy the proportionate amount of the tax determined to be
29 due from the person, the personal representative or other person required to
30 pay the tax may recover the deficiency from the person interested in the
31 estate. If the property is not in the possession of the personal
32 representative or the other person required to pay the tax, the personal
33 representative or the other person required to pay the tax may recover from
34 any person interested in the estate the amount of the tax apportioned to the
35 person in accordance with this Act.

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

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

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

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

18 (4) Any credit for inheritance, succession or estate taxes or
19 taxes in the nature thereof applicable to property or interests includable in
20 the estate, inures to the benefit of the persons or interests chargeable with
21 the payment thereof to the extent proportionately that the credit reduces the
22 tax.

23 (5) To the extent that property passing to or in trust for a
24 surviving spouse or any charitable, public or similar purpose is not an
25 allowable deduction for purposes of the tax solely by reason of an inheritance
26 tax or other death tax imposed upon and deductible from the property, the
27 property is not included in the computation provided for in subsection (b)
28 hereof, and to that extent no apportionment is made against the property. The
29 sentence immediately preceding does not apply to any case if the result would
30 be to deprive the estate of a deduction otherwise allowable under Section
31 2053(d) of the Internal Revenue Code of 1954, as amended, of the United
32 States, relating to deduction for state death taxes on transfers for public,
33 charitable, or religious uses.

34 (f) No interest in income and no estate for years or for life or other
35 temporary interest in any property or fund is subject to apportionment as

1 between the temporary interest and the remainder. The tax on the temporary
2 interest and the tax, if any, on the remainder is chargeable against the
3 corpus of the property or funds subject to the temporary interest and
4 remainder.

5 (g) Neither the personal representative nor other person required to pay
6 the tax is under any duty to institute any action to recover from any person
7 interested in the estate the amount of the tax apportioned to the person until
8 the expiration of the 3 months next following final determination of the tax.

9 A personal representative or other person required to pay the tax who
10 institutes the action within a reasonable time after the 3 months' period is
11 not subject to any liability or surcharge because any portion of the tax
12 apportioned to any person interested in the estate was collectible at a time
13 following the death of the decedent but thereafter became uncollectible. If
14 the personal representative or other person required to pay the tax cannot
15 collect from any person interested in the estate the amount of the tax
16 apportioned to the person, the amount not recoverable shall be equitably
17 apportioned among the other persons interested in the estate who are subject
18 to apportionment.

19 (h) A personal representative acting in another state or a person
20 required to pay the tax domiciled in another state may institute an action in
21 the courts of this state and may recover a proportionate amount of the federal
22 estate tax, of an estate tax payable to another state or of a death duty due
23 by a decedent's estate to another state, from a person interested in the
24 estate who is either domiciled in this state or who owns property in this
25 state subject to attachment or execution. For the purposes of the action the
26 determination of apportionment by the Court having jurisdiction of the
27 administration of the decedent's estate in the other state is prima facie
28 correct.

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

34
35

PART 10
CLOSING ESTATES

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

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

18 (b) If one or more heirs or devisees were omitted as parties in, or were
19 not given notice of, a previous formal testacy proceeding, the Court, on
20 proper petition for an order of complete settlement of the estate under this
21 section, and after notice to the omitted or unnotified persons and other
22 interested parties determined to be interested on the assumption that the
23 previous order concerning testacy is conclusive as to those given notice of
24 the earlier proceeding, may determine testacy as it affects the omitted
25 persons and confirm or alter the previous order of testacy as it affects all
26 interested persons as appropriate in the light of the new proofs. In the
27 absence of objection by an omitted or unnotified person, evidence received in
28 the original testacy proceeding shall constitute prima facie proof of due
29 execution of any will previously admitted to probate, or of the fact that the
30 decedent left no valid will if the prior proceedings determined this fact.

31

32 Section 28-3-1002. Formal Proceedings Terminating Testate
33 Administration; Order Construing Will Without Adjudicating Testacy.

34 A personal representative administering an estate under an informally
35 probated will or any devisee under an informally probated will may petition

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

18

19 Section 28-3-1003. Closing Estates; By Sworn Statement of Personal
20 Representative.

21 (a) Unless prohibited by order of the Court and except for estates being
22 administered in supervised administration proceedings, a personal
23 representative may close an estate by filing with the court no earlier than
24 six months after the date of original appointment of a general personal
25 representative for the estate, a verified statement stating that the personal
26 representatives or a previous personal representative, has:

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

29 (2) fully administered the estate of the decedent by making
30 payment, settlement, or other disposition of all claims that were presented,
31 expenses of administration and estate, inheritance and other death taxes,
32 except as specified in the statement, and that the assets of the estate have
33 been distributed to the persons entitled. If any claims remain undischarged,
34 the statement must state whether the personal representative has distributed
35 the estate subject to possible liability with the agreement of the

1 distributees or state in detail other arrangements that have been made to
2 accommodate outstanding liabilities; and

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

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

11

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

13 After assets of an estate have been distributed and subject to Section
14 28-3-1006, an undischarged claim not barred may be prosecuted in a proceeding
15 against one or more distributees. No distributee shall be liable to claimants
16 for amounts received as exempt property, homestead or family allowances, or
17 for amounts in excess of the value of his distribution as of the time of
18 distribution. As between distributees, each shall bear the cost of
19 satisfaction of unbarred claims as if the claim had been satisfied in the
20 course of administration. Any distributee who shall have failed to notify
21 other distributees of the demand made upon him by the claimant in sufficient
22 time to permit them to join in any proceeding in which the claim was asserted
23 against him loses his right of contribution against other distributees.

24

25 Section 28-3-1005. Limitations on Proceedings Against Personal
26 Representative.

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

35

1 Section 28-3-1006. Limitations on Actions and Proceedings Against
2 Distributees.

3 Unless previously adjudicated in a formal testacy proceeding or in a
4 proceeding settling the accounts of a personal representative or otherwise
5 barred, the claim of a claimant to recover from a distributee who is liable to
6 pay the claim, and the right of an heir or devisee, or of a successor personal
7 representative acting in their behalf, to recover property improperly
8 distributed or its value from any distributee is forever barred at the later
9 of three years after the decedent's death or one year after the time of its
10 distribution thereof, but all claims of creditors of the decedent, are barred
11 one year after the decedent's death. This section does not bar an action to
12 recover property or value received as a result of fraud.

13

14 Section 28-3-1007. Certificate Discharging Liens Securing Fiduciary
15 Performance.

16 After his appointment has terminated, the personal representative, his
17 sureties, or any successor of either, upon the filing of a verified
18 application showing, so far as is known by the applicant, that no action
19 concerning the estate is pending in any court, is entitled to receive a
20 certificate from the Registrar that the personal representative appears to
21 have fully administered the estate in question. The certificate evidences
22 discharge of any lien on any property given to secure the obligation of the
23 personal representative in lieu of bond or any surety, but does not preclude
24 action against the personal representative or the surety.

25

26 Section 28-3-1008. Subsequent Administration.

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

35

PART 11

1 COMPROMISE OF CONTROVERSIES

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

4 A compromise of any controversy as to admission to probate of any
5 instrument offered for formal probate as the will of a decedent, the
6 construction, validity, or effect of any governing instrument, the rights or
7 interests in the estate of the decedent, of any successor, or the
8 administration of the estate, if approved in a formal proceeding in the Court
9 for that purpose, is binding on all the parties thereto including those
10 unborn, unascertained or who could not be located. An approved compromise is
11 binding even though it may affect a trust or an inalienable interest. A
12 compromise does not impair the rights of creditors or of taxing authorities
13 who are not parties to it.

14

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

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

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

23 (2) Any interested person, including the personal representative, if
24 any, or a trustee, then may submit the agreement to the Court for its approval
25 and for execution by the personal representative, the trustee of every
26 affected testamentary trust, and other fiduciaries and representatives.

27 (3) After notice to all interested persons or their representatives,
28 including the personal representative of any estate and all affected trustees
29 of trusts, the Court, if it finds that the contest or controversy is in good
30 faith and that the effect of the agreement upon the interests of persons
31 represented by fiduciaries or other representatives is just and reasonable,
32 shall make an order approving the agreement and directing all fiduciaries
33 subject to its jurisdiction to execute the agreement. Minor children
34 represented only by their parents may be bound only if their parents join with
35 other competent persons in execution of the compromise. Upon the making of

1 the order and the execution of the agreement, all further disposition of the
 2 estate is in accordance with the terms of the agreement.

3 PART 12

4 COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT AND SUMMARY ADMINISTRATION
 5 PROCEDURE FOR SMALL ESTATES

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

7 (a) Thirty days after the death of a decedent, any person indebted to
 8 the decedent or having possession of tangible personal property or an
 9 instrument evidencing a debt, obligation, stock or chose in action belonging
 10 to the decedent shall make payment of the indebtedness or deliver the tangible
 11 personal property or an instrument evidencing a debt, obligation, stock or
 12 chose in action to a person claiming to be the successor of the decedent upon
 13 being presented an affidavit made by or on behalf of the successor stating
 14 that:

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

17 (2) 30 days have elapsed since the death of the decedent;

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

20 (4) the claiming successor is entitled to payment or delivery of
 21 the property.

22 (b) A transfer agent of any security shall change the registered
 23 ownership on the books of a corporation from the decedent to the successor or
 24 successors upon the presentation of an affidavit as provided in subsection
 25 (a).

26

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

28 The person paying, delivering, transferring, or issuing personal
 29 property or the evidence thereof pursuant to affidavit is discharged and
 30 released to the same extent as if he dealt with a personal representative of
 31 the decedent. He is not required to see to the application of the personal
 32 property or evidence thereof or to inquire into the truth of any statement in
 33 the affidavit. If any person to whom an affidavit is delivered refuses to
 34 pay, deliver, transfer, or issue any personal property or evidence thereof, it
 35 may be recovered or its payment, delivery, transfer, or issuance compelled

1 upon proof of their right in a proceeding brought for the purpose by or on
2 behalf of the persons entitled thereto. Any person to whom payment, delivery,
3 transfer or issuance is made is answerable and accountable therefor to any
4 personal representative of the estate or to any other person having a superior
5 right.

6

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

8 If it appears from the inventory and appraisal that the value of the
9 entire estate, less liens and encumbrances, does not exceed homestead
10 allowance, exempt property, family allowance, costs and expenses of
11 administration, reasonable funeral expenses, and reasonable and necessary
12 medical and hospital expenses of the last illness of the decedent, the
13 personal representative, without giving notice to creditors, may immediately
14 disburse and distribute the estate to the persons entitled thereto and file a
15 closing statement as provided in Section 28-3-1204.

16

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

19 (a) Unless prohibited by order of the Court and except for estates being
20 administered by supervised personal representatives, a personal representative
21 may close an estate administered under the summary procedures of Section 28-
22 3-1203 by filing with the Court, at any time after disbursement and
23 distribution of the estate, a verified statement stating that:

24 (1) to the best knowledge of the personal representative, the
25 value of the entire estate, less liens and encumbrances, did not exceed
26 homestead allowance, exempt property, family allowance, costs and expenses of
27 administration, reasonable funeral expenses, and reasonable, necessary medical
28 and hospital expenses of the last illness of the decedent;

29 (2) the personal representative has fully administered the estate
30 by disbursing and distributing it to the persons entitled thereto; and

31 (3) the personal representative has sent a copy of the closing
32 statement to all distributees of the estate and to all creditors or other
33 claimants of whom he is aware whose claims are neither paid nor barred and has
34 furnished a full account in writing of his administration to the distributees
35 whose interests are affected.

1 (b) If no actions or proceedings involving the personal representative
 2 are pending in the Court one year after the closing statement is filed, the
 3 appointment of the personal representative terminates.

4 (c) A closing statement filed under this section has the same effect as
 5 one filed under Section 28-3-1003.

6

7

ARTICLE IV

8

FOREIGN PERSONAL REPRESENTATIVES; ANCILLARY ADMINISTRATION

9

PART 1

10

DEFINITIONS

11

Section 28-4-101. Definitions.

12

In this Article

13

(1) "local administration" means administration by a personal
 14 representative appointed in this state pursuant to appointment proceedings
 15 described in Article III.

16

(2) "local personal representative" includes any personal representative
 17 appointed in this state pursuant to appointment proceedings described in
 18 Article III and excludes foreign personal representatives who acquire the
 19 power of a local personal representative pursuant to Section 28-4-205.

20

(3) "resident creditor" means a person domiciled in, or doing business
 21 in this state, who is, or could be, a claimant against an estate of a
 22 non-resident decedent.

23

PART 2

24

POWERS OF FOREIGN PERSONAL REPRESENTATIVES

25

Section 28-4-201. Payment of Debt and Delivery of Property to

26

Domiciliary Foreign Personal Representative Without Local Administration.

