

REFERENCE TITLE: Probate Code

State of Arizona
Senate
Thirtieth Legislature
Second Regular Session

[Signature]
S.B. 1101

Ray Rottler
Introduced by *[Signature]*

[Signature]
AN ACT

Frank Kelley
RELATING TO DECEDENTS' ESTATES, GUARDIANSHIPS, PROTECTIVE PROCEEDINGS AND TRUSTS; REPEALING TITLE 14, CHAPTER 1, CHAPTER 2, ARTICLE 1, CHAPTER 3, CHAPTER 4 EXCEPT SECTION 14-477, CHAPTER 5 EXCEPT SECTION 14-511, CHAPTER 6 EXCEPT SECTION 14-898, CHAPTER 7, ARTICLES 1 THROUGH 6 AND SECTIONS 14-1110 THROUGH 14-1114 AND CHAPTER 8, ARIZONA REVISED STATUTES; AMENDING ARIZONA REVISED STATUTES, BY ADDING A NEW TITLE 14; AMENDING SECTIONS 6-267, 6-508, 12-1224, 12-1251 AND 12-2101, ARIZONA REVISED STATUTES; TRANSFERRING TITLE 14, CHAPTER 2, ARTICLE 2, ARIZONA REVISED STATUTES, FOR PLACEMENT IN THE NEW TITLE 14, CHAPTER 2, ARTICLE 8, ARIZONA REVISED STATUTES; TRANSFERRING TITLE 14, CHAPTER 7, ARTICLES 7, 8 AND 9, ARIZONA REVISED STATUTES, FOR PLACEMENT IN THE NEW TITLE 14, CHAPTER 7, ARIZONA REVISED STATUTES, AS ARTICLES 4, 5 AND 6; TRANSFERRING SECTION 14-477, ARIZONA REVISED STATUTES, FOR PLACEMENT IN THE NEW TITLE 14, CHAPTER 3, ARTICLE 1, ARIZONA REVISED STATUTES; TRANSFERRING SECTION 14-511, ARIZONA REVISED STATUTES, FOR PLACEMENT IN THE NEW TITLE 14, CHAPTER 3, ARTICLE 12, ARIZONA REVISED STATUTES; TRANSFERRING SECTION 14-898, ARIZONA REVISED STATUTES, FOR PLACEMENT IN TITLE 36, CHAPTER 5, ARTICLE 1, ARIZONA REVISED STATUTES, AND REPEALING SECTIONS 6-268, 6-431 AND 12-504, ARIZONA REVISED STATUTES.

- 1 Be it enacted by the Legislature of the State of Arizona:
- 2 Section 1. Purpose
- 3 The legislature intends by this act to provide for a substantial
- 4 revision of the laws relating to decedents' estates, guardianships,
- 5 protective proceedings and trusts to become effective January 1, 1973.
- 6 Sec. 2. Repeal
- 7 Title 14, chapter 1, chapter 2 article 1, chapter 3, chapter 4

1 except section 14-477, chapter 5 except section 14-511, chapter 6
2 except section 14-898, chapter 7 articles 1 through 6 and sections
3 14-1110 through 14-1114, and chapter 8, Arizona Revised Statutes, are
4 repealed.

5 Sec. 3. Arizona Revised Statutes, are amended by adding a new
6 title 14.

7 TITLE 14.

8 DECEDENTS' ESTATES, GUARDIANSHIPS, PROTECTIVE
9 PROCEEDINGS AND TRUSTS

10 CHAPTER 1.

11 GENERAL PROVISIONS, DEFINITIONS AND

12 PROBATE JURISDICTION OF COURTS

13 ARTICLE 1. GENERAL PROVISIONS

14 14-1101. (Blank)

15 14-1102. Purposes; rule of construction

16 A. THIS TITLE SHALL BE LIBERALLY CONSTRUED AND APPLIED TO
17 PROMOTE ITS UNDERLYING PURPOSES AND POLICIES.

18 B. THE UNDERLYING PURPOSES AND POLICIES OF THIS TITLE ARE:

19 1. TO SIMPLIFY AND CLARIFY THE LAW CONCERNING THE AFFAIRS OF
20 DECEDENTS, MISSING PERSONS, PROTECTED PERSONS, MINORS AND INCAPACITATED
21 PERSONS.

22 2. TO DISCOVER AND MAKE EFFECTIVE THE INTENT OF A DECEDENT IN
23 DISTRIBUTION OF HIS PROPERTY.

24 3. TO PROMOTE A SPEEDY AND EFFICIENT SYSTEM FOR LIQUIDATING
25 THE ESTATE OF THE DECEDENT AND MAKING DISTRIBUTION TO ITS SUCCESSORS.

26 4. TO FACILITATE USE AND ENFORCEMENT OF CERTAIN TRUSTS.

27 5. TO MAKE UNIFORM THE LAW AMONG THE VARIOUS JURISDICTIONS.

28 14-1103. Supplementary general principles of law applicable
29 UNLESS DISPLACED BY THE PARTICULAR PROVISIONS OF THIS TITLE, THE
30 PRINCIPLES OF LAW AND EQUITY SUPPLEMENT ITS PROVISIONS.

31 14-1104. (Blank)

32 14-1105. (Blank)

33 14-1106. Effect of fraud and evasion

1 IF FRAUD HAS BEEN PERPETRATED IN CONNECTION WITH ANY PROCEEDING
2 OR IN ANY STATEMENT FILED UNDER THIS TITLE OR IF FRAUD IS USED TO
3 AVOID OR CIRCUMVENT THE PROVISIONS OR PURPOSES OF THIS TITLE, ANY PERSON
4 INJURED THEREBY MAY OBTAIN APPROPRIATE RELIEF AGAINST THE PERPETRATOR
5 OF THE FRAUD INCLUDING RESTITUTION FROM ANY PERSON, OTHER THAN A BONA
6 FIDE PURCHASER, BENEFITING FROM THE FRAUD, WHETHER INNOCENT OR NOT.
7 ANY PROCEEDING MUST BE COMMENCED WITHIN TWO YEARS AFTER THE DISCOVERY
8 OF THE FRAUD, BUT NO PROCEEDING MAY BE BROUGHT AGAINST ONE NOT A PER-
9 PETRATOR OF THE FRAUD LATER THAN FIVE YEARS AFTER THE TIME OF COMMIS-
10 SION OF THE FRAUD. THIS SECTION HAS NO BEARING ON REMEDIES RELATING
11 TO FRAUD PRACTICED ON A DECEDENT DURING HIS LIFETIME WHICH AFFECTS THE
12 SUCCESSION OF HIS ESTATE.

13 14-1107. Evidence as to death or status

14 IN PROCEEDINGS UNDER THIS TITLE THE RULES OF EVIDENCE IN COURTS
15 OF GENERAL JURISDICTION INCLUDING ANY RELATING TO SIMULTANEOUS DEATHS,
16 ARE APPLICABLE UNLESS SPECIFICALLY DISPLACED BY THIS TITLE. IN ADDI-
17 TION, THE FOLLOWING RULES RELATING TO DETERMINATION OF DEATH AND STATUS
18 ARE APPLICABLE:

19 1. A CERTIFIED OR AUTHENTICATED COPY OF A DEATH CERTIFICATE
20 PURPORTING TO BE ISSUED BY AN OFFICIAL OR AGENCY OF THE PLACE WHERE THE
21 DEATH PURPORTEDLY OCCURRED IS PRIMA FACIE PROOF OF THE FACT, PLACE,
22 DATE AND TIME OF DEATH AND THE IDENTITY OF THE DECEDENT.

23 2. A CERTIFIED OR AUTHENTICATED COPY OF ANY RECORD OR REPORT OF
24 A GOVERNMENTAL AGENCY, DOMESTIC OR FOREIGN, THAT A PERSON IS MISSING,
25 DETAINED, DEAD OR ALIVE IS PRIMA FACIE EVIDENCE OF THE STATUS AND OF
26 THE DATES, CIRCUMSTANCES AND PLACES DISCLOSED BY THE RECORD OR REPORT.

27 3. A PERSON WHO IS ABSENT FOR A CONTINUOUS PERIOD OF FIVE YEARS,
28 DURING WHICH HE HAS NOT BEEN HEARD FROM AND WHOSE ABSENCE IS NOT SATIS-
29 FACTORILY EXPLAINED AFTER DILIGENT SEARCH OR INQUIRY IS PRESUMED TO BE
30 DEAD. HIS DEATH IS PRESUMED TO HAVE OCCURRED AT THE END OF THE PERIOD
31 UNLESS THERE IS SUFFICIENT EVIDENCE FOR DETERMINING THAT DEATH OCCURRED
32 EARLIER.

33 14-1108. Acts by holder of general power

1 FOR THE PURPOSE OF GRANTING CONSENT OR APPROVAL WITH REGARD
2 TO THE ACTS OR ACCOUNTS OF A PERSONAL REPRESENTATIVE OR TRUSTEE,
3 INCLUDING RELIEF FROM LIABILITY OR PENALTY FOR FAILURE TO POST BOND,
4 TO REGISTER A TRUST OR TO PERFORM OTHER DUTIES, AND FOR PURPOSES OF
5 CONSENTING TO MODIFICATION OR TERMINATION OF A TRUST OR TO DEVIATION
6 FROM ITS TERMS, THE SOLE HOLDER OR ALL CO-HOLDERS OF A PRESENTLY
7 EXERCISABLE GENERAL POWER OF APPOINTMENT, INCLUDING ONE IN THE FORM
8 OF A POWER OF AMENDMENT OR REVOCATION, ARE DEEMED TO ACT FOR BENEFI-
9 CIARIES TO THE EXTENT THEIR INTERESTS, AS OBJECTS, TAKERS IN DEFAULT
10 OR OTHERWISE, ARE SUBJECT TO THE POWER.

11 ARTICLE 2. DEFINITIONS

12 14-1201. General definitions

13 SUBJECT TO ADDITIONAL DEFINITIONS CONTAINED IN THE SUBSEQUENT
14 CHAPTERS WHICH ARE APPLICABLE TO SPECIFIC CHAPTERS OR ARTICLES AND
15 UNLESS THE CONTEXT OTHERWISE REQUIRES, IN THIS TITLE:

16 1. "APPLICATION" MEANS A WRITTEN REQUEST TO THE REGISTRAR
17 FOR AN ORDER OF INFORMAL PROBATE OR APPOINTMENT UNDER ARTICLE 3 OF
18 CHAPTER 3.

19 2. "BENEFICIARY", AS IT RELATES TO TRUST BENEFICIARIES, IN-
20 CLUDES A PERSON WHO HAS ANY PRESENT OR FUTURE INTEREST, VESTED OR
21 CONTINGENT, AND ALSO INCLUDES THE OWNER OF AN INTEREST BY ASSIGN-
22 MENT OR OTHER TRANSFER AND AS IT RELATES TO A CHARITABLE TRUST, IN-
23 CLUDES ANY PERSON ENTITLED TO ENFORCE THE TRUST.

24 3. "CHILD" INCLUDES ANY INDIVIDUAL ENTITLED TO TAKE AS A CHILD
25 UNDER THIS TITLE BY TESTATE SUCCESSION FROM THE PARENT WHOSE RELA-
26 TIONSHIP IS INVOLVED AND EXCLUDES ANY PERSON WHO IS ONLY A STEPCHILD,
27 A FOSTER CHILD, A GRANDCHILD OR ANY MORE REMOTE DESCENDANT.

28 4. "CLAIMS", IN RESPECT TO ESTATES OF DECEDENTS AND PROTECTED
29 PERSONS, INCLUDE LIABILITIES OF THE DECEDENT OR PROTECTED PERSON
30 WHETHER ARISING IN CONTRACT, IN TORT OR OTHERWISE, AND LIABILITIES
31 OF THE ESTATE WHICH ARISE AT OR AFTER THE DEATH OF THE DECEDENT OR
32 AFTER THE APPOINTMENT OF A CONSERVATOR, INCLUDING FUNERAL EXPENSES
33 AND EXPENSES OF ADMINISTRATION. THE TERM DOES NOT INCLUDE ESTATE

1 OR INHERITANCE TAXES, DEMANDS OR DISPUTES REGARDING TITLE OF A DE-
2 CEDENT OR PROTECTED PERSON TO SPECIFIC ASSETS ALLEGED TO BE INCLUDED
3 IN THE ESTATE.

4 5. "COMMUNITY PROPERTY" IS THAT PROPERTY OF A HUSBAND AND
5 WIFE WHICH IS ACQUIRED DURING MARRIAGE AS COMMUNITY PROPERTY AS DE-
6 FINED IN SECTION 25-211.

7 6. "CONSERVATOR" MEANS A PERSON WHO IS APPOINTED BY A COURT
8 TO MANAGE THE ESTATE OF A PROTECTED PERSON.

9 7. "COURT" MEANS THE SUPERIOR COURT OR DIVISION HAVING JURIS-
10 DICTION IN MATTERS RELATING TO THE AFFAIRS OF DECEDENTS.

11 8. "DEVISE", WHEN USED AS A NOUN, MEANS A TESTAMENTARY DIS-
12 POSITION OF REAL OR PERSONAL PROPERTY AND WHEN USED AS A VERB, MEANS
13 TO DISPOSE OF REAL OR PERSONAL PROPERTY BY WILL.

14 9. "DEWISEE" MEANS ANY PERSON DESIGNATED IN A WILL TO RECEIVE
15 A DEVISE. IN THE CASE OF A DEVISE TO AN EXISTING TRUST OR TRUSTEE,
16 OR TO A TRUSTEE ON TRUST DESCRIBED BY WILL, THE TRUST OR TRUSTEE IS
17 THE DEVISEE AND THE BENEFICIARIES ARE NOT DEVISEES.

18 10. "DISABILITY" MEANS CAUSE FOR A PROTECTIVE ORDER AS DESCRIBED
19 BY SECTION 14-5401, PARAGRAPH 1.

20 11. "DISTRIBUTE" MEANS ANY PERSON WHO HAS RECEIVED PROPERTY OF
21 A DECEDENT FROM HIS PERSONAL REPRESENTATIVE OTHER THAN AS A CREDITOR
22 OR PURCHASER. A TESTAMENTARY TRUSTEE IS A DISTRIBUTE ONLY TO THE
23 EXTENT OF DISTRIBUTED ASSETS OR INCREMENT THERETO REMAINING IN HIS
24 HANDS. A BENEFICIARY OF A TESTAMENTARY TRUST TO WHOM THE TRUSTEE HAS
25 DISTRIBUTED PROPERTY RECEIVED FROM A PERSONAL REPRESENTATIVE IS A
26 DISTRIBUTE OF THE PERSONAL REPRESENTATIVE.

27 12. "ESTATE" MEANS ALL OF THE PROPERTY OF THE DECEDENT, TRUST
28 OR OTHER PERSON WHOSE AFFAIRS ARE SUBJECT TO THIS TITLE AS ORIGINALLY
29 CONSTITUTED AND AS IT EXISTS FROM TIME TO TIME DURING ADMINISTRATION.
30 IN THE CASE OF A HUSBAND OR WIFE, THE ESTATE INCLUDES ONLY THE SEP-
31 ARATE PROPERTY AND THE SHARE OF THE COMMUNITY PROPERTY BELONGING TO
32 THE DECEDENT OR PERSON WHOSE AFFAIRS ARE SUBJECT TO THIS TITLE.

33 13. "EXEMPT PROPERTY" MEANS THAT PROPERTY OF A DECEDENT'S ESTATE

1 WHICH IS DESCRIBED IN SECTION 14-2402.
2 14. "FIDUCIARY" INCLUDES PERSONAL REPRESENTATIVE, GUARDIAN,
3 CONSERVATOR AND TRUSTEE.
4 15. "FOREIGN PERSONAL REPRESENTATIVE" MEANS A PERSONAL REPRESENTATIVE OF ANOTHER JURISDICTION.
5
6 16. "FORMAL PROCEEDINGS" MEAN THOSE CONDUCTED BEFORE A JUDGE
7 WITH NOTICE TO INTERESTED PERSONS.
8
9 17. "GUARDIAN" MEANS A PERSON WHO HAS QUALIFIED AS A GUARDIAN
10 OF A MINOR OR INCAPACITATED PERSON PURSUANT TO TESTAMENTARY OR COURT
11 APPOINTMENT, BUT EXCLUDES ONE WHO IS MERELY A GUARDIAN AD LITEM.
12
13 18. "HEIRS" MEAN THOSE PERSONS, INCLUDING THE SURVIVING SPOUSE,
14 WHO ARE ENTITLED UNDER THE STATUTES OF INTESTATE SUCCESSION TO THE
15 PROPERTY OF A DECEDENT.
16
17 19. "INCAPACITATED PERSON" IS AS DEFINED IN SECTION 14-5101.
18
19 20. "INFORMAL PROCEEDINGS" MEAN THOSE CONDUCTED WITHOUT
20 NOTICE TO INTERESTED PERSONS BY AN OFFICER OF THE COURT ACTING AS A
21 REGISTRAR FOR PROBATE OF A WILL OR APPOINTMENT OF A PERSONAL REPRESENTATIVE.
22
23 21. "INTERESTED PERSON" INCLUDES HEIRS, DEVISEES, CHILDREN,
24 SPOUSES, CREDITORS, BENEFICIARIES AND ANY OTHERS HAVING A PROPERTY
25 RIGHT IN OR CLAIM AGAINST A TRUST ESTATE OR THE ESTATE OF A DECEDENT,
26 WARD OR PROTECTED PERSON WHICH MAY BE AFFECTED BY THE PROCEEDING.
27 IT ALSO INCLUDES PERSONS HAVING PRIORITY FOR APPOINTMENT AS PERSONAL
28 REPRESENTATIVE, AND OTHER FIDUCIARIES REPRESENTING INTERESTED PERSONS.
29 THE MEANING AS IT RELATES TO PARTICULAR PERSONS MAY VARY FROM TIME TO
30 TIME AND MUST BE DETERMINED ACCORDING TO THE PARTICULAR PURPOSES OF,
31 AND MATTER INVOLVED IN, ANY PROCEEDING.
32
33 22. "ISSUE" OF A PERSON MEANS ALL HIS LINEAL DESCENDANTS OF
34 ALL GENERATIONS, WITH THE RELATIONSHIP OF PARENT AND CHILD AT EACH
GENERATION BEING DETERMINED BY THE DEFINITIONS OF CHILD AND PARENT
CONTAINED IN THIS TITLE.
32 23. "LEASE" INCLUDES AN OIL, GAS OR OTHER MINERAL LEASE.
33 24. "LETTERS" INCLUDE LETTERS TESTAMENTARY, LETTERS OF GUARD-
34 IANSHIP, LETTERS OF ADMINISTRATION AND LETTERS OF CONSERVATORSHIP.

1 25. "MINOR" MEANS A PERSON DEFINED AS SUCH IN SECTION 1-215.
2 26. "MORTGAGE" MEANS ANY CONVEYANCE, AGREEMENT OR ARRANGEMENT
3 IN WHICH PROPERTY IS USED AS SECURITY.
4 27. "NONRESIDENT DECEDENT" MEANS A DECEDENT WHO WAS DOMICILED
5 IN ANOTHER JURISDICTION AT THE TIME OF HIS DEATH.
6 28. "ORGANIZATION" INCLUDES A CORPORATION, GOVERNMENT OR GOVERN-
7 MENTAL SUBDIVISION OR AGENCY, BUSINESS TRUST, ESTATE, TRUST, PARTNER-
8 SHIP OR ASSOCIATION, TWO OR MORE PERSONS HAVING A JOINT OR COMMON
9 INTEREST OR ANY OTHER LEGAL ENTITY.
10 29. "PARENT" INCLUDES ANY PERSON ENTITLED TO TAKE, OR WHO WOULD
11 BE ENTITLED TO TAKE IF THE CHILD DIED WITHOUT A WILL, AS A PARENT UNDER
12 THIS TITLE BY INTESTATE SUCCESSION FROM THE CHILD WHOSE RELATIONSHIP
13 IS IN QUESTION AND EXCLUDES ANY PERSON WHO IS ONLY A STEPPARENT, FOSTER
14 PARENT OR GRANDPARENT.
15 30. "PERSON" MEANS AN INDIVIDUAL, A CORPORATION, AN ORGANIZATION
16 OR OTHER LEGAL ENTITY.
17 31. "PERSONAL REPRESENTATIVE" INCLUDES EXECUTOR, ADMINISTRATOR,
18 SUCCESSOR PERSONAL REPRESENTATIVE, SPECIAL ADMINISTRATOR AND PERSONS
19 WHO PERFORM SUBSTANTIALLY THE SAME FUNCTION UNDER THE LAW GOVERNING
20 THEIR STATUS. "GENERAL PERSONAL REPRESENTATIVE" EXCLUDES SPECIAL
21 ADMINISTRATOR.
22 32. "PETITION" MEANS A WRITTEN REQUEST TO THE COURT FOR AN ORDER
23 AFTER NOTICE.
24 33. "PROCEEDING" INCLUDES ACTION AT LAW AND SUIT IN EQUITY.
25 34. "PROPERTY" INCLUDES BOTH REAL AND PERSONAL PROPERTY OR ANY
26 INTEREST THEREIN AND MEANS ANYTHING THAT MAY BE THE SUBJECT OF OWNER-
27 SHIP.
28 35. "PROTECTED PERSON" IS AS DEFINED IN SECTION 14-5101.
29 36. "PROTECTIVE PROCEEDING" IS AS DEFINED IN SECTION 14-5101.
30 37. "REGISTRAR" REFERS TO THE OFFICIAL OF THE COURT DESIGNATED
31 TO PERFORM THE FUNCTIONS OF REGISTRAR AS PROVIDED IN SECTION 14-1307.
32 38. "SECURITY" INCLUDES ANY NOTE, STOCK, TREASURY STOCK, BOND,
33 DEBENTURE, EVIDENCE OF INDEBTEDNESS, CERTIFICATE OF INTEREST OR

1 PARTICIPATION IN AN OIL, GAS OR MINING TITLE OR LEASE OR IN PAYMENTS
2 OUT OF PRODUCTION UNDER SUCH A TITLE OR LEASE, COLLATERAL TRUST CER-
3 TIFICATE, TRANSFERABLE SHARE, VOTING TRUST CERTIFICATE OR, IN GENERAL,
4 ANY INTEREST OR INSTRUMENT COMMONLY KNOWN AS A SECURITY, OR ANY
5 CERTIFICATE OF INTEREST OR PARTICIPATION, ANY TEMPORARY OR INTERIM
6 CERTIFICATE, RECEIPT OR CERTIFICATE OF DEPOSIT FOR, OR ANY WARRANT
7 OR RIGHT TO SUBSCRIBE TO OR PURCHASE ANY OF THE FOREGOING.

8 39. "SEPARATE PROPERTY" IS THAT PROPERTY OF A HUSBAND OR WIFE
9 WHICH IS HIS OR HER SEPARATE PROPERTY AS DEFINED IN SECTION 25-213.

10 40. "SETTLEMENT", IN REFERENCE TO A DECEDENT'S ESTATE, INCLUDES
11 THE FULL PROCESS OF ADMINISTRATION, DISTRIBUTION AND CLOSING.

12 41. "SPECIAL ADMINISTRATOR" MEANS A PERSONAL REPRESENTATIVE AS
13 DESCRIBED BY SECTIONS 14-3614 THROUGH 14-3618.

14 42. "STATE" INCLUDES ANY STATE OF THE UNITED STATES, THE DISTRICT
15 OF COLUMBIA, THE COMMONWEALTH OF PUERTO RICO AND ANY TERRITORY OR
16 POSSESSION SUBJECT TO THE LEGISLATIVE AUTHORITY OF THE UNITED STATES.

17 43. "SUCCESSOR PERSONAL REPRESENTATIVE" MEANS A PERSONAL REPRE-
18 SENTATIVE, OTHER THAN A SPECIAL ADMINISTRATOR, WHO IS APPOINTED TO
19 SUCCEED A PREVIOUSLY APPOINTED PERSONAL REPRESENTATIVE.

20 44. "SUCCESSORS" MEAN THOSE PERSONS, OTHER THAN CREDITORS, WHO
21 ARE ENTITLED TO PROPERTY OF A DECEDENT UNDER HIS WILL OR THIS TITLE.

22 45. "SUPERVISED ADMINISTRATION" REFERS TO THE PROCEEDINGS
23 DESCRIBED IN CHAPTER 3, ARTICLE 5.

24 46. "TESTACY PROCEEDING" MEANS A PROCEEDING TO ESTABLISH A WILL
25 OR DETERMINE INTESTACY.

26 47. "TRUST" INCLUDES ANY EXPRESS TRUST, PRIVATE OR CHARITABLE,
27 WITH ADDITIONS THERETO, WHEREVER AND HOWEVER CREATED. IT ALSO INCLUDES
28 A TRUST CREATED OR DETERMINED BY JUDGMENT OR DECREE UNDER WHICH THE
29 TRUST IS TO BE ADMINISTERED IN THE MANNER OF AN EXPRESS TRUST. "TRUST"
30 EXCLUDES OTHER CONSTRUCTIVE TRUSTS, AND IT EXCLUDES RESULTING TRUSTS,
31 CONSERVATORSHIPS, PERSONAL REPRESENTATIVES, TRUST ACCOUNTS AS DEFINED
32 IN CHAPTER 6, CUSTODIAL ARRANGEMENTS PURSUANT TO TITLE 44, CHAPTER 12.1,
33 BUSINESS TRUSTS PROVIDING FOR CERTIFICATES TO BE ISSUED TO BENEFICIARIES.

1 COMMON TRUST FUNDS, VOTING TRUSTS, SECURITY ARRANGEMENTS, LIQUIDATION
2 TRUSTS AND TRUSTS FOR THE PRIMARY PURPOSE OF PAYING DEBTS, DIVIDENDS,
3 INTEREST, SALARIES, WAGES, PROFITS, PENSIONS OR EMPLOYEE BENEFITS OF
4 ANY KIND, AND ANY ARRANGEMENT UNDER WHICH A PERSON IS NOMINEE OR
5 ESCOWEE FOR ANOTHER.

6 48. "TRUSTEE" INCLUDES AN ORIGINAL, ADDITIONAL OR SUCCESSOR
7 TRUSTEE, WHETHER OR NOT APPOINTED OR CONFIRMED BY COURT.

8 49. "WARD" IS AS DEFINED IN SECTION 14-5101.

9 50. "WILL" INCLUDES CODICIL AND ANY TESTAMENTARY INSTRUMENT WHICH
10 MERELY APPOINTS AN EXECUTOR OR REVOKES OR REVISES ANOTHER WILL.

11 ARTICLE 3. SCOPE, JURISDICTION AND COURTS

12 14-1301. Territorial application

13 EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE, THE TITLE APPLIES TO:

- 14 1. THE AFFAIRS AND ESTATES OF DECEDENTS, MISSING PERSONS AND
15 PERSONS TO BE PROTECTED, DOMICILED IN THIS STATE.
16 2. THE PROPERTY OF NONRESIDENTS LOCATED IN THIS STATE OR PROPERTY
17 COMING INTO THE CONTROL OF A FIDUCIARY WHO IS SUBJECT TO THE LAWS OF
18 THIS STATE.

19 3. INCAPACITATED PERSONS AND MINORS IN THIS STATE.