27

At any time after the expiration of sixty days from the death of a
 28 nonresident decedent, any person indebted to the estate of the nonresident
 29 decedent or having possession or control of personal property, or of an
 30 instrument evidencing a debt, obligation, stock or chose in action belonging
 31 to the estate of the nonresident decedent may pay the debt, deliver the
 32 personal property, or the instrument evidencing the debt, obligation, stock or
 33 chose in action, to the domiciliary foreign personal representative of the
 34 nonresident decedent upon being presented with proof of his appointment and an
 35 affidavit made by or on behalf of the representative stating:

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

6

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

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

12

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

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

19

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

21 If no local administration or application or petition therefor is
22 pending in this state, a domiciliary foreign personal representative may file
23 with a Court in this State in a county in which property belonging to the
24 decedent is located, authenticated copies of his appointment and of any
25 official bond he has given.

26

27 Section 28-4-205. Powers.

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

32

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

34 The power of a domiciliary foreign personal representative under Section
35 28-4-201 or 28-4-205 shall be exercised only if there is no administration or

1 application therefor pending in this state. An application or petition for
 2 local administration of the estate terminates the power of the foreign
 3 personal representative to act under Section 28-4-205, but the local Court may
 4 allow the foreign personal representative to exercise limited powers to
 5 preserve the estate. No person who, before receiving actual notice of a
 6 pending local administration, has changed his position in reliance upon the
 7 powers of a foreign personal representative shall be prejudiced by reason of
 8 the application or petition for, or grant of, local administration. The local
 9 personal representative is subject to all duties and obligations which have
 10 accrued by virtue of the exercise of the powers by the foreign personal
 11 representative and may be substituted for him in any action or proceedings in
 12 this state.

13

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

16 In respect to a nonresident decedent, the provisions of Article III of
 17 this Code govern (1) proceedings, if any, in a Court of this state for probate
 18 of the will, appointment, removal, supervision, and discharge of the local
 19 personal representative, and any other order concerning the estate; and (2)
 20 the status, powers, duties and liabilities of any local personal
 21 representative and the rights of claimants, purchasers, distributees and
 22 others in regard to a local administration.

23

PART 3

24

JURISDICTION OVER FOREIGN REPRESENTATIVES

25

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

27

28 A foreign personal representative submits personally to the jurisdiction
 28 of the Courts of this state in any proceeding relating to the estate by (1)
 29 filing authenticated copies of his appointment as provided in Section 28-
 30 4-204, (2) receiving payment of money or taking delivery of personal property
 31 under Section 28-4-201, or (3) doing any act as a personal representative in
 32 this state which would have given the state jurisdiction over him as an
 33 individual. Jurisdiction under (2) is limited to the money or value of
 34 personal property collected.

35

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

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

6

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

8 (a) Service of process may be made upon the foreign personal
 9 representative by registered or certified mail, addressed to his last
 10 reasonably ascertainable address, requesting a return receipt signed by
 11 addressee only. Notice by ordinary first class mail is sufficient if
 12 registered or certified mail service to the addressee is unavailable. Service
 13 may be made upon a foreign personal representative in the manner in which
 14 service could have been made under other laws of this state on either the
 15 foreign personal representative or his decedent immediately prior to death.

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

19

PART 4

20

JUDGMENTS AND PERSONAL REPRESENTATIVE

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

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

26

27

ARTICLE V

28

PROTECTION OF PERSONS UNDER DISABILITY AND THEIR PROPERTY

29

PART 1

30

GENERAL PROVISIONS AND DEFINITIONS

31 Section 28-5-101. Facility of Payment or Delivery.

32 (a) Any person under a duty to pay or deliver money or personal property
 33 to a minor may perform the duty, in amounts not exceeding \$5,000 a year, by
 34 paying or delivering the money or property to:

35

- (1) the minor if 18 or more years of age or married;

1 (2) any person having the care and custody of the minor with whom
2 the minor resides;

3 (3) a guardian of the minor; or

4 (4) a financial institution incident to a deposit in a state or
5 federally insured savings account or certificate in the sole name of the minor
6 with notice of the deposit to the minor.

7 (b) This section does not apply if the person making payment or delivery
8 knows that a conservator has been appointed or proceedings for appointment of
9 a conservator of the estate of the minor are pending.

10 (c) Persons, other than the minor or any financial institution,
11 receiving money or property for a minor, are obligated to apply the money to
12 the support and education of the minor, but may not pay themselves except by
13 way of reimbursement for out-of-pocket expenses for goods and services
14 necessary for the minor's support. Any excess sums must be preserved for
15 future support and education of the minor and any balance not so used and any
16 property received for the minor must be turned over to the minor when majority
17 is attained. A person who pays or delivers money or property in accordance
18 with provisions of this section is not responsible for the proper application
19 thereof.

20

21 Section 28-5-102. Delegation of Powers by Parent or Guardian.

22 A parent or guardian of a minor or incapacitated person, by a properly
23 executed power of attorney, may delegate to another person, for a period not
24 exceeding 6 months, any power regarding care, custody or property of the minor
25 child or ward, except the power to consent to marriage or adoption of a minor
26 ward.

27

28 Section 28-5-103. General Definitions.

29 As used in Parts 1, 2, 3 and 4 of this Article:

30 (1) "Claims," in respect to a protected person, includes liabilities of
31 the protected person, whether arising in contract, tort, or otherwise, and
32 liabilities of the estate which arise at or after the appointment of a
33 conservator, including expenses of administration.

34 (2) "Court" means the probate court.

35 (3) "Conservator" means a person who is appointed by a Court to manage

1 the estate of a protected person and includes a limited conservator described
2 in Section 28-5-419(a).

3 (4) "Disability" means cause for a protective order as described in
4 Section 28-5-401.

5 (5) "Estate" includes the property of the person whose affairs are
6 subject to this Article.

7 (6) "Guardian" means a person who has qualified as a guardian of a minor
8 or incapacitated person pursuant to parental or spousal nomination or court
9 appointment and includes a limited guardian as described in Sections 28-
10 5-209(e) and 28-5-306(c), but excludes one who is merely a guardian ad litem.

11 (7) "Incapacitated person" means any person who is impaired by reason of
12 mental illness, mental deficiency, physical illness or disability, chronic use
13 of drugs, chronic intoxication, or other cause (except minority) to the extent
14 of lacking sufficient understanding or capacity to make or communicate
15 responsible decisions.

16 (8) "Lease" includes an oil, gas, or other mineral lease.

17 (9) "Letters" includes letters of guardianship and letters of
18 conservatorship.

19 (10) "Minor" means a person who is under 21 years of age.

20 (11) "Mortgage" means any conveyance, agreement, or arrangement in which
21 property is used as collateral.

22 (12) "Organization" includes a corporation, business trust, estate,
23 trust, partnership, association, 2 or more persons having a joint or common
24 interest, government, governmental subdivision or agency, or any other legal
25 entity.

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

30 (14) "Person" means an individual or an organization.

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

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

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

1 (18) "Protected person" means a minor or other person for whom a
2 conservator has been appointed or other protective order has been made as
3 provided in Sections 28-5-407 and 28-5-408.

4 (19) "Protective proceeding" means a proceeding under the provisions of
5 Part 4 of this Article.

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

14 (21) "Visitor" means a person appointed in a guardianship or protective
15 proceeding who is trained in law, nursing, or social work, is an officer,
16 employee, or special appointee of the Court, and has no personal interest in
17 the proceeding.

18 (22) "Ward" means a person for whom a guardian has been appointed. A
19 "minor ward" is a minor for whom a guardian has been appointed solely because
20 of minority.

21

22 Section 28-5-104. Request for Notice; Interested Person.

23 Upon payment of any required fee, an interested person who desires to be
24 notified before any order is made in a guardianship proceeding, including any
25 proceeding subsequent to the appointment of a guardian under Section 28-5-312,
26 or in a protective proceeding under Section 28-5-401, may file a request for
27 notice with the probate clerk in which the proceeding is pending. The probate
28 clerk shall mail a copy of the request to the guardian and to the conservator
29 if one has been appointed. A request is not effective unless it contains a
30 statement showing the interest of the person making it and the address of that
31 person or an attorney to whom notice is to be given. The request is effective
32 only as to proceedings occurring after the filing. Any governmental agency
33 paying or planning to pay benefits to the person to be protected is an
34 interested person in protective proceedings.

35

PART 2

GUARDIANS OF MINORS

1
2 Section 28-5-201. Appointment and Status of Guardian of Minor.

3 A person may become a guardian of a minor by parental appointment or
4 upon appointment by the Court. The guardianship status continues until
5 terminated, without regard to the location from time to time of the guardian
6 or minor ward.

7
8 Section 28-5-202. Parental Appointment of Guardian for Minor.

9 (a) The parent of an unmarried minor may appoint a guardian for the
10 minor by will, or other writing signed by the parent and attested by at least
11 2 witnesses.

12 (b) Subject to the right of the minor under Section 28-5-203, if both
13 parents are dead or incapacitated or the surviving parent has no parental
14 rights or has been adjudged to be incapacitated, a parental appointment
15 becomes effective when the guardian's acceptance is filed in the Court in
16 which a nominating instrument is probated, or, in the case of a
17 non-testamentary nominating instrument, in the Court at the place where the
18 minor resides or is present. If both parents are dead, an effective
19 appointment by the parent who died later has priority.

20 (c) A parental appointment effected by filing the guardian's acceptance
21 under a will probated in the state of the testator's domicile is effective in
22 this State.

23 (d) Upon acceptance of appointment, the guardian shall give written
24 notice of acceptance to the minor and to the person having the minor's care or
25 the minor's nearest adult relative.

26
27 Section 28-5-203. Objection by Minor of Fourteen or Older to Parental
28 Appointment.

29 A minor 14 or more years of age who is the subject of a parental
30 appointment may prevent the appointment or cause it to terminate by filing in
31 the Court in which the nominating instrument is filed a written objection to
32 the appointment before it is accepted or within 30 days after receiving notice
33 of its acceptance. An objection may be withdrawn. An objection does not
34 preclude appointment by the Court in a proper proceeding of the parental
35 nominee or any other suitable person.

1

2 Section 28-5-204. Court Appointment of Guardian of Minor; Conditions
3 for Appointment.

4 (a) The Court may appoint a guardian for an unmarried minor if all
5 parental rights have been terminated or suspended by circumstances or prior
6 Court order. A guardian appointed pursuant to Section 28-5-202 whose
7 appointment has not been prevented or nullified under Section 28-5-203 has
8 priority over any guardian who may be appointed by the Court, but the Court
9 may proceed with another appointment upon a finding that the parental nominee
10 has failed to accept the appointment within 30 days after notice of the
11 guardianship proceeding.

12 (b) If necessary, and on appropriate petition or application, the Court
13 may appoint a temporary guardian who shall have the full authority of a
14 general guardian of a minor, but the authority of a temporary guardian may not
15 last longer than 6 months. The appointment of a temporary guardian for a
16 minor may occur even though the conditions described in subsection (a) have
17 not been established.

18

19 Section 28-5-205. Venue.

20 The venue for guardianship proceedings for a minor is in the court at
21 the place where the minor resides or is present at the time the proceedings
22 are commenced.

23

24 Section 28-5-206. Procedure for Court-appointment of Guardian of Minor.

25 (a) A minor or any person interested in the welfare of the minor may
26 petition for appointment of a guardian.

27 (b) After the filing of a petition, the Court shall set a date for
28 hearing, and the petitioner shall give notice of the time and place of hearing
29 the petition in the manner prescribed by Section 28-1-401 to:

30 (1) the minor, if 14 or more years of age and not the petitioner;

31 (2) any person alleged to have had the principal care and custody
32 of the minor during the 60 days preceding the filing of the petition; and

33 (3) any living parent of the minor.

34 (c) Upon hearing, if the Court finds that a qualified person seeks
35 appointment, venue is proper, the required notices have been given, the

1 conditions of Section 28-5-204(a) have been met, and the welfare and best
2 interest of the minor will be served by the requested appointment, it shall
3 make the appointment and issue letters. In other cases, the Court may dismiss
4 the proceedings or make any other disposition of the matter that will serve
5 the best interest of the minor.

6 (d) If the Court determines at any time in the proceeding that the
7 interests of the minor are or may be inadequately represented, it may appoint
8 an attorney to represent the minor, giving consideration to the preference of
9 the minor if the minor is 14 or more years of age.

10

11 Section 28-5-207. Court Appointment of Guardian of Minor;

12 Qualifications; Priority of Minor's Nominee.

13 The Court may appoint as guardian any person whose appointment would be
14 in the best interest of the minor. The Court shall appoint a person nominated
15 by the minor, if the minor is 14 or more years of age, unless the Court finds
16 the appointment contrary to the best interest of the minor.

17

18 Section 28-5-208. Consent to Service by Acceptance of Appointment;

19 Notice.

20 By accepting a parental or court appointment as guardian, a guardian
21 submits personally to the jurisdiction of the Court in any proceeding relating
22 to the guardianship that may be instituted by any interested person. The
23 petitioner shall cause notice of any proceeding to be delivered or mailed to
24 the guardian at the guardian's address listed in the Court records and to the
25 address then known to the petitioner. Letters of guardianship must indicate
26 whether the guardian was appointed by court order or parental nomination.

27

28 Section 28-5-209. Powers and Duties of Guardian of Minor.

29 (a) A guardian of a minor ward has the powers and responsibilities of a
30 parent regarding the ward's support, care, and education, but a guardian is
31 not personally liable for the ward's expenses and is not liable to third
32 persons by reason of the relationship for acts of the ward.

33 (b) In particular and without qualifying the foregoing, a guardian
34 shall:

35 (1) become or remain personally acquainted with the ward and

1 maintain sufficient contact with the ward to know of the ward's capacities,
2 limitations, needs, opportunities, and physical and mental health;

3 (2) take reasonable care of the ward's personal effects and
4 commence protective proceedings if necessary to protect other property of the
5 ward;

6 (3) apply any available money of the ward to the ward's current
7 needs for support, care, and education;

8 (4) conserve any excess money of the ward for the ward's future
9 needs, but if a conservator has been appointed for the estate of the ward, the
10 guardian, at least quarterly, shall pay to the conservator money of the ward
11 to be conserved for the ward's future needs; and

12 (5) report the condition of the ward and of the ward's estate that
13 has been subject to the guardian's possession or control, as ordered by the
14 Court on petition of any person interested in the ward's welfare or as
15 required by Court rule.

16 (c) A guardian may:

17 (1) receive money payable for the support of the ward to the
18 ward's parent, guardian, or custodian under the terms of any statutory benefit
19 or insurance system or any private contract, devise, trust, conservatorship,
20 or custodianship, and money or property of the ward paid or delivered pursuant
21 to Section 28-5-101;

22 (2) if consistent with the terms of any order by a court of
23 competent jurisdiction relating to detention or commitment of the ward, take
24 custody of the person of the ward and establish the ward's place of abode
25 within or without this State;

26 (3) if no conservator for the estate of the ward has been
27 appointed, institute proceedings, including administrative proceedings, or
28 take other appropriate action to compel the performance by any person of a
29 duty to support the ward or to pay sums for the welfare of the ward;

30 (4) consent to medical or other professional care, treatment, or
31 advice for the ward without liability by reason of the consent for injury to
32 the ward resulting from the negligence or acts of third persons unless a
33 parent would have been liable in the circumstances;

34 (5) consent to the marriage or adoption of the ward; and

35 (6) if reasonable under all of the circumstances, delegate to the

1 ward certain responsibilities for decisions affecting the ward's well-being.

2 (d) A guardian is entitled to reasonable compensation for services as
3 guardian and to reimbursement for room, board and clothing personally provided
4 to the ward, but only as approved by order of the Court. If a conservator,
5 other than the guardian or one who is affiliated with the guardian, has been
6 appointed for the estate of the ward, reasonable compensation and
7 reimbursement to the guardian may be approved and paid by the conservator
8 without order of the Court controlling the guardian.

9 (e) In the interest of developing self-reliance on the part of a ward or
10 for other good cause, the Court, at the time of appointment or later, on its
11 own motion or on appropriate petition or motion of the minor or other
12 interested person, may limit the powers of a guardian otherwise conferred by
13 this section and thereby create a limited guardianship. Any limitation on the
14 statutory power of a guardian of a minor must be endorsed on the guardian's
15 letters or, in the case of a guardian by parental appointment, must be
16 reflected in letters that are issued at the time any limitation is imposed.
17 Following the same procedure, a limitation may be removed and appropriate
18 letters issued.

19

20 Section 28-5-210. Termination of Appointment of Guardian; General.

21 A guardian's authority and responsibility terminates upon the death,
22 resignation, or removal of the guardian or upon the minor's death, adoption,
23 marriage, or attainment of majority, but termination does not affect the
24 guardian's liability for prior acts or the obligation to account for funds and
25 assets of the ward. Resignation of a guardian does not terminate the
26 guardianship until it has been approved by the Court. A parental appointment
27 under an informally probated will terminates if the will is later denied
28 probate in a formal proceeding.

29

30 Section 28-5-211. Proceedings Subsequent to Appointment; Venue.

31 (a) The Court at the place where the ward resides has concurrent
32 jurisdiction with the Court that appointed the guardian or in which acceptance
33 of a parental appointment was filed over resignation, removal, accounting, and
34 other proceedings relating to the guardianship.

35 (b) If the Court at the place where the ward resides is neither the

1 appointing court nor the court in which acceptance of appointment is filed,
2 the court in which proceedings subsequent to appointment are commenced in all
3 appropriate cases shall notify the other court, in this or another state, and
4 after consultation with that court determine whether to retain jurisdiction or
5 transfer the proceedings to the other court, whichever is in the best interest
6 of the ward. A copy of any order accepting a resignation or removing a
7 guardian must be sent to the appointing court or the court in which acceptance
8 of appointment is filed.

9

10 Section 28-5-212. Resignation, Removal, and Other Post-appointment
11 Proceedings.

12 (a) Any person interested in the welfare of a ward or the ward, if 14 or
13 more years of age, may petition for removal of a guardian on the ground that
14 removal would be in the best interest of the ward or for any other order that
15 is in the best interest of the ward. A guardian may petition for permission
16 to resign. A petition for removal or for permission to resign may, but need
17 not, include a request for appointment of a successor guardian.

18 (b) Notice of hearing on a petition for an order subsequent to
19 appointment of a guardian must be given to the ward, the guardian, and any
20 other person as ordered by the court.

21 (c) After notice and hearing on a petition for removal or for permission
22 to resign, the Court may terminate the guardianship and make any further order
23 that may be appropriate.

24 (d) If the Court determines at any time in the proceeding that the
25 interest of the ward is or may be inadequately represented, it may appoint an
26 attorney to represent the minor, giving consideration to the preference of the
27 minor if the minor is 14 or more years of age.

28

PART 3

29

GUARDIANS OF INCAPACITATED PERSONS

30 Section 28-5-301. Appointment of Guardian for Incapacitated Person by
31 Will or Other Writing.

32 (a) The parent of an unmarried incapacitated person may appoint by will,
33 or other writing signed by the parent and attested by at least 2 witnesses, a
34 guardian of the incapacitated person. If both parents are dead or the
35 surviving parent is adjudged incapacitated, a parental appointment becomes

1 effective when, after having given 7 days prior written notice of intention to
2 do so to the incapacitated person and to the person having the care of the
3 person or to the nearest adult relative, the guardian files acceptance of
4 appointment in the court in which the will is informally or formally probated,
5 or in the case of a non-testamentary nominating instrument, in the Court at
6 the place where the incapacitated person resides or is present. The notice
7 shall state that the appointment may be terminated by filing a written
8 objection in the Court, as provided by subsection (d). If both parents are
9 dead, an effective appointment by the parent who died later has priority.

10 (b) The spouse of a married incapacitated person may appoint by will, or
11 other writing signed by the spouse and attested by at least 2 witnesses, a
12 guardian of the incapacitated person. The appointment becomes effective when,
13 after having given 7 days prior written notice of intention to do so to the
14 incapacitated person and to the person having care of the incapacitated person
15 or to the nearest adult relative, the guardian files acceptance of appointment
16 in the Court in which the will is informally or formally probated or, in the
17 case of non-testamentary nominating instrument, in the Court at the place
18 where the incapacitated person resides or is present. The notice shall state
19 that the appointment may be terminated by filing a written objection in the
20 Court, as provided by subsection (d). An effective appointment by a spouse
21 has priority over an appointment by a parent.

22 (c) An appointment effected by filing the guardian's acceptance under a
23 will probated in the state of the decedent's domicile is effective in this
24 State.

25 (d) Upon the filing in the Court in which the will was probated or, in
26 the case of a non-testamentary nominating instrument, in the Court at the
27 place where the incapacitated person resides or is present, of written
28 objection to the appointment by the incapacitated person for whom a parental
29 or spousal appointment of guardian has been made, the appointment is
30 terminated. An objection does not prevent appointment by the Court in a
31 proper proceeding of the parental or spousal nominee or any other suitable
32 person upon an adjudication of incapacity in proceedings under the succeeding
33 sections of this Part.

34

35 Section 28-5-302. Venue.

1 The venue for guardianship proceedings for an incapacitated person is in
2 the place where the incapacitated person resides or is present at the time the
3 proceedings are commenced. If the incapacitated person is admitted to an
4 institution pursuant to order of a court of competent jurisdiction, venue is
5 also in the county in which that court is located.

6

7 Section 28-5-303. Procedure for Court-appointment of a Guardian of an
8 Incapacitated Person.

9 (a) An incapacitated person or any person interested in the welfare of
10 the incapacitated person may petition for appointment of a guardian, limited
11 or general.

12 (b) After the filing of a petition, the Court shall set a date for
13 hearing on the issue of incapacity so that notices may be given as required by
14 Section 28-5-304, and, may appoint an attorney to represent the person in the
15 proceeding. The person so appointed may be granted the powers and duties of a
16 guardian ad litem. The person alleged to be incapacitated must be examined by
17 a physician or other qualified person appointed by the Court who shall submit
18 a report in writing to the Court. The person alleged to be incapacitated also
19 may be interviewed by a visitor appointed by the Court. If a visitor is
20 appointed, the visitor also shall interview the person who appears to have
21 caused the petition to be filed and any person who is nominated to serve as
22 guardian and visit the present place of abode of the person alleged to be
23 incapacitated and the place it is proposed that the person will be detained or
24 reside if the appointment is made and submit a report in writing to the Court.
25 The Court may utilize the service of any public or charitable agency as an
26 additional visitor to evaluate the condition of the allegedly incapacitated
27 person and to make appropriate recommendations to the Court.

28 (c) A person alleged to be incapacitated is entitled to be present at
29 the hearing in person. The person is entitled to be represented by counsel,
30 to present evidence, to cross-examine witnesses, including the Court-appointed
31 physician or other qualified person and any visitor. The issue may be
32 determined at a closed hearing if the person alleged to be incapacitated or
33 counsel for the person so requests.

34 (d) Any person may apply for permission to participate in the
35 proceeding, and the Court may grant the request, with or without hearing, upon

1 determining that the best interest of the alleged incapacitated person will be
 2 served thereby. The Court may attach appropriate conditions to the
 3 permission.

4

5 Section 28-5-304. Notice in Guardianship Proceeding.

6 (a) In a proceeding for the appointment of a guardian of an
 7 incapacitated person, and, if notice is required in a proceeding for
 8 appointment of a temporary guardian, notice of hearing must be given to each
 9 of the following:

10 (1) the person alleged to be incapacitated and spouse, or, if
 11 none, adult children, or if none, parents;

12 (2) any person who is serving as guardian, conservator, or who has
 13 the care and custody of the person alleged to be incapacitated;

14 (3) in case no other person is notified under paragraph (1), at
 15 least one of the nearest adult relatives, if any can be found; and

16 (4) any other person as directed by the Court.

17 (b) Notice of hearing on a petition for an order subsequent to
 18 appointment of a guardian must be given to the ward, the guardian and any
 19 other person as ordered by the Court.

20 (c) Notice must be served personally on the alleged incapacitated
 21 person. Notices to other persons as required by subsection (a)(1) must be
 22 served personally if the person to be notified can be found within the state.
 23 In all other cases, required notices must be given as provided in Section 28-
 24 1-401.

25 (d) The person alleged to be incapacitated may not waive notice.

26

27 Section 28-5-305. Who May Be Guardian; Priorities.

28 (a) Any qualified person may be appointed guardian of an incapacitated
 29 person.

30 (b) Unless lack of qualification or other good cause dictates the
 31 contrary, the Court shall appoint a guardian in accordance with the
 32 incapacitated person's most recent nomination in a durable power of attorney.

33 (c) Except as provided in subsection (b), the following are entitled to
 34 consideration for appointment in the order listed:

35 (1) the spouse of the incapacitated person or a person nominated

1 by will of a deceased spouse or by other writing signed by the spouse and
2 attested by at least 2 witnesses;

3 (2) an adult child of the incapacitated person;

4 (3) a parent of the incapacitated person, or a person nominated by
5 will of a deceased parent or by other writing signed by a parent and attested
6 by at least two witnesses;

7 (4) any relative of the incapacitated person with whom the person
8 has resided for more than 6 months prior to the filing of the petition; and

9 (5) a person nominated by the person who is caring for or paying
10 for the care of the incapacitated person.