20 4. SURVIVORSHIP AND RELATED ACCOUNTS IN THIS STATE.

21 5. TRUSTS SUBJECT TO ADMINISTRATION IN THIS STATE.

22 THIS TITLE DOES NOT APPLY TO PROPERTY OF INDIANS WITHIN THE JURISDICTION
23 OF THEIR TRIBAL COURTS OR TO LANDS HELD IN TRUST BY THE UNITED STATES
24 FOR INDIANS.

25 14-1302. Subject matter jurisdiction

26 A. TO THE FULL EXTENT PERMITTED BY THE CONSTITUTION, THE COURT
27 HAS JURISDICTION OVER ALL SUBJECT MATTER RELATING TO:

28 1. ESTATES OF DECEDENTS, INCLUDING CONSTRUCTION OF WILLS AND
29 DETERMINATION OF HEIRS AND SUCCESSORS OF DECEDENTS, AND ESTATES OF
30 PROTECTED PERSONS.

31 2. PROTECTION OF MINORS AND INCAPACITATED PERSONS.

32 3. TRUSTS.

33 B. THE COURT HAS FULL POWER TO MAKE ORDERS, JUDGMENTS AND DECREES

1 AND TAKE ALL OTHER ACTION NECESSARY AND PROPER TO ADMINISTER JUSTICE
2 IN THE MATTERS WHICH COME BEFORE IT.

3 14-1303. Venue; multiple proceedings; transfer

4 A. WHERE A PROCEEDING UNDER THIS TITLE COULD BE MAINTAINED IN
5 MORE THAN ONE PLACE IN THIS STATE, THE COURT IN WHICH THE PROCEEDING
6 IS FIRST COMMENCED HAS THE EXCLUSIVE RIGHT TO PROCEED.

7 B. IF PROCEEDINGS CONCERNING THE SAME ESTATE, PROTECTED PERSON,
8 WARD OR TRUST ARE COMMENCED IN MORE THAN ONE COUNTY OF THIS STATE, THE
9 COURT IN THE COUNTY IN WHICH THE PROCEEDING WAS FIRST COMMENCED SHALL
10 CONTINUE TO HEAR THE MATTER, AND THE OTHER COURTS SHALL HOLD THE
11 MATTER IN ABEYANCE UNTIL THE QUESTION OF VENUE IS DECIDED, AND IF THE
12 RULING COURT DETERMINES THAT VENUE IS PROPERLY IN ANOTHER COUNTY, IT
13 SHALL TRANSFER THE PROCEEDING TO THE OTHER COUNTY.

14 C. IF A COURT FINDS THAT IN THE INTEREST OF JUSTICE A PROCEEDING
15 OR A FILE SHOULD BE LOCATED IN ANOTHER COUNTY OF THIS STATE, THE COURT
16 MAKING THE FINDING MAY TRANSFER THE PROCEEDING OR FILE TO THE OTHER
17 COUNTY.

18 14-1304. Practice in court

19 UNLESS SPECIFICALLY PROVIDED TO THE CONTRARY IN THIS TITLE OR
20 UNLESS INCONSISTENT WITH ITS PROVISIONS, THE RULES OF CIVIL PROCEDURE
21 INCLUDING THE RULES CONCERNING VACATION OF ORDERS AND APPELLATE REVIEW
22 GOVERN FORMAL PROCEEDINGS UNDER THIS TITLE.

23 14-1305. Records and certified copies

24 THE CLERK OF THE COURT SHALL KEEP A RECORD FOR EACH DECEDENT,
25 WARD, PROTECTED PERSON OR TRUST INVOLVED IN ANY DOCUMENT WHICH MAY BE
26 FILED WITH THE COURT UNDER THIS TITLE INCLUDING PETITIONS AND APPLI-
27 CATIONS, DEMANDS FOR NOTICES OR BONDS, TRUST REGISTRATIONS AND OF ANY
28 ORDERS OR RESPONSES RELATING THERETO BY THE REGISTRAR OR COURT, AND
29 ESTABLISH AND MAINTAIN A SYSTEM FOR INDEXING, FILING OR RECORDING WHICH
30 IS SUFFICIENT TO ENABLE USERS OF THE RECORDS TO OBTAIN ADEQUATE IN-
31 FORMATION. UPON PAYMENT OF THE FEES REQUIRED BY LAW THE CLERK MUST
32 ISSUE CERTIFIED COPIES OF ANY PROBATED WILLS, LETTERS ISSUED TO PER-
33 SONAL REPRESENTATIVES, OR ANY OTHER RECORD OR PAPER FILED OR RECORDED.

1 CERTIFICATES RELATING TO PROBATED WILLS MUST INDICATE WHETHER THE
2 DECEDENT WAS DOMICILED IN THIS STATE AND WHETHER THE PROBATE WAS
3 FORMAL OR INFORMAL. CERTIFICATES RELATING TO LETTERS MUST SHOW THE
4 DATE OF APPOINTMENT.

5 14-1306. Jury trial

6 A. IF DULY DEMANDED, A PARTY IS ENTITLED TO TRIAL BY JURY IN A
7 FORMAL TESTACY PROCEEDING AND ANY PROCEEDING IN WHICH ANY CONTROVERTED
8 QUESTION OF FACT ARISES AS TO WHICH ANY PARTY HAS A CONSTITUTIONAL
9 RIGHT TO TRIAL BY JURY.

10 B. IF THERE IS NO RIGHT TO TRIAL BY JURY UNDER SUBSECTION A
11 OR THE RIGHT IS WAIVED, THE COURT IN ITS DISCRETION MAY CALL A JURY
12 TO DECIDE ANY ISSUE OF FACT, IN WHICH CASE THE VERDICT IS ADVISORY
13 ONLY.

14 14-1307. Registrar; powers

15 THE ACTS AND ORDERS WHICH THIS TITLE SPECIFIES AS PERFORMABLE BY
16 THE REGISTRAR SHALL BE PERFORMED BY THE CLERK OF THE COURT, A COURT
17 COMMISSIONER OR EITHER AT THE SELECTION OF THE PRESIDING JUDGE OF THE
18 COUNTY DESIGNATED BY THE COURT BY A WRITTEN ORDER FILED AND RECORDED
19 IN THE OFFICE OF THE CLERK OF THE COURT.

20 14-1308. (Blank)

21 14-1309. (Blank)

22 14-1310. Oath or affirmation on filed documents

23 EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS TITLE OR BY
24 RULE, EACH DOCUMENT FILED WITH THE COURT UNDER THIS TITLE INCLUDING
25 APPLICATIONS, PETITIONS AND DEMANDS FOR NOTICE, SHALL BE DEEMED TO
26 INCLUDE AN OATH, AFFIRMATION OR STATEMENT TO THE EFFECT THAT ITS
27 REPRESENTATIONS ARE TRUE AS FAR AS THE PERSON EXECUTING OR FILING
28 IT KNOWS OR IS INFORMED. EACH DOCUMENT FILED WITH THE COURT UNDER
29 THIS TITLE IS MATERIAL AND MAY SUBJECT THE PERSON EXECUTING OR FILING
30 SUCH DOCUMENT TO PENALTIES UNDER THE PROVISIONS OF TITLE 13, CHAPTER
31 2, ARTICLE 30, RELATING TO PERJURY AND SUBORNATION OF PERJURY.

32 ARTICLE 4. NOTICE, PARTIES AND REPRESENTATION
33 IN ESTATE LITIGATION AND OTHER MATTERS

1 14-1401. Notice; method and time of giving

2 A. IF NOTICE OF A HEARING ON ANY PETITION IS REQUIRED AND EXCEPT
3 FOR SPECIFIC NOTICE REQUIREMENTS AS OTHERWISE PROVIDED, THE PETITIONER
4 SHALL CAUSE NOTICE OF THE TIME AND PLACE OF HEARING OF ANY PETITION TO
5 BE GIVEN TO ANY INTERESTED PERSON OR HIS ATTORNEY IF HE HAS APPEARED
6 BY ATTORNEY OR REQUESTED THAT NOTICE BE SENT TO HIS ATTORNEY. NOTICE
7 SHALL BE GIVEN:

8 1. BY MAILING A COPY THEREOF AT LEAST FOURTEEN DAYS BEFORE THE
9 TIME SET FOR THE HEARING BY CERTIFIED, REGISTERED OR ORDINARY FIRST
10 CLASS MAIL ADDRESSED TO THE PERSON BEING NOTIFIED AT THE POST OFFICE
11 ADDRESS GIVEN IN HIS DEMAND FOR NOTICE, IF ANY, OR AT HIS OFFICE OR
12 PLACE OF RESIDENCE, IF KNOWN.

13 2. BY DELIVERING A COPY THEREOF TO THE PERSON BEING NOTIFIED
14 PERSONALLY AT LEAST FOURTEEN DAYS BEFORE THE TIME SET FOR THE HEARING.

15 3. IF THE ADDRESS, OR IDENTITY OF ANY PERSON IS NOT KNOWN AND
16 CANNOT BE ASCERTAINED WITH REASONABLE DILIGENCE, BY PUBLISHING AT
17 LEAST ONCE A WEEK FOR THREE CONSECUTIVE WEEKS, A COPY THEREOF IN A
18 NEWSPAPER HAVING GENERAL CIRCULATION IN THE COUNTY WHERE THE HEARING
19 IS TO BE HELD, THE LAST PUBLICATION OF WHICH IS TO BE AT LEAST TEN
20 DAYS BEFORE THE TIME SET FOR THE HEARING.

21 B. THE COURT FOR GOOD CAUSE SHOWN MAY PROVIDE FOR A DIFFERENT
22 METHOD OR TIME OF GIVING NOTICE FOR ANY HEARING.

23 C. PROOF OF THE GIVING OF NOTICE SHALL BE MADE ON OR BEFORE THE
24 HEARING AND FILED IN THE PROCEEDING.

25 14-1402. Notice; waiver

26 A PERSON, INCLUDING A GUARDIAN AD LITEM, CONSERVATOR OR OTHER
27 FIDUCIARY, MAY WAIVE NOTICE BY A WRITING SIGNED BY HIM OR HIS ATTORNEY
28 AND FILED IN THE PROCEEDING.

29 14-1403. Pleadings; when parties bound by others;
30 notice

31 IN JUDICIAL PROCEEDINGS INVOLVING TRUSTS OR ESTATES OF DECEDENTS,
32 MINORS, PROTECTED PERSONS OR INCAPACITATED PERSONS, AND IN JUDICIALLY
33 SUPERVISED SETTLEMENTS, THE FOLLOWING APPLY:

1 1. INTERESTS TO BE AFFECTED SHALL BE DESCRIBED IN PLEADINGS
2 WHICH GIVE REASONABLE INFORMATION TO OWNERS BY NAME OR CLASS, BY
3 REFERENCE TO THE INSTRUMENT CREATING THE INTERESTS OR IN OTHER APPRO-
4 PRIATE MANNER.

5 2. PERSONS ARE BOUND BY ORDERS BINDING OTHERS IN THE FOLLOWING
6 CASES:

7 (a) ORDERS BINDING THE SOLE HOLDER OR ALL CO-HOLDERS OF A
8 POWER OF REVOCATION OR A PRESENTLY EXERCISABLE GENERAL POWER OF AP-
9 POINTMENT, INCLUDING ONE IN THE FORM OF A POWER OF AMENDMENT, BIND
10 OTHER PERSONS TO THE EXTENT THEIR INTERESTS, AS OBJECTS, TAKERS IN
11 DEFAULT OR OTHERWISE, ARE SUBJECT TO THE POWER.

12 (b) TO THE EXTENT THERE IS NO CONFLICT OF INTEREST BETWEEN
13 THEM OR AMONG PERSONS REPRESENTED:

14 (i) ORDERS BINDING A CONSERVATOR BIND THE PERSON WHOSE ESTATE
15 HE CONTROLS.

16 (ii) ORDERS BINDING A GUARDIAN BIND THE WARD IF NO CONSERVATOR
17 OF HIS ESTATE HAS BEEN APPOINTED.

18 (iii) ORDERS BINDING A TRUSTEE BIND BENEFICIARIES OF THE TRUST
19 IN PROCEEDINGS TO PROBATE A WILL ESTABLISHING OR ADDING TO A TRUST,
20 TO REVIEW THE ACTS OR ACCOUNTS OF A PRIOR FIDUCIARY AND IN PROCEED-
21 INGS INVOLVING CREDITORS OR OTHER THIRD PARTIES.

22 (iv) ORDERS BINDING A PERSONAL REPRESENTATIVE BIND PERSONS
23 INTERESTED IN THE UNDISTRIBUTED ASSETS OF A DECEDENT'S ESTATE IN
24 ACTIONS OR PROCEEDINGS BY OR AGAINST THE ESTATE.
25 IF THERE IS NO CONFLICT OF INTEREST AND NO CONSERVATOR OR GUARDIAN HAS
26 BEEN APPOINTED, A PARENT MAY REPRESENT HIS MINOR CHILD.

27 (c) AN UNBORN OR UNASCERTAINED PERSON WHO IS NOT OTHERWISE
28 REPRESENTED IS BOUND BY AN ORDER TO THE EXTENT HIS INTEREST IS ADE-
29 QUATELY REPRESENTED BY ANOTHER PARTY HAVING A SUBSTANTIALLY IDENTICAL
30 INTEREST IN THE PROCEEDING.

31 3. NOTICE IS REQUIRED AS FOLLOWS:

32 (a) NOTICE AS PRESCRIBED BY SECTION 14-1401 SHALL BE GIVEN TO
33 EVERY INTERESTED PERSON OR TO ONE WHO CAN BIND AN INTERESTED PERSON

1 AS DESCRIBED IN PARAGRAPH 2, SUBDIVISION (a) OR (b) OF THIS SECTION.
2 NOTICE MAY BE GIVEN BOTH TO A PERSON AND TO ANOTHER WHO MAY BIND HIM.

3 (b) NOTICE IS GIVEN TO UNBORN OR UNASCERTAINED PERSONS WHO ARE
4 NOT REPRESENTED UNDER PARAGRAPH 2, SUBDIVISION (a) OR (b) OF THIS
5 SECTION, BY GIVING NOTICE TO ALL KNOWN PERSONS WHOSE INTERESTS IN THE
6 PROCEEDINGS ARE SUBSTANTIALLY IDENTICAL TO THOSE OF THE UNBORN OR
7 UNASCERTAINED PERSONS.

8 4. AT ANY POINT IN A PROCEEDING, A COURT MAY APPOINT A GUARDIAN
9 AD LITEM TO REPRESENT THE INTEREST OF A MINOR, AN INCAPACITATED, UN-
10 BORN OR UNASCERTAINED PERSON, OR A PERSON WHOSE IDENTITY OR ADDRESS
11 IS UNKNOWN, IF THE COURT DETERMINES THAT REPRESENTATION OF THE INTER-
12 EST OTHERWISE WOULD BE INADEQUATE. IF NOT PRECLUDED BY CONFLICT OF
13 INTERESTS, A GUARDIAN AD LITEM MAY BE APPOINTED TO REPRESENT SEVERAL
14 PERSONS OR INTERESTS. THE COURT SHALL SET OUT ITS REASONS FOR AP-
15 POINTING A GUARDIAN AD LITEM AS A PART OF THE RECORD OF THE PROCEEDING.

16 CHAPTER 2.

17 INTESTATE SUCCESSION AND WILLS

18 ARTICLE 1. INTESTATE SUCCESSION

19 14-2101. Intestate estate

20 ANY PART OF THE ESTATE OF A DECEDENT NOT EFFECTIVELY DISPOSED
21 OF BY HIS WILL PASSES TO HIS HEIRS AS PRESCRIBED IN THE FOLLOWING
22 SECTIONS OF THIS TITLE.

23 14-2102. Intestate share of surviving spouse

24 THE INTESTATE SHARE OF THE SURVIVING SPOUSE, AS TO BOTH SEPARATE
25 PROPERTY AND THE ONE-HALF OF COMMUNITY PROPERTY WHICH BELONGS TO DE-
26 CEDENT, IS AS FOLLOWS:

27 1. IF THERE IS NO SURVIVING ISSUE, OR IF THERE ARE SURVIVING
28 ISSUE ALL OF WHOM ARE ISSUE OF THE SURVIVING SPOUSE ALSO, THE ENTIRE
29 INTESTATE ESTATE.

30 2. IF THERE ARE SURVIVING ISSUE ONE OR MORE OF WHOM ARE NOT
31 ISSUE OF THE SURVIVING SPOUSE, AN AMOUNT WHICH IS ONE-HALF OF THE SUM
32 OF THE DECEDENT'S SEPARATE PROPERTY AND THE TOTAL COMMUNITY PROPERTY,
33 INCLUDING THE SHARE OF THE SURVIVING SPOUSE, EXCEPT PROPERTY DISPOSED
34 OF BY WILL.

1 14-2103. Share of heirs other than surviving spouse
2 THE PART OF THE INTESTATE ESTATE NOT PASSING TO THE SURVIVING
3 SPOUSE UNDER SECTION 14-2102, OR THE ENTIRE INTESTATE ESTATE IF THERE
4 IS NO SURVIVING SPOUSE, PASSES AS FOLLOWS:

5 1. TO THE ISSUE OF THE DECEDENT. IF THE ISSUE ARE ALL OF THE
6 SAME DEGREE OF KINSHIP TO THE DECEDENT THEY TAKE EQUALLY, BUT IF OF
7 UNEQUAL DEGREE, THEN THOSE OF MORE REMOTE DEGREE TAKE BY REPRESENTA-
8 TION.

9 2. IF THERE IS NO SURVIVING ISSUE, TO HIS PARENT OR PARENTS
10 EQUALLY.

11 3. IF THERE IS NO SURVIVING ISSUE OR PARENT, TO THE BROTHERS
12 AND SISTERS AND THE ISSUE OF EACH DECEASED BROTHER OR SISTER BY REP-
13 RESENTATION. IF THERE IS NO SURVIVING BROTHER OR SISTER, THE ISSUE
14 OF BROTHERS AND SISTERS TAKE EQUALLY IF THEY ARE ALL OF THE SAME
15 DEGREE OF KINSHIP TO THE DECEDENT, BUT IF OF UNEQUAL DEGREE THEN
16 THOSE OF MORE REMOTE DEGREE TAKE BY REPRESENTATION.

17 4. IF THERE IS NO SURVIVING ISSUE, PARENT OR ISSUE OF A PARENT,
18 BUT THE DECEDENT IS SURVIVED BY ONE OR MORE GRANDPARENTS OR ISSUE OF
19 GRANDPARENTS, HALF OF THE ESTATE PASSES TO THE PATERNAL GRANDPARENTS
20 IF BOTH SURVIVE, OR TO THE SURVIVING PATERNAL GRANDPARENT, OR TO THE
21 ISSUE OF THE PATERNAL GRANDPARENTS IF BOTH ARE DECEASED, THE ISSUE
22 TAKING EQUALLY IF THEY ARE ALL OF THE SAME DEGREE OF KINSHIP TO THE
23 DECEDENT, BUT IF OF UNEQUAL DEGREE THOSE OF MORE REMOTE DEGREE TAKE
24 BY REPRESENTATION AND THE OTHER HALF PASSES TO THE MATERNAL RELATIVES
25 IN THE SAME MANNER. IF THERE BE NO SURVIVING GRANDPARENT OR ISSUE OF
26 GRANDPARENT ON EITHER THE PATERNAL OR THE MATERNAL SIDE, THE ENTIRE
27 ESTATE PASSES TO THE RELATIVES ON THE OTHER SIDE IN THE SAME MANNER
28 AS THE HALF.

29 14-2104. Requirement that heir survive decedent
30 for one hundred twenty hours

31 ANY PERSON WHO FAILS TO SURVIVE THE DECEDENT BY ONE HUNDRED TWENTY
32 HOURS IS DEEMED TO HAVE PREDECEASED THE DECEDENT FOR PURPOSES OF THE AL-
33 LOWANCE IN LIEU OF HOMESTEAD, EXEMPT PROPERTY AND INTESTATE SUCCESSION,
34

1 AND THE DECEDENT'S HEIRS ARE DETERMINED ACCORDINGLY. IF THE TIME
2 OF DEATH OF THE DECEDENT OR OF THE PERSON WHO WOULD OTHERWISE BE AN
3 HEIR, OR THE TIMES OF DEATH OF BOTH, CANNOT BE DETERMINED, AND IT
4 CANNOT BE ESTABLISHED THAT THE PERSON WHO WOULD OTHERWISE BE AN HEIR
5 HAS SURVIVED THE DECEDENT BY ONE HUNDRED TWENTY HOURS, IT IS DEEMED
6 THAT THE PERSON FAILED TO SURVIVE FOR THE REQUIRED PERIOD. THIS
7 SECTION IS NOT TO BE APPLIED WHERE ITS APPLICATION WOULD RESULT IN
8 A TAKING OF INTESTATE ESTATE BY THE STATE UNDER SECTION 14-2105.

9 14-2105. No taker

10 IF THERE IS NO TAKER UNDER THE PROVISIONS OF THIS CHAPTER, THE
11 INTESTATE ESTATE PASSES TO THE STATE.

12 14-2106. Representation

13 IF REPRESENTATION IS CALLED FOR BY THIS TITLE, THE ESTATE IS
14 DIVIDED INTO AS MANY SHARES AS THERE ARE SURVIVING HEIRS IN THE NEAR-
15 EST DEGREE OF KINSHIP AND DECEASED PERSONS IN THE SAME DEGREE WHO
16 LEFT ISSUE WHO SURVIVE THE DECEDENT, EACH SURVIVING HEIR IN THE NEAR-
17 EST DEGREE RECEIVING ONE SHARE AND THE SHARE OF EACH DECEASED PERSON
18 IN THE SAME DEGREE BEING DIVIDED AMONG HIS ISSUE IN THE SAME MANNER.

19 14-2107. Kindred of half blood

20 RELATIVES OF THE HALF BLOOD INHERIT THE SAME SHARE THEY WOULD
21 INHERIT IF THEY WERE OF THE WHOLE BLOOD.

22 14-2108. Afterborn heirs

23 RELATIVES OF THE DECEDENT CONCEIVED BEFORE HIS DEATH BUT BORN
24 THEREAFTER INHERIT AS IF THEY HAD BEEN BORN IN THE LIFETIME OF THE
25 DECEDENT.

26 14-2109. Meaning of child and related terms

27 IF, FOR PURPOSES OF INTESTATE SUCCESSION, A RELATIONSHIP OF
28 PARENT AND CHILD MUST BE ESTABLISHED TO DETERMINE SUCCESSION BY,
29 THROUGH OR FROM A PERSON:

30 1. AN ADOPTED PERSON IS THE CHILD OF AN ADOPTING PARENT AND
31 NOT OF THE NATURAL PARENTS EXCEPT THAT ADOPTION OF A CHILD BY THE
32 SPOUSE OF A NATURAL PARENT HAS NO EFFECT ON THE RELATIONSHIP BETWEEN
33 THE CHILD AND THAT NATURAL PARENT.

1 2. IN CASES NOT COVERED BY PARAGRAPH 1, A PERSON BORN OUT OF
2 WEDLOCK IS A CHILD OF THE MOTHER. THAT PERSON IS ALSO A CHILD OF
3 THE FATHER, IF EITHER:

4 (a) THE NATURAL PARENTS PARTICIPATED IN A MARRIAGE CEREMONY
5 BEFORE OR AFTER THE BIRTH OF THE CHILD, EVEN THOUGH THE ATTEMPTED
6 MARRIAGE IS VOID.

7 (b) THE PATERNITY IS ESTABLISHED BY AN ADJUDICATION BEFORE THE
8 DEATH OF THE FATHER OR IS ESTABLISHED THEREAFTER BY CLEAR AND CON-
9 VINING PROOF, EXCEPT THAT THE PATERNITY ESTABLISHED UNDER THIS SUB-
10 DIVISION IS INEFFECTIVE TO QUALIFY THE FATHER OR HIS KINDRED TO INHERIT
11 FROM OR THROUGH THE CHILD UNLESS THE FATHER HAS OPENLY TREATED THE
12 CHILD AS HIS, AND HAS NOT REFUSED TO SUPPORT THE CHILD.

13 14-2110. Advancements

14 IF A PERSON DIES INTESTATE AS TO ALL HIS ESTATE, PROPERTY WHICH
15 HE GAVE IN HIS LIFETIME TO AN HEIR IS TREATED AS AN ADVANCEMENT AGAINST
16 THE LATTER'S SHARE OF THE ESTATE ONLY IF DECLARED IN A CONTEMPORANEOUS
17 WRITING BY THE DECEDENT OR ACKNOWLEDGED IN WRITING BY THE HEIR TO BE
18 AN ADVANCEMENT. FOR THIS PURPOSE THE PROPERTY ADVANCED IS VALUED AS
19 OF THE TIME THE HEIR CAME INTO POSSESSION OR ENJOYMENT OF THE PROPERTY
20 OR AS OF THE TIME OF DEATH OF THE DECEDENT, WHICHEVER FIRST OCCURS.
21 IF THE RECIPIENT OF THE PROPERTY FAILS TO SURVIVE THE DECEDENT, THE
22 PROPERTY IS NOT TAKEN INTO ACCOUNT IN COMPUTING THE INTESTATE SHARE
23 TO BE RECEIVED BY THE RECIPIENT'S ISSUE, UNLESS THE DECLARATION OR
24 ACKNOWLEDGMENT PROVIDES OTHERWISE.

25 14-2111. Debts to decedent

26 A DEBT OWED TO THE DECEDENT IS NOT CHARGED AGAINST THE INTESTATE
27 SHARE OF ANY PERSON EXCEPT THE DEBTOR. IF THE DEBTOR FAILS TO SURVIVE
28 THE DECEDENT, THE DEBT IS NOT TAKEN INTO ACCOUNT IN COMPUTING THE
29 INTESTATE SHARE OF THE DEBTOR'S ISSUE.

30 14-2112. Alienage

31 NO PERSON IS DISQUALIFIED TO TAKE AS AN HEIR BECAUSE HE OR A
32 PERSON THROUGH WHOM HE CLAIMS IS OR HAS BEEN AN ALIEN.

1 ARTICLE 2. ELECTIVE SHARE OF SURVIVING
2 SPOUSE IN QUASI-COMMUNITY PROPERTY

3 14-2201. Right to elective share

4 A. WHEN A MARRIED PERSON DOMICILED IN THIS STATE DIES, HIS SUR-
5 VIVING SPOUSE HAS THE RIGHT TO AN ELECTIVE SHARE OF ONE-HALF OF HIS
6 NET QUASI-COMMUNITY PROPERTY, SUBJECT TO THE LIMITATIONS AND CONDITIONS
7 STATED IN THIS CHAPTER. QUASI-COMMUNITY PROPERTY MEANS:

8 1. THAT SEPARATE PROPERTY OF THE DECEDENT ACQUIRED BY HIM
9 WHILE DOMICILED IN ANOTHER STATE AND ACQUIRED UNDER SUCH CIRCUMSTANCES
10 THAT IT WOULD HAVE BEEN THE COMMUNITY PROPERTY OF THE DECEDENT AND HIS
11 SURVIVING SPOUSE HAD THE DECEDENT BEEN DOMICILED IN THIS STATE AT THE
12 TIME.