11 (d) With respect to persons having equal priority, the Court shall
12 select the one it deems best qualified to serve. The Court, acting in the
13 best interest of the incapacitated person, may pass over a person having
14 priority and appoint a person having a lower priority or no priority.

15

16 Section 28-5-306. Findings; Order of Appointment.

17 (a) The Court shall exercise the authority conferred in this Part so as
18 to encourage the development of maximum self-reliance and independence of the
19 incapacitated person and make appointive and other orders only to the extent
20 necessitated by the incapacitated person's mental and adaptive limitations or
21 other conditions warranting the procedure.

22 (b) The Court may appoint a guardian as requested if it is satisfied
23 that the person for whom a guardian is sought is incapacitated and that the
24 appointment is necessary or desirable as a means of providing continuing care
25 and supervision of the person of the incapacitated person. The Court, on
26 appropriate findings, may (i) treat the petition as one for a protective order
27 under Section 28-5-401 and proceed accordingly, (ii) enter any other
28 appropriate order, or (iii) dismiss the proceedings.

29 (c) The Court, at the time of appointment or later, on its own motion or
30 on appropriate petition or motion of the incapacitated person or other
31 interested person, may limit the powers of a guardian otherwise conferred by
32 Parts 1, 2, 3 and 4 of this Article and thereby create a limited guardianship.
33 Any limitation on the statutory power of a guardian of an incapacitated
34 person must be endorsed on the guardian's letters or, in the case of a
35 guardian by parental or spousal appointment, must be reflected in letters

1 issued at the time any limitation is imposed. Following the same procedure, a
2 limitation may be removed or modified and appropriate letters issued.

3

4 Section 28-5-307. Acceptance of Appointment; Consent to Jurisdiction.

5 By accepting appointment, a guardian submits personally to the
6 jurisdiction of the Court in any proceeding relating to the guardianship that
7 may be instituted by any interested person. Notice of any proceeding must be
8 delivered or mailed to the guardian at the address listed in the Court records
9 and at the address as then known to the petitioner.

10

11 Section 28-5-308. Emergency Orders; Temporary Guardians.

12 (a) If an incapacitated person has no guardian, an emergency exists, and
13 no other person appears to have authority to act in the circumstances, on
14 appropriate petition the Court may appoint a temporary guardian whose
15 authority may not extend beyond 15 days, and who may exercise those powers
16 granted in the order.

17 (b) If an appointed guardian is not effectively performing duties and
18 the Court further finds that the welfare of the incapacitated person requires
19 immediate action, it may appoint, with or without notice, a temporary guardian
20 for the incapacitated person having the powers of a general guardian for a
21 specified period not to exceed 6 months. The authority of any permanent
22 guardian previously appointed by the Court is suspended as long as a temporary
23 guardian has authority.

24 (c) The Court may remove a temporary guardian at any time. A temporary
25 guardian shall make any report the Court requires. In other respects the
26 provisions of Parts 1, 2, 3 and 4 of this Article concerning guardians apply
27 to temporary guardians.

28

29 Section 28-5-309. General Powers and Duties of Guardian.

30 Except as limited pursuant to Section 28-5-306(c), a guardian of an
31 incapacitated person is responsible for care, custody, and control of the
32 ward, but is not liable to third persons by reason of that responsibility for
33 acts of the ward. In particular and without qualifying the foregoing, a
34 guardian has the same duties, powers and responsibilities as a guardian for a
35 minor as described in Section 28-5-209(b), (c) and (d).

1

2 Section 28-5-310. Termination of Guardianship for Incapacitated Person.

3 The authority and responsibility of a guardian of an incapacitated
 4 person terminates upon the death of the guardian or ward, the determination of
 5 incapacity of the guardian, or upon removal or resignation as provided in
 6 Section 28-5-311. Testamentary appointment under an informally probated will
 7 terminates if the will is later denied probate in a formal proceeding.
 8 Termination does not affect a guardian's liability for prior acts or the
 9 obligation to account for funds and assets of the ward.

10

11 Section 28-5-311. Removal or Resignation of Guardian; Termination of
 12 Incapacity.

13 (a) On petition of the ward or any person interested in the ward's
 14 welfare, the Court, after hearing, may remove a guardian if in the best
 15 interest of the ward. On petition of the guardian, the Court, after hearing,
 16 may accept a resignation.

17 (b) An order adjudicating incapacity may specify a minimum period, not
 18 exceeding six months, during which a petition for an adjudication that the
 19 ward is no longer incapacitated may not be filed without special leave.
 20 Subject to that restriction, the ward or any person interested in the welfare
 21 of the ward may petition for an order that the ward is no longer incapacitated
 22 and for termination of the guardianship. A request for an order may also be
 23 made informally to the Court and any person who knowingly interferes with
 24 transmission of the request may be adjudged guilty of contempt of court.

25 (c) Upon removal, resignation, or death of the guardian, or if the
 26 guardian is determined to be incapacitated, the Court may appoint a successor
 27 guardian and make any other appropriate order. Before appointing a successor
 28 guardian, or ordering that a ward's incapacity has terminated, the Court shall
 29 follow the same procedures to safeguard the rights of the ward that apply to a
 30 petition for appointment of a guardian.

31

32 Section 28-5-312. Proceedings Subsequent to Appointment; Venue.

33 (a) The Court at the place where the ward resides has concurrent
 34 jurisdiction with the Court that appointed the guardian or in which acceptance
 35 of a parental or spousal appointment was filed over resignation, removal,

1 accounting, and other proceedings relating to the guardianship, including
2 proceedings to limit the authority previously conferred on a guardian or to
3 remove limitations previously imposed.

4 (b) If the Court at the place where the ward resides is not the Court in
5 which acceptance of appointment is filed, the Court in which proceedings
6 subsequent to appointment are commenced, in all appropriate cases, shall
7 notify the other Court, in this or another state, and after consultation with
8 that Court determine whether to retain jurisdiction or transfer the
9 proceedings to the other Court, whichever may be in the best interest of the
10 ward. A copy of any order accepting a resignation, removing a guardian, or
11 altering authority must be sent to the Court in which acceptance of
12 appointment is filed.

13 PART 4

14 PROTECTION OF PROPERTY OF PERSONS UNDER DISABILITY AND MINORS

15 Section 28-5-401. Protective Proceedings.

16 (a) Upon petition and after notice and hearing in accordance with the
17 provisions of this Part, the Court may appoint a conservator or make any other
18 protective order for cause as provided in this section.

19 (b) Appointment of a conservator or other protective order may be made
20 in relation to the estate and affairs of a minor if the Court determines that
21 a minor owns money or property requiring management or protection that cannot
22 otherwise be provided or has or may have business affairs that may be
23 jeopardized or prevented by minority, or that funds are needed for support and
24 education and that protection is necessary or desirable to obtain or provide
25 funds.

26 (c) Appointment of a conservator or other protective order may be made
27 in relation to the estate and affairs of a person if the Court determines that
28 (i) the person is unable to manage property and business affairs effectively
29 for such reasons as mental illness, mental deficiency, physical illness or
30 disability, chronic use of drugs, chronic intoxication, confinement, detention
31 by a foreign power, or disappearance; and (ii) the person has property that
32 will be wasted or dissipated unless property management is provided or money
33 is needed for the support, care, and welfare of the person or those entitled
34 to the person's support and that protection is necessary or desirable to
35 obtain or provide money.

1

2 Section 28-5-402. Protective Proceedings; Jurisdiction of Business
3 Affairs of Protected Persons.

4 After the service of notice in a proceeding seeking the appointment of a
5 conservator or other protective order and until termination of the proceeding,
6 the Court in which the petition is filed has:

7 (1) exclusive jurisdiction to determine the need for a conservator or
8 other protective order until the proceedings are terminated;

9 (2) exclusive jurisdiction to determine how the estate of the protected
10 person which is subject to the laws of this State must be managed, expended,
11 or distributed to or for the use of the protected person, the protected
12 person's dependents, or other claimants; and

13 (3) concurrent jurisdiction to determine the validity of claims against
14 the person or estate of the protected person and questions of title concerning
15 any estate asset.

16

17 Section 28-5-403. Venue.

18 Venue for proceedings under this Part is:

19 (1) in the Court at the place in this State where the person to be
20 protected resides whether or not a guardian has been appointed in another
21 place; or

22 (2) if the person to be protected does not reside in this State, in the
23 Court at any place where property of the person is located.

24

25 Section 28-5-404. Original Petition for Appointment or Protective
26 Order.

27 (a) The person to be protected or any person who is interested in the
28 estate, affairs, or welfare of the person, including a parent, guardian,
29 custodian, or any person who would be adversely affected by lack of effective
30 management of the person's property and business affairs may petition for the
31 appointment of a conservator or for other appropriate protective order.

32 (b) The petition must set forth to the extent known the interest of the
33 petitioner; the name, age, residence, and address of the person to be
34 protected; the name and address of the guardian, if any; the name and
35 address of the nearest relative known to the petitioner; a general statement

1 of the person's property with an estimate of the value thereof, including any
2 compensation, insurance, pension, or allowance to which the person is
3 entitled; and the reason why appointment of a conservator or other protective
4 order is necessary. If the appointment of a conservator is requested, the
5 petition must also set forth the name and address of the person whose
6 appointment is sought and the basis of the claim to priority for appointment.

7

8 Section 28-5-405. Notice.

9 (a) On a petition for appointment of a conservator or other protective
10 order, the requirements for notice described in Section 28-5-304 apply, but
11 (i) if the person to be protected has disappeared or is otherwise situated so
12 as to make personal service of notice impracticable, notice to the person must
13 be given by publication as provided in Section 28-1-401, and (ii) if the
14 person to be protected is a minor, the provisions of Section 28-5-206 also
15 apply.

16 (b) Notice of hearing on a petition for an order subsequent to
17 appointment of a conservator or other protective order must be given to the
18 protected person, any conservator of the protected person's estate, and any
19 other person as ordered by the Court.

20

21 Section 28-5-406. Procedure Concerning Hearing and Order on Original
22 Petition.

23 (a) Upon receipt of a petition for appointment of a conservator or other
24 protective order because of minority, the Court shall set a date for hearing.
25 If the Court determines at any time in the proceeding that the interests of
26 the minor are or may be inadequately represented, it may appoint an attorney
27 to represent the minor, giving consideration to the choice of the minor if 14
28 or more years of age. An attorney appointed by the Court to represent a minor
29 may be granted the powers and duties of a guardian ad litem.

30 (b) Upon receipt of a petition for appointment of a conservator or other
31 protective order for reasons other than minority, the Court shall set a date
32 for hearing. The Court may appoint an attorney to represent the person who
33 may be granted the powers and duties of a guardian ad litem. If the alleged
34 disability is mental illness, mental deficiency, physical illness or
35 disability, chronic use of drugs, or chronic intoxication, the Court may

1 direct that the person to be protected be examined by a physician designated
2 by the Court, preferably a physician who is not connected with any institution
3 in which the person is a patient or is detained. The Court may send a visitor
4 to interview the person to be protected. The visitor may be a guardian ad
5 litem or an officer or employee of the Court.

6 (c) The Court may utilize, as an additional visitor, the service of any
7 public or charitable agency to evaluate the condition of the person to be
8 protected and make appropriate recommendations to the Court.

9 (d) The person to be protected is entitled to be present at the hearing
10 in person. The person is entitled to be represented by counsel, to present
11 evidence, to cross-examine witnesses, including any Court-appointed physician
12 or other qualified person and any visitor. The issue may be determined at a
13 closed hearing if the person to be protected or counsel for the person so
14 requests.

15 (e) Any person may apply for permission to participate in the proceeding
16 and the Court may grant the request, with or without hearing, upon determining
17 that the best interest of the person to be protected will be served thereby.
18 The Court may attach appropriate conditions to the permission.

19 (f) After hearing, upon finding that a basis for the appointment of a
20 conservator or other protective order has been established, the Court shall
21 make an appointment or other appropriate protective order.

22

23 Section 28-5-407. Permissible Court Orders.

24 (a) The Court shall exercise the authority conferred in this Part to
25 encourage the development of maximum self-reliance and independence of a
26 protected person and make protective orders only to the extent necessitated by
27 the protected person's mental and adaptive limitations and other conditions
28 warranting the procedure.

29 (b) The Court has the following powers that may be exercised directly or
30 through a conservator in respect to the estate and business affairs of a
31 protected person:

32 (1) While a petition for appointment of a conservator or other
33 protective order is pending and after preliminary hearing and without notice
34 to others, the Court may preserve and apply the property of the person to be
35 protected as may be required for the support of the person or dependents of

1 the person.