13 2. ANY SEPARATE PROPERTY OF THE DECEDENT, WHENEVER AND WHEREVER
14 ACQUIRED, WHICH IS ACQUIRED AS A PRODUCT OF, IN EXCHANGE FOR, OR WITH
15 THE PROCEEDS OF, THE PROPERTY DESCRIBED IN PARAGRAPH 1.

16 B. IF A MARRIED PERSON NOT DOMICILED IN THIS STATE DIES, THE
17 RIGHT, IF ANY, OF THE SURVIVING SPOUSE TO TAKE AN ELECTIVE SHARE IN
18 PROPERTY IN THIS STATE IS GOVERNED BY THE LAW OF THE DECEDENT'S
19 DOMICILE AT DEATH, BUT THE RIGHT DOES NOT EXTEND TO ANY COMMUNITY
20 PROPERTY OF THE DECEDENT AND THE SPOUSE LOCATED IN THIS STATE.

21 14-2202. Quasi-community property subject to
22 elective share

23 A. THE FOLLOWING QUASI-COMMUNITY PROPERTY OF A DECEDENT, AS
24 DEFINED IN SECTION 14-2201, SHALL BE INCLUDED IN DETERMINING THE
25 ELECTIVE SHARE OF HIS SURVIVING SPOUSE:

26 1. THE VALUE OF ALL QUASI-COMMUNITY PROPERTY IN THE ESTATE,
27 REDUCED BY THE PROPORTIONATE SHARE ATTRIBUTABLE TO THE QUASI-COMMUNITY
28 PROPERTY, OF THE FOLLOWING ITEMS ALLOCATED TO THE COMMUNITY PROPERTY,
29 THE QUASI-COMMUNITY PROPERTY, AND THE OTHER SEPARATE PROPERTY IN THE
30 ESTATE ACCORDING TO THEIR RESPECTIVE VALUES AS CLAIMS AND EXPENSES
31 OF ADMINISTRATION, ALLOWANCE IN LIEU OF HOMESTEAD, EXEMPT PROPERTY
32 AND FAMILY ALLOWANCE.
33

1 2. THE VALUE OF QUASI-COMMUNITY PROPERTY TRANSFERRED BY THE
2 DECEDENT AT ANY TIME DURING MARRIAGE, TO OR FOR THE BENEFIT OF ANY
3 PERSON OTHER THAN THE SURVIVING SPOUSE, TO THE EXTENT THAT THE DECE-
4 DENT DID NOT RECEIVE ADEQUATE AND FULL CONSIDERATION IN MONEY OR
5 MONEY'S WORTH FOR THE TRANSFER, IF THE TRANSFER IS OF ANY OF THE
6 FOLLOWING TYPES:

7 (a) ANY TRANSFER UNDER WHICH THE DECEDENT RETAINED AT THE TIME
8 OF HIS DEATH THE POSSESSION OR ENJOYMENT OF, OR RIGHT TO INCOME FROM,
9 THE PROPERTY.

10 (b) ANY TRANSFER TO THE EXTENT THAT THE DECEDENT RETAINED AT
11 THE TIME OF HIS DEATH A POWER, EITHER ALONE OR IN CONJUNCTION WITH
12 ANY OTHER PERSON, TO REVOKE OR TO CONSUME, INVADE OR DISPOSE OF THE
13 PRINCIPAL FOR HIS OWN BENEFIT.

14 (c) ANY TRANSFER WHEREBY PROPERTY IS HELD AT THE TIME OF DECE-
15 DENT'S DEATH BY DECEDENT AND ANOTHER WITH RIGHT OF SURVIVORSHIP.

16 (d) ANY TRANSFER MADE WITHIN TWO YEARS OF DEATH OF THE DECEDENT
17 TO THE EXTENT THAT THE AGGREGATE TRANSFERS TO ANY ONE DONEE IN EITHER
18 OF THE YEARS EXCEED THREE THOUSAND DOLLARS.
19 ANY TRANSFER IS EXCLUDED IF MADE WITH THE WRITTEN CONSENT OR JOINDER
20 OF THE SURVIVING SPOUSE. PROPERTY IS VALUED AS OF THE DECEDENT'S
21 DEATH EXCEPT THAT PROPERTY GIVEN IRREVOCABLY TO A DONEE DURING LIFE-
22 TIME OF THE DECEDENT IS VALUED AS OF THE DATE THE DONEE CAME INTO POS-
23 SESSION OR ENJOYMENT IF THAT OCCURS FIRST. NOTHING IN THIS SUBSECTION
24 SHALL CAUSE ANY LIFE INSURANCE, ACCIDENT INSURANCE, JOINT ANNUITY OR
25 PENSION PAYABLE TO A PERSON OTHER THAN THE SURVIVING SPOUSE TO BE IN-
26 CLUDED IN DETERMINING THE ELECTIVE SHARE.

27 B. THERE SHALL BE DEDUCTED FROM THE ELECTIVE SHARE THE VALUE
28 OF PROPERTY OWNED BY THE SURVIVING SPOUSE AT THE DECEDENT'S DEATH
29 TO THE EXTENT THE PROPERTY IS DERIVED FROM THE DECEDENT OUT OF THE
30 DECEDENT'S SEPARATE PROPERTY AND THE DECEDENT'S SHARE OF COMMUNITY
31 PROPERTY, WITHOUT A FULL CONSIDERATION IN MONEY OR MONEY'S WORTH
32 FURNISHED BY THE SURVIVING SPOUSE OUT OF SEPARATE PROPERTY OR THE
33 SURVIVING SPOUSE'S SHARE OF COMMUNITY PROPERTY, AND ONE-HALF OF

1 PROPERTY OWNED BY THE SURVIVING SPOUSE AT THE DECEDENT'S DEATH TO
2 THE EXTENT THE PROPERTY IS DERIVED FROM THE DECEDENT OUT OF QUASI-
3 COMMUNITY PROPERTY WITHOUT SUCH A CONSIDERATION. FOR PURPOSES OF
4 THIS SUBSECTION:

5 (a) PROPERTY DERIVED FROM THE DECEDENT INCLUDES, BUT IS NOT
6 LIMITED TO, PROPERTY PASSING BY TESTATE OR INTESTATE SUCCESSION OR
7 BY INTER VIVOS GIFT, PROPERTY PASSING TO THE SURVIVING SPOUSE BY
8 RIGHT OF SURVIVORSHIP, ANY BENEFICIAL INTEREST OF THE SURVIVING
9 SPOUSE IN A TRUST CREATED BY THE DECEDENT DURING HIS LIFETIME, ANY
10 PROPERTY APPOINTED TO THE SPOUSE BY THE DECEDENT'S EXERCISE OF A
11 GENERAL OR SPECIAL POWER OF APPOINTMENT ALSO EXERCISABLE IN FAVOR
12 OF OTHERS THAN THE SPOUSE, ANY PROCEEDS OF INSURANCE, INCLUDING
13 ACCIDENTAL DEATH BENEFITS, ON THE LIFE OF THE DECEDENT ATTRIBUTABLE
14 TO PREMIUMS PAID BY HIM, ANY LUMP SUM IMMEDIATELY PAYABLE AND THE
15 COMMUTED VALUE OF THE PROCEEDS OF ANNUITY CONTRACTS UNDER WHICH THE
16 DECEDENT WAS THE PRIMARY ANNUITANT ATTRIBUTABLE TO PREMIUMS PAID BY
17 HIM, AND THE COMMUTED VALUE OF AMOUNTS PAYABLE AFTER THE DECEDENT'S
18 DEATH UNDER ANY PUBLIC OR PRIVATE PENSION, DISABILITY COMPENSATION,
19 DEATH BENEFIT OR RETIREMENT PLAN, EXCLUSIVE OF THE FEDERAL SOCIAL
20 SECURITY SYSTEM, BY REASON OF SERVICE PERFORMED OR DISABILITIES IN-
21 CURRED BY THE DECEDENT. PREMIUMS PAID BY THE DECEDENT'S EMPLOYER,
22 HIS PARTNER, A PARTNERSHIP OF WHICH HE WAS A MEMBER, OR HIS CREDITORS,
23 ARE DEEMED TO HAVE BEEN PAID BY THE DECEDENT.

24 (b) PROPERTY OWNED BY THE SPOUSE AT THE DECEDENT'S DEATH IS
25 VALUED AS OF THE DATE OF DEATH. INCOME EARNED BY INCLUDED PROPERTY
26 PRIOR TO THE DECEDENT'S DEATH IS NOT TREATED AS PROPERTY DERIVED
27 FROM THE DECEDENT.

28 (c) PROPERTY OWNED BY THE SURVIVING SPOUSE AS OF THE DECEDENT'S
29 DEATH IS PRESUMED TO HAVE BEEN DERIVED FROM THE DECEDENT EXCEPT TO THE
30 EXTENT THAT THE SURVIVING SPOUSE ESTABLISHES THAT IT WAS DERIVED FROM
31 ANOTHER SOURCE.

32 14-2203. Right of election personal to surviving spouse

33 THE RIGHT OF ELECTION OF THE SURVIVING SPOUSE MAY BE EXERCISED

1 ONLY DURING HIS LIFETIME BY HIM. IN THE CASE OF A PROTECTED PERSON,
2 THE RIGHT OF ELECTION MAY BE EXERCISED ONLY BY ORDER OF THE COURT IN
3 WHICH PROTECTIVE PROCEEDINGS AS TO HIS PROPERTY ARE PENDING, AFTER
4 FINDING THAT EXERCISE IS NECESSARY TO PROVIDE ADEQUATE SUPPORT FOR THE
5 PROTECTED PERSON DURING HIS PROBABLE LIFE EXPECTANCY.

6 14-2204. Waiver of right to elect and of other rights

7 THE RIGHT OF ELECTION OF A SURVIVING SPOUSE AND THE RIGHTS OF
8 THE SURVIVING SPOUSE TO ALLOWANCE IN LIEU OF HOMESTEAD, EXEMPT PROPERTY
9 AND FAMILY ALLOWANCE, OR ANY OF THEM, MAY BE WAIVED, WHOLLY OR PARTIALLY,
10 BEFORE OR AFTER MARRIAGE, BY A WRITTEN CONTRACT, AGREEMENT OR WAIVER
11 SIGNED BY THE PARTY WAIVING AFTER FAIR DISCLOSURE. UNLESS IT PROVIDES
12 TO THE CONTRARY, A WAIVER OF ALL RIGHTS IN THE PROPERTY OR ESTATE OF A
13 PRESENT OR PROSPECTIVE SPOUSE OR A COMPLETE PROPERTY SETTLEMENT ENTERED
14 INTO AFTER OR IN ANTICIPATION OF SEPARATION OR DIVORCE IS A WAIVER OF
15 ALL RIGHTS TO ELECTIVE SHARE, ALLOWANCE IN LIEU OF HOMESTEAD, EXEMPT
16 PROPERTY AND FAMILY ALLOWANCE BY EACH SPOUSE IN THE PROPERTY OF THE
17 OTHER AND A RENUNCIATION BY EACH OF ALL BENEFITS WHICH WOULD OTHERWISE
18 PASS TO HIM FROM THE OTHER BY INTESTATE SUCCESSION OR BY VIRTUE OF THE
19 PROVISIONS OF ANY WILL EXECUTED BEFORE THE WAIVER OR PROPERTY SETTLEMENT.

20 14-2205. Proceeding for elective share; time limit

21 A. THE SURVIVING SPOUSE MAY ELECT TO TAKE HIS ELECTIVE SHARE
22 BY FILING IN THE COURT AND MAILING OR DELIVERING TO THE PERSONAL REP-
23 RESENTATIVE A PETITION FOR THE ELECTIVE SHARE WITHIN FOUR MONTHS AFTER
24 THE PUBLICATION OF NOTICE TO CREDITORS FOR FILING CLAIMS WHICH AROSE
25 BEFORE THE DEATH OF THE DECEDENT. THE COURT MAY EXTEND THE TIME FOR
26 ELECTION AS IT SEES FIT FOR CAUSE SHOWN BY THE SURVIVING SPOUSE BEFORE
27 THE TIME FOR ELECTION HAS EXPIRED.

28 B. THE SURVIVING SPOUSE SHALL GIVE NOTICE OF THE TIME AND PLACE
29 SET FOR HEARING TO PERSONS INTERESTED IN THE ESTATE AND TO THE DIS-
30 TRIBUTEES AND RECIPIENTS OF PORTIONS OF QUASI-COMMUNITY PROPERTY WHOSE
31 INTERESTS WILL BE ADVERSELY AFFECTED BY THE TAKING OF THE ELECTIVE
32 SHARE.

33 C. THE SURVIVING SPOUSE MAY WITHDRAW HIS DEMAND FOR AN ELECTIVE

1 SHARE AT ANY TIME BEFORE ENTRY OF A FINAL DETERMINATION BY THE COURT
2 D. AFTER NOTICE AND HEARING, THE COURT SHALL DETERMINE THE
3 AMOUNT OF THE ELECTIVE SHARE AND SHALL ORDER ITS PAYMENT FROM THE
4 ASSETS OF THE ESTATE OR BY CONTRIBUTION AS APPEARS APPROPRIATE UNDER
5 SECTION 14-2207. IF IT APPEARS THAT QUASI-COMMUNITY PROPERTY INCLUDED
6 IN DETERMINING THE ELECTIVE SHARE HAS NOT COME INTO THE POSSESSION
7 OF THE PERSONAL REPRESENTATIVE OR HAS BEEN DISTRIBUTED BY THE PERSONAL
8 REPRESENTATIVE, THE COURT NEVERTHELESS SHALL FIX THE LIABILITY OF ANY
9 PERSON WHO HAS ANY INTEREST IN THE PROPERTY OR WHO HAS POSSESSION
10 THEREOF, WHETHER AS TRUSTEE OR OTHERWISE. THE PROCEEDING MAY BE MAIN-
11 TAINED AGAINST FEWER THAN ALL PERSONS AGAINST WHOM RELIEF COULD BE
12 SOUGHT, BUT NO PERSON IS SUBJECT TO CONTRIBUTION IN ANY GREATER AMOUNT
13 THAN HE WOULD HAVE BEEN IF RELIEF HAD BEEN SECURED AGAINST ALL PERSONS
14 SUBJECT TO CONTRIBUTION.

15 E. THE ORDER OR JUDGMENT OF THE COURT MAY BE ENFORCED AS NECES-
16 SARY IN SUIT FOR CONTRIBUTION OR PAYMENT IN OTHER COURTS OF THIS STATE
17 OR OTHER JURISDICTIONS.

18 14-2206. Effect of election on benefits by will or statute

19 A. THE SURVIVING SPOUSE'S ELECTION OF HIS ELECTIVE SHARE DOES
20 NOT AFFECT THE SHARE OF THE SURVIVING SPOUSE UNDER THE PROVISIONS OF
21 THE DECEDENT'S WILL OR INTESTATE SUCCESSION UNLESS THE SURVIVING SPOUSE
22 ALSO EXPRESSLY RENOUNCES IN THE PETITION FOR AN ELECTIVE SHARE THE
23 BENEFIT OF ALL OR ANY OF THE PROVISIONS. IF ANY PROVISION IS SO RE-
24 NOUNCED, THE PROPERTY OR OTHER BENEFIT WHICH WOULD OTHERWISE HAVE PASSED
25 TO THE SURVIVING SPOUSE THEREUNDER IS TREATED, SUBJECT TO CONTRIBUTION
26 UNDER SECTION 14-2207, SUBSECTION B, AS IF THE SURVIVING SPOUSE HAD
27 PREDECEASED THE TESTATOR.

28 B. A SURVIVING SPOUSE IS ENTITLED TO ALLOWANCE IN LIEU OF HOME-
29 STEAD, EXEMPT PROPERTY AND FAMILY ALLOWANCE WHETHER OR NOT HE ELECTS
30 TO TAKE AN ELECTIVE SHARE AND WHETHER OR NOT HE RENOUNCES THE BENEFITS
31 CONFERRED UPON HIM BY THE WILL EXCEPT THAT, IF IT CLEARLY APPEARS FROM
32 THE WILL THAT A PROVISION THEREIN MADE FOR THE SURVIVING SPOUSE WAS
33 INTENDED TO BE IN LIEU OF THESE RIGHTS, HE IS NOT SO ENTITLED IF HE
34 DOES NOT RENOUNCE THE PROVISION SO MADE FOR HIM IN THE WILL.

1 14-2207. Charging spouse with gifts received; liability
2 of others for balance of elective share
3 A. IN THE PROCEEDING FOR AN ELECTIVE SHARE, PROPERTY DESCRIBED
4 IN SECTION 14-2202, SUBSECTION B, WHICH PASSES OR HAS PASSED TO THE
5 SURVIVING SPOUSE AND WHICH HAS NOT BEEN RENOUNCED, IS APPLIED FIRST
6 TO SATISFY THE ELECTIVE SHARE.
7 B. REMAINING QUASI-COMMUNITY PROPERTY INCLUDED IN COMPUTING
8 THE ELECTIVE SHARE UNDER SECTION 14-2202, SUBSECTION A, IS SO APPLIED
9 THAT LIABILITY FOR THE BALANCE OF THE ELECTIVE SHARE OF THE SURVIVING
10 SPOUSE IS EQUITABLY APPORTIONED AMONG THE RECIPIENTS OF THE PROPERTY
11 IN PROPORTION TO THE VALUE OF THEIR INTERESTS THEREIN.
12 C. ONLY ORIGINAL TRANSFEREES FROM, OR APPOINTEES OF, THE DECEDENT
13 AND THEIR DONEES, TO THE EXTENT THE DONEES HAVE THE PROPERTY OR ITS
14 PROCEEDS, ARE SUBJECT TO THE CONTRIBUTION TO MAKE UP THE ELECTIVE SHARE
15 OF THE SURVIVING SPOUSE. A PERSON LIABLE TO CONTRIBUTION MAY CHOOSE
16 TO GIVE UP THE PROPERTY TRANSFERRED TO HIM OR TO PAY ITS VALUE AS OF
17 THE TIME IT IS CONSIDERED IN COMPUTING THE ELECTIVE SHARE.

18 ARTICLE 3. SPOUSE AND CHILDREN
19 UNPROVIDED FOR IN WILLS

20 14-2301. Omitted spouse

21 A. IF A TESTATOR FAILS TO PROVIDE BY WILL FOR HIS SURVIVING
22 SPOUSE WHO MARRIED THE TESTATOR AFTER THE EXECUTION OF THE WILL, THE
23 OMITTED SPOUSE SHALL RECEIVE THE SAME SHARE OF THE ESTATE HE WOULD
24 HAVE RECEIVED IF THE DECEDENT LEFT NO WILL UNLESS IT APPEARS FROM THE
25 WILL THAT THE OMISSION WAS INTENTIONAL OR THE TESTATOR PROVIDED FOR
26 THE SPOUSE BY TRANSFER OUTSIDE THE WILL AND THE INTENT THAT THE TRANS-
27 FER BE IN LIEU OF A TESTAMENTARY PROVISION IS SHOWN BY STATEMENTS OF
28 THE TESTATOR OR FROM THE AMOUNT OF THE TRANSFER OR OTHER EVIDENCE.

29 B. IN SATISFYING A SHARE PROVIDED BY THIS SECTION, THE DEVISES
30 MADE BY THE WILL ABATE AS PROVIDED IN SECTION 14-3902.

31 14-2302. Pretermitted children

32 A. IF A TESTATOR FAILS TO PROVIDE IN HIS WILL FOR ANY OF HIS
33 CHILDREN BORN OR ADOPTED AFTER THE EXECUTION OF HIS WILL, THE OMITTED

1 CHILD RECEIVES A SHARE IN THE ESTATE EQUAL IN VALUE TO THAT WHICH HE
2 WOULD HAVE RECEIVED IF THE TESTATOR HAD DIED INTESTATE UNLESS:

3 1. IT APPEARS FROM THE WILL THAT THE OMISSION WAS INTENTIONAL.

4 2. WHEN THE WILL WAS EXECUTED THE TESTATOR HAD ONE OR MORE
5 CHILDREN AND DEPOSED SUBSTANTIALLY ALL HIS ESTATE TO THE OTHER PARENT
6 OF THE OMITTED CHILD.

7 3. THE TESTATOR PROVIDED FOR THE CHILD BY TRANSFER OUTSIDE THE
8 WILL AND THE INTENT THAT THE TRANSFER BE IN LIEU OF A TESTAMENTARY
9 PROVISION IS SHOWN BY STATEMENTS OF THE TESTATOR OR FROM THE AMOUNT
10 OF THE TRANSFER OR OTHER EVIDENCE.

11 B. IF AT THE TIME OF EXECUTION OF THE WILL THE TESTATOR FAILS
12 TO PROVIDE IN HIS WILL FOR A LIVING CHILD SOLELY BECAUSE HE BELIEVES
13 THE CHILD TO BE DEAD, THE CHILD RECEIVES A SHARE IN THE ESTATE EQUAL
14 IN VALUE TO THAT WHICH HE WOULD HAVE RECEIVED IF THE TESTATOR HAD
15 DIED INTESTATE.

16 C. IN SATISFYING A SHARE PROVIDED BY THIS SECTION, THE DEVISES
17 MADE BY THE WILL ABATE AS PROVIDED IN SECTION 14-3902.

18 ARTICLE 4. EXEMPT PROPERTY AND ALLOWANCES

19 14-2401. Allowance in lieu of homestead

20 A SURVIVING SPOUSE OF A DECEDENT WHO WAS DOMICILED IN THIS STATE
21 IS ENTITLED TO AN ALLOWANCE OF SIX THOUSAND DOLLARS. IF THERE IS NO
22 SURVIVING SPOUSE, EACH DEPENDENT CHILD OF THE DECEDENT IS ENTITLED TO
23 AN ALLOWANCE OF SIX THOUSAND DOLLARS DIVIDED BY THE NUMBER OF DEPENDENT
24 CHILDREN OF THE DECEDENT. THE ALLOWANCE PROVIDED IN THIS SECTION IS IN
25 LIEU OF ANY HOMESTEAD EXEMPTION THE DECEDENT MAY HAVE HAD DURING LIFE-
26 TIME UNDER SECTION 33-1101. THE ALLOWANCE PROVIDED IN THIS SECTION IS
27 EXEMPT FROM AND HAS PRIORITY OVER ALL CLAIMS AGAINST THE ESTATE EXCEPT
28 EXPENSES OF ADMINISTRATION. THE ALLOWANCE IS IN ADDITION TO ANY
29 SHARE PASSING TO THE SURVIVING SPOUSE OR CHILD EITHER BY INTESTATE
30 SUCCESSION, OR BY THE WILL OF THE DECEDENT UNLESS THE WILL PROVIDES
31 OTHERWISE, OR BY WAY OF ELECTIVE SHARE.

32 14-2402. Exempt property

33 IN ADDITION TO THE ALLOWANCE IN LIEU OF HOMESTEAD THE SURVIVING

1 SPOUSE OF A DECEDENT WHO WAS DOMICILED IN THIS STATE IS ENTITLED FROM
2 THE ESTATE TO VALUE NOT EXCEEDING THREE THOUSAND FIVE HUNDRED DOLLARS
3 IN EXCESS OF ANY SECURITY INTERESTS THEREIN IN HOUSEHOLD FURNITURE,
4 AUTOMOBILES, FURNISHINGS, APPLIANCES AND PERSONAL EFFECTS. IF THERE
5 IS NO SURVIVING SPOUSE, MINOR DEPENDENT CHILDREN OF THE DECEDENT ARE
6 ENTITLED JOINTLY TO THE SAME VALUE. IF ENCUMBERED CHATTELS ARE
7 SELECTED AND IF THE VALUE IN EXCESS OF SECURITY INTERESTS, PLUS THAT
8 OF OTHER EXEMPT PROPERTY, IS LESS THAN THREE THOUSAND FIVE HUNDRED
9 DOLLARS, OR IF THERE IS NOT THREE THOUSAND FIVE HUNDRED DOLLARS WORTH
10 OF EXEMPT PROPERTY IN THE ESTATE, THE SPOUSE OR CHILDREN ARE ENTITLED
11 TO OTHER ASSETS OF THE ESTATE, IF ANY, TO THE EXTENT NECESSARY TO MAKE
12 UP THE THREE THOUSAND FIVE HUNDRED DOLLAR VALUE. RIGHTS TO EXEMPT
13 PROPERTY AND ASSETS NEEDED TO MAKE UP A DEFICIENCY OF EXEMPT PROPERTY
14 HAVE PRIORITY OVER ALL CLAIMS AGAINST THE ESTATE, EXCEPT THAT THE
15 RIGHT TO ANY ASSETS TO MAKE UP A DEFICIENCY OF EXEMPT PROPERTY SHALL
16 ABATE AS NECESSARY TO PERMIT PRIOR PAYMENT OF HOMESTEAD ALLOWANCE AND
17 FAMILY ALLOWANCE. THESE RIGHTS ARE IN ADDITION TO ANY BENEFIT OR
18 SHARE PASSING TO THE SURVIVING SPOUSE OR CHILDREN BY INTESTATE SUCCESSION,
19 OR BY THE WILL OF THE DECEDENT UNLESS THE WILL PROVIDES OTHERWISE
20 OR BY WAY OF ELECTIVE SHARE.

21 14-2403. Family allowance

22 A. IN ADDITION TO THE RIGHT TO THE ALLOWANCE IN LIEU OF HOMESTEAD
23 AND EXEMPT PROPERTY, IF THE DECEDENT WAS DOMICILED IN THIS STATE, THE
24 SURVIVING SPOUSE AND MINOR CHILDREN WHOM THE DECEDENT WAS OBLIGATED
25 TO SUPPORT AND CHILDREN WHO WERE IN FACT BEING SUPPORTED BY HIM ARE
26 ENTITLED TO A REASONABLE ALLOWANCE IN MONEY OUT OF THE ESTATE FOR
27 THEIR MAINTENANCE DURING THE PERIOD OF ADMINISTRATION, WHICH ALLOWANCE
28 MAY NOT CONTINUE FOR LONGER THAN ONE YEAR IF THE ESTATE IS INADEQUATE
29 TO DISCHARGE ALLOWED CLAIMS. THE ALLOWANCE MAY BE PAID AS A LUMP SUM
30 OR IN PERIODIC INSTALLMENTS. IT IS PAYABLE TO THE SURVIVING SPOUSE,
31 FOR THE USE OF THE SURVIVING SPOUSE AND MINOR AND DEPENDENT CHILDREN.
32 IF THE SPOUSE IS NOT LIVING THE ALLOWANCE IS PAYABLE TO THE CHILDREN
33 OR PERSONS HAVING THEIR CARE AND CUSTODY. IN CASE ANY MINOR CHILD OR

1 DEPENDENT CHILD IS NOT LIVING WITH THE SURVIVING SPOUSE, THE ALLOWANCE
2 MAY BE MADE PARTIALLY TO THE CHILD OR HIS GUARDIAN OR OTHER PERSON
3 HAVING HIS CARE AND CUSTODY, AND PARTIALLY TO THE SPOUSE, AS THEIR
4 NEEDS MAY APPEAR. THE FAMILY ALLOWANCE IS EXEMPT FROM AND HAS PRIORITY
5 OVER ALL CLAIMS BUT NOT OVER THE ALLOWANCE IN LIEU OF HOMESTEAD.

6 B. THE FAMILY ALLOWANCE IS NOT CHARGEABLE AGAINST ANY BENEFIT
7 OR SHARE PASSING TO THE SURVIVING SPOUSE OR CHILDREN EITHER BY INTESTATE
8 SUCCESSION, OR BY THE WILL OF THE DECEDENT UNLESS THE WILL PROVIDES
9 OTHERWISE OR BY WAY OF ELECTIVE SHARE. THE DEATH OF ANY PERSON ENTITLED
10 TO FAMILY ALLOWANCE TERMINATES HIS RIGHT TO ALLOWANCES NOT PAID.

11 14-2404. Source, determination and documentation

12 IF THE ESTATE IS OTHERWISE SUFFICIENT, PROPERTY SPECIFICALLY
13 DEVISED SHALL NOT BE USED TO SATISFY RIGHTS TO THE ALLOWANCE IN LIEU
14 OF HOMESTEAD AND EXEMPT PROPERTY. SUBJECT TO THIS RESTRICTION, THE
15 SURVIVING SPOUSE, THE GUARDIANS OF THE MINOR CHILDREN OR CHILDREN WHO
16 ARE ADULTS MAY SELECT PROPERTY OF THE ESTATE AS THE ALLOWANCE IN LIEU
17 OF HOMESTEAD AND EXEMPT PROPERTY. THE PERSONAL REPRESENTATIVE MAY
18 MAKE THESE SELECTIONS IF THE SURVIVING SPOUSE, THE CHILDREN OR THE
19 GUARDIANS OF THE MINOR CHILDREN ARE UNABLE OR FAIL TO DO SO WITHIN A
20 REASONABLE TIME OR IF THERE ARE NO GUARDIANS OF THE MINOR CHILDREN.
21 THE ALLOWANCE IN LIEU OF HOMESTEAD, THE EXEMPT PROPERTY, AND THE
22 FAMILY ALLOWANCE MAY BE TAKEN OUT OF SEPARATE PROPERTY OR THE DECEDENT'S
23 SHARE OF COMMUNITY PROPERTY. THE PERSONAL REPRESENTATIVE MAY EXECUTE
24 AN INSTRUMENT OR DEED OF DISTRIBUTION TO ESTABLISH THE OWNERSHIP OF
25 PROPERTY TAKEN AS THE ALLOWANCE IN LIEU OF HOMESTEAD OR EXEMPT PROP-
26 erty. HE MAY DETERMINE THE FAMILY ALLOWANCE IN A LUMP SUM NOT EX-
27 CEEDING SIX THOUSAND DOLLARS OR PERIODIC INSTALLMENTS NOT EXCEEDING
28 FIVE HUNDRED DOLLARS PER MONTH FOR ONE YEAR, AND MAY DISBURSE FUNDS OF
29 THE ESTATE IN PAYMENT OF THE FAMILY ALLOWANCE AND ANY PART OF THE
30 ALLOWANCE IN LIEU OF HOMESTEAD PAYABLE IN CASH. THE PERSONAL REPRESENTATIVE
31 OR ANY INTERESTED PERSON AGGRIEVED BY ANY SELECTION, DETERMINATION,
32 PAYMENT, PROPOSED PAYMENT OR FAILURE TO ACT UNDER THIS SECTION MAY
33 PETITION THE COURT FOR APPROPRIATE RELIEF, WHICH RELIEF MAY PROVIDE

1 A FAMILY ALLOWANCE LARGER OR SMALLER THAN THAT WHICH THE PERSONAL REPRESENTATIVE DETERMINED OR COULD HAVE DETERMINED.

3 ARTICLE 5. WILLS

4 14-2501. Who may make a will

5 ANY PERSON EIGHTEEN OR MORE YEARS OF AGE WHO IS OF SOUND MIND
6 MAY MAKE A WILL.

7 14-2502. Execution

8 EXCEPT AS PROVIDED FOR HOLOGRAPHIC WILLS, WRITINGS WITHIN
9 SECTION 14-2513 AND WILLS WITHIN SECTION 14-2506, EVERY WILL SHALL
10 BE IN WRITING SIGNED BY THE TESTATOR OR IN THE TESTATOR'S NAME BY
11 SOME OTHER PERSON IN THE TESTATOR'S PRESENCE AND BY HIS DIRECTION,
12 AND SHALL BE SIGNED BY AT LEAST TWO PERSONS EACH OF WHOM WITNESSED
13 EITHER THE SIGNING OR THE TESTATOR'S ACKNOWLEDGMENT OF THE SIGNATURE
14 OR OF THE WILL.

15 14-2503. Holographic will

16 A WILL WHICH DOES NOT COMPLY WITH SECTION 14-2502 IS VALID AS
17 A HOLOGRAPHIC WILL, WHETHER OR NOT WITNESSED, IF THE SIGNATURE AND
18 THE MATERIAL PROVISIONS ARE IN THE HANDWRITING OF THE TESTATOR.

19 14-2504. Self-proved will

20 AN ATTESTED WILL MAY AT THE TIME OF ITS EXECUTION OR AT ANY
21 SUBSEQUENT DATE BE MADE SELF-PROVED, BY THE ACKNOWLEDGMENT THEREOF BY
22 THE TESTATOR AND THE AFFIDAVITS OF THE WITNESSES, EACH MADE BEFORE AN
23 OFFICER AUTHORIZED TO ADMINISTER OATHS UNDER THE LAWS OF THIS STATE
24 AND EVIDENCED BY THE OFFICER'S CERTIFICATE, UNDER OFFICIAL SEAL, ATTACHED OR ANNEXED TO THE WILL IN FORM AND CONTENT SUBSTANTIALLY AS
25 FOLLOWS:

26
27 THE STATE OF _____
28 COUNTY OF _____

29 WE, _____, _____, AND _____, THE TESTATOR AND THE
30 WITNESSES, RESPECTIVELY, WHOSE NAMES ARE SIGNED TO THE ATTACHED OR
31 FOREGOING INSTRUMENT, BEING FIRST DULY SWORN, DO HEREBY DECLARE TO
32 THE UNDERSIGNED AUTHORITY THAT THE TESTATOR SIGNED AND EXECUTED THE
33 INSTRUMENT AS HIS LAST WILL AND THAT HE HAD SIGNED WILLINGLY OR

1 DIRECTED ANOTHER TO SIGN FOR HIM, AND THAT HE EXECUTED IT AS HIS FREE
2 AND VOLUNTARY ACT FOR THE PURPOSES THEREIN EXPRESSED, AND THAT EACH OF
3 THE WITNESSES, IN THE PRESENCE AND HEARING OF THE TESTATOR, SIGNED
4 THE WILL AS WITNESS AND THAT TO THE BEST OF HIS KNOWLEDGE THE TESTATOR
5 WAS AT THAT TIME EIGHTEEN OR MORE YEARS OF AGE, OF SOUND MIND AND UNDER
6 NO CONSTRAINT OR UNDUE INFLUENCE.

7
8 _____
TESTATOR

9
10 _____
WITNESS

11
12 _____
WITNESS

13 SUBSCRIBED, SWORN TO AND ACKNOWLEDGED BEFORE ME BY _____,
14 THE TESTATOR, AND SUBSCRIBED AND SWORN TO BEFORE ME BY _____
15 AND _____, WITNESSES, THIS _____ DAY OF _____,
16 _____.
17 (SEAL) (SIGNED) _____

18
19 _____
(OFFICIAL CAPACITY OF OFFICER)

20 14-2505. Who may witness

21 A. ANY PERSON GENERALLY COMPETENT TO BE A WITNESS MAY ACT AS A
22 WITNESS TO A WILL.

23 B. A WILL OR ANY PROVISION THEREOF IS NOT INVALID BECAUSE THE
24 WILL IS SIGNED BY AN INTERESTED WITNESS.

25 14-2506. Choice of law as to execution

26 A WRITTEN WILL IS VALID IF EXECUTED IN COMPLIANCE WITH SECTION
27 14-2502 OR SECTION 14-2503 OR IF ITS EXECUTION COMPLIES WITH THE LAW
28 AT THE TIME OF EXECUTION OF THE PLACE WHERE THE WILL IS EXECUTED, OR
29 OF THE LAW OF THE PLACE WHERE AT THE TIME OF EXECUTION OR AT THE TIME
30 OF DEATH THE TESTATOR IS DOMICILED, HAS A PLACE OF ABODE OR IS A
31 NATIONAL.

32 14-2507. Revocation by writing or by act

33 A WILL OR ANY PART THEREOF IS REVOKED BY EITHER:

1 1. A SUBSEQUENT WILL WHICH REVOKES THE PRIOR WILL OR PART
2 EXPRESSLY OR BY INCONSISTENCY.

3 2. BEING BURNED, TORN, CANCELED, OBLITERATED OR DESTROYED,
4 WITH THE INTENT AND FOR THE PURPOSE OF REVOKING IT BY THE TESTATOR OR
5 BY ANOTHER PERSON IN HIS PRESENCE AND BY HIS DIRECTION.

6 14-2508. Revocation by divorce; no revocation by other
7 changes of circumstances

8 IF AFTER EXECUTING A WILL THE TESTATOR IS DIVORCED OR HIS
9 MARRIAGE ANNULLED, THE DIVORCE OR ANNULMENT REVOKES ANY DISPOSITION
10 OR APPOINTMENT OF PROPERTY MADE BY THE WILL TO THE FORMER SPOUSE, ANY
11 PROVISION CONFERRING A GENERAL OR SPECIAL POWER OF APPOINTMENT ON THE
12 FORMER SPOUSE, AND ANY NOMINATION OF THE FORMER SPOUSE AS EXECUTOR,
13 TRUSTEE, CONSERVATOR OR GUARDIAN, UNLESS THE WILL EXPRESSLY PROVIDES
14 OTHERWISE. PROPERTY PREVENTED FROM PASSING TO A FORMER SPOUSE BECAUSE
15 OF REVOCATION BY DIVORCE OR ANNULMENT PASSES AS IF THE FORMER SPOUSE
16 FAILED TO SURVIVE THE DECEDENT, AND OTHER PROVISIONS CONFERRING SOME
17 POWER OR OFFICE ON THE FORMER SPOUSE ARE INTERPRETED AS IF THE SPOUSE
18 FAILED TO SURVIVE THE DECEDENT. IF PROVISIONS ARE REVOKED SOLELY BY
19 THIS SECTION, THEY ARE REVIVED BY TESTATOR'S REMARRIAGE TO THE FORMER
20 SPOUSE. FOR PURPOSES OF THIS SECTION, DIVORCE OR ANNULMENT MEANS ANY
21 DIVORCE OR ANNULMENT WHICH WOULD EXCLUDE THE SPOUSE AS A SURVIVING
22 SPOUSE WITHIN THE MEANING OF SECTION 14-2802, SUBSECTION B. A DECREE
23 OF SEPARATION WHICH DOES NOT TERMINATE THE STATUS OF HUSBAND AND WIFE
24 IS NOT A DIVORCE FOR PURPOSES OF THIS SECTION. NO CHANGE OF CIRCUM-
25 STANCES OTHER THAN AS DESCRIBED IN THIS SECTION REVOKES A WILL OR ANY
26 PART THEREOF.

27 14-2509. Revival of revoked will

28 A. IF A SECOND WILL WHICH, HAD IT REMAINED EFFECTIVE AT DEATH,
29 WOULD HAVE REVOKED THE FIRST WILL IN WHOLE OR IN PART, IS THEREAFTER
30 REVOKED BY ACTS UNDER SECTION 14-2507, THE FIRST WILL IS REVOKED IN
31 WHOLE OR IN PART UNLESS IT IS EVIDENT FROM THE CIRCUMSTANCES OF THE
32 REVOCATION OF THE SECOND WILL OR FROM TESTATOR'S CONTEMPORARY OR SUB-
33 SEQUENT DECLARATIONS THAT HE INTENDED THE FIRST WILL TO TAKE EFFECT
34 AS EXECUTED.

1 B. IF A SECOND WILL WHICH, HAD IT REMAINED EFFECTIVE AT DEATH,
2 WOULD HAVE REVOKED THE FIRST WILL IN WHOLE OR IN PART, IS THEREAFTER
3 REVOKED BY A THIRD WILL, THE FIRST WILL IS REVOKED IN WHOLE OR IN
4 PART, EXCEPT TO THE EXTENT IT APPEARS FROM THE TERMS OF THE THIRD
5 WILL THAT THE TESTATOR INTENDED THE FIRST WILL TO TAKE EFFECT.

6 14-2510. Incorporation by reference

7 ANY WRITING IN EXISTENCE WHEN A WILL IS EXECUTED MAY BE INCOR-
8 PORATED BY REFERENCE IF THE LANGUAGE OF THE WILL MANIFESTS THIS INTENT
9 AND DESCRIBES THE WRITING SUFFICIENTLY TO PERMIT ITS IDENTIFICATION.

10 14-2511. Testamentary additions to trusts

11 A DEVISE OR BEQUEST, THE VALIDITY OF WHICH IS DETERMINABLE BY
12 THE LAW OF THIS STATE, MAY BE MADE BY A WILL TO THE TRUSTEE OF A
13 TRUST, REGARDLESS OF THE EXISTENCE, SIZE OR CHARACTER OF THE CORPUS OF
14 THE TRUST AND INCLUDING A FUNDED OR UNFUNDED LIFE INSURANCE TRUST,
15 ALTHOUGH THE TRUSTOR HAS RESERVED ANY OR ALL RIGHTS OF OWNERSHIP OF
16 THE INSURANCE CONTRACTS, ESTABLISHED OR TO BE ESTABLISHED BY THE
17 TESTATOR, THE TESTATOR AND SOME OTHER PERSON OR SOME OTHER PERSON IF
18 THE TRUST IS IDENTIFIED IN THE TESTATOR'S WILL AND ITS TERMS ARE SET
19 FORTH IN A WRITTEN INSTRUMENT OTHER THAN A WILL EXECUTED BEFORE OR
20 CONCURRENTLY WITH THE EXECUTION OF THE TESTATOR'S WILL OR IN THE
21 VALID LAST WILL OF A PERSON WHO HAS PREDECEASED THE TESTATOR. THE
22 DEVISE IS NOT INVALID BECAUSE THE TRUST IS AMENDABLE OR REVOCABLE, OR
23 BECAUSE THE TRUST WAS AMENDED AFTER THE EXECUTION OF THE WILL OR AFTER
24 THE DEATH OF THE TESTATOR. UNLESS THE TESTATOR'S WILL PROVIDES OTHER-
25 WISE, THE PROPERTY SO DEVISED:

26 1. IS NOT DEEMED TO BE HELD UNDER A TESTAMENTARY TRUST OF THE
27 TESTATOR BUT BECOMES A PART OF THE TRUST TO WHICH IT IS GIVEN.

28 2. SHALL BE ADMINISTERED AND DISPOSED OF IN ACCORDANCE WITH
29 THE PROVISIONS OF THE INSTRUMENT OR WILL SETTING FORTH THE TERMS OF
30 THE TRUST, INCLUDING ANY AMENDMENTS THERETO MADE BEFORE THE DEATH OF
31 THE TESTATOR, REGARDLESS OF WHETHER MADE BEFORE OR AFTER THE EXECUTION
32 OF THE TESTATOR'S WILL, AND, IF THE TESTATOR'S WILL SO PROVIDES, INCLUDING
33 ANY AMENDMENTS TO THE TRUST MADE AFTER THE DEATH OF THE TESTATOR.

1 A REVOCATION OR TERMINATION OF THE TRUST BEFORE THE DEATH OF THE TESTATOR
2 CAUSES THE DEVISE TO LAPSE.

3 14-2512. Events of independent significance

4 A WILL MAY DISPOSE OF PROPERTY BY REFERENCE TO ACTS AND EVENTS
5 WHICH HAVE SIGNIFICANCE APART FROM THEIR EFFECT UPON THE DISPOSITIONS
6 MADE BY THE WILL, WHETHER THEY OCCUR BEFORE OR AFTER THE EXECUTION
7 OF THE WILL OR BEFORE OR AFTER THE TESTATOR'S DEATH. THE EXECUTION
8 OR REVOCATION OF A WILL OF ANOTHER PERSON IS SUCH AN EVENT.

9 14-2513. Separate writing identifying bequest of
10 tangible property

11 WHETHER OR NOT THE PROVISIONS RELATING TO HOLOGRAPHIC WILLS
12 APPLY, A WILL MAY REFER TO A WRITTEN STATEMENT OR LIST TO DISPOSE
13 OF ITEMS OF TANGIBLE PERSONAL PROPERTY NOT OTHERWISE SPECIFICALLY
14 DISPOSED OF BY THE WILL, OTHER THAN MONEY, EVIDENCES OF INDEBTEDNESS,
15 DOCUMENTS OF TITLE AND SECURITIES, AND PROPERTY USED IN TRADE OR
16 BUSINESS. TO BE ADMISSIBLE UNDER THIS SECTION AS EVIDENCE OF THE
17 INTENDED DISPOSITION, THE WRITING MUST EITHER BE IN THE HANDWRITING
18 OF THE TESTATOR OR BE SIGNED BY HIM AND MUST DESCRIBE THE ITEMS AND
19 THE DEVISEES WITH REASONABLE CERTAINTY. THE WRITING MAY BE REFERRED
20 TO AS ONE:

- 21 1. IN EXISTENCE AT THE TIME OF THE TESTATOR'S DEATH.
- 22 2. PREPARED BEFORE OR AFTER THE EXECUTION OF THE WILL.
- 23 3. ALTERED BY THE TESTATOR AFTER ITS PREPARATION.
- 24 4. WHICH HAS NO SIGNIFICANCE APART FROM ITS EFFECT UPON THE
- 25 DISPOSITIONS MADE BY THE WILL.

26 ARTICLE 6. RULES OF CONSTRUCTION

27 14-2601. Requirement that devisee survive
28 testator by one hundred twenty hours

29 A. A DEVISEE WHO DOES NOT SURVIVE THE TESTATOR BY ONE HUNDRED
30 TWENTY HOURS IS TREATED AS IF HE PREDECEASED THE TESTATOR, UNLESS THE
31 WILL OF DECEDENT CONTAINS SOME LANGUAGE DEALING EXPLICITLY WITH SI-
32 MULTANEOUS DEATHS OR DEATHS IN A COMMON DISASTER, OR REQUIRING THAT
33 THE DEVISEE SURVIVE THE TESTATOR OR SURVIVE THE TESTATOR FOR A STATED
34 PERIOD IN ORDER TO TAKE UNDER THE WILL.

1 B. IF THE TIME OF DEATH OF THE TESTATOR, THE DEVISEE OR BOTH
2 CANNOT BE DETERMINED AND IT CANNOT BE ESTABLISHED THAT THE DEVISEE
3 HAS SURVIVED THE TESTATOR BY ONE HUNDRED TWENTY HOURS, IT IS DEEMED
4 THAT THE DEVISEE HAS FAILED TO SURVIVE FOR THE REQUIRED PERIOD.

5 14-2602. Choice of law as to meaning and effect
6 of wills

7 THE MEANING AND LEGAL EFFECT OF A DISPOSITION IN A WILL SHALL
8 BE DETERMINED BY THE LOCAL LAW OF A PARTICULAR STATE SELECTED BY THE
9 TESTATOR IN HIS INSTRUMENT UNLESS THE APPLICATION OF THAT LAW IS CON-
10 TRARY TO THE PUBLIC POLICY OF THIS STATE OTHERWISE APPLICABLE TO THE
11 DISPOSITION.

12 14-2603. Rules of construction and intention

13 THE INTENTION OF A TESTATOR AS EXPRESSED IN HIS WILL CONTROLS
14 THE LEGAL EFFECT OF HIS DISPOSITIONS. THE RULES OF CONSTRUCTION
15 EXPRESSED IN THE SUCCEEDING SECTIONS OF THIS ARTICLE APPLY UNLESS
16 A CONTRARY INTENTION IS INDICATED BY THE WILL.

17 14-2604. Construction that will passes all property;
18 after-acquired property

19 A WILL IS CONSTRUED TO PASS ALL PROPERTY WHICH THE TESTATOR
20 OWNS AT HIS DEATH INCLUDING PROPERTY ACQUIRED AFTER THE EXECUTION
21 OF THE WILL.

22 14-2605. Anti-lapse; deceased devisee; class gifts

23 IF A DEVISEE WHO IS A GRANDPARENT OR A LINEAL DESCENDANT OF A
24 GRANDPARENT OF THE TESTATOR IS DEAD AT THE TIME OF EXECUTION OF THE
25 WILL, FAILS TO SURVIVE THE TESTATOR, OR IS TREATED AS IF HE PRE-
26 DECEASED THE TESTATOR, THE ISSUE OF THE DECEASED DEVISEE WHO SURVIVE
27 THE TESTATOR BY ONE HUNDRED TWENTY HOURS TAKE IN PLACE OF THE DECEASED
28 DEVISEE AND IF THEY ARE ALL OF THE SAME DEGREE OF KINSHIP TO THE
29 DEVISEE THEY TAKE EQUALLY, BUT IF OF UNEQUAL DEGREE THEN THOSE OF
30 MORE REMOTE DEGREE TAKE BY REPRESENTATION. ONE WHO WOULD HAVE BEEN A
31 DEVISEE UNDER A CLASS GIFT IF HE HAD SURVIVED THE TESTATOR IS TREATED
32 AS A DEVISEE FOR PURPOSES OF THIS SECTION WHETHER HIS DEATH OCCURRED
33 BEFORE OR AFTER THE EXECUTION OF THE WILL.

1 14-2606. Failure of testamentary provision
2 A. EXCEPT AS PROVIDED IN SECTION 14-2605 IF A DEVISE OTHER THAN
3 A RESIDUARY DEVISE FAILS FOR ANY REASON, IT BECOMES A PART OF THE
4 RESIDUE.
5 B. EXCEPT AS PROVIDED IN SECTION 14-2605 IF THE RESIDUE IS
6 DEVISED TO TWO OR MORE PERSONS AND THE SHARE OF ONE OF THE RESIDUARY
7 DEVISEES FAILS FOR ANY REASON, HIS SHARE PASSES TO THE OTHER RESID-
8 UARY DEVISEE, OR TO OTHER RESIDUARY DEVISEES IN PROPORTION TO THEIR
9 INTERESTS IN THE RESIDUE.
10 14-2607. Change in securities; accessions; nonademption
11 A. IF THE TESTATOR INTENDED A SPECIFIC DEVISE OF CERTAIN
12 SECURITIES RATHER THAN THE EQUIVALENT VALUE THEREOF, THE SPECIFIC
13 DEVISEE IS ENTITLED ONLY TO:
14 1. AS MUCH OF THE DEVISED SECURITIES AS IS A PART OF THE ESTATE
15 AT TIME OF THE TESTATOR'S DEATH.
16 2. ANY ADDITIONAL OR OTHER SECURITIES OF THE SAME ENTITY OWNED
17 BY THE TESTATOR BY REASON OF ACTION INITIATED BY THE ENTITY EXCLUDING
18 ANY ACQUIRED BY EXERCISE OF PURCHASE OPTIONS.
19 3. SECURITIES OF ANOTHER ENTITY OWNED BY THE TESTATOR AS A
20 RESULT OF A MERGER, CONSOLIDATION, REORGANIZATION OR OTHER SIMILAR
21 ACTION INITIATED BY THE ENTITY.
22 4. ANY ADDITIONAL SECURITIES OF THE ENTITY OWNED BY THE TESTATOR
23 AS A RESULT OF A PLAN OF REINVESTMENT IF IT IS A REGULATED INVESTMENT
24 COMPANY.
25 B. DISTRIBUTIONS PRIOR TO DEATH WITH RESPECT TO A SPECIFICALLY
26 DEVISED SECURITY NOT PROVIDED FOR IN SUBSECTION A ARE NOT PART OF THE
27 SPECIFIC DEVISE.
28 14-2608. Nonademption of specific devises in certain
29 cases; sale by conservator; unpaid proceeds
30 of sale, condemnation or insurance
31 A. IF SPECIFICALLY DEVISED PROPERTY IS SOLD BY A CONSERVATOR, OR
32 IF A CONDEMNATION AWARD OR INSURANCE PROCEEDS ARE PAID TO A CONSERVATOR
33 AS A RESULT OF CONDEMNATION, FIRE OR CASUALTY, THE SPECIFIC DEVISEE HAS

1 THE RIGHT TO A GENERAL PECUNIARY DEVISE EQUAL TO THE NET SALE PRICE,
2 THE CONDEMNATION AWARD OR THE INSURANCE PROCEEDS. THIS SUBSECTION
3 DOES NOT APPLY IF SUBSEQUENT TO THE SALE, CONDEMNATION OR CASUALTY,
4 IT IS ADJUDICATED THAT THE DISABILITY OF THE TESTATOR HAS CEASED AND
5 THE TESTATOR SURVIVES THE ADJUDICATION BY ONE YEAR. THE RIGHT OF THE
6 SPECIFIC DEVISEE UNDER THIS SUBSECTION IS REDUCED BY ANY RIGHT HE HAS
7 UNDER SUBSECTION B.

8 B. A SPECIFIC DEVISEE HAS THE RIGHT TO THE REMAINING SPECIFIC-
9 ALLY DEVISED PROPERTY AND:

10 1. ANY BALANCE OF THE PURCHASE PRICE, TOGETHER WITH ANY SECURITY
11 INTEREST, OWING FROM A PURCHASER TO THE TESTATOR AT DEATH BY REASON OF
12 SALE OF THE PROPERTY.

13 2. ANY AMOUNT OF A CONDEMNATION AWARD FOR THE TAKING OF THE
14 PROPERTY UNPAID AT DEATH.

15 3. ANY PROCEEDS UNPAID AT DEATH ON FIRE OR CASUALTY INSURANCE
16 ON THE PROPERTY.

17 4. PROPERTY OWNED BY TESTATOR AT HIS DEATH AS A RESULT OF
18 FORECLOSURE, OR OBTAINED IN LIEU OF FORECLOSURE, OF THE SECURITY
19 FOR A SPECIFICALLY DEVISED OBLIGATION.

20 14-2609. Non-exoneration

21 A SPECIFIC DEVISE PASSES SUBJECT TO ANY SECURITY INTEREST EXIST-
22 ING AT THE DATE OF DEATH, WITHOUT RIGHT OF EXONERATION, REGARDLESS OF
23 A GENERAL DIRECTIVE IN THE WILL TO PAY DEBTS.

24 14-2610. Exercise of power of appointment

25 A GENERAL RESIDUARY CLAUSE IN A WILL, OR A WILL MAKING GENERAL
26 DISPOSITION OF ALL OF THE TESTATOR'S PROPERTY, DOES NOT EXERCISE A
27 POWER OF APPOINTMENT HELD BY THE TESTATOR UNLESS SPECIFIC REFERENCE
28 IS MADE TO THE POWER OR THERE IS SOME OTHER INDICATION OF INTENTION
29 TO INCLUDE THE PROPERTY SUBJECT TO THE POWER.