2 (2) After hearing and upon determining that a basis for an
3 appointment or other protective order exists with respect to a minor without
4 other disability, the Court has all those powers over the estate and business
5 affairs of the minor which are or may be necessary for the best interest of
6 the minor and members of the minor's immediate family.

7 (3) After hearing and upon determining that a basis for an
8 appointment or other protective order exists with respect to a person for
9 reasons other than minority, the Court, for the benefit of the person and
10 members of the person's immediate family, has all the powers over the estate
11 and business affairs which the person could exercise if present and not under
12 disability, except the power to make a will. Those powers include, but are
13 not limited to, power to make gifts; to convey or release contingent and
14 expectant interests in property, including marital property rights and any
15 right of survivorship incident to joint tenancy or tenancy by the entirety;
16 to exercise or release powers held by the protected person as trustee,
17 personal representative, custodian for minors, conservator, or donee of a
18 power of appointment; to enter into contracts; to create revocable or
19 irrevocable trusts of property of the estate which may extend beyond the
20 disability or life of the protected person; to exercise options of the
21 protected person to purchase securities or other property; to exercise rights
22 to elect options and change beneficiaries under insurance and annuity policies
23 and to surrender the policies for their cash value; to exercise any right to
24 an elective share in the estate of the person's deceased spouse and to
25 renounce or disclaim any interest by testate or intestate succession or by
26 inter vivos transfer.

27 (c) The Court may exercise or direct the exercise of the following
28 powers only if satisfied, after notice and hearing, that it is in the best
29 interest of the protected person, and that the person either is incapable of
30 consenting or has consented to the proposed exercise of power:

31 (1) to exercise or release powers of appointment of which the
32 protected person is donee;

33 (2) to renounce or disclaim interests;

34 (3) to make gifts in trust or otherwise exceeding 20 percent of
35 any year's income of the estate; and

1 (4) to change beneficiaries under insurance and annuity policies.

2 (d) A determination that a basis for appointment of a conservator or
3 other protective order exists has no effect on the capacity of the protected
4 person.

5

6 Section 28-5-408. Protective Arrangements and Single Transactions
7 Authorized.

8 (a) If it is established in a proper proceeding that a basis exists as
9 described in Section 28-5-401 for affecting the property and business affairs
10 of a person, the Court, without appointing a conservator, may authorize,
11 direct or ratify any transaction necessary or desirable to achieve any
12 security, service, or care arrangement meeting the foreseeable needs of the
13 protected person. Protective arrangements include payment, delivery, deposit,
14 or retention of funds or property; sale, mortgage, lease, or other transfer
15 of property; entry into an annuity contract, a contract for life care, a
16 deposit contract, or a contract for training and education; or addition to or
17 establishment of a suitable trust.

18 (b) If it is established in a proper proceeding that a basis exists as
19 described in Section 28-5-401 for affecting the property and business affairs
20 of a person, the Court, without appointing a conservator, may authorize,
21 direct, or ratify any contract, trust, or other transaction relating to the
22 protected person's property and business affairs if the Court determines that
23 the transaction is in the best interest of the protected person.

24 (c) Before approving a protective arrangement or other transaction under
25 this section, the Court shall consider the interests of creditors and
26 dependents of the protected person and, in view of the disability, whether the
27 protected person needs the continuing protection of a conservator. The Court
28 may appoint a special conservator to assist in the accomplishment of any
29 protective arrangement or other transaction authorized under this section who
30 shall have the authority conferred by the order and serve until discharged by
31 order after report to the Court of all matters done pursuant to the order of
32 appointment.

33

34 Section 28-5-409. Who May Be Appointed Conservator; Priorities.

35 (a) The Court may appoint an individual or a corporation with general

1 power to serve as trustee or conservator of the estate of a protected person.
2 The following are entitled to consideration for appointment in the order
3 listed:

4 (1) a conservator, guardian of property, or other like fiduciary
5 appointed or recognized by an appropriate court of any other jurisdiction in
6 which the protected person resides;

7 (2) an individual or corporation nominated by the protected person
8 14 or more years of age and of sufficient mental capacity to make an
9 intelligent choice;

10 (3) the spouse of the protected person;

11 (4) an adult child of the protected person;

12 (5) a parent of the protected person, or a person nominated by the
13 will of a deceased parent;

14 (6) any relative of the protected person who has resided with the
15 protected person for more than 6 months before the filing of the petition;
16 and

17 (7) a person nominated by one who is caring for or paying benefits
18 to the protected person.

19 (b) A person in priorities (1), (3), (4), (5), or (6) may designate in
20 writing a substitute to serve instead and thereby transfer the priority to the
21 substitute. With respect to persons having equal priority, the Court shall
22 select the one it deems best qualified to serve. The Court, acting in the
23 best interest of the protected person, may pass over a person having priority
24 and appoint a person having a lower priority or no priority.

25

26 Section 28-5-410. Bond.

27 The Court may require a conservator to furnish a bond conditioned upon
28 faithful discharge of all duties of the trust according to law, with sureties
29 as it shall specify. Unless otherwise directed, the bond must be in the
30 amount of the aggregate capital value of the property of the estate in the
31 conservator's control, plus one year's estimated income, and minus the value
32 of securities deposited under arrangements requiring an order of the Court for
33 their removal and the value of any land which the fiduciary, by express
34 limitation of power, lacks power to sell or convey without Court
35 authorization. The Court, in lieu of sureties on a bond, may accept other

1 collateral for the performance of the bond, including a pledge of securities
2 or a mortgage of land.

3

4 Section 28-5-411. Terms and Requirements of Bonds.

5 (a) The following requirements and provisions apply to any bond required
6 under Section 28-5-410.

7 (1) Unless otherwise provided by the terms of the approved bond,
8 sureties are jointly and severally liable with the conservator and with each
9 other.

10 (2) By executing an approved bond of a conservator, the surety
11 consents to the jurisdiction of the Court that issued letters to the primary
12 obligor in any proceeding pertaining to the fiduciary duties of the
13 conservator and naming the surety as a party respondent. Notice of any
14 proceeding must be delivered to the surety or mailed by registered or
15 certified mail to the address listed with the Court at the place where the
16 bond is filed and to the address as then known to the petitioner.

17 (3) On petition of a successor conservator or any interested
18 person, a proceeding may be initiated against a surety for breach of the
19 obligation of the bond of the conservator.

20 (4) The bond of the conservator is not void after the first
21 recovery but may be proceeded against from time to time until the whole
22 penalty is exhausted.

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

26

27 Section 28-5-412. Effect of Acceptance of Appointment.

28 By accepting appointment, a conservator submits personally to the
29 jurisdiction of the Court in any proceeding relating to the estate which may
30 be instituted by any interested person. Notice of any proceeding must be
31 delivered to the conservator or mailed by registered or certified mail to the
32 address as listed in the petition for appointment or as thereafter reported to
33 the Court and to the address as then known to the petitioner.

34

35 Section 28-5-413. Compensation and Expenses.

1 If not otherwise compensated for services rendered, any visitor,
2 attorney, physician, conservator, or special conservator appointed in a
3 protective proceeding and any attorney whose services resulted in a protective
4 order or in an order that was beneficial to a protected person's estate is
5 entitled to reasonable compensation from the estate.

6

7 Section 28-5-414. Death, Resignation, or Removal of Conservator.

8 The Court may remove a conservator for good cause, upon notice and
9 hearing, or accept the resignation of a conservator. Upon the conservator's
10 death, resignation, or removal, the Court may appoint another conservator. A
11 conservator so appointed succeeds to the title and powers of the predecessor.

12

13 Section 28-5-415. Petitions for Orders Subsequent to Appointment.

14 (a) Any person interested in the welfare of a person for whom a
15 conservator has been appointed may file a petition in the appointing court for
16 an order:

17 (1) requiring bond or collateral or additional bond or collateral,
18 or reducing bond;

19 (2) requiring an accounting for the administration of the trust;

20 (3) directing distribution;

21 (4) removing the conservator and appointing a temporary or
22 successor conservator; or

23 (5) granting other appropriate relief.

24 (b) A conservator may petition the appointing court for instructions
25 concerning fiduciary responsibility.

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

28

29 Section 28-5-416. General Duty of Conservator.

30 A conservator, in relation to powers conferred by this Part, or implicit
31 in the title acquired by virtue of the proceeding, shall act as a fiduciary
32 and observe the standards of care applicable to trustees.

33

34 Section 28-5-417. Inventory and Records.

35 (a) Within 90 days after appointment, each conservator shall prepare and

1 file with the appointing Court a complete inventory of the estate subject to
2 the conservatorship together with an oath or affirmation that the inventory is
3 believed to be complete and accurate as far as information permits. The
4 conservator shall provide a copy thereof to the protected person if
5 practicable and the person has attained the age of 14 years and has sufficient
6 mental capacity to understand the arrangement. A copy also shall be provided
7 to any guardian or parent with whom the protected person resides.

8 (b) The conservator shall keep suitable records of the administration
9 and exhibit the same on request of any interested person.

10

11 Section 28-5-418. Accounts.

12 Each conservator shall account to the Court for administration of the
13 trust not less than annually unless the Court directs otherwise, upon
14 resignation or removal and at other times as the Court may direct. On
15 termination of the protected person's minority or disability, a conservator
16 shall account to the Court or to the formerly protected person or the
17 successors of that person. Subject to appeal or vacation within the time
18 permitted, an order after notice and hearing allowing an intermediate account
19 of a conservator adjudicates as to liabilities concerning the matters
20 considered in connection therewith; and an order, following notice and
21 hearing, allowing a final account adjudicates as to all previously unsettled
22 liabilities of the conservator to the protected person or the protected
23 person's successors relating to the conservatorship. In connection with any
24 account, the Court may require a conservator to submit to a physical check of
25 the estate, to be made in any manner the Court specifies.

26

27 Section 28-5-419. Conservators; Title By Appointment.

28 (a) The appointment of a conservator vests in the conservator title as
29 trustee to all property, or to the part thereof specified in the order, of the
30 protected person, presently held or thereafter acquired, including title to
31 any property theretofore held for the protected person by custodians or
32 attorneys-in-fact. An order specifying that only a part of the property of
33 the protected person vests in the conservator creates a limited
34 conservatorship.

35 (b) Except as otherwise provided herein, the interest of the protected

1 person in property vested in a conservator by this section is not
2 transferrable or assignable by the protected person. An attempted transfer or
3 assignment by the protected person, though ineffective to affect property
4 rights, may generate a claim for restitution or damages which, subject to
5 presentation and allowance, may be satisfied as provided in Section 28-5-427.

6 (c) Neither property vested in a conservator by this section nor the
7 interest of the protected person in that property is subject to levy,
8 garnishment, or similar process other than an order issued in the protective
9 proceeding made as provided in Section 28-5-427.

10

11 Section 28-5-420. Recording of Conservator's Letters.

12 (a) Letters of conservatorship are evidence of transfer of all assets,
13 or the part thereof specified in the letters, of a protected person to the
14 conservator. An order terminating a conservatorship is evidence of transfer
15 of all assets subjected to the conservatorship from the conservator to the
16 protected person, or to successors of the person.

17 (b) Subject to the requirements of general statutes governing the filing
18 or recordation of documents of title to land or other property, letters of
19 conservatorship and orders terminating conservatorships, may be filed or
20 recorded to give record notice of title as between the conservator and the
21 protected person.

22

23 Section 28-5-421. Sale, Encumbrance, or Transaction Involving Conflict
24 of Interest; Voidable; Exceptions.

25 Any sale or encumbrance to a conservator, the spouse, agent, attorney of
26 a conservator, or any corporation, trust, or other organization in which the
27 conservator has a substantial beneficial interest, or any other transaction
28 involving the estate being administered by the conservator which is affected
29 by a substantial conflict between fiduciary and personal interests is voidable
30 unless the transaction is approved by the Court after notice as directed by
31 the Court.

32

33 Section 28-5-422. Persons Dealing With Conservators; Protection.

34 (a) A person who in good faith either assists or deals with a
35 conservator for value in any transaction other than those requiring a Court

1 order as provided in Section 28-5-407 is protected as if the conservator
2 properly exercised the power. The fact that a person knowingly deals with a
3 conservator does not alone require the person to inquire into the existence of
4 a power or the propriety of its exercise, but restrictions on powers of
5 conservators which are endorsed on letters as provided in Section 28-5-425 are
6 effective as to third persons. A person is not bound to see to the proper
7 application of estate assets paid or delivered to a conservator.

8 (b) The protection expressed in this section extends to any procedural
9 irregularity or jurisdictional defect occurred in proceedings leading to the
10 issuance of letters and is not a substitution for protection provided by
11 comparable provisions of the law relating to commercial transactions or to
12 simplifying transfers of securities by fiduciaries.