30 14-2611. Construction of generic terms to accord

31 with relationships as defined for

32 intestate succession

33 HALFBLOODS, ADOPTED PERSONS AND PERSONS BORN OUT OF WEDLOCK ARE

1 INCLUDED IN CLASS GIFT TERMINOLOGY AND TERMS OF RELATIONSHIP IN ACCOR-
2 DANCE WITH RULES FOR DETERMINING RELATIONSHIPS FOR PURPOSES OF INTESTATE
3 SUCCESSION, BUT A PERSON BORN OUT OF WEDLOCK IS TREATED AS THE CHILD
4 OF THE FATHER ONLY IF THE FATHER HAS OPENLY TREATED THE CHILD AS HIS
5 AND HAS NOT REFUSED TO SUPPORT THE CHILD.

6 14-2612. Ademption by satisfaction

7 PROPERTY WHICH A TESTATOR GAVE IN HIS LIFETIME TO A PERSON IS
8 TREATED AS A SATISFACTION OF A DEVISE TO THAT PERSON IN WHOLE OR IN
9 PART, ONLY IF THE WILL PROVIDES FOR DEDUCTION OF THE LIFETIME GIFT,
10 THE TESTATOR DECLARES IN A CONTEMPORANEOUS WRITING THAT THE GIFT IS
11 TO BE DEDUCTED FROM THE DEVISE OR IS IN SATISFACTION OF THE DEVISE,
12 OR THE DEVISEE ACKNOWLEDGES IN WRITING THAT THE GIFT IS IN SATISFAC-
13 TION. FOR PURPOSE OF PARTIAL SATISFACTION, PROPERTY GIVEN DURING
14 LIFETIME IS VALUED AS OF THE TIME THE DEVISEE CAME INTO POSSESSION
15 OR ENJOYMENT OF THE PROPERTY OR AS OF THE TIME OF DEATH OF THE
16 TESTATOR, WHICHEVER OCCURS FIRST.

17 ARTICLE 7. CONTRACTUAL

18 ARRANGEMENTS RELATING TO DEATH

19 14-2701. Contracts concerning succession

20 A CONTRACT TO MAKE A WILL OR DEVISE, OR NOT TO REVOKE A WILL OR
21 DEVISE, OR TO DIE INTESTATE, IF EXECUTED AFTER THE EFFECTIVE DATE OF
22 THIS TITLE, CAN BE ESTABLISHED ONLY BY ONE OR MORE OF THE FOLLOWING:

- 23 1. PROVISIONS OF A WILL STATING MATERIAL PROVISIONS OF THE
24 CONTRACT.
- 25 2. AN EXPRESS REFERENCE IN A WILL TO A CONTRACT AND EXTRINSIC
26 EVIDENCE PROVING THE TERMS OF THE CONTRACT.
- 27 3. A WRITING SIGNED BY THE DECEDENT EVIDENCING THE CONTRACT.
- 28 THE EXECUTION OF A JOINT WILL OR MUTUAL WILLS DOES NOT CREATE A PRE-
29 SUMPTION OF A CONTRACT NOT TO REVOKE THE WILL OR WILLS.

30 ARTICLE 8. GENERAL PROVISIONS

31 14-2801. Renunciation of succession

32 A. A PERSON, OR HIS PERSONAL REPRESENTATIVE, WHO IS AN HEIR,
33 DEVISEE, PERSON SUCCEEDING TO A RENOUNCED INTEREST, BENEFICIARY UNDER

1 A TESTAMENTARY INSTRUMENT OR PERSON DESIGNATED TO TAKE PURSUANT TO A
2 POWER OF APPOINTMENT EXERCISED BY A TESTAMENTARY INSTRUMENT MAY RE-
3 NOUNCE IN WHOLE OR IN PART THE SUCCESSION TO ANY PROPERTY OR INTEREST
4 THEREIN BY FILING A WRITTEN INSTRUMENT WITHIN THE TIME AND AT THE PLACE
5 HEREINAFTER PROVIDED. THE INSTRUMENT SHALL:

6 1. DESCRIBE THE PROPERTY OR PART THEREOF OR INTEREST THEREIN
7 RENOUNCED.

8 2. BE SIGNED BY THE PERSON RENOUNCING.

9 3. DECLARE THE RENUNCIATION AND THE EXTENT THEREOF.

10 B. THE WRITING SPECIFIED IN SUBSECTION A MUST BE FILED WITHIN
11 SIX MONTHS AFTER THE DEATH OF THE DECEDENT OR THE DONEE OF THE POWER,
12 OR IF THE TAKER OF THE PROPERTY IS NOT THEN FINALLY ASCERTAINED NOT
13 LATER THAN SIX MONTHS AFTER THE EVENT BY WHICH THE TAKER OR THE IN-
14 TEREST IS FINALLY ASCERTAINED. THE WRITING MUST BE FILED IN THE
15 COURT OF THE COUNTY WHERE PROCEEDINGS CONCERNING THE DECEDENT'S
16 ESTATE ARE PENDING, OR WHERE THEY WOULD BE PENDING IF COMMENCED. A
17 COPY OF THE WRITING ALSO SHALL BE MAILED TO THE PERSONAL REPRESENTA-
18 TIVE OF THE DECEDENT.

19 C. UNLESS THE DECEDENT OR DONEE OF THE POWER HAS OTHERWISE
20 INDICATED BY HIS WILL, THE INTEREST RENOUNCED AND ANY FUTURE INTEREST
21 WHICH IS TO TAKE EFFECT IN POSSESSION OR ENJOYMENT AT OR AFTER THE
22 TERMINATION OF THE INTEREST RENOUNCED, PASSES AS IF THE PERSON RE-
23 NOUNCING HAD PREDECEASED THE DECEDENT, OR IF THE PERSON RENOUNCING
24 IS ONE DESIGNATED TO TAKE PURSUANT TO A POWER OF APPOINTMENT EXER-
25 CISED BY A TESTAMENTARY INSTRUMENT, AS IF THE PERSON RENOUNCING HAD
26 PREDECEASED THE DONEE OF THE POWER. IN EVERY CASE THE RENUNCIATION
27 RELATES BACK FOR ALL PURPOSES TO THE DATE OF DEATH OF THE DECEDENT
28 OR THE DONEE, AS THE CASE MAY BE.

29 D. ANY OF THE FOLLOWING:

30 1. ASSIGNMENT, CONVEYANCE, ENCUMBRANCE, PLEDGE OR TRANSFER OF
31 PROPERTY THEREIN OR ANY CONTRACT THEREFOR;

32 2. WRITTEN WAIVER OF THE RIGHT TO RENOUNCE OR ANY ACCEPTANCE
33 OF PROPERTY BY AN HEIR, DEVISEE, PERSON SUCCEEDING TO A RENOUNCED

1 INTEREST, BENEFICIARY OR PERSON DESIGNATED TO TAKE PURSUANT TO A POWER
2 OF APPOINTMENT EXERCISED BY TESTAMENTARY INSTRUMENT;

3 3. SALE OR OTHER DISPOSITION OF PROPERTY PURSUANT TO JUDICIAL
4 PROCESS;

5 MADE BEFORE THE EXPIRATION OF THE PERIOD IN WHICH HE IS PERMITTED TO
6 RENOUNCE, BARS THE RIGHT TO RENOUNCE AS TO THE PROPERTY.

7 E. THE RIGHT TO RENOUNCE GRANTED BY THIS SECTION EXISTS IR-
8 RESPECTIVE OF ANY LIMITATION ON THE INTEREST OF THE PERSON RENOUNCING
9 IN THE NATURE OF A SPENDTHRIFT PROVISION OR SIMILAR RESTRICTION.

10 F. THIS SECTION DOES NOT ABRIDGE THE RIGHT OF ANY PERSON TO
11 ASSIGN, CONVEY, RELEASE OR RENOUNCE ANY PROPERTY ARISING UNDER ANY
12 OTHER SECTION OF THIS TITLE OR OTHER STATUTE.

13 G. ANY INTEREST IN PROPERTY WHICH EXISTS ON THE EFFECTIVE
14 DATE OF THIS SECTION, BUT WHICH HAS NOT THEN BECOME INDEFEASIBLY
15 FIXED BOTH IN QUALITY AND QUANTITY, OR THE TAKER OF WHICH HAS NOT
16 THEN BECOME FINALLY ASCERTAINED, MAY BE RENOUNCED AFTER THE EFFEC-
17 TIVE DATE OF THIS SECTION AS PROVIDED HEREIN. AN INTEREST WHICH
18 HAS ARISEN PRIOR TO THE EFFECTIVE DATE OF THIS SECTION IN ANY PERSON
19 OTHER THAN THE PERSON RENOUNCING IS NOT DESTROYED OR DIMINISHED BY
20 ANY ACTION OF THE PERSON RENOUNCING TAKEN UNDER THIS SECTION.

21 14-2802. Effect of divorce, annulment and
22 decree of separation

23 A. A PERSON WHO IS DIVORCED FROM THE DECEDENT OR WHOSE MAR-
24 RIAGE TO THE DECEDENT HAS BEEN ANNULLED IS NOT A SURVIVING SPOUSE
25 UNLESS, BY VIRTUE OF A SUBSEQUENT MARRIAGE, HE IS MARRIED TO THE
26 DECEDENT AT THE TIME OF DEATH. A DECREE OF SEPARATION WHICH DOES
27 NOT TERMINATE THE STATUS OF HUSBAND AND WIFE IS NOT A DIVORCE FOR
28 PURPOSES OF THIS SECTION.

29 B. FOR PURPOSES OF ARTICLES 1, 2, 3 AND 4 OF THIS CHAPTER, A
30 SURVIVING SPOUSE DOES NOT INCLUDE:

31 1. A PERSON WHO OBTAINS OR CONSENTS TO A FINAL DECREE OR JUDG-
32 MENT OF DIVORCE FROM THE DECEDENT OR AN ANNULMENT OF THEIR MARRIAGE,
33 WHICH DECREE OR JUDGMENT IS NOT RECOGNIZED AS VALID IN THIS STATE,

1 UNLESS THEY SUBSEQUENTLY PARTICIPATE IN A MARRIAGE CEREMONY PURPORTING
2 TO MARRY EACH TO THE OTHER, OR SUBSEQUENTLY LIVE TOGETHER AS MAN AND
3 WIFE.

4 2. A PERSON WHO, FOLLOWING A DECREE OR JUDGMENT OF DIVORCE OR
5 ANNULMENT OBTAINED BY THE DECEDENT, PARTICIPATES IN A MARRIAGE CERE-
6 MONY WITH A THIRD PERSON.

7 3. A PERSON WHO WAS A PARTY TO A VALID PROCEEDING CONCLUDED
8 BY AN ORDER PURPORTING TO TERMINATE ALL MARITAL PROPERTY RIGHTS.

9 14-2803. Effect of homicide on intestate succession,
10 wills, joint assets, life insurance and
11 beneficiary designations

12 A. A SPOUSE, HEIR OR DEVISEE WHO FELONIOUSLY AND INTENTIONALLY
13 KILLS THE DECEDENT IS NOT ENTITLED TO ANY BENEFITS UNDER THE WILL OR
14 UNDER THIS CHAPTER, AND THE ESTATE OF DECEDENT PASSES AS IF THE KILLER
15 HAD PREDECEASED THE DECEDENT. PROPERTY APPOINTED BY THE WILL OF THE
16 DECEDENT TO OR FOR THE BENEFIT OF THE KILLER PASSES AS IF THE KILLER
17 HAD PREDECEASED THE DECEDENT.

18 B. ANY JOINT TENANT WHO FELONIOUSLY AND INTENTIONALLY KILLS
19 ANOTHER JOINT TENANT THEREBY EFFECTS A SEVERANCE OF THE INTEREST OF
20 THE DECEDENT SO THAT THE SHARE OF THE DECEDENT PASSES AS HIS PROPERTY
21 AND THE KILLER HAS NO RIGHTS BY SURVIVORSHIP. THIS PROVISION APPLIES
22 TO JOINT TENANCIES IN REAL AND PERSONAL PROPERTY, JOINT ACCOUNTS IN
23 BANKS, SAVINGS AND LOAN ASSOCIATIONS, CREDIT UNIONS AND OTHER INSTI-
24 TUTIONS, AND ANY OTHER FORM OF CO-OWNERSHIP WITH SURVIVORSHIP INCI-
25 DENTS.

26 C. A NAMED BENEFICIARY OF A BOND, LIFE INSURANCE POLICY OR
27 OTHER CONTRACTUAL ARRANGEMENT WHO FELONIOUSLY AND INTENTIONALLY KILLS
28 THE PRINCIPAL OBLIGEE OR THE PERSON UPON WHOSE LIFE THE POLICY IS
29 ISSUED IS NOT ENTITLED TO ANY BENEFIT UNDER THE BOND, POLICY OR OTHER
30 CONTRACTUAL ARRANGEMENT, AND IT BECOMES PAYABLE AS THOUGH THE KILLER
31 HAD PREDECEASED THE DECEDENT.

32 D. ANY OTHER ACQUISITION OF PROPERTY OR INTEREST BY THE KILLER
33 SHALL BE TREATED IN ACCORDANCE WITH THE PRINCIPLES OF THIS SECTION.

1 E. A FINAL JUDGMENT OF CONVICTION OF FELONIOUS AND INTENTIONAL
2 KILLING IS CONCLUSIVE FOR PURPOSES OF THIS SECTION. IN THE ABSENCE
3 OF A CONVICTION OF FELONIOUS AND INTENTIONAL KILLING THE COURT MAY
4 DETERMINE BY A PREPONDERANCE OF EVIDENCE WHETHER THE KILLING WAS
5 FELONIOUS AND INTENTIONAL FOR PURPOSES OF THIS SECTION.

6 F. THIS SECTION DOES NOT AFFECT THE RIGHTS OF ANY PERSON WHO,
7 BEFORE RIGHTS UNDER THIS SECTION HAVE BEEN ADJUDICATED, PURCHASES
8 FROM THE KILLER FOR VALUE AND WITHOUT NOTICE PROPERTY WHICH THE
9 KILLER WOULD HAVE ACQUIRED EXCEPT FOR THIS SECTION, BUT THE KILLER
10 IS LIABLE FOR THE AMOUNT OF THE PROCEEDS OR THE VALUE OF THE PROP-
11 ERTY. ANY INSURANCE COMPANY, BANK, OR OTHER OBLIGOR MAKING PAYMENT
12 ACCORDING TO THE TERMS OF ITS POLICY OR OBLIGATION IS NOT LIABLE
13 BY REASON OF THIS SECTION UNLESS PRIOR TO PAYMENT IT HAS RECEIVED
14 AT ITS HOME OFFICE OR PRINCIPAL ADDRESS WRITTEN NOTICE OF A CLAIM
15 UNDER THIS SECTION.

16 ARTICLE 9. CUSTODY AND DEPOSIT OF WILLS

17 14-2901. Deposit of will with court in testator's
18 lifetime

19 A WILL MAY BE DEPOSITED BY THE TESTATOR OR HIS AGENT WITH ANY
20 COURT FOR SAFEKEEPING, UNDER RULES OF THE COURT. THE WILL SHALL BE
21 KEPT CONFIDENTIAL. DURING THE TESTATOR'S LIFETIME A DEPOSITED WILL
22 SHALL BE DELIVERED ONLY TO HIM OR TO A PERSON AUTHORIZED IN WRITING
23 SIGNED BY HIM TO RECEIVE THE WILL. A CONSERVATOR MAY BE ALLOWED
24 TO EXAMINE A DEPOSITED WILL OF A PROTECTED TESTATOR UNDER PROCEDURES
25 DESIGNED TO MAINTAIN THE CONFIDENTIAL CHARACTER OF THE DOCUMENT TO
26 THE EXTENT POSSIBLE, AND TO ASSURE THAT IT WILL BE RESEALED AND LEFT
27 ON DEPOSIT AFTER THE EXAMINATION. UPON BEING INFORMED OF THE TESTATOR'S
28 DEATH, THE COURT SHALL NOTIFY ANY PERSON DESIGNATED TO RECEIVE THE
29 WILL AND DELIVER IT TO HIM ON REQUEST, OR THE COURT MAY DELIVER THE
30 WILL TO THE APPROPRIATE COURT.

31 14-2902. Duty of custodian of will; liability

32 AFTER THE DEATH OF A TESTATOR AND ON REQUEST OF AN INTERESTED
33 PERSON, ANY PERSON HAVING CUSTODY OF A WILL OF THE TESTATOR SHALL

1 DELIVER IT WITH REASONABLE PROMPTNESS TO A PERSON ABLE TO SECURE ITS
2 PROBATE AND IF NONE IS KNOWN, TO AN APPROPRIATE COURT. ANY PERSON
3 WHO WILFULLY FAILS TO DELIVER A WILL IS LIABLE TO ANY PERSON AG-
4 GRIEVED FOR THE DAMAGES WHICH MAY BE SUSTAINED BY THE FAILURE. ANY
5 PERSON WHO WILFULLY REFUSES OR FAILS TO DELIVER A WILL AFTER BEING
6 ORDERED BY THE COURT IN A PROCEEDING BROUGHT FOR THE PURPOSE OF COM-
7 PELLING DELIVERY IS SUBJECT TO PENALTY FOR CONTEMPT OF COURT.

8 CHAPTER 3.

9 PROBATE OF WILLS AND ADMINISTRATION

10 ARTICLE 1. GENERAL PROVISIONS

11 14-3101. Devolution of estate at death; administration
12 on deaths of husband and wife

13 A. THE POWER OF A PERSON TO LEAVE PROPERTY BY WILL, AND THE
14 RIGHTS OF CREDITORS, DEVISEES AND HEIRS TO HIS PROPERTY ARE SUBJECT
15 TO THE RESTRICTIONS AND LIMITATIONS CONTAINED IN THIS TITLE TO
16 FACILITATE THE PROMPT SETTLEMENT OF ESTATES. UPON THE DEATH OF A
17 PERSON, HIS SEPARATE PROPERTY AND HIS SHARE OF COMMUNITY PROPERTY
18 DEVOLVES TO THE PERSONS TO WHOM THE PROPERTY IS DEVISED BY HIS LAST
19 WILL, OR TO THOSE INDICATED AS SUBSTITUTES FOR THEM IN CASES INVOLV-
20 ING LAPSE, RENUNCIATION OR OTHER CIRCUMSTANCES AFFECTING THE DEVOLU-
21 TION OF TESTATE ESTATES, OR IN THE ABSENCE OF TESTAMENTARY DISPOSITION
22 TO HIS HEIRS, OR TO THOSE INDICATED AS SUBSTITUTES FOR THEM IN CASES
23 INVOLVING RENUNCIATION OR OTHER CIRCUMSTANCES AFFECTING THE DEVOLUTION
24 OF INTESTATE ESTATES. THE DEVOLUTION OF SEPARATE PROPERTY AND DECE-
25 DENT'S SHARE OF COMMUNITY PROPERTY IS SUBJECT TO RIGHTS TO THE ALLOW-
26 ANCE IN LIEU OF HOMESTEAD, EXEMPT PROPERTY AND FAMILY ALLOWANCE, TO
27 THE ELECTIVE SHARE OF THE SURVIVING SPOUSE, TO RIGHTS OF CREDITORS
28 AND TO ADMINISTRATION AS PROVIDED IN THIS TITLE. IN ADDITION, THE
29 SURVIVING SPOUSE'S SHARE OF THE COMMUNITY PROPERTY IS SUBJECT TO
30 ADMINISTRATION UNTIL THE TIME FOR PRESENTATION OF CLAIMS HAS EXPIRED,
31 AND THEREAFTER ONLY TO THE EXTENT NECESSARY TO PAY COMMUNITY CLAIMS.

32 B. IF A HUSBAND AND WIFE BOTH DIE, AND THE ADMINISTRATION OF
33 ONE OF THEIR ESTATES IS NOT COMPLETED PRIOR TO COMMENCEMENT OF ADMIN-
34 ISTRATION OF THE OTHER, THEIR ESTATES MAY BE COMBINED IN A SINGLE

1 ADMINISTRATION WITH THE SAME PERSONAL REPRESENTATIVE, IF FEASIBLE.
2 IF THEIR ESTATES DEVOLVE AS IF EACH SPOUSE SURVIVED THE OTHER BECAUSE
3 OF APPLICATION OF SECTION 14-2804, SECTION 14-2104 OR SECTION 14-
4 2601, AND THEIR ESTATES ARE NOT COMBINED, HALF OF THEIR COMMUNITY
5 PROPERTY IS SUBJECT TO ADMINISTRATION IN EACH ESTATE AND COMMUNITY
6 CLAIMS WILL BE CHARGED RATABLY TO EACH HALF OF THE COMMUNITY PROPERTY.

7 14-3102. Necessity of order of probate for will

8 EXCEPT AS PROVIDED IN SECTION 14-3971, TO BE EFFECTIVE TO PROVE
9 THE TRANSFER OF ANY PROPERTY OR TO NOMINATE AN EXECUTOR, A WILL MUST
10 BE DECLARED TO BE VALID BY AN ORDER OF INFORMAL PROBATE BY THE REG-
11 ISTRAR, OR AN ADJUDICATION OF PROBATE BY THE COURT, EXCEPT THAT A
12 DULY EXECUTED AND UNREVOKED WILL WHICH HAS NOT BEEN PROBATED MAY BE
13 ADMITTED AS EVIDENCE OF A DEVISE IF:

14 1. NO COURT PROCEEDING CONCERNING THE SUCCESSION OR ADMINIS-
15 TRATION OF THE ESTATE HAS OCCURRED.

16 2. EITHER THE DEVISEE OR HIS SUCCESSORS AND ASSIGNS POSSESSED
17 THE PROPERTY DEVISED IN ACCORDANCE WITH THE PROVISIONS OF THE WILL,
18 OR THE PROPERTY DEVISED WAS NOT POSSESSED OR CLAIMED BY ANYONE BY
19 VIRTUE OF THE DECEDENT'S TITLE DURING THE TIME PERIOD FOR TESTACY
20 PROCEEDINGS.

21 14-3103. Necessity of appointment for administration

22 EXCEPT AS OTHERWISE PROVIDED IN CHAPTER 4, TO ACQUIRE THE POWERS
23 AND UNDERTAKE THE DUTIES AND LIABILITIES OF A PERSONAL REPRESENTATIVE
24 OF A DECEDENT, A PERSON MUST BE APPOINTED BY ORDER OF THE COURT OR
25 REGISTRAR, QUALIFY AND BE ISSUED LETTERS. ADMINISTRATION OF AN ES-
26 TATE IS COMMENCED BY THE ISSUANCE OF LETTERS.

27 14-3104. Claims against decedent; necessity of
28 administration

29 NO PROCEEDING TO ENFORCE A CLAIM AGAINST THE ESTATE OF A DECEDENT
30 OR HIS SUCCESSORS MAY BE REVIVED OR COMMENCED BEFORE THE APPOINTMENT OF
31 A PERSONAL REPRESENTATIVE. AFTER THE APPOINTMENT AND UNTIL DISTRIBUTION,
32 ALL PROCEEDINGS AND ACTIONS TO ENFORCE A CLAIM AGAINST THE ESTATE ARE
33 GOVERNED BY THE PROCEDURE PRESCRIBED BY THIS CHAPTER. AFTER DISTRIBUTION

1 A CREDITOR WHOSE CLAIM HAS NOT BEEN BARRED MAY RECOVER FROM THE DIS-
2 TRIBUTEES AS PROVIDED IN SECTION 14-3934 OR FROM A FORMER PERSONAL
3 REPRESENTATIVE INDIVIDUALLY LIABLE AS PROVIDED IN SECTION 14-3935.
4 THIS SECTION HAS NO APPLICATION TO A PROCEEDING BY A SECURED CREDITOR
5 OF THE DECEDENT TO ENFORCE HIS RIGHT TO HIS SECURITY EXCEPT AS TO
6 ANY DEFICIENCY JUDGMENT WHICH MIGHT BE SOUGHT THEREIN.

7 14-3105. Proceedings affecting devolution and
8 administration; jurisdiction of
9 subject matter

10 PERSONS INTERESTED IN DECEDENTS' ESTATES MAY APPLY TO THE REGISTRAR
11 FOR DETERMINATION IN THE INFORMAL PROCEEDINGS PROVIDED IN THIS CHAPTER,
12 AND MAY PETITION THE COURT FOR ORDERS IN FORMAL PROCEEDINGS WITHIN THE
13 COURT'S JURISDICTION INCLUDING BUT NOT LIMITED TO THOSE DESCRIBED IN
14 THIS ARTICLE. THE COURT MAY HEAR AND DETERMINE FORMAL PROCEEDINGS IN-
15 VOLVING ADMINISTRATION AND DISTRIBUTION OF DECEDENTS' ESTATES AFTER
16 NOTICE TO INTERESTED PERSONS IN CONFORMITY WITH SECTION 14-1401. PER-
17 SONS NOTIFIED ARE BOUND THOUGH LESS THAN ALL INTERESTED PERSONS MAY
18 HAVE BEEN GIVEN NOTICE.

19 14-3106. (Blank)

20 14-3107. Scope of proceedings; proceedings
21 independent; exception

22 UNLESS SUPERVISED ADMINISTRATION AS DESCRIBED IN ARTICLE 5 IS
23 INVOLVED:

24 1. EACH PROCEEDING BEFORE THE COURT OR REGISTRAR IS INDEPENDENT
25 OF ANY OTHER PROCEEDING INVOLVING THE SAME ESTATE.

26 2. PETITIONS FOR FORMAL ORDERS OF THE COURT MAY COMBINE VARIOUS
27 REQUESTS FOR RELIEF IN A SINGLE PROCEEDING IF THE ORDERS SOUGHT MAY BE
28 FINALLY GRANTED WITHOUT DELAY. EXCEPT AS REQUIRED FOR PROCEEDINGS
29 WHICH ARE PARTICULARLY DESCRIBED BY OTHER SECTIONS OF THIS CHAPTER,
30 NO PETITION IS DEFECTIVE BECAUSE IT FAILS TO EMBRACE ALL MATTERS
31 WHICH MIGHT THEN BE THE SUBJECT OF A FINAL ORDER.

32 3. PROCEEDINGS FOR PROBATE OF WILLS OR ADJUDICATIONS OF NO
33 WILL MAY BE COMBINED WITH PROCEEDINGS FOR APPOINTMENT OF PERSONAL
34 REPRESENTATIVES.

1 4. A PROCEEDING FOR APPOINTMENT OF A PERSONAL REPRESENTATIVE IS
2 CONCLUDED BY AN ORDER MAKING OR DECLINING THE APPOINTMENT.

3 14-3108. Probate, testacy and appointment
4 proceedings; ultimate time limit

5 NO INFORMAL PROBATE OR APPOINTMENT PROCEEDING OR FORMAL TESTACY
6 OR APPOINTMENT PROCEEDING, OTHER THAN A PROCEEDING TO PROBATE A WILL
7 PREVIOUSLY PROBATED AT THE TESTATOR'S DOMICILE AND APPOINTMENT PRO-
8 CEEDINGS RELATING TO AN ESTATE IN WHICH THERE HAS BEEN A PRIOR APPOINT-
9 MENT, MAY BE COMMENCED MORE THAN THREE YEARS AFTER THE DECEDENT'S
10 DEATH, EXCEPT:

11 1. IF A PREVIOUS PROCEEDING WAS DISMISSED BECAUSE OF DOUBT
12 ABOUT THE FACT OF THE DECEDENT'S DEATH, APPROPRIATE PROBATE, APPOINT-
13 MENT OR TESTACY PROCEEDINGS MAY BE MAINTAINED AT ANY TIME THEREAFTER
14 UPON A FINDING THAT THE DECEDENT'S DEATH OCCURRED PRIOR TO THE INI-
15 TIATION OF THE PREVIOUS PROCEEDING AND THE APPLICANT OR PETITIONER
16 HAS NOT DELAYED UNDULY IN INITIATING THE SUBSEQUENT PROCEEDING.