13

14 Section 28-5-423. Powers of Conservator in Administration.

15 (a) Subject to limitation provided in Section 28-5-425, a conservator
16 has all of the powers conferred in this section and any additional powers
17 conferred by law on trustees in this State. In addition, a conservator of the
18 estate of an unmarried minor under the age of 18 years, as to whom no one has
19 parental rights, has the duties and powers of a guardian of a minor described
20 in Section 28-5-209 until the minor attains the age of 18 years or marries,
21 but the parental rights so conferred on a conservator do not preclude
22 appointment of a guardian as provided in Part 2.

23 (b) A conservator without Court authorization or confirmation, may
24 invest and reinvest funds of the estate as would a trustee.

25 (c) A conservator, acting reasonably in efforts to accomplish the
26 purpose of the appointment, may act without Court authorization or
27 confirmation, to

28 (1) collect, hold, and retain assets of the estate including land
29 in another state, until judging that disposition of the assets should be made,
30 and the assets may be retained even though they include an asset in which the
31 conservator is personally interested;

32 (2) receive additions to the estate;

33 (3) continue or participate in the operation of any business or
34 other enterprise;

35 (4) acquire an undivided interest in an estate asset in which the

1 conservator, in any fiduciary capacity, holds an undivided interest;

2 (5) invest and reinvest estate assets in accordance with
3 subsection (b);

4 (6) deposit estate funds in a state or federally insured financial
5 institution, including one operated by the conservator;

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

10 (8) make ordinary or extraordinary repairs or alterations in
11 buildings or other structures; demolish any improvements; and raze existing
12 or erect new party walls or buildings;

13 (9) subdivide, develop, or dedicate land to public use; make or
14 obtain the vacation of plats and adjust boundaries; adjust differences in
15 valuation or exchange or partition by giving or receiving considerations; and
16 dedicate easements to public use without consideration;

17 (10) enter for any purpose into a lease as lessor or lessee with
18 or without option to purchase or renew for a term within or extending beyond
19 the term of the conservatorship;

20 (11) enter into a lease or arrangement for exploration and removal
21 of minerals or other natural resources or enter into a pooling or unitization
22 agreement;

23 (12) grant an option involving disposition of an estate asset and
24 take an option for the acquisition of any asset;

25 (13) vote a security, in person or by general or limited proxy;

26 (14) pay calls, assessments, and any other sums chargeable or
27 accruing against or on account of securities;

28 (15) sell or exercise stock-subscription or conversion rights;

29 (16) consent, directly or through a committee or other agent, to
30 the reorganization, consolidation, merger, dissolution, or liquidation of a
31 corporation or other business enterprise;

32 (17) hold a security in the name of a nominee or in other form
33 without disclosure of the conservatorship so that title to the security may
34 pass by delivery, but the conservator is liable for any act of the nominee in
35 connection with the stock so held;

1 (18) insure the assets of the estate against damage or loss and
2 the conservator against liability with respect to third persons;

3 (19) borrow money to be repaid from estate assets or otherwise;
4 advance money for the protection of the estate or the protected person and for
5 all expenses, losses, and liability sustained in the administration of the
6 estate or because of the holding or ownership of any estate assets, for which
7 the conservator has a lien on the estate as against the protected person for
8 advances so made;

9 (20) pay or contest any claim; settle a claim by or against the
10 estate or the protected person by compromise, arbitration, or otherwise; and
11 release, in whole or in part, any claim belonging to the estate to the extent
12 the claim is uncollectible;

13 (21) pay taxes, assessments, compensation of the conservator, and
14 other expenses incurred in the collection, care, administration, and
15 protection of the estate;

16 (22) allocate items of income or expense to either estate income
17 or principal, as provided by law, including creation of reserves out of income
18 for depreciation, obsolescence, or amortization, or for depletion in mineral
19 or timber properties;

20 (23) pay any sum distributable to a protected person or dependent
21 of the protected person by paying the sum to the distributee or by paying the
22 sum for the use of the distributee to the guardian of the distributee, or, if
23 none, to a relative or other person having custody of the distributee;

24 (24) employ persons, including attorneys, auditors, investment
25 advisors, or agents, even though they are associated with the conservator, to
26 advise or assist in the performance of administrative duties; act upon their
27 recommendation without independent investigation; and instead of acting
28 personally, employ one or more agents to perform any act of administration,
29 whether or not discretionary;

30 (25) prosecute or defend actions, claims, or proceedings in any
31 jurisdiction for the protection of estate assets and of the conservator in the
32 performance of fiduciary duties; and

33 (26) execute and deliver all instruments that will accomplish or
34 facilitate the exercise of the powers vested in the conservator.

35

1 Section 28-5-424. Distributive Duties and Powers of Conservator.

2 (a) A conservator may expend or distribute income or principal of the
3 estate without Court authorization or confirmation for the support, education,
4 care, or benefit of the protected person and dependents in accordance with the
5 following principles:

6 (1) The conservator shall consider recommendations relating to the
7 appropriate standard of support, education, and benefit for the protected
8 person or dependent made by a parent or guardian, if any. The conservator may
9 not be surcharged for sums paid to persons or organizations furnishing
10 support, education, or care to the protected person or a dependent pursuant to
11 the recommendations of a parent or guardian of the protected person unless the
12 conservator knows that the parent or guardian derives personal financial
13 benefit therefrom, including relief from any personal duty of support or the
14 recommendations are clearly not in the best interest of the protected person.

15 (2) The conservator shall expend or distribute sums reasonably
16 necessary for the support, education, care, or benefit of the protected person
17 and dependents with due regard to (i) the size of the estate, the probable
18 duration of the conservatorship, and the likelihood that the protected person,
19 at some future time, may be fully able to be wholly self-sufficient and able
20 to manage business affairs and the estate; (ii) the accustomed standard of
21 living of the protected person and dependents; and (iii) other funds or
22 sources used for the support of the protected person.

23 (3) The conservator may expend funds of the estate for the support
24 of persons legally dependent on the protected person and others who are
25 members of the protected person's household who are unable to support
26 themselves, and who are in need of support.

27 (4) Funds expended under this subsection may be paid by the
28 conservator to any person, including the protected person, to reimburse for
29 expenditures that the conservator might have made, or in advance for services
30 to be rendered to the protected person if it is reasonable to expect the
31 services will be performed and advance payments are customary or reasonably
32 necessary under the circumstances.

33 (5) A conservator, in discharging the responsibilities conferred
34 by Court order and this Part, shall implement the principles described in
35 Section 28-5-407(a), to the extent possible.

1 (b) If the estate is ample to provide for the purposes implicit in the
2 distributions authorized by the preceding subsections, a conservator for a
3 protected person other than a minor has power to make gifts to charity and
4 other objects as the protected person might have been expected to make, in
5 amounts that do not exceed in total for any year 20 percent of the income from
6 the estate.

7 (c) When a minor who has not been adjudged disabled under Section 28-
8 5-401(c) attains majority, the conservator, after meeting all claims and
9 expenses of administration, shall pay over and distribute all funds and
10 properties to the formerly protected person as soon as possible.

11 (d) If satisfied that a protected person's disability, other than
12 minority, has ceased, the conservator, after meeting all claims and expenses
13 of administration, shall pay over and distribute all funds and properties to
14 the formerly protected person as soon as possible.

15 (e) If a protected person dies, the conservator shall deliver to the
16 Court for safekeeping any will of the deceased protected person which may have
17 come into the conservator's possession, inform the executor or beneficiary
18 named therein of the delivery, and retain the estate for delivery to a duly
19 appointed personal representative of the decedent or other persons entitled
20 thereto. If, 40 days after the death of the protected person, no other person
21 has been appointed personal representative and no application or petition for
22 appointment is before the Court, the conservator may apply to exercise the
23 powers and duties of a personal representative in order to be able to proceed
24 to administer and distribute the decedent's estate. Upon application for an
25 order granting the powers of a personal representative to a conservator, after
26 notice to any person nominated personal representative by any will of which
27 the applicant is aware, the Court may grant the application upon determining
28 that there is no objection and endorse the letters of the conservator to note
29 that the formerly protected person is deceased and that the conservator has
30 acquired all of the powers and duties of a personal representative. The
31 making and entry of an order under this section has the effect of an order of
32 appointment of a personal representative as provided in Section 28-3-308 and
33 Parts 6 through 10 of Article III, but the estate in the name of the
34 conservator, after administration, may be distributed to the decedent's
35 successors without prior re-transfer to the conservator as personal

1 representative.

2

3 Section 28-5-425. Enlargement or Limitation of Powers of Conservator.

4 Subject to the restrictions in Section 28-5-407(c), the Court may confer
5 on a conservator at the time of appointment or later, in addition to the
6 powers conferred by Sections 28-5-423 and 28-5-424, any power that the Court
7 itself could exercise under Sections 28-5-407(b)(2) and 28-5-407(b)(3). The
8 Court, at the time of appointment or later, may limit the powers of a
9 conservator otherwise conferred by Sections 28-5-423 and 28-5-424 or
10 previously conferred by the Court and may at any time remove or modify any
11 limitation. If the Court limits any power conferred on the conservator by
12 Section 28-5-423 or Section 28-5-424, or specifies, as provided in Section 28-
13 5-419(a), that title to some but not all assets of the protected person vest
14 in the conservator, the limitation or specification of assets subject to the
15 conservatorship must be endorsed upon the letters of appointment.

16

17 Section 28-5-426. Preservation of Estate Plan; Right to Examine.

18 In (i) investing the estate, (ii) selecting assets of the estate for
19 distribution under subsections (a) and (b) of Section 28-5-424, and (iii)
20 utilizing powers of revocation or withdrawal available for the support of the
21 protected person and exercisable by the conservator or the Court, the
22 conservator and the Court shall take into account any estate plan of the
23 protected person known to them, including a will, any revocable trust of which
24 the person is settlor, and any contract, transfer, or joint ownership
25 arrangement originated by the protected person with provisions for payment or
26 transfer of benefits or interests at the person's death to another or others.
27 The conservator may examine the will of the protected person.

28

29 Section 28-5-427. Claims Against Protected Person; Enforcement.

30 (a) A conservator may pay or secure from the estate claims against the
31 estate or against the protected person arising before or after the
32 conservatorship upon their presentation and allowance in accordance with the
33 priorities stated in subsection (c). A claim may be presented by either of
34 the following methods:

35 (1) The claimant may deliver or mail to the conservator a written

1 statement of the claim indicating its basis, the name and mailing address of
2 the claimant, and the amount claimed; or

3 (2) The claimant may file a written statement of the claim, in the
4 form prescribed by rule, with the probate clerk and deliver or mail a copy of
5 the statement to the conservator.

6 (b) A claim is deemed presented on the first to occur of receipt of the
7 written statement of claim by the conservator or the filing of the claim with
8 the Court. A presented claim is allowed if it is not disallowed by written
9 statement mailed by the conservator to the claimant within 60 days after its
10 presentation. The presentation of a claim tolls any statute of limitation
11 relating to the claim until 30 days after its disallowance.

12 (c) A claimant whose claim has not been paid may petition the Probate
13 Court for determination of the claim at any time before it is barred by the
14 applicable statute of limitation and, upon due proof, procure an order for its
15 allowance, payment, or security from the estate. If a proceeding is pending
16 against a protected person at the time of appointment of a conservator or is
17 initiated against the protected person thereafter, the moving party shall give
18 notice of the proceeding to the conservator if the proceeding could result in
19 creating a claim against the estate.

20 (d) If it appears that the estate in conservatorship is likely to be
21 exhausted before all existing claims are paid, the conservator shall
22 distribute the estate in money or in kind in payment of claims in the
23 following order:

24 (1) costs and expenses of administration;

25 (2) claims of the federal or state government having priority
26 under other laws;

27 (3) claims incurred by the conservator for care, maintenance, and
28 education, previously provided to the protected person or the protected
29 person's dependents;

30 (4) claims arising prior to the conservatorship;

31 (5) all other claims.

32 (e) No preference may be given in the payment of any claim over any
33 other claim of the same class, and a claim due and payable is not entitled to
34 a preference over claims not due; but if it appears that the assets of the
35 conservatorship are adequate to meet all existing claims, the Court, acting in

1 the best interest of the protected person, may order the conservator to give a
2 mortgage or other security on the conservatorship estate to secure payment at
3 some future date of any or all claims in class 5.

4

5 Section 28-5-428. Personal Liability of Conservator.

6 (a) Unless otherwise provided in the contract, a conservator is not
7 personally liable on a contract properly entered into in fiduciary capacity in
8 the course of administration of the estate unless the conservator fails to
9 reveal the representative capacity and identify the estate in the contract.

10 (b) The conservator is personally liable for obligations arising from
11 ownership or control of property of the estate or for torts committed in the
12 course of administration of the estate only if personally at fault.

13 (c) Claims based on (i) contracts entered into by a conservator in
14 fiduciary capacity, (ii) obligations arising from ownership or control of the
15 estate, or (iii) torts committed in the course of administration of the
16 estate, may be asserted against the estate by proceeding against the
17 conservator in fiduciary capacity, whether or not the conservator is
18 personally liable therefor.

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

22

23 Section 28-5-429. Termination of Proceedings.

24 The protected person, conservator, or any other interested person, may
25 petition the Court to terminate the conservatorship. A protected person
26 seeking termination is entitled to the same rights and procedures as in an
27 original proceeding for a protective order. The Court, upon determining after
28 notice and hearing that the minority or disability of the protected person has
29 ceased, shall terminate the conservatorship. Upon termination, title to
30 assets of the estate passes to the formerly protected person or to successors.
31 The order of termination must provide for expenses of administration and
32 direct the conservator to execute appropriate instruments to evidence the
33 transfer.

34

35 Section 28-5-430. Payment of Debt and Delivery of Property to Foreign

1 Conservator without Local Proceedings.

2 (a) Any person indebted to a protected person or having possession of
3 property or of an instrument evidencing a debt, stock, or chose in action
4 belonging to a protected person may pay or deliver it to a conservator,
5 guardian of the estate, or other like fiduciary appointed by a court of the
6 state of residence of the protected person upon being presented with proof of
7 appointment and an affidavit made by or on behalf of the fiduciary stating:

8 (1) that no protective proceeding relating to the protected person
9 is pending in this State; and

10 (2) that the foreign fiduciary is entitled to payment or to
11 receive delivery.

12 (b) If the person to whom the affidavit is presented is not aware of any
13 protective proceeding pending in this State, payment or delivery in response
14 to the demand and affidavit discharges the debtor or possessor.

15

16 Section 28-5-431. Foreign Conservator; Proof of Authority; Bond;
17 Powers.

18 If a conservator has not been appointed in this State and no petition in
19 a protective proceeding is pending in this State, a conservator appointed in
20 the state in which the protected person resides may file in a Court of this
21 State in a county in which property belonging to the protected person is
22 located, authenticated copies of letters of appointment and of any bond.
23 Thereafter, the domiciliary foreign conservator may exercise as to assets in
24 this State all powers of a conservator appointed in this State and may
25 maintain actions and proceedings in this State subject to any conditions
26 imposed upon non-resident parties generally.

27

PART 5

28

DURABLE POWER OF ATTORNEY

29 Section 28-5-501. Definition.

30 A durable power of attorney is a power of attorney by which a principal
31 designates another his attorney in fact in writing and the writing contains
32 the words "This power of attorney shall not be affected by subsequent
33 disability or incapacity of the principal, or lapse of time," or "This power
34 of attorney shall become effective upon the disability or incapacity of the
35 principal," or similar words showing the intent of the principal that the

1 authority conferred shall be exercisable notwithstanding the principal's
2 subsequent disability or incapacity, and, unless it states a time of
3 termination, notwithstanding the lapse of time since the execution of the
4 instrument.

5

6 Section 28-5-502. Durable Power of Attorney Not Affected By Lapse of
7 Time, Disability or Incapacity.

8 All acts done by an attorney in fact pursuant to a durable power of
9 attorney during any period of disability or incapacity of the principal have
10 the same effect and inure to the benefit of and bind the principal and his
11 successors in interest as if the principal were competent and not disabled.
12 Unless the instrument states a time of termination, the power is exercisable
13 notwithstanding the lapse of time since the execution of the instrument.

14

15 Section 28-5-503. Relation of Attorney in Fact to Court-appointed
16 Fiduciary.

17 (a) If, following execution of a durable power of attorney, a court of
18 the principal's domicile appoints a conservator, guardian of the estate, or
19 other fiduciary charged with the management of all of the principal's property
20 or all of his property except specified exclusions, the attorney in fact is
21 accountable to the fiduciary as well as to the principal. The fiduciary has
22 the same power to revoke or amend the power of attorney that the principal
23 would have had if he were not disabled or incapacitated.

24 (b) A principal may nominate, by a durable power of attorney, the
25 conservator, guardian of his estate, or guardian of his person for
26 consideration by the court if protective proceedings for the principal's
27 person or estate are thereafter commenced. The court shall make its
28 appointment in accordance with the principal's most recent nomination in a
29 durable power of attorney except for good cause or disqualification.

30

31 Section 28-5-504. Power of Attorney Not Revoked Until Notice.

32 (a) The death of a principal who has executed a written power of
33 attorney, durable or otherwise, does not revoke or terminate the agency as to
34 the attorney in fact or other person, who, without actual knowledge of the
35 death of the principal, acts in good faith under the power. Any action so

1 taken, unless otherwise invalid or unenforceable, binds successors in interest
 2 of the principal.

3 (b) The disability or incapacity of a principal who has previously
 4 executed a written power of attorney that is not a durable power does not
 5 revoke or terminate the agency as to the attorney in fact or other person,
 6 who, without actual knowledge of the disability or incapacity of the
 7 principal, acts in good faith under the power. Any action so taken, unless
 8 otherwise invalid or unenforceable, binds the principal and his successors in
 9 interest.

10

11 Section 28-5-505. Proof of Continuance of Durable and Other Powers of
 12 Attorney by Affidavit.

13 As to acts undertaken in good faith reliance thereon, an affidavit
 14 executed by the attorney in fact under a power of attorney, durable or
 15 otherwise, stating that he did not have at the time of exercise of the power
 16 actual knowledge of the termination of the power by revocation or of the
 17 principal's death, disability, or incapacity is conclusive proof of the
 18 nonrevocation or nontermination of the power at that time. If the exercise of
 19 the power of attorney requires execution and delivery of any instrument that
 20 is recordable, the affidavit when authenticated for record is likewise
 21 recordable. This section does not affect any provision in a power of attorney
 22 for its termination by expiration of time or occurrence of an event other than
 23 express revocation or a change in the principal's capacity.

24

25 ARTICLE VI

26 NONPROBATE TRANSFERS ON DEATH

27 PART 1

28 PROVISIONS RELATING TO EFFECT OF DEATH

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

30 (a) A provision for a nonprobate transfer on death in an insurance
 31 policy, contract of employment, bond, mortgage, promissory note, certificated
 32 or uncertificated security, account agreement, custodial agreement, deposit
 33 agreement, compensation plan, pension plan, individual retirement plan,
 34 employee benefit plan, trust, conveyance, deed of gift, marital property
 35 agreement, or other written instrument of a similar nature is nontestamentary.

1 This subsection includes a written provision that:

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

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

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

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

16 PART 2

17 MULTIPLE-PERSON ACCOUNTS

18 SUBPART 1

19 DEFINITIONS AND GENERAL PROVISIONS

20 Section 28-6-201. Definitions.

21 In this part:

22 (1) "Account" means a contract of deposit between a depositor and a
 23 financial institution, and includes a checking account, savings account,
 24 certificate of deposit, and share account.

25 (2) "Agent" means a person authorized to make account transactions for a
 26 party.

27 (3) "Beneficiary" means a person named as one to whom sums on deposit in
 28 an account are payable on request after death of all parties or for whom a
 29 party is named as trustee.

30 (4) "Financial institution" means an organization authorized to do
 31 business under state or federal laws relating to financial institutions, and
 32 includes a bank, trust company, savings bank, building and loan association,
 33 savings and loan company or association, and credit union.

34 (5) "Multiple-party account" means an account payable on request to one
 35 or more of two or more parties, whether or not a right of survivorship is

1 mentioned.

2 (6) "Party" means a person who, by the terms of an account, has a
3 present right, subject to request, to payment from the account other than as a
4 beneficiary or agent.

5 (7) "Payment" of sums on deposit includes withdrawal, payment to a party
6 or third person pursuant to check or other request, and a pledge of sums on
7 deposit by a party, or a set-off, reduction, or other disposition of all or
8 part of an account pursuant to a pledge.

9 (8) "POD designation" means the designation of (i) a beneficiary in an
10 account payable on request to one party during the party's lifetime and on the
11 party's death to one or more beneficiaries, or to one or more parties during
12 their lifetimes and on death of all of them to one or more beneficiaries, or
13 (ii) a beneficiary in an account in the name of one or more parties as trustee
14 for one or more beneficiaries if the relationship is established by the terms
15 of the account and there is no subject of the trust other than the sums on
16 deposit in the account, whether or not payment to the beneficiary is
17 mentioned.

18 (9) "Receive," as it relates to notice to a financial institution, means
19 receipt in the office or branch office of the financial institution in which
20 the account is established, but if the terms of the account require notice at
21 a particular place, in the place required.

22 (10) "Request" means a request for payment complying with all terms of
23 the account, including special requirements concerning necessary signatures
24 and regulations of the financial institution; but, for purposes of this part,
25 if terms of the account condition payment on advance notice, a request for
26 payment is treated as immediately effective and a notice of intent to withdraw
27 is treated as a request for payment.

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

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

34

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

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

7

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

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

14 (b) An account established before, on, or after the effective date of
15 this part, whether in the form prescribed in Section 28-6-204 or in any other
16 form, is either a single-party account or a multiple-party account, with or
17 without right of survivorship, and with or without a POD designation or an
18 agency designation, within the meaning of this part, and is governed by this
19 part.

20

21 Section 28-6-204. Forms.

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

25 UNIFORM SINGLE-OR MULTIPLE-PARTY ACCOUNT FORM

26 PARTIES [Name One or More Parties]:

27 _____

28 OWNERSHIP [Select One And Initial]:

29 _____SINGLE-PARTY ACCOUNT

30 _____MULTIPLE-PARTY ACCOUNT

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

33 RIGHTS AT DEATH [Select One And Initial]:

34 _____SINGLE-PARTY ACCOUNT

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

1 _____SINGLE-PARTY ACCOUNT WITH POD (PAY ON DEATH) DESIGNATION

2 [Name One Or More Beneficiaries]:

3 _____

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

6 _____MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP

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

8 _____MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP AND POD (PAY ON DEATH)
9 DESIGNATION

10 [Name One Or More Beneficiaries]:

11 _____

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

14 _____MULTIPLE-PARTY ACCOUNT WITHOUT RIGHT OF SURVIVORSHIP

15 At death of party, deceased party's ownership passes as part of deceased
16 party's estate.

17 AGENCY (POWER OF ATTORNEY) DESIGNATION [Optional]

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

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

21 _____

22 [Select One And Initial]:

23 _____ AGENCY DESIGNATION SURVIVES DISABILITY OR INCAPACITY OF PARTIES

24 _____ AGENCY DESIGNATION TERMINATES ON DISABILITY OR INCAPACITY OF
25 PARTIES

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

30

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

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

34 (b) Unless the terms of an agency designation provide that the authority
35 of the agent terminates on disability or incapacity of a party, the agent's

1 authority survives disability and incapacity. The agent may act for a
2 disabled or incapacitated party until the authority of the agent is
3 terminated.

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

6

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

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

14

SUBPART 2

15

OWNERSHIP AS BETWEEN PARTIES AND OTHERS

16

Section 28-6-211. Ownership During Lifetime.

17

(a) In this section, "net contribution" of a party means the sum of all
18 deposits to an account made by or for the party, less all payments from the
19 account made to or for the party which have not been paid to or applied to the
20 use of another party and a proportionate share of any charges deducted from
21 the account, plus a proportionate share of any interest or dividends earned,
22 whether or not included in the current balance. The term includes deposit
23 life insurance proceeds added to the account by reason of death of the party
24 whose net contribution is in question.

25

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

30

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

32

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

34

35 Section 28-6-212. Rights at Death.

1 (a) Except as otherwise provided in this part, on death of a party sums
2 on deposit in a multiple-party account belong to the surviving party or
3 parties. If two or more parties survive and one is the surviving spouse of
4 the decedent, the amount to which the decedent, immediately before death, was
5 beneficially entitled under Section 28-6-211 belongs to the surviving spouse.
6 If two or more parties survive and none is the surviving spouse of the
7 decedent, the amount to which the decedent, immediately before death, was
8 beneficially entitled under Section 28-6-211 belongs to the surviving parties
9 in equal shares, and augments the proportion to which each survivor,
10 immediately before the decedent's death, was beneficially entitled under
11 Section 28-6-211, and the right of survivorship continues between the
12 surviving parties.

13 (b) In an account with a POD designation:

14 (1) On death of one of two or more parties, the rights in sums on
15 deposit are governed by subsection (a).