17 2. APPROPRIATE PROBATE, APPOINTMENT OR TESTACY PROCEEDINGS MAY
18 BE MAINTAINED IN RELATION TO THE ESTATE OF AN ABSENT, DISAPPEARED OR
19 MISSING PERSON FOR WHOSE ESTATE A CONSERVATOR HAS BEEN APPOINTED, AT
20 ANY TIME WITHIN THREE YEARS AFTER THE CONSERVATOR BECOMES ABLE TO
21 ESTABLISH THE DEATH OF THE PROTECTED PERSON.

22 3. A PROCEEDING TO CONTEST AN INFORMALLY PROBATED WILL AND TO
23 SECURE APPOINTMENT OF THE PERSON WITH LEGAL PRIORITY FOR APPOINTMENT
24 IN THE EVENT THE CONTEST IS SUCCESSFUL, MAY BE COMMENCED WITHIN THE
25 LATER OF TWELVE MONTHS FROM THE INFORMAL PROBATE OR THREE YEARS FROM
26 THE DECEDENT'S DEATH.
27 THESE LIMITATIONS DO NOT APPLY TO PROCEEDINGS TO CONSTRUE PROBATED
28 WILLS OR DETERMINE HEIRS OF AN INTESTATE. IN CASES UNDER PARAGRAPH
29 1 OR 2, THE DATE ON WHICH A TESTACY OR APPOINTMENT PROCEEDING IS PROP-
30 ERLY COMMENCED SHALL BE DEEMED TO BE THE DATE OF THE DECEDENT'S DEATH
31 FOR PURPOSES OF OTHER LIMITATIONS PROVISIONS OF THIS TITLE WHICH
32 RELATE TO THE DATE OF DEATH.

1 14-3109. Statutes of limitation on decedent's
2 cause of action

3 UPON THE DEATH OF A PERSON IN WHOSE FAVOR THERE IS A CAUSE OF
4 ACTION WHICH HAS NOT BEEN BARRED AS OF THE DATE OF HIS DEATH, THE
5 LIMITATION OF THE ACTION CEASES TO RUN UNTIL A PERSONAL REPRESENTATIVE
6 IS APPOINTED OR UNTIL TWELVE MONTHS AFTER THE DEATH, WHICHEVER FIRST
7 OCCURS, BUT SHALL NOT BAR SUCH ACTION SOONER THAN FOUR MONTHS AFTER
8 DEATH EVEN IF A PERSONAL REPRESENTATIVE IS APPOINTED EARLIER.

9 ARTICLE 2. VENUE FOR PROBATE AND ADMINISTRATION;
10 PRIORITY TO ADMINISTER; DEMAND FOR NOTICE

11 14-3201. Venue for first and subsequent estate proceedings;
12 location of property

13 A. VENUE FOR THE FIRST INFORMAL OR FORMAL TESTACY OR APPOINTMENT
14 PROCEEDINGS AFTER A DECEDENT'S DEATH IS:

15 1. IN THE COUNTY WHERE THE DECEDENT HAD HIS DOMICILE AT THE
16 TIME OF HIS DEATH.

17 2. IF THE DECEDENT WAS NOT DOMICILED IN THIS STATE, IN ANY
18 COUNTY WHERE PROPERTY OF THE DECEDENT WAS LOCATED AT THE TIME OF HIS
19 DEATH.

20 B. VENUE FOR ALL SUBSEQUENT PROCEEDINGS WITHIN THE EXCLUSIVE
21 JURISDICTION OF THE COURT IS IN THE PLACE WHERE THE INITIAL PROCEEDING
22 OCCURRED, UNLESS THE INITIAL PROCEEDING HAS BEEN TRANSFERRED AS PRO-
23 VIDED IN SECTION 14-1303 OR SUBSECTION C OF THIS SECTION.

24 C. IF THE FIRST PROCEEDING WAS INFORMAL, ON APPLICATION OF AN
25 INTERESTED PERSON AND AFTER NOTICE TO THE PROPONENT IN THE FIRST PRO-
26 CEEDING, THE COURT, UPON FINDING THAT VENUE IS ELSEWHERE, MAY TRANSFER
27 THE PROCEEDING AND THE FILE TO THE OTHER COURT.

28 D. FOR THE PURPOSE OF AIDING DETERMINATIONS CONCERNING LOCATION
29 OF ASSETS WHICH MAY BE RELEVANT IN CASES INVOLVING NON-DOMICILIARIES,
30 A DEBT, OTHER THAN ONE EVIDENCED BY INVESTMENT OR COMMERCIAL PAPER OR
31 OTHER INSTRUMENT IN FAVOR OF A NON-DOMICILIARY, IS LOCATED WHERE THE
32 DEBTOR RESIDES OR, IF THE DEBTOR IS A PERSON OTHER THAN AN INDIVIDUAL,

1 AT THE PLACE WHERE IT HAS ITS PRINCIPAL OFFICE. COMMERCIAL PAPER, IN-
2 VESTMENT PAPER AND OTHER INSTRUMENTS ARE LOCATED WHERE THE INSTRUMENT
3 IS. AN INTEREST IN PROPERTY HELD IN TRUST IS LOCATED WHERE THE TRUSTEE
4 MAY BE SUED.

5 14-3202. Appointment or testacy proceedings;
6 conflicting claim of domicile in
7 another state

8 IF CONFLICTING CLAIMS AS TO THE DOMICILE OF A DECEDENT ARE MADE
9 IN A FORMAL TESTACY OR APPOINTMENT PROCEEDING COMMENCED IN THIS STATE,
10 AND IN A TESTACY OR APPOINTMENT PROCEEDING AFTER NOTICE PENDING AT
11 THE SAME TIME IN ANOTHER STATE, THE COURT OF THIS STATE MUST STAY,
12 DISMISS OR PERMIT SUITABLE AMENDMENT IN, THE PROCEEDING HERE UNLESS IT
13 IS DETERMINED THAT THE LOCAL PROCEEDING WAS COMMENCED BEFORE THE PRO-
14 CEEDING ELSEWHERE. THE DETERMINATION OF DOMICILE IN THE PROCEEDING
15 FIRST COMMENCED MUST BE ACCEPTED AS DETERMINATIVE IN THE PROCEEDING
16 IN THIS STATE.

17 14-3203. Priority among persons seeking appointment
18 as personal representative

19 A. WHETHER THE PROCEEDINGS ARE FORMAL OR INFORMAL, PERSONS
20 WHO ARE NOT DISQUALIFIED HAVE PRIORITY FOR APPOINTMENT IN THE FOL-
21 LOWING ORDER:

22 1. THE PERSON WITH PRIORITY AS DETERMINED BY A PROBATED WILL
23 INCLUDING A PERSON NOMINATED BY A POWER CONFERRED IN A WILL.

24 2. THE SURVIVING SPOUSE OF THE DECEDENT WHO IS A DEVISEE OF
25 THE DECEDENT.

26 3. OTHER DEVISEES OF THE DECEDENT.

27 4. THE SURVIVING SPOUSE OF THE DECEDENT.

28 5. OTHER HEIRS OF THE DECEDENT.

29 6. FORTY-FIVE DAYS AFTER THE DEATH OF THE DECEDENT, ANY CREDITOR.

30 B. AN OBJECTION TO AN APPOINTMENT CAN BE MADE ONLY IN FORMAL
31 PROCEEDINGS. IN CASE OF OBJECTION THE PRIORITIES STATED IN SUBSECTION
32 A APPLY EXCEPT THAT:

1 1. IF THE ESTATE APPEARS TO BE MORE THAN ADEQUATE TO MEET
2 EXEMPTIONS AND COSTS OF ADMINISTRATION BUT INADEQUATE TO DISCHARGE
3 ANTICIPATED UNSECURED CLAIMS, THE COURT, ON PETITION OF CREDITORS, MAY
4 APPOINT ANY QUALIFIED PERSON.

5 2. IN CASE OF OBJECTION TO APPOINTMENT OF A PERSON OTHER THAN
6 ONE WHOSE PRIORITY IS DETERMINED BY WILL BY AN HEIR OR DEVISEE APPEAR-
7 ING TO HAVE A SUBSTANTIAL INTEREST IN THE ESTATE, THE COURT MAY APPOINT
8 A PERSON WHO IS ACCEPTABLE TO HEIRS AND DEVISEES WHOSE INTERESTS IN THE
9 ESTATE APPEAR TO BE WORTH IN TOTAL MORE THAN HALF OF THE PROBABLE DIS-
10 TRIBUTABLE VALUE, OR, IN DEFAULT OF THIS ACCORD ANY SUITABLE PERSON.

11 C. A PERSON ENTITLED TO LETTERS UNDER PARAGRAPHS 2 THROUGH 5
12 OF SUBSECTION A AND A PERSON AGED EIGHTEEN AND OVER WHO WOULD BE EN-
13 TITLED TO LETTERS BUT FOR HIS AGE, MAY NOMINATE A QUALIFIED PERSON TO
14 ACT AS PERSONAL REPRESENTATIVE. ANY PERSON AGED EIGHTEEN AND OVER
15 MAY RENOUNCE HIS RIGHT TO NOMINATE OR TO AN APPOINTMENT BY APPROPRIATE
16 WRITING FILED WITH THE COURT. WHEN TWO OR MORE PERSONS SHARE A
17 PRIORITY, THOSE OF THEM WHO DO NOT RENOUNCE MUST CONCUR IN NOMINATING
18 ANOTHER TO ACT FOR THEM, OR IN APPLYING FOR APPOINTMENT.

19 D. CONSERVATORS OF THE ESTATES OF PROTECTED PERSONS, OR IF
20 THERE IS NO CONSERVATOR, ANY GUARDIAN EXCEPT A GUARDIAN AD LITEM OF A
21 MINOR OR INCAPACITATED PERSON, MAY EXERCISE THE SAME RIGHT TO NOMINATE,
22 TO OBJECT TO ANOTHER'S APPOINTMENT, OR TO PARTICIPATE IN DETERMINING
23 THE PREFERENCE OF A MAJORITY IN INTEREST OF THE HEIRS AND DEVISEES THAT
24 THE PROTECTED PERSON OR WARD WOULD HAVE IF QUALIFIED FOR APPOINTMENT.

25 E. APPOINTMENT OF ONE WHO DOES NOT HAVE PRIORITY, INCLUDING
26 PRIORITY RESULTING FROM RENUNCIATION OR NOMINATION DETERMINED PURSUANT
27 TO THIS SECTION, MAY BE MADE ONLY IN FORMAL PROCEEDINGS. BEFORE APPOINT-
28 ING ONE WITHOUT PRIORITY, THE COURT MUST DETERMINE THAT THOSE HAVING
29 PRIORITY, ALTHOUGH GIVEN NOTICE OF THE PROCEEDINGS, HAVE FAILED TO
30 REQUEST APPOINTMENT OR TO NOMINATE ANOTHER FOR APPOINTMENT, AND THAT
31 ADMINISTRATION IS NECESSARY.

32 F. NO PERSON IS QUALIFIED TO SERVE AS A PERSONAL REPRESENTATIVE
33 WHO IS:

1 1. UNDER THE AGE OF MAJORITY AS DEFINED IN SECTION 1-215.
2 2. A PERSON WHOM THE COURT FINDS UNSUITABLE IN FORMAL PROCEEDINGS.
3 G. A PERSONAL REPRESENTATIVE APPOINTED BY A COURT OF THE DECE-
4 DENT'S DOMICILE HAS PRIORITY OVER ALL OTHER PERSONS EXCEPT WHERE THE
5 DECEDENT'S WILL NOMINATES DIFFERENT PERSONS TO BE PERSONAL REPRESENTATIVE IN THIS STATE AND IN THE STATE OF DOMICILE. THE DOMICILIARY
6 PERSONAL REPRESENTATIVE MAY NOMINATE ANOTHER, WHO SHALL HAVE THE SAME
7 PRIORITY AS THE DOMICILIARY PERSONAL REPRESENTATIVE.
8
9 H. THIS SECTION GOVERNS PRIORITY FOR APPOINTMENT OF A SUCCESSOR
10 PERSONAL REPRESENTATIVE BUT DOES NOT APPLY TO THE SELECTION OF A
11 SPECIAL ADMINISTRATOR.

12 14-3204. Demand for notice of order or filing
13 concerning decedent's estate

14 ANY PERSON DESIRING NOTICE OF ANY ORDER OR FILING PERTAINING TO
15 A DECEDENT'S ESTATE IN WHICH HE HAS A FINANCIAL OR PROPERTY INTEREST,
16 MAY FILE A DEMAND FOR NOTICE WITH THE COURT AT ANY TIME AFTER THE
17 DEATH OF THE DECEDENT STATING THE NAME OF THE DECEDENT, THE NATURE OF
18 HIS INTEREST IN THE ESTATE AND THE DEMANDANT'S ADDRESS OR THAT OF
19 HIS ATTORNEY. THE CLERK SHALL MAIL A COPY OF THE DEMAND TO THE PERSONAL REPRESENTATIVE IF ONE HAS BEEN APPOINTED. AFTER FILING OF A
20 DEMAND, NO ORDER OR FILING TO WHICH THE DEMAND RELATES SHALL BE MADE
21 OR ACCEPTED WITHOUT NOTICE AS PRESCRIBED IN SECTION 14-1401 TO THE
22 DEMANDANT OR HIS ATTORNEY. THE VALIDITY OF AN ORDER WHICH IS ISSUED
23 OR FILING WHICH IS ACCEPTED WITHOUT COMPLIANCE WITH THIS REQUIREMENT
24 SHALL NOT BE AFFECTED BY THE ERROR, BUT THE PETITIONER RECEIVING THE
25 ORDER OR THE PERSON MAKING THE FILING MAY BE LIABLE FOR ANY DAMAGE
26 CAUSED BY THE ABSENCE OF NOTICE. THE REQUIREMENT OF NOTICE ARISING
27 FROM A DEMAND UNDER THIS PROVISION MAY BE WAIVED IN WRITING BY THE
28 DEMANDANT AND SHALL CEASE UPON THE TERMINATION OF HIS INTEREST IN THE
29 ESTATE.
30

31 ARTICLE 3. INFORMAL PROBATE AND APPOINTMENT
32 PROCEEDINGS
33

1 14-3301. Informal probate or appointment proceedings;
2 application; contents

3 APPLICATIONS FOR INFORMAL PROBATE OR INFORMAL APPOINTMENT SHALL
4 BE DIRECTED TO THE REGISTRAR, AND VERIFIED BY THE APPLICANT TO BE
5 ACCURATE AND COMPLETE TO THE BEST OF HIS KNOWLEDGE AND BELIEF AS TO
6 THE FOLLOWING INFORMATION:

7 1. EVERY APPLICATION FOR INFORMAL PROBATE OF A WILL OR FOR
8 INFORMAL APPOINTMENT OF A PERSONAL REPRESENTATIVE, OTHER THAN A
9 SPECIAL, ANCILLARY OR SUCCESSOR REPRESENTATIVE SHALL CONTAIN THE FOL-
10 LOWING:

11 (a) A STATEMENT OF THE INTEREST OF THE APPLICANT.

12 (b) THE NAME, DATE OF DEATH OF THE DECEDENT, HIS AGE, THE COUNTY
13 AND STATE OF HIS DOMICILE AT THE TIME OF DEATH, THE NAMES AND ADDRESSES
14 OF THE SPOUSE, CHILDREN, HEIRS AND DEVISEES AND THE AGES OF ANY WHO ARE
15 MINORS SO FAR AS KNOWN OR ASCERTAINABLE WITH REASONABLE DILIGENCE BY
16 THE APPLICANT.

17 (c) IF THE DECEDENT WAS NOT DOMICILED IN THE STATE AT THE TIME
18 OF HIS DEATH, A STATEMENT SHOWING VENUE.

19 (d) A STATEMENT IDENTIFYING AND INDICATING THE ADDRESS OF ANY
20 PERSONAL REPRESENTATIVE OF THE DECEDENT APPOINTED IN THIS STATE OR
21 ELSEWHERE WHOSE APPOINTMENT HAS NOT BEEN TERMINATED.

22 (e) A STATEMENT INDICATING WHETHER THE APPLICANT HAS RECEIVED A
23 DEMAND FOR NOTICE, OR IS AWARE OF ANY DEMAND FOR NOTICE OF ANY PROBATE
24 OR APPOINTMENT PROCEEDING CONCERNING THE DECEDENT THAT MAY HAVE BEEN
25 FILED IN THIS STATE OR ELSEWHERE.

26 2. AN APPLICATION FOR INFORMAL PROBATE OF A WILL SHALL STATE
27 THE FOLLOWING IN ADDITION TO THE STATEMENTS REQUIRED BY PARAGRAPH 1
28 OF THIS SECTION:

29 (a) THAT THE ORIGINAL OF THE DECEDENT'S LAST WILL IS IN THE
30 POSSESSION OF THE COURT, OR ACCOMPANIES THE APPLICATION, OR THAT AN
31 AUTHENTICATED COPY OF A WILL PROBATED IN ANOTHER JURISDICTION ACCOM-
32 PANIES THE APPLICATION.
33

1 (b) THAT THE APPLICANT, TO THE BEST OF HIS KNOWLEDGE, BELIEVES
2 THE WILL TO HAVE BEEN VALIDLY EXECUTED.

3 (c) THAT AFTER THE EXERCISE OF REASONABLE DILIGENCE, THE APPLI-
4 CANT IS UNAWARE OF ANY INSTRUMENT REVOKING THE WILL, AND THAT THE
5 APPLICANT BELIEVES THAT THE INSTRUMENT WHICH IS THE SUBJECT OF THE
6 APPLICATION IS THE DECEDENT'S LAST WILL.

7 (d) THAT THE TIME LIMIT FOR INFORMAL PROBATE AS PROVIDED IN THIS
8 CHAPTER HAS NOT EXPIRED EITHER BECAUSE THREE YEARS OR LESS HAVE PASSED
9 SINCE THE DECEDENT'S DEATH, OR, IF MORE THAN THREE YEARS FROM DEATH
10 HAVE PASSED, THAT CIRCUMSTANCES AS DESCRIBED BY SECTION 14-3108
11 AUTHORIZING TARDY PROBATE HAVE OCCURRED.

12 3. AN APPLICATION FOR INFORMAL APPOINTMENT OF A PERSONAL REP-
13 REPRESENTATIVE TO ADMINISTER AN ESTATE UNDER A WILL SHALL DESCRIBE THE
14 WILL BY DATE OF EXECUTION AND STATE THE TIME AND PLACE OF PROBATE OR
15 THE PENDING APPLICATION OR PETITION FOR PROBATE. THE APPLICATION FOR
16 APPOINTMENT SHALL ADOPT THE STATEMENTS IN THE APPLICATION OR PETITION
17 FOR PROBATE AND STATE THE NAME, ADDRESS AND PRIORITY FOR APPOINTMENT
18 OF THE PERSON WHOSE APPOINTMENT IS SOUGHT.

19 4. AN APPLICATION FOR INFORMAL APPOINTMENT OF AN ADMINISTRATOR
20 IN INTESTACY SHALL STATE IN ADDITION TO THE STATEMENTS REQUIRED BY
21 PARAGRAPH 1 OF THIS SECTION:

22 (a) THAT AFTER THE EXERCISE OF REASONABLE DILIGENCE, THE APPLICANT
23 IS UNAWARE OF ANY UNREVOKED TESTAMENTARY INSTRUMENT RELATING TO PROP-
24 ERTY HAVING A SITUS IN THIS STATE UNDER SECTION 14-1301, OR, A STATE-
25 MENT WHY ANY SUCH INSTRUMENT OF WHICH HE MAY BE AWARE IS NOT BEING
26 PROBATED.

27 (b) THE PRIORITY OF THE PERSON WHOSE APPOINTMENT IS SOUGHT AND
28 THE NAMES OF ANY OTHER PERSONS SHAVING A PRIOR OR EQUAL RIGHT TO THE
29 APPOINTMENT UNDER SECTION 14-3203.

30 5. AN APPLICATION FOR APPOINTMENT OF A PERSONAL REPRESENTATIVE
31 TO SUCCEED A PERSONAL REPRESENTATIVE APPOINTED UNDER A DIFFERENT
32 TESTACY STATUS SHALL REFER TO THE ORDER IN THE MOST RECENT TESTACY
33 PROCEEDING, STATE THE NAME AND ADDRESS OF BOTH THE PERSON WHOSE APPOINT-
34 MENT IS SOUGHT AND OF THE PERSON WHOSE APPOINTMENT WILL BE TERMINATED

1 IF THE APPLICATION IS GRANTED, AND DESCRIBE THE PRIORITY OF THE APPLI-
2 CANT.

3 6. AN APPLICATION FOR APPOINTMENT OF A PERSONAL REPRESENTATIVE
4 TO SUCCEED A PERSONAL REPRESENTATIVE WHO HAS TENDERED A RESIGNATION AS
5 PROVIDED IN SECTION 14-3610, SUBSECTION C, OR WHOSE APPOINTMENT HAS
6 BEEN TERMINATED BY DEATH, APPOINTMENT OF A CONSERVATOR OR REMOVAL,
7 SHALL ADOPT THE STATEMENTS IN THE APPLICATION OR PETITION WHICH LED
8 TO THE APPOINTMENT OF THE PERSON BEING SUCCEEDED EXCEPT AS SPECIFICALLY
9 CHANGED OR CORRECTED, STATE THE NAME AND ADDRESS OF THE PERSON WHO SEEKS
10 APPOINTMENT AS SUCCESSOR AND DESCRIBE THE PRIORITY OF THE APPLICANT.

11 14-3302. Informal probate; duty of registrar;
12 effect of informal probate

13 UPON RECEIPT OF AN APPLICATION REQUESTING INFORMAL PROBATE OF A
14 WILL, THE REGISTRAR, UPON MAKING THE FINDINGS REQUIRED BY SECTION 14-3303
15 SHALL ISSUE A WRITTEN STATEMENT OF INFORMAL PROBATE IF AT LEAST ONE
16 HUNDRED TWENTY HOURS HAVE ELAPSED SINCE THE DECEDENT'S DEATH. INFORMAL
17 PROBATE IS CONCLUSIVE AS TO ALL PERSONS UNTIL SUPERSEDED BY AN ORDER IN
18 A FORMAL TESTACY PROCEEDING. NO DEFECT IN THE APPLICATION OR PROCEDURE
19 RELATING THERETO WHICH LEADS TO INFORMAL PROBATE OF A WILL RENDERS THE
20 PROBATE VOID.

21 14-3303. Informal probate; proof and findings required

22 A. IN AN INFORMAL PROCEEDING FOR ORIGINAL PROBATE OF A WILL, THE
23 REGISTRAR SHALL DETERMINE WHETHER:

24 1. THE APPLICATION IS COMPLETE.

25 2. THE APPLICANT HAS MADE OATH OR AFFIRMATION THAT THE STATEMENTS
26 CONTAINED IN THE APPLICATION ARE TRUE TO THE BEST OF HIS KNOWLEDGE AND
27 BELIEF.

28 3. THE APPLICANT APPEARS FROM THE APPLICATION TO BE AN INTER-
29 ESTED PERSON AS DEFINED IN SECTION 14-1201, PARAGRAPH 20.

30 4. ON THE BASIS OF THE STATEMENTS IN THE APPLICATION, VENUE IS
31 PROPER.

32 5. AN ORIGINAL, DULY EXECUTED AND APPARENTLY UNREVOKED WILL IS
33 IN THE REGISTRAR'S POSSESSION.

1 6. ANY NOTICE REQUIRED BY SECTION 14-3204 HAS BEEN GIVEN AND
2 THAT THE APPLICATION IS NOT WITHIN SECTION 14-3304.
3 7. IT APPEARS FROM THE APPLICATION THAT THE TIME LIMIT FOR
4 ORIGINAL PROBATE HAS NOT EXPIRED.
5 B. THE APPLICATION SHALL BE DENIED IF IT INDICATES THAT A
6 PERSONAL REPRESENTATIVE HAS BEEN APPOINTED IN ANOTHER COUNTY OF THIS
7 STATE OR EXCEPT AS PROVIDED IN SUBSECTION D OF THIS SECTION, IF IT
8 APPEARS THAT THIS OR ANOTHER WILL OF THE DECEDENT HAS BEEN THE SUBJECT
9 OF A PREVIOUS PROBATE ORDER.
10 C. A WILL WHICH APPEARS TO HAVE THE REQUIRED SIGNATURES AND
11 WHICH CONTAINS AN ATTESTATION CLAUSE SHOWING THAT REQUIREMENTS OF
12 EXECUTION UNDER SECTION 14-2502, 14-2503 OR 14-2506 HAVE BEEN MET
13 SHALL BE PROBATED WITHOUT FURTHER PROOF. IN OTHER CASES, THE REGIS-
14 TRAR MAY ASSUME EXECUTION IF THE WILL APPEARS TO HAVE BEEN PROPERLY
15 EXECUTED, OR HE MAY ACCEPT A SWORN STATEMENT OR AFFIDAVIT OF ANY
16 PERSON HAVING KNOWLEDGE OF THE CIRCUMSTANCES OF EXECUTION, WHETHER OR
17 NOT THE PERSON WAS A WITNESS TO THE WILL.
18 D. INFORMAL PROBATE OF A WILL WHICH HAS BEEN PREVIOUSLY PRO-
19 BATED ELSEWHERE MAY BE GRANTED AT ANY TIME UPON WRITTEN APPLICATION
20 BY ANY INTERESTED PERSON, TOGETHER WITH DEPOSIT OF AN AUTHENTICATED
21 COPY OF THE WILL AND OF THE STATEMENT PROBATING IT FROM THE OFFICE OR
22 COURT WHERE IT WAS FIRST PROBATED.
23 E. A WILL FROM A PLACE WHICH DOES NOT PROVIDE FOR PROBATE OF A
24 WILL AFTER DEATH AND WHICH IS NOT ELIGIBLE FOR PROBATE UNDER SUBSEC-
25 TION A OF THIS SECTION, MAY BE PROBATED IN THIS STATE UPON RECEIPT BY
26 THE REGISTRAR OF A DULY AUTHENTICATED COPY OF THE WILL AND A DULY AU-
27 THENTICATED CERTIFICATE OF ITS LEGAL CUSTODIAN THAT THE COPY FILED IS
28 A TRUE COPY AND THAT THE WILL HAS BECOME OPERATIVE UNDER THE LAW OF
29 THE OTHER PLACE.
30 14-3304. Informal probate; unavailable in certain cases
31 APPLICATIONS FOR INFORMAL PROBATE WHICH RELATE TO ONE OR MORE OF
32 A KNOWN SERIES OF TESTAMENTARY INSTRUMENTS, OTHER THAN WILLS AND THEIR
33 CODICILS, THE LATEST OF WHICH DOES NOT EXPRESSLY REVOKE THE EARLIER

1 SHALL BE DECLINED.

2 14-3305. Informal probate; registrar not satisfied

3 IF THE REGISTRAR IS NOT SATISFIED THAT A WILL IS ENTITLED TO
4 BE PROBATED IN INFORMAL PROCEEDINGS BECAUSE OF FAILURE TO MEET THE
5 REQUIREMENTS OF SECTIONS 14-3303 AND 14-3304 OR ANY OTHER REASON, HE
6 MAY DECLINE THE APPLICATION. A DECLINATION OF INFORMAL PROBATE IS
7 NOT AN ADJUDICATION AND DOES NOT PRECLUDE FORMAL PROBATE PROCEEDINGS.

8 14-3306. Informal probate; notice requirements

9 THE MOVING PARTY MUST GIVE NOTICE AS DESCRIBED BY SECTION
10 14-1401 OF HIS APPLICATION FOR INFORMAL PROBATE:

- 11 1. TO ANY PERSON DEMANDING IT PURSUANT TO SECTION 14-3204.
- 12 2. TO ANY PERSONAL REPRESENTATIVE OF THE DECEDENT WHOSE APPOINT-
13 MENT HAS NOT BEEN TERMINATED.

14 NO OTHER NOTICE OF INFORMAL PROBATE IS REQUIRED.

15 14-3307. Informal appointment proceedings; delay
16 in order; duty of registrar; effect
17 of appointment

18 A. UPON RECEIPT OF AN APPLICATION FOR INFORMAL APPOINTMENT OF
19 A PERSONAL REPRESENTATIVE OTHER THAN A SPECIAL ADMINISTRATOR AS PRO-
20 VIDED IN SECTION 14-3614, IF AT LEAST ONE HUNDRED TWENTY HOURS HAVE
21 ELAPSED SINCE THE DECEDENT'S DEATH, THE REGISTRAR, AFTER MAKING THE
22 FINDINGS REQUIRED BY SECTION 14-3308, SHALL APPOINT THE APPLICANT
23 SUBJECT TO QUALIFICATION AND ACCEPTANCE, EXCEPT THAT IF THE DECEDENT
24 WAS A NONRESIDENT THE REGISTRAR SHALL DELAY THE ORDER OF APPOINTMENT
25 UNTIL THIRTY DAYS HAVE ELAPSED SINCE DEATH UNLESS THE PERSONAL REP-
26 RESENTATIVE APPOINTED AT THE DECEDENT'S DOMICILE IS THE APPLICANT OR
27 THE DECEDENT'S WILL DIRECTS THAT HIS ESTATE BE SUBJECT TO THE LAWS OF
28 THIS STATE.

29 B. THE STATUS OF PERSONAL REPRESENTATIVE AND THE POWERS AND
30 DUTIES PERTAINING TO THE OFFICE ARE FULLY ESTABLISHED BY INFORMAL
31 APPOINTMENT. AN APPOINTMENT, AND THE OFFICE OF PERSONAL REPRESENTA-
32 TIVE CREATED THEREBY, IS SUBJECT TO TERMINATION AS PROVIDED IN SEC-
33 TIONS 14-3608 THROUGH 14-3612, BUT IS NOT SUBJECT TO RETROACTIVE
34 VACATION.

1 14-3308. Informal appointment proceedings; proof
2 and findings required
3 A. IN INFORMAL APPOINTMENT PROCEEDINGS, THE REGISTRAR MUST
4 DETERMINE WHETHER:
5 1. THE APPLICATION FOR INFORMAL APPOINTMENT OF A PERSONAL
6 REPRESENTATIVE IS COMPLETE.
7 2. THE APPLICANT HAS MADE OATH OR AFFIRMATION THAT THE STATE-
8 MENTS CONTAINED IN THE APPLICATION ARE TRUE TO THE BEST OF HIS
9 KNOWLEDGE AND BELIEF.
10 3. THE APPLICANT APPEARS FROM THE APPLICATION TO BE AN INTER-
11 ESTED PERSON AS DEFINED IN SECTION 14-1201, PARAGRAPH 20.
12 4. ON THE BASIS OF THE STATEMENTS IN THE APPLICATION, VENUE
13 IS PROPER.
14 5. ANY WILL TO WHICH THE REQUESTED APPOINTMENT RELATES HAS
15 BEEN FORMALLY OR INFORMALLY PROBATED, EXCEPT THIS REQUIREMENT DOES
16 NOT APPLY TO THE APPOINTMENT OF A SPECIAL ADMINISTRATOR.
17 6. ANY NOTICE REQUIRED BY SECTION 14-3204 HAS BEEN GIVEN.
18 7. FROM THE STATEMENTS IN THE APPLICATION, THE PERSON WHOSE
19 APPOINTMENT IS SOUGHT HAS PRIORITY ENTITLING HIM TO THE APPOINTMENT.
20 B. UNLESS SECTION 14-3612 CONTROLS, THE APPLICATION MUST BE
21 DENIED IF IT INDICATES:
22 1. THAT A PERSONAL REPRESENTATIVE WHO HAS NOT FILED A WRITTEN
23 STATEMENT OF RESIGNATION AS PROVIDED IN SECTION 14-3610, SUBSECTION C
24 HAS BEEN APPOINTED IN THIS OR ANOTHER COUNTY OF THIS STATE.
25 2. THAT THE DECEDENT WAS NOT DOMICILED IN THIS STATE, THAT
26 A PERSONAL REPRESENTATIVE WHOSE APPOINTMENT HAS NOT BEEN TERMINATED
27 HAS BEEN APPOINTED BY A COURT IN THE STATE OF DOMICILE AND THAT
28 THE APPLICANT IS NOT THE DOMICILIARY PERSONAL REPRESENTATIVE OR HIS
29 NOMINEE.
30 3. THAT OTHER REQUIREMENTS OF THIS SECTION HAVE NOT BEEN MET.
31 14-3309. Informal appointment proceedings;
32 registrar not satisfied
33 IF THE REGISTRAR IS NOT SATISFIED THAT A REQUESTED INFORMAL

1 APPOINTMENT OF A PERSONAL REPRESENTATIVE SHOULD BE MADE BECAUSE OF
2 FAILURE TO MEET THE REQUIREMENTS OF SECTIONS 14-3307 AND 14-3308, OR
3 FOR ANY OTHER REASON, HE MAY DECLINE THE APPLICATION. A DECLINATION
4 OF INFORMAL APPOINTMENT IS NOT AN ADJUDICATION AND DOES NOT PRECLUDE
5 APPOINTMENT IN FORMAL PROCEEDINGS.

6 14-3310. Informal appointment proceedings; notice
7 requirements

8 THE MOVING PARTY MUST GIVE NOTICE AS DESCRIBED BY SECTION
9 14-1401 OF HIS INTENTION TO SEEK AN APPOINTMENT INFORMALLY:
10 1. TO ANY PERSON DEMANDING IT PURSUANT TO SECTION 14-3204.
11 2. TO ANY PERSON HAVING A PRIOR OR EQUAL RIGHT TO APPOINT-
12 MENT NOT WAIVED IN WRITING AND FILED WITH THE COURT.
13 NO OTHER NOTICE OF AN INFORMAL APPOINTMENT PROCEEDING IS REQUIRED.

14 14-3311. Informal appointment unavailable in certain cases
15 IF AN APPLICATION FOR INFORMAL APPOINTMENT INDICATES THE EXIS-
16 TENCE OF A POSSIBLE UNREVOKED TESTAMENTARY INSTRUMENT WHICH MAY RELATE
17 TO PROPERTY SUBJECT TO THE LAWS OF THIS STATE, AND WHICH IS NOT FILED
18 FOR PROBATE IN THIS COURT, THE REGISTRAR SHALL DECLINE THE APPLICATION.

19 ARTICLE 4. FORMAL TESTACY AND APPOINTMENT
20 PROCEEDINGS

21 14-3401. Formal testacy proceedings; nature; when commenced

22 A. A FORMAL TESTACY PROCEEDING IS LITIGATION TO DETERMINE
23 WHETHER A DECEDENT LEFT A VALID WILL. A FORMAL TESTACY PROCEEDING
24 MAY BE COMMENCED BY AN INTERESTED PERSON FILING A PETITION AS DE-
25 SCRIBED IN SECTION 14-3402, SUBSECTION A IN WHICH HE REQUESTS THAT
26 THE COURT, AFTER NOTICE AND HEARING, ENTER AN ORDER PROBATING A WILL,
27 OR A PETITION TO SET ASIDE AN INFORMAL PROBATE OF A WILL OR TO PRE-
28 VENT INFORMAL PROBATE OF A WILL WHICH IS THE SUBJECT OF A PENDING
29 APPLICATION, OR A PETITION IN ACCORDANCE WITH SECTION 14-3402, SUB-
30 SECTION B FOR AN ORDER THAT THE DECEDENT DIED INTESTATE.

31 B. A PETITION MAY SEEK FORMAL PROBATE OF A WILL WITHOUT REGARD
32 TO WHETHER THE SAME OR A CONFLICTING WILL HAS BEEN INFORMALLY PROBATED.
33 A FORMAL TESTACY PROCEEDING MAY INVOLVE A REQUEST FOR APPOINTMENT OF
34 A PERSONAL REPRESENTATIVE.

1 C. DURING THE PENDENCY OF A FORMAL TESTACY PROCEEDING, THE
2 REGISTRAR SHALL NOT ACT UPON ANY APPLICATION FOR INFORMAL PROBATE
3 OF ANY WILL OF THE DECEDENT OR ANY APPLICATION FOR INFORMAL APPOINT-
4 MENT OF A PERSONAL REPRESENTATIVE OF THE DECEDENT.

5 D. UNLESS A PETITION IN A FORMAL TESTACY PROCEEDING ALSO RE-
6 QUESTS CONFIRMATION OF THE PREVIOUS INFORMAL APPOINTMENT, A PREVIOUSLY
7 APPOINTED PERSONAL REPRESENTATIVE, AFTER RECEIPT OF NOTICE OF THE
8 COMMENCEMENT OF A FORMAL PROBATE PROCEEDING, MUST REFRAIN FROM EXER-
9 CISING HIS POWER TO MAKE ANY FURTHER DISTRIBUTION OF THE ESTATE DURING
10 THE PENDENCY OF THE FORMAL PROCEEDING. A PETITIONER WHO SEEKS THE
11 APPOINTMENT OF A DIFFERENT PERSONAL REPRESENTATIVE IN A FORMAL PRO-
12 CEEDING ALSO MAY REQUEST AN ORDER RESTRAINING THE ACTING PERSONAL
13 REPRESENTATIVE FROM EXERCISING ANY OF THE POWERS OF HIS OFFICE AND
14 REQUESTING THE APPOINTMENT OF A SPECIAL ADMINISTRATOR. IN THE AB-
15 SENCE OF A REQUEST OR IF THE REQUEST IS DENIED, THE COMMENCEMENT OF
16 A FORMAL PROCEEDING HAS NO EFFECT ON THE POWERS AND DUTIES OF A
17 PREVIOUSLY APPOINTED PERSONAL REPRESENTATIVE OTHER THAN THOSE RELATING
18 TO DISTRIBUTION.

19 14-3402. Formal testacy or appointment proceedings;
20 petition; contents

21 A. PETITIONS FOR FORMAL PROBATE OF A WILL, OR FOR ADJUDICATION
22 OF INTESTACY WITH OR WITHOUT REQUEST FOR APPOINTMENT OF A PERSONAL
23 REPRESENTATIVE, MUST BE DIRECTED TO THE COURT, REQUEST A JUDICIAL
24 ORDER AFTER NOTICE AND HEARING AND CONTAIN FURTHER STATEMENTS AS
25 INDICATED IN THIS SECTION. A PETITION FOR FORMAL PROBATE OF A WILL:

26 1. REQUESTS AN ORDER AS TO THE TESTACY OF THE DECEDENT IN
27 RELATION TO A PARTICULAR INSTRUMENT WHICH MAY OR MAY NOT HAVE BEEN
28 INFORMALLY PROBATED AND DETERMINING THE HEIRS.

29 2. CONTAINS THE STATEMENTS REQUIRED FOR INFORMAL APPLICATIONS
30 AS STATED IN PARAGRAPH 1, SECTION 14-3301 AND THE STATEMENTS REQUIRED
31 BY SUBDIVISIONS (b) AND (c), PARAGRAPH 2 OF SECTION 14-3301.

32 3. STATES WHETHER THE ORIGINAL OF THE LAST WILL OF THE DECE-
33 DENT IS IN THE POSSESSION OF THE COURT OR ACCOMPANIES THE PETITION.

1 B. IF THE ORIGINAL WILL IS NEITHER IN THE POSSESSION OF THE
2 COURT NOR ACCOMPANIES THE PETITION AND NO AUTHENTICATED COPY OF A
3 WILL PROBATED IN ANOTHER JURISDICTION ACCOMPANIES THE PETITION, THE
4 PETITION ALSO MUST STATE THE CONTENTS OF THE WILL, AND INDICATE THAT
5 IT IS LOST, DESTROYED OR OTHERWISE UNAVAILABLE.

6 C. A PETITION FOR ADJUDICATION OF INTESTACY AND APPOINTMENT
7 OF AN ADMINISTRATOR IN INTESTACY MUST REQUEST A JUDICIAL FINDING
8 AND ORDER THAT THE DECEDENT LEFT NO WILL AND DETERMINING THE HEIRS,
9 CONTAIN THE STATEMENTS REQUIRED BY PARAGRAPHS 1 AND 4 OF SECTION
10 14-3301 AND INDICATE WHETHER SUPERVISED ADMINISTRATION IS SOUGHT.
11 A PETITION MAY REQUEST AN ORDER DETERMINING INTESTACY AND HEIRS
12 WITHOUT REQUESTING THE APPOINTMENT OF AN ADMINISTRATOR, IN WHICH
13 CASE, THE STATEMENTS REQUIRED BY SUBDIVISION (b), PARAGRAPH 4, SEC-
14 TION 14-3301 MAY BE OMITTED.

15 14-3403. Formal testacy proceeding; notice of
16 hearing on petition

17 A. UPON COMMENCEMENT OF A FORMAL TESTACY PROCEEDING, THE COURT
18 SHALL FIX A TIME AND PLACE OF HEARING. NOTICE SHALL BE GIVEN IN THE
19 MANNER PRESCRIBED BY SECTION 14-1401 BY THE PETITIONER TO THE PERSONS
20 SPECIFIED IN THIS SECTION AND TO ANY ADDITIONAL PERSON WHO HAS FILED
21 A DEMAND FOR NOTICE UNDER SECTION 14-3204. NOTICE SHALL BE GIVEN TO
22 THE FOLLOWING PERSONS: THE SURVIVING SPOUSE, CHILDREN AND OTHER HEIRS
23 OF THE DECEDENT, THE DEVISEES AND EXECUTORS NAMED IN ANY WILL THAT IS
24 BEING, OR HAS BEEN, PROBATED, OR OFFERED FOR INFORMAL OR FORMAL PROBATE
25 IN THE COUNTY, OR THAT IS KNOWN BY THE PETITIONER TO HAVE BEEN PRO-
26 BATED, OR OFFERED FOR INFORMAL OR FORMAL PROBATE ELSEWHERE, AND ANY
27 PERSONAL REPRESENTATIVE OF THE DECEDENT WHOSE APPOINTMENT HAS NOT BEEN
28 TERMINATED. NOTICE MAY BE GIVEN TO OTHER PERSONS. IN ADDITION, THE
29 PETITIONER SHALL GIVE NOTICE BY PUBLICATION TO ALL UNKNOWN PERSONS AND
30 TO ALL KNOWN PERSONS WHOSE ADDRESSES ARE UNKNOWN WHO HAVE ANY INTEREST
31 IN THE MATTERS BEING LITIGATED.

32 B. IF IT APPEARS BY THE PETITION OR OTHERWISE THAT THE FACT OF
33 THE DEATH OF THE ALLEGED DECEDENT MAY BE IN DOUBT, OR ON THE WRITTEN

1 DEMAND OF ANY INTERESTED PERSON, A COPY OF THE NOTICE OF THE HEARING
2 ON THE PETITION SHALL BE SENT BY REGISTERED MAIL TO THE ALLEGED DECE-
3 DENT AT HIS LAST KNOWN ADDRESS. THE COURT SHALL DIRECT THE PETITIONER
4 TO REPORT THE RESULTS OF, OR MAKE AND REPORT BACK CONCERNING, A REASON-
5 ABLY DILIGENT SEARCH FOR THE ALLEGED DECEDENT IN ANY MANNER THAT MAY
6 SEEM ADVISABLE, INCLUDING ANY OR ALL OF THE FOLLOWING METHODS:

7 1. BY INSERTING IN ONE OR MORE SUITABLE PERIODICALS A NOTICE
8 REQUESTING INFORMATION FROM ANY PERSON HAVING KNOWLEDGE OF THE WHERE-
9 ABOUTS OF THE ALLEGED DECEDENT.

10 2. BY NOTIFYING LAW ENFORCEMENT OFFICIALS AND PUBLIC WELFARE
11 AGENCIES IN APPROPRIATE LOCATIONS OF THE DISAPPEARANCE OF THE ALLEGED
12 DECEDENT.

13 3. BY ENGAGING THE SERVICES OF AN INVESTIGATOR. THE COSTS OF
14 ANY SEARCH SO DIRECTED SHALL BE PAID BY THE PETITIONER IF THERE IS NO
15 ADMINISTRATION OR BY THE ESTATE OF THE DECEDENT IN CASE THERE IS AD-
16 MINISTRATION.

17 14-3404. Formal testacy proceedings; written
18 objections to probate

19 ANY PARTY TO A FORMAL PROCEEDING WHO OPPOSES THE PROBATE OF A
20 WILL FOR ANY REASON SHALL STATE IN HIS PLEADINGS HIS OBJECTIONS TO
21 PROBATE OF THE WILL.

22 14-3405. Formal testacy proceedings; uncontested
23 cases; hearings and proof

24 IF A PETITION IN A TESTACY PROCEEDING IS UNOPPOSED, THE COURT
25 MAY ORDER PROBATE OR INTESTACY ON THE STRENGTH OF THE PLEADINGS IF
26 SATISFIED THAT THE CONDITIONS OF SECTION 14-3409 HAVE BEEN MET, OR
27 CONDUCT A HEARING IN OPEN COURT AND REQUIRE PROOF OF THE MATTERS
28 NECESSARY TO SUPPORT THE ORDER SOUGHT. IF EVIDENCE CONCERNING EXECU-
29 TION OF THE WILL IS NECESSARY, THE AFFIDAVIT OR TESTIMONY OF ONE OF
30 ANY ATTESTING WITNESSES TO THE INSTRUMENT IS SUFFICIENT. IF THE AF-
31 FIDAVIT OR TESTIMONY OF AN ATTESTING WITNESS IS NOT AVAILABLE, EXECU-
32 TION OF THE WILL MAY BE PROVED BY OTHER EVIDENCE OR AFFIDAVIT.

1 14-3406. Formal testacy proceedings; contested
2 cases; testimony of attesting witnesses

3 A. IF EVIDENCE CONCERNING EXECUTION OF AN ATTESTED WILL WHICH
4 IS NOT SELF-PROVED IS NECESSARY IN CONTESTED CASES, THE TESTIMONY OF
5 AT LEAST ONE OF THE ATTESTING WITNESSES, IF WITHIN THE STATE COMPETENT
6 AND ABLE TO TESTIFY, IS REQUIRED. DUE EXECUTION OF AN ATTESTED OR
7 UNATTESTED WILL MAY BE PROVED BY OTHER EVIDENCE.

8 B. IF THE WILL IS SELF-PROVED, COMPLIANCE WITH SIGNATURE RE-
9 QUIREMENTS FOR EXECUTION IS CONCLUSIVELY PRESUMED AND OTHER REQUIRE-
10 MENTS OF EXECUTION ARE PRESUMED SUBJECT TO REBUTTAL WITHOUT THE
11 TESTIMONY OF ANY WITNESS UPON FILING THE WILL AND THE ACKNOWLEDGMENT
12 AND AFFIDAVITS ANNEXED OR ATTACHED THERETO, UNLESS THERE IS PROOF OF
13 FRAUD OR FORGERY AFFECTING THE ACKNOWLEDGMENT OR AFFIDAVIT.

14 14-3407. Formal testacy proceedings; burdens in
15 contested cases

16 IN CONTESTED CASES, PETITIONERS WHO SEEK TO ESTABLISH INTESTACY
17 HAVE THE BURDEN OF ESTABLISHING PRIMA FACIE PROOF OF DEATH, VENUE AND
18 HEIRSHIP. PROPONENTS OF A WILL HAVE THE BURDEN OF ESTABLISHING PRIMA
19 FACIE PROOF OF DUE EXECUTION IN ALL CASES, AND IF THEY ARE ALSO PETI-
20 TIONERS, PRIMA FACIE PROOF OF DEATH AND VENUE. CONTESTANTS OF A WILL
21 HAVE THE BURDEN OF ESTABLISHING LACK OF TESTAMENTARY INTENT OR CAPA-
22 CITY, UNDOE INFLUENCE, FRAUD, DURESS, MISTAKE OR REVOCATION. PARTIES
23 HAVE THE ULTIMATE BURDEN OF PERSUASION AS TO MATTERS WITH RESPECT TO
24 WHICH THEY HAVE THE INITIAL BURDEN OF PROOF. IF A WILL IS OPPOSED BY
25 THE PETITION FOR PROBATE OF A LATER WILL REVOKING THE FORMER, IT
26 SHALL BE DETERMINED FIRST WHETHER THE LATER WILL IS ENTITLED TO PRO-
27 BATE, AND IF A WILL IS OPPOSED BY A PETITION FOR A DECLARATION OF
28 INTESTACY, IT SHALL BE DETERMINED FIRST WHETHER THE WILL IS ENTITLED
29 TO PROBATE.

30 14-3408. Formal testacy proceedings; will construction;
31 effect of final order in another jurisdiction

32 A FINAL ORDER OF A COURT OF ANOTHER STATE DETERMINING TESTACY,
33 THE VALIDITY OR CONSTRUCTION OF A WILL, MADE IN A PROCEEDING INVOLVING

1 NOTICE TO AND AN OPPORTUNITY FOR CONTEST BY ALL INTERESTED PERSONS
2 MUST BE ACCEPTED AS DETERMINATIVE BY THE COURTS OF THIS STATE IF IT
3 INCLUDES, OR IS BASED UPON A FINDING THAT THE DECEDENT WAS DOMICILED
4 AT HIS DEATH IN THE STATE WHERE THE ORDER WAS MADE.

5 14-3409. Formal testacy proceedings; order; foreign will

6 AFTER THE TIME REQUIRED FOR ANY NOTICE HAS EXPIRED, UPON PROOF
7 OF NOTICE, AND AFTER ANY HEARING THAT MAY BE NECESSARY, IF THE COURT
8 FINDS THAT THE TESTATOR IS DEAD, VENUE IS PROPER AND THAT THE PROCEED-
9 ING WAS COMMENCED WITHIN THE LIMITATION PRESCRIBED BY SECTION 14-3108,
10 IT SHALL DETERMINE THE DECEDENT'S DOMICILE AT DEATH, HIS HEIRS AND HIS
11 STATE OF TESTACY. ANY WILL FOUND TO BE VALID AND UNREVOKED SHALL BE
12 FORMALLY PROBATED. TERMINATION OF ANY PREVIOUS INFORMAL APPOINTMENT
13 OF A PERSONAL REPRESENTATIVE, WHICH MAY BE APPROPRIATE IN VIEW OF THE
14 RELIEF REQUESTED AND FINDINGS, IS GOVERNED BY SECTION 14-3612. THE
15 PETITION SHALL BE DISMISSED OR APPROPRIATE AMENDMENT ALLOWED IF THE
16 COURT IS NOT SATISFIED THAT THE ALLEGED DECEDENT IS DEAD. A WILL
17 FROM A PLACE WHICH DOES NOT PROVIDE FOR PROBATE OF A WILL AFTER
18 DEATH, MAY BE PROVED FOR PROBATE IN THIS STATE BY A DULY AUTHENTICATED
19 CERTIFICATE OF ITS LEGAL CUSTODIAN THAT THE COPY INTRODUCED IS A TRUE
20 COPY AND THAT THE WILL HAS BECOME EFFECTIVE UNDER THE LAW OF THE OTHER
21 PLACE.

22 14-3410. Formal testacy proceedings; probate of
23 more than one instrument

24 IF TWO OR MORE INSTRUMENTS ARE OFFERED FOR PROBATE BEFORE A
25 FINAL ORDER IS ENTERED IN A FORMAL TESTACY PROCEEDING, MORE THAN ONE
26 INSTRUMENT MAY BE PROBATED IF NEITHER EXPRESSLY REVOKES THE OTHER OR
27 CONTAINS PROVISIONS WHICH WORK A TOTAL REVOCATION BY IMPLICATION. IF
28 MORE THAN ONE INSTRUMENT IS PROBATED, THE ORDER SHALL INDICATE WHAT
29 PROVISIONS CONTROL IN RESPECT TO THE NOMINATION OF AN EXECUTOR, IF
30 ANY. THE ORDER MAY, BUT NEED NOT, INDICATE HOW ANY PROVISIONS OF A
31 PARTICULAR INSTRUMENT ARE AFFECTED BY THE OTHER INSTRUMENT. AFTER
32 A FINAL ORDER IN A TESTACY PROCEEDING HAS BEEN ENTERED, NO PETITION
33 FOR PROBATE OF ANY OTHER INSTRUMENT OF THE DECEDENT MAY BE ENTERTAINED.

1 EXCEPT INCIDENT TO A PETITION TO VACATE OR MODIFY A PREVIOUS PROBATE
2 ORDER AND SUBJECT TO THE TIME LIMITS OF SECTION 14-3412.

3 14-3411. Formal testacy proceedings; partial intestacy

4 IF IT BECOMES EVIDENT IN THE COURSE OF A FORMAL TESTACY PROCEED-
5 ING THAT, THOUGH ONE OR MORE INSTRUMENTS ARE ENTITLED TO BE PROBATED,
6 THE DECEDENT'S ESTATE IS OR MAY BE PARTIALLY INTESTATE, THE COURT SHALL
7 ENTER AN ORDER TO THAT EFFECT.

8 14-3412. Formal testacy proceedings; effect of order;
9 vacation

10 A. SUBJECT TO APPEAL AND SUBJECT TO VACATION AS PROVIDED IN
11 THIS SECTION AND IN SECTION 14-3413, A FORMAL TESTACY ORDER UNDER
12 SECTIONS 14-3409 THROUGH 14-3411, INCLUDING AN ORDER THAT THE DECEDENT
13 LEFT NO VALID WILL AND DETERMINING HEIRS, IS FINAL AS TO ALL PERSONS
14 WITH RESPECT TO ALL ISSUES CONCERNING THE DECEDENT'S ESTATE THAT THE
15 COURT CONSIDERED OR MIGHT HAVE CONSIDERED INCIDENT TO ITS RENDITION
16 RELEVANT TO THE QUESTION OF WHETHER THE DECEDENT LEFT A VALID WILL,
17 AND TO THE DETERMINATION OF HEIRS, EXCEPT THAT:

18 1. THE COURT SHALL ENTERTAIN A PETITION FOR MODIFICATION OR
19 VACATION OF ITS ORDER AND PROBATE OF ANOTHER WILL OF THE DECEDENT
20 IF IT IS SHOWN THAT THE PROPONENTS OF THE LATER-OFFERED WILL WERE
21 UNAWARE OF ITS EXISTENCE AT THE TIME OF THE EARLIER PROCEEDING OR
22 WERE UNAWARE OF THE EARLIER PROCEEDING AND WERE GIVEN NO NOTICE
23 THEREOF, EXCEPT BY PUBLICATION.

24 2. IF INTESTACY OF ALL OR PART OF THE ESTATE HAS BEEN ORDERED,
25 THE DETERMINATION OF HEIRS OF THE DECEDENT MAY BE RECONSIDERED IF IT
26 IS SHOWN THAT ONE OR MORE PERSONS WERE OMITTED FROM THE DETERMINATION
27 AND IT IS ALSO SHOWN THAT THE PERSONS WERE UNAWARE OF THEIR RELATION-
28 SHIP TO THE DECEDENT, WERE UNAWARE OF HIS DEATH OR WERE GIVEN NO NOTICE
29 OF ANY PROCEEDING CONCERNING HIS ESTATE, EXCEPT BY PUBLICATION.

30 3. A PETITION FOR VACATION UNDER EITHER PARAGRAPH 1 OR 2 OF
31 THIS SUBSECTION MUST BE FILED PRIOR TO THE EARLIER OF THE FOLLOWING
32 TIME LIMITS:
33

1 (a) IF A PERSONAL REPRESENTATIVE HAS BEEN APPOINTED FOR THE
2 ESTATE, THE TIME OF ENTRY OF ANY ORDER APPROVING FINAL DISTRIBUTION
3 OF THE ESTATE, OR, IF THE ESTATE IS CLOSED BY STATEMENT, SIX MONTHS
4 AFTER THE FILING OF THE CLOSING STATEMENT.

5 (b) WHETHER OR NOT A PERSONAL REPRESENTATIVE HAS BEEN APPOINTED
6 FOR THE ESTATE OF THE DECEDENT, THE TIME PRESCRIBED BY SECTION 14-3108
7 WHEN IT IS NO LONGER POSSIBLE TO INITIATE AN ORIGINAL PROCEEDING TO
8 PROBATE A WILL OF THE DECEDENT.

9 (c) TWELVE MONTHS AFTER THE ENTRY OF THE ORDER SOUGHT TO BE
10 VACATED.

11 4. THE ORDER ORIGINALLY RENDERED IN THE TESTACY PROCEEDING MAY
12 BE MODIFIED OR VACATED, IF APPROPRIATE UNDER THE CIRCUMSTANCES, BY THE
13 ORDER OF PROBATE OF THE LATER-OFFERED WILL OR THE ORDER REDETERMINING
14 HEIRS.

15 5. THE FINDING OF THE FACT OF DEATH IS CONCLUSIVE AS TO THE
16 ALLEGED DECEDENT ONLY IF NOTICE OF THE HEARING ON THE PETITION IN
17 THE FORMAL TESTACY PROCEEDING WAS SENT BY REGISTERED OR CERTIFIED
18 MAIL ADDRESSED TO THE ALLEGED DECEDENT AT HIS LAST KNOWN ADDRESS
19 AND THE COURT FINDS THAT A SEARCH UNDER SECTION 14-3403, SUBSECTION
20 B WAS MADE.

21 8. IF THE ALLEGED DECEDENT IS NOT DEAD, EVEN IF NOTICE WAS SENT
22 AND SEARCH WAS MADE, HE MAY RECOVER ESTATE ASSETS IN THE HANDS OF THE
23 PERSONAL REPRESENTATIVE. IN ADDITION TO ANY REMEDIES AVAILABLE TO THE
24 ALLEGED DECEDENT BY REASON OF ANY FRAUD OR INTENTIONAL WRONGDOING, THE
25 ALLEGED DECEDENT MAY RECOVER ANY ESTATE OR ITS PROCEEDS FROM DISTRIBUTEES
26 THAT IS IN THEIR HANDS, OR THE VALUE OF DISTRIBUTIONS RECEIVED BY THEM,
27 TO THE EXTENT THAT ANY RECOVERY FROM DISTRIBUTEES IS EQUITABLE IN VIEW
28 OF THE CIRCUMSTANCES.

29 14-3413. Formal testacy proceedings; vacation
30 of order for other cause

31 FOR GOOD CAUSE SHOWN, AN ORDER IN A FORMAL TESTACY PROCEEDING
32 MAY BE MODIFIED OR VACATED WITHIN THE TIME ALLOWED FOR APPEAL.

33 14-3414. Formal proceedings concerning appointment
34 of personal representative

1 A. A FORMAL PROCEEDING FOR ADJUDICATION REGARDING THE PRIORITY
2 OR QUALIFICATION OF ONE WHO IS AN APPLICANT FOR APPOINTMENT AS PERSONAL
3 REPRESENTATIVE, OR OF ONE WHO PREVIOUSLY HAS BEEN APPOINTED PERSONAL
4 REPRESENTATIVE IN INFORMAL PROCEEDINGS, IF AN ISSUE CONCERNING THE
5 TESTACY OF THE DECEDENT IS OR MAY BE INVOLVED, IS GOVERNED BY SECTION
6 14-3402, AS WELL AS BY THIS SECTION. IN OTHER CASES, THE PETITION
7 SHALL CONTAIN OR ADOPT THE STATEMENTS REQUIRED BY SECTION 14-3301,
8 PARAGRAPH 1 AND DESCRIBE THE QUESTION RELATING TO PRIORITY OR QUALIFI-
9 CATION OF THE PERSONAL REPRESENTATIVE WHICH IS TO BE RESOLVED. IF THE
10 PROCEEDING PRECEDES ANY APPOINTMENT OF A PERSONAL REPRESENTATIVE, IT
11 SHALL STAY ANY PENDING INFORMAL APPOINTMENT PROCEEDINGS AS WELL AS ANY
12 COMMENCED THEREAFTER. IF THE PROCEEDING IS COMMENCED AFTER APPOINT-
13 MENT, THE PREVIOUSLY APPOINTED PERSONAL REPRESENTATIVE, AFTER RECEIPT
14 OF NOTICE THEREOF, SHALL REFRAIN FROM EXERCISING ANY POWER OF ADMINIS-
15 TRATION EXCEPT AS NECESSARY TO PRESERVE THE ESTATE OR UNLESS THE COURT
16 ORDERS OTHERWISE.

17 B. AFTER NOTICE TO INTERESTED PERSONS, INCLUDING ALL PERSONS
18 INTERESTED IN THE ADMINISTRATION OF THE ESTATE AS SUCCESSORS UNDER
19 THE APPLICABLE ASSUMPTION CONCERNING TESTACY, ANY PREVIOUSLY APPOINTED
20 PERSONAL REPRESENTATIVE AND ANY PERSON HAVING OR CLAIMING PRIORITY FOR
21 APPOINTMENT AS PERSONAL REPRESENTATIVE, THE COURT SHALL DETERMINE WHO
22 IS ENTITLED TO APPOINTMENT UNDER SECTION 14-3203, MAKE A PROPER AP-
23 POINTMENT AND, IF APPROPRIATE, TERMINATE ANY PRIOR APPOINTMENT FOUND
24 TO HAVE BEEN IMPROPER AS PROVIDED IN CASES OF REMOVAL UNDER SECTION
25 14-3611.

26 ARTICLE 5. SUPERVISED ADMINISTRATION

27 14-3501. Supervised administration; nature of proceeding

28 SUPERVISED ADMINISTRATION IS A SINGLE IN REM PROCEEDING TO SECURE
29 COMPLETE ADMINISTRATION AND SETTLEMENT OF A DECEDENT'S ESTATE UNDER THE
30 CONTINUING AUTHORITY OF THE COURT WHICH EXTENDS UNTIL ENTRY OF AN ORDER
31 APPROVING DISTRIBUTION OF THE ESTATE AND DISCHARGING THE PERSONAL REP-
32 REPRESENTATIVE OR OTHER ORDER TERMINATING THE PROCEEDING. A SUPERVISED
33 PERSONAL REPRESENTATIVE IS RESPONSIBLE TO THE COURT, AS WELL AS TO THE

1 INTERESTED PARTIES, AND IS SUBJECT TO DIRECTIONS CONCERNING THE ESTATE
2 MADE BY THE COURT ON ITS OWN MOTION OR ON THE MOTION OF ANY INTERESTED
3 PARTY. EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE, OR AS OTHERWISE
4 ORDERED BY THE COURT, A SUPERVISED PERSONAL REPRESENTATIVE HAS THE
5 SAME DUTIES AND POWERS AS A PERSONAL REPRESENTATIVE WHO IS NOT SUPER-
6 VISED.

7 14-3502. Supervised administration; petition; order

8 A PETITION FOR SUPERVISED ADMINISTRATION MAY BE FILED BY ANY
9 INTERESTED PERSON OR BY A PERSONAL REPRESENTATIVE AT ANY TIME OR THE
10 PRAYER FOR SUPERVISED ADMINISTRATION MAY BE JOINED WITH A PETITION IN
11 A TESTACY OR APPOINTMENT PROCEEDING. IF THE TESTACY OF THE DECEDENT
12 AND THE PRIORITY AND QUALIFICATION OF ANY PERSONAL REPRESENTATIVE HAVE
13 NOT BEEN ADJUDICATED PREVIOUSLY, THE PETITION FOR SUPERVISED ADMINIS-
14 TRATION SHALL INCLUDE THE MATTERS REQUIRED OF A PETITION IN A FORMAL
15 TESTACY PROCEEDING AND THE NOTICE REQUIREMENTS AND PROCEDURES APPLI-
16 CABLE TO A FORMAL TESTACY PROCEEDING APPLY. IF NOT PREVIOUSLY AD-
17 JUDICATED, THE COURT SHALL ADJUDICATE THE TESTACY OF THE DECEDENT
18 AND QUESTIONS RELATING TO THE PRIORITY AND QUALIFICATIONS OF THE
19 PERSONAL REPRESENTATIVE IN ANY CASE INVOLVING A REQUEST FOR SUPERVISED
20 ADMINISTRATION, EVEN THOUGH THE REQUEST FOR SUPERVISED ADMINISTRATION
21 MAY BE DENIED. AFTER NOTICE TO INTERESTED PERSONS, THE COURT SHALL
22 ORDER SUPERVISED ADMINISTRATION OF A DECEDENT'S ESTATE:

23 1. IF THE DECEDENT'S WILL DIRECTS SUPERVISED ADMINISTRATION, IT
24 SHALL BE ORDERED UNLESS THE COURT FINDS THAT CIRCUMSTANCES BEARING ON
25 THE NEED FOR SUPERVISED ADMINISTRATION HAVE CHANGED SINCE THE EXECUTION
26 OF THE WILL AND THAT THERE IS NO NECESSITY FOR SUPERVISED ADMINISTRATION.

27 2. IF THE DECEDENT'S WILL DIRECTS UNSUPERVISED ADMINISTRATION,
28 SUPERVISED ADMINISTRATION SHALL BE ORDERED ONLY UPON A FINDING THAT
29 IT IS NECESSARY FOR PROTECTION OF PERSONS INTERESTED IN THE ESTATE.

30 3. IN OTHER CASES IF THE COURT FINDS THAT SUPERVISED ADMINIS-
31 TRATION IS NECESSARY UNDER THE CIRCUMSTANCES.

32 14-3503. Supervised administration; effect on
33 other proceedings

1 A. THE PENDENCY OF A PROCEEDING FOR SUPERVISED ADMINISTRATION
2 OF A DECEDENT'S ESTATE STAYS ACTION ON ANY INFORMAL APPLICATION THEN
3 PENDING OR THEREAFTER FILED.

4 B. IF A WILL HAS BEEN PREVIOUSLY PROBATED IN INFORMAL PROCEED-
5 INGS, THE EFFECT OF THE FILING OF A PETITION FOR SUPERVISED ADMINISTRA-
6 TION IS AS PROVIDED FOR FORMAL TESTACY PROCEEDINGS BY SECTION 14-3401.

7 C. AFTER HE HAS RECEIVED NOTICE OF THE FILING OF A PETITION FOR
8 SUPERVISED ADMINISTRATION, A PERSONAL REPRESENTATIVE WHO HAS BEEN AP-
9 POINTED PREVIOUSLY SHALL NOT EXERCISE HIS POWER TO DISTRIBUTE ANY ES-
10 TATE. THE FILING OF THE PETITION DOES NOT AFFECT HIS OTHER POWERS AND
11 DUTIES UNLESS THE COURT RESTRICTS THE EXERCISE OF ANY OF THEM PENDING
12 FULL HEARING ON THE PETITION.

13 14-3504. Supervised administration; powers
14 of personal representative

15 UNLESS RESTRICTED BY THE COURT, A SUPERVISED PERSONAL REPRESENTATIVE HAS, WITHOUT INTERIM ORDERS APPROVING EXERCISE OF A POWER, ALL
16 POWERS OF PERSONAL REPRESENTATIVES UNDER THIS TITLE, BUT HE SHALL NOT
17 EXERCISE HIS POWER TO MAKE ANY DISTRIBUTION OF THE ESTATE WITHOUT PRIOR
18 ORDER OF THE COURT. ANY OTHER RESTRICTION ON THE POWER OF A PERSONAL
19 REPRESENTATIVE WHICH MAY BE ORDERED BY THE COURT MUST BE ENDORSED ON
20 HIS LETTERS OF APPOINTMENT AND, UNLESS SO ENDORSED, IS INEFFECTIVE AS
21 TO PERSONS DEALING IN GOOD FAITH WITH THE PERSONAL REPRESENTATIVE.

22 14-3505. Supervised administration; interim orders;
23 distribution and closing orders

24 UNLESS OTHERWISE ORDERED BY THE COURT, SUPERVISED ADMINISTRATION
25 IS TERMINATED BY ORDER IN ACCORDANCE WITH TIME RESTRICTIONS, NOTICES
26 AND CONTENTS OF ORDERS PRESCRIBED FOR PROCEEDINGS UNDER SECTION 14-3931.
27 INTERIM ORDERS APPROVING OR DIRECTING PARTIAL DISTRIBUTIONS OR GRANTING
28 OTHER RELIEF MAY BE ISSUED BY THE COURT AT ANY TIME DURING THE PENDENCY
29 OF A SUPERVISED ADMINISTRATION ON THE APPLICATION OF THE PERSONAL REPRESENTATIVE OR ANY INTERESTED PERSON.

30 ARTICLE 6. PERSONAL REPRESENTATIVE; APPOINTMENT,
31 CONTROL AND TERMINATION OF AUTHORITY
32
33

1 14-3601. Qualification

2 PRIOR TO RECEIVING LETTERS, A PERSONAL REPRESENTATIVE SHALL
3 QUALIFY BY FILING WITH THE APPOINTING COURT ANY REQUIRED BOND AND A
4 STATEMENT OF ACCEPTANCE OF THE DUTIES OF THE OFFICE.

5 14-3602. Acceptance of appointment; consent to
6 jurisdiction

7 BY ACCEPTING APPOINTMENT, A PERSONAL REPRESENTATIVE SUBMITS PER-
8 SONALLY TO THE JURISDICTION OF THE COURT IN ANY PROCEEDING RELATING TO
9 THE ESTATE THAT MAY BE INSTITUTED BY ANY INTERESTED PERSON. NOTICE
10 OF ANY PROCEEDING SHALL BE DELIVERED TO THE PERSONAL REPRESENTATIVE,
11 OR MAILED TO HIM BY ORDINARY FIRST CLASS MAIL AT HIS ADDRESS AS LISTED
12 IN THE APPLICATION OR PETITION FOR APPOINTMENT OR AS THEREAFTER REPORTED
13 TO THE COURT AND TO HIS ADDRESS AS THEN KNOWN TO THE PETITIONER.

14 14-3603. Bond not required without court order, exceptions

15 NO BOND IS REQUIRED OF A PERSONAL REPRESENTATIVE APPOINTED IN
16 INFORMAL PROCEEDINGS, EXCEPT:

17 1. UPON THE APPOINTMENT OF A SPECIAL ADMINISTRATOR.

18 2. IF AN EXECUTOR OR OTHER PERSONAL REPRESENTATIVE IS APPOINTED
19 TO ADMINISTER AN ESTATE UNDER A WILL CONTAINING AN EXPRESS REQUIREMENT
20 OF BOND.

21 3. IF BOND IS REQUIRED UNDER SECTION 14-3605.

22 BOND MAY BE REQUIRED BY COURT ORDER AT THE TIME OF APPOINTMENT OF A
23 PERSONAL REPRESENTATIVE APPOINTED IN ANY FORMAL PROCEEDING EXCEPT
24 THAT BOND IS NOT REQUIRED OF A PERSONAL REPRESENTATIVE APPOINTED IN
25 FORMAL PROCEEDINGS IF THE WILL RELIEVES THE PERSONAL REPRESENTATIVE
26 OF BOND, UNLESS BOND HAS BEEN REQUESTED BY AN INTERESTED PARTY AND
27 THE COURT IS SATISFIED THAT IT IS DESIRABLE. BOND REQUIRED BY ANY
28 WILL MAY BE DISPENSED WITH IN FORMAL PROCEEDINGS UPON DETERMINATION
29 BY THE COURT THAT IT IS NOT NECESSARY. NO BOND IS REQUIRED OF ANY
30 PERSONAL REPRESENTATIVE WHO, PURSUANT TO STATUTE, HAS DEPOSITED
31 CASH OR COLLATERAL WITH AN AGENCY OF THIS STATE TO SECURE PERFORMANCE
32 OF HIS DUTIES.

1 14-3604. Bond amount; security; procedure; reduction
2 IF BOND IS REQUIRED AND THE PROVISIONS OF THE WILL OR ORDER DO
3 NOT SPECIFY THE AMOUNT, UNLESS STATED IN HIS APPLICATION OR PETITION,
4 THE PERSON QUALIFYING SHALL FILE A STATEMENT UNDER OATH WITH THE
5 REGISTRAR INDICATING HIS BEST ESTIMATE OF THE VALUE OF THE PERSONAL
6 ESTATE OF THE DECEDENT AND OF THE INCOME EXPECTED FROM THE PERSONAL
7 AND REAL ESTATE DURING THE NEXT YEAR, AND HE SHALL EXECUTE AND FILE A
8 BOND WITH THE REGISTRAR, OR GIVE OTHER SUITABLE SECURITY, IN AN AMOUNT
9 NOT LESS THAN THE ESTIMATE. THE REGISTRAR SHALL DETERMINE THAT THE
10 BOND IS DULY EXECUTED BY A CORPORATE SURETY, OR ONE OR MORE INDIVIDUAL
11 SURETIES WHOSE PERFORMANCE IS SECURED BY PLEDGE OF PERSONAL PROPERTY,
12 MORTGAGE ON REAL PROPERTY OR OTHER ADEQUATE SECURITY. THE REGISTRAR
13 MAY PERMIT THE AMOUNT OF THE BOND TO BE REDUCED BY THE VALUE OF ASSETS
14 OF THE ESTATE DEPOSITED WITH A DOMESTIC FINANCIAL INSTITUTION, AS DE-
15 FINED IN SECTION 14-6106, IN A MANNER THAT PREVENTS THEIR UNAUTHORIZED
16 DISPOSITION. ON PETITION OF THE PERSONAL REPRESENTATIVE OR ANOTHER
17 INTERESTED PERSON THE COURT MAY EXCUSE A REQUIREMENT OF BOND, INCREASE
18 OR REDUCE THE AMOUNT OF THE BOND, RELEASE SURETIES, OR PERMIT THE
19 SUBSTITUTION OF ANOTHER BOND WITH THE SAME OR DIFFERENT SURETIES.

20 14-3605. Demand for bond by interested person
21 ANY PERSON APPARENTLY HAVING AN INTEREST IN THE ESTATE WORTH IN
22 EXCESS OF ONE THOUSAND DOLLARS, OR ANY CREDITOR HAVING A CLAIM IN EX-
23 CESS OF ONE THOUSAND DOLLARS, MAY MAKE A WRITTEN DEMAND THAT A PER-
24 SONAL REPRESENTATIVE GIVE BOND. THE DEMAND MUST BE FILED WITH THE
25 REGISTRAR AND A COPY MAILED TO THE PERSONAL REPRESENTATIVE, IF APPOINT-
26 MENT AND QUALIFICATION HAVE OCCURRED. THEREUPON, BOND IS REQUIRED,
27 BUT THE REQUIREMENT CEASES IF THE PERSON DEMANDING BOND CEASES TO BE
28 INTERESTED IN THE ESTATE, OR IF BOND IS EXCUSED AS PROVIDED IN SECTION
29 14-3603 OR 14-3604. AFTER HE HAS RECEIVED NOTICE AND UNTIL THE FILING
30 OF THE BOND OR CESSATION OF THE REQUIREMENT OF BOND, THE PERSONAL REP-
31 REPRESENTATIVE SHALL REFRAIN FROM EXERCISING ANY POWERS OF HIS OFFICE
32 EXCEPT AS NECESSARY TO PRESERVE THE ESTATE. FAILURE OF THE PERSONAL
33 REPRESENTATIVE TO MEET A REQUIREMENT OF BOND BY GIVING SUITABLE BOND

1 WITHIN THIRTY DAYS AFTER RECEIPT OF NOTICE IS CAUSE FOR HIS REMOVAL AND
2 APPOINTMENT OF A SUCCESSOR PERSONAL REPRESENTATIVE.

3 14-3606. Terms and conditions of bonds

4 A. THE FOLLOWING REQUIREMENTS AND PROVISIONS APPLY TO ANY BOND
5 REQUIRED BY THIS ARTICLE.

6 1. BONDS SHALL NAME THE STATE AS OBLIGEE FOR THE BENEFIT OF
7 THE PERSONS INTERESTED IN THE ESTATE AND SHALL BE CONDITIONED UPON
8 THE FAITHFUL DISCHARGE BY THE FIDUCIARY OF ALL DUTIES ACCORDING TO
9 LAW.

10 2. UNLESS OTHERWISE PROVIDED BY THE TERMS OF THE APPROVED BOND,
11 SURETIES ARE JOINTLY AND SEVERALLY LIABLE WITH THE PERSONAL REPRESENTA-
12 TIVE AND WITH EACH OTHER. THE ADDRESS OF SURETIES SHALL BE STATED IN
13 THE BOND.

14 3. BY EXECUTING AN APPROVED BOND OF A PERSONAL REPRESENTATIVE,
15 THE SURETY CONSENTS TO THE JURISDICTION OF THE PROBATE COURT WHICH
16 ISSUED LETTERS TO THE PRIMARY OBLIGOR IN ANY PROCEEDINGS PERTAINING
17 TO THE FIDUCIARY DUTIES OF THE PERSONAL REPRESENTATIVE AND NAMING
18 THE SURETY AS A PARTY. NOTICE OF ANY PROCEEDING SHALL BE DELIVERED
19 TO THE SURETY OR MAILED TO HIM BY REGISTERED OR CERTIFIED MAIL AT
20 HIS ADDRESS AS LISTED WITH THE COURT WHERE THE BOND IS FILED AND
21 TO HIS ADDRESS AS THEN KNOWN TO THE PETITIONER.

22 4. ON PETITION OF A SUCCESSOR PERSONAL REPRESENTATIVE, ANY
23 OTHER PERSONAL REPRESENTATIVE OF THE SAME DECEDENT, OR ANY INTERESTED
24 PERSON, A PROCEEDING IN THE COURT MAY BE INITIATED AGAINST A SURETY
25 FOR BREACH OF THE OBLIGATION OF THE BOND OF THE PERSONAL REPRESENTATIVE.

26 5. THE BOND OF THE PERSONAL REPRESENTATIVE IS NOT VOID AFTER
27 THE FIRST RECOVERY BUT MAY BE PROCEEDED AGAINST FROM TIME TO TIME
28 UNTIL THE WHOLE PENALTY IS EXHAUSTED.

29 B. NO ACTION OR PROCEEDING MAY BE COMMENCED AGAINST THE SURETY
30 ON ANY MATTER AS TO WHICH AN ACTION OR PROCEEDING AGAINST THE PRIMARY
31 OBLIGOR IS BARRED BY ADJUDICATION OR LIMITATION.

32 14-3607. Order restraining personal representative

33 A. ON PETITION OF ANY PERSON WHO APPEARS TO HAVE AN INTEREST IN

1 THE ESTATE, THE COURT BY TEMPORARY ORDER MAY RESTRAIN A PERSONAL REP-
2 REPRESENTATIVE FROM PERFORMING SPECIFIED ACTS OF ADMINISTRATION, DISBURSE-
3 MENT OR DISTRIBUTION, OR EXERCISE OF ANY POWERS OR DISCHARGE OF ANY
4 DUTIES OF HIS OFFICE, OR MAKE ANY OTHER ORDER TO SECURE PROPER PERFOR-
5 MANCE OF HIS DUTY, IF IT APPEARS TO THE COURT THAT THE PERSONAL REPRESENTATIVE
6 OTHERWISE MAY TAKE SOME ACTION WHICH WOULD JEOPARDIZE UNREA-
7 SONABLY THE INTEREST OF THE APPLICANT OR OF SOME OTHER INTERESTED PER-
8 SON. PERSONS WITH WHOM THE PERSONAL REPRESENTATIVE MAY TRANSACT
9 BUSINESS MAY BE MADE PARTIES.

10 B. THE MATTER SHALL BE SET FOR HEARING WITHIN TEN DAYS UNLESS
11 THE PARTIES OTHERWISE AGREE. NOTICE AS THE COURT DIRECTS SHALL BE GIVEN
12 TO THE PERSONAL REPRESENTATIVE AND HIS ATTORNEY OF RECORD, IF ANY, AND
13 TO ANY OTHER PARTIES NAMED DEFENDANT IN THE PETITION.

14 14-3608. Termination of appointment; general

15 TERMINATION OF APPOINTMENT OF A PERSONAL REPRESENTATIVE OCCURS AS
16 INDICATED IN SECTIONS 14-3609 THROUGH 14-3612. TERMINATION ENDS THE
17 RIGHT AND POWER PERTAINING TO THE OFFICE OF PERSONAL REPRESENTATIVE AS
18 CONFERRED BY THIS TITLE OR ANY WILL, EXCEPT THAT A PERSONAL REPRESENTATIVE,
19 AT ANY TIME PRIOR TO DISTRIBUTION OR UNTIL RESTRAINED OR EN-
20 JOINED BY COURT ORDER, MAY PERFORM ACTS NECESSARY TO PROTECT THE ESTATE
21 AND MAY DELIVER THE ASSETS TO A SUCCESSOR REPRESENTATIVE. TERMINATION
22 DOES NOT DISCHARGE A PERSONAL REPRESENTATIVE FROM LIABILITY FOR TRANS-
23 ACTIONS OR OMISSIONS OCCURRING BEFORE TERMINATION, OR RELIEVE HIM OF
24 THE DUTY TO PRESERVE ASSETS SUBJECT TO HIS