16 (2) On death of the sole party or the last survivor of two or more
17 parties, sums on deposit belong to the surviving beneficiary or beneficiaries.
18 If two or more beneficiaries survive, sums on deposit belong to them in equal
19 and undivided shares, and there is no right of survivorship in the event of
20 death of a beneficiary thereafter. If no beneficiary survives, sums on
21 deposit belong to the estate of the last surviving party.

22 (c) Sums on deposit in a single-party account without a POD designation,
23 or in a multiple-party account that, by the terms of the account, is without
24 right of survivorship, are not affected by death of a party, but the amount to
25 which the decedent, immediately before death, was beneficially entitled under
26 Section 28-6-211 is transferred as part of the decedent's estate. A POD
27 designation in a multiple-party account without right of survivorship is
28 ineffective. For purposes of this section, designation of an account as a
29 tenancy in common establishes that the account is without right of
30 survivorship.

31 (d) The ownership right of a surviving party or beneficiary, or of the
32 decedent's estate, in sums on deposit is subject to requests for payment made
33 by a party before the party's death, whether paid by the financial institution
34 before or after death, or unpaid. The surviving party or beneficiary, or the
35 decedent's estate, is liable to the payee of an unpaid request for payment.

1 The liability is limited to a proportionate share of the amount transferred
2 under this section, to the extent necessary to discharge the request for
3 payment.

4

5 Section 28-6-213. Alteration of Rights.

6 (a) Rights at death under Section 28-6-212 are determined by the terms
7 of the account at the death of a party. The terms of the account may be
8 altered by written notice given by a party to the financial institution to
9 change the terms of the account or to stop or vary payment under the terms of
10 the account. The notice must be signed by a party and received by the
11 financial institution during the party's lifetime.

12 (b) A right of survivorship arising from the express terms of the
13 account, Section 28-6-212, or a POD designation, may not be altered by will.

14

15 Section 28-6-214. Accounts and Transfers Nontestamentary.

16 Except as provided in Part 2 of Article II (elective share of surviving
17 spouse) or as a consequence of, and to the extent directed by, Section 28-
18 6-215, a transfer resulting from the application of Section 28-6-212 is
19 effective by reason of the terms of the account involved and this part and is
20 not testamentary or subject to Articles I through IV (estate administration).

21

22 Section 28-6-215. Rights of Creditors and Others.

23 (a) If other assets of the estate are insufficient, a transfer resulting
24 from a right of survivorship or POD designation under this part is not
25 effective against the estate of a deceased party to the extent needed to pay
26 claims against the estate and statutory allowances to the surviving spouse and
27 children.

28 (b) A surviving party or beneficiary who receives payment from an
29 account after death of a party is liable to account to the personal
30 representative of the decedent for a proportionate share of the amount
31 received to which the decedent, immediately before death, was beneficially
32 entitled under Section 28-6-211, to the extent necessary to discharge the
33 claims and allowances described in subsection (a) remaining unpaid after
34 application of the decedent's estate. A proceeding to assert the liability
35 may not be commenced unless the personal representative has received a written

1 demand by the surviving spouse, a creditor, a child, or a person acting for a
 2 child of the decedent. The proceeding must be commenced within one year after
 3 death of the decedent.

4 (c) A surviving party or beneficiary against whom a proceeding to
 5 account is brought may join as a party to the proceeding a surviving party or
 6 beneficiary of any other account of the decedent.

7 (d) Sums recovered by the personal representative must be administered
 8 as part of the decedent's estate. This section does not affect the protection
 9 from claims of the personal representative or estate of a deceased party
 10 provided in Section 28-6-226 for a financial institution that makes payment in
 11 accordance with the terms of the account.

12

13 Section 28-6-216. Community Property and Tenancy by the Entireties.

14 (a) A deposit of community property in an account does not alter the
 15 community character of the property or community rights in the property, but a
 16 right of survivorship between parties married to each other arising from the
 17 express terms of the account or Section 28-6-212 may not be altered by will.

18 (b) This part does not affect the law governing tenancy by the
 19 entireties.

20

SUBPART 3

21

PROTECTION OF FINANCIAL INSTITUTIONS

22

Section 28-6-221. Authority of Financial Institution.

23

A financial institution may enter into a contract of deposit for a
 24 multiple-party account to the same extent it may enter into a contract of
 25 deposit for a single-party account, and may provide for a POD designation and
 26 an agency designation in either a single-party account or a multiple-party
 27 account. A financial institution need not inquire as to the source of a
 28 deposit to an account or as to the proposed application of a payment from an
 29 account.

30

31 Section 28-6-222. Payment on Multiple-Party Account.

32

A financial institution, on request, may pay sums on deposit in a
 33 multiple-party account to:

34

(1) one or more of the parties, whether or not another party is
 35 disabled, incapacitated, or deceased when payment is requested and whether or

1 not the party making the request survives another party; or

2 (2) the personal representative, if any, or, if there is none, the
3 heirs or devisees of a deceased party if proof of death is presented to the
4 financial institution showing that the deceased party was the survivor of all
5 other persons named on the account either as a party or beneficiary, unless
6 the account is without right of survivorship under Section 28-6-212.

7

8 Section 28-6-223. Payment on POD Designation.

9 A financial institution, on request, may pay sums on deposit in an
10 account with a POD designation to:

11 (1) one or more of the parties, whether or not another party is
12 disabled, incapacitated, or deceased when the payment is requested and whether
13 or not a party survives another party;

14 (2) the beneficiary or beneficiaries, if proof of death is
15 presented to the financial institution showing that the beneficiary or
16 beneficiaries survived all persons named as parties; or

17 (3) the personal representative, if any, or, if there is none, the
18 heirs or devisees of a deceased party, if proof of death is presented to the
19 financial institution showing that the deceased party was the survivor of all
20 other persons named on the account either as a party or beneficiary.

21

22 Section 28-6-224. Payment to Designated Agent.

23 A financial institution, on request of an agent under an agency
24 designation for an account, may pay to the agent sums on deposit in the
25 account, whether or not a party is disabled, incapacitated, or deceased when
26 the request is made or received, and whether or not the authority of the agent
27 terminates on the disability or incapacity of a party.

28

29 Section 28-6-225. Payment to Minor.

30 If a financial institution is required or permitted to make payment
31 pursuant to this part to a minor designated as a beneficiary, payment may be
32 made pursuant to the Uniform Transfers to Minors Act.

33

34 Section 28-6-226. Discharge.

35 (a) Payment made pursuant to this part in accordance with the type of

1 account discharges the financial institution from all claims for amounts so
2 paid, whether or not the payment is consistent with the beneficial ownership
3 of the account as between parties, beneficiaries, or their successors.
4 Payment may be made whether or not a party, beneficiary, or agent is disabled,
5 incapacitated, or deceased when payment is requested, received, or made.

6 (b) Protection under this section does not extend to payments made after
7 a financial institution has received written notice from a party, or from the
8 personal representative, surviving spouse, or heir or devisee of a deceased
9 party, to the effect that payments in accordance with the terms of the
10 account, including one having an agency designation, should not be permitted,
11 and the financial institution has had a reasonable opportunity to act on it
12 when the payment is made. Unless the notice is withdrawn by the person giving
13 it, the successor of any deceased party must concur in a request for payment
14 if the financial institution is to be protected under this section. Unless a
15 financial institution has been served with process in an action or proceeding,
16 no other notice or other information shown to have been available to the
17 financial institution affects its right to protection under this section.

18 (c) A financial institution that receives written notice pursuant to
19 this section or otherwise has reason to believe that a dispute exists as to
20 the rights of the parties may refuse, without liability, to make payments in
21 accordance with the terms of the account.

22 (d) Protection of a financial institution under this section does not
23 affect the rights of parties in disputes between themselves or their
24 successors concerning the beneficial ownership of sums on deposit in accounts
25 or payments made from accounts.

26

27 Section 28-6-227. Set-Off.

28 Without qualifying any other statutory right to set-off or lien and
29 subject to any contractual provision, if a party is indebted to a financial
30 institution, the financial institution has a right to set-off against the
31 account. The amount of the account subject to set-off is the proportion to
32 which the party is, or immediately before death was, beneficially entitled
33 under Section 28-6-211 or, in the absence of proof of that proportion, an
34 equal share with all parties.

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ARTICLE VII

(Reserved)

ARTICLE VIII

EFFECTIVE DATE AND REPEALER

Section 28-8-101. Time of Taking Effect; Provisions for Transition.

(a) This Code takes effect on July 1, 1998.

(b) Except as provided elsewhere in this Code, on the effective date of this Code:

(1) the Code applies to governing instruments executed by decedents dying thereafter;

(2) the Code applies to any proceedings in Court then pending or thereafter commenced regardless of the time of the death of decedent except to the extent that in the opinion of the Court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this Code;

(3) every personal representative including a person administering an estate of a minor or incompetent holding an appointment on that date, continues to hold the appointment but has only the powers conferred by this Code and is subject to the duties imposed with respect to any act occurring or done thereafter;

(4) an act done before the effective date in any proceeding and any accrued right is not impaired by this Code. If a right is acquired, extinguished or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before the effective date, the provisions shall remain in force with respect to that right;

(5) any rule of construction or presumption provided in this Code applies to governing instruments executed before the effective date unless there is a clear indication of a contrary intent;

(6) a person holding office as judge of the Court on the effective date of this Act may continue the office of judge of this Court and may be selected for additional terms after the effective date of this Act even though he does not meet the qualifications of a judge as provided in Article I.

Section 28-8-102. Specific Repealer and Renumbering.

1 (a) The following provisions of the Arkansas Code are repealed:
 2 §§ 28-1-101 through 28-1-103; §§ 28-1-109 through 28-1-117; §§ 28-2-101
 3 through 28-2-109; §§ 28-8-101 and 102; §§ 28-9-201 through 28-9-220; §§ 28-10-
 4 101 through 28-10-111; §§ 28-11-101 and 28-11-102; §§ 28-11-201 through 28-11-
 5 204; §§ 28-11-301 through 28-11-307; §§ 28-11-401 through 28-11-405; §§ 28-24-
 6 101 and 28-24-102; §§ 28-25-101 through 28-25-110; §§ 28-26-101 through 28-26-
 7 105; §§ 28-27-101 through 28-27-105; §§ 28-39-101 through 28-39-105; §§ 28-39-
 8 301 through 28-39-309; §§ 28-39-401 through 28-39-407; §§ 28-40-101 through
 9 28-40-123; §§ 28-40-301 through 28-40-303; §§ 28-41-101 through 28-41-104; §§
 10 28-42-101 through 28-42-111; §§ 28-48-101 through 28-48-109; §§ 28-48-201
 11 through 28-48-209; §§ 28-49-101 through 28-49-117; §§ 28-50-101 through 28-50-
 12 114; §§ 28-51-101 through 28-51-109; §§ 28-51-201 through 28-51-203; §§ 28-51-
 13 301 through 28-51-309; §§ 28-52-101 through 28-52-110; §§ 28-53-101 through
 14 28-53-119; §§ 28-65-101 through 28-65-109; §§ 28-65-201 through 28-65-220; §§
 15 28-65-301 through 28-65-323; §§ 28-65-401 through 28-65-403; §§ 28-65-501
 16 through 28-65-503; §§ 28-65-601 through 28-65-603; §§ 28-67-101 through 28-67-
 17 111; § 28-68-101; §§ 28-68-201 through 28-68-203; §§ 28-68-301 through 28-68-
 18 313; and §§ 28-72-101 through 28-72-104.

19 (b) The following Code provisions are renumbered:

20 Old Number	New Number
21 § 28-1-104	§ 16-14-110
22 § 28-1-105	§ 16-14-111
23 § 28-1-106	§ 16-14-112
24 § 28-1-107	§ 16-14-113
25 § 28-1-108	§ 16-14-114
26 § 28-14-101	§ 28-6-301
27 § 28-14-102	§ 28-6-302
28 § 28-14-103	§ 28-6-303
29 § 28-14-104	§ 28-6-304
30 § 28-14-105	§ 28-6-305
31 § 28-14-106	§ 28-6-306
32 § 28-14-107	§ 28-6-307
33 § 28-14-108	§ 28-6-308
34 § 28-14-109	§ 28-6-309
35 § 28-14-110	§ 28-6-310

1 § 28-14-111 § 28-6-312

2 § 28-14-112 § 28-6-311

3

4 Section 28-8-103. All provisions of this act of a general and permanent
5 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
6 Code Revision Commission shall incorporate the same in the Code.

7

8 Section 28-8-104. If any provision of this act or the application
9 thereof to any person or circumstance is held invalid, such invalidity shall
10 not affect other provisions or applications of the act which can be given
11 effect without the invalid provision or application, and to this end the
12 provisions of this act are declared to be severable.

13

14 Section 28-8-105. All laws and parts of laws in conflict with this act
15 are hereby repealed.

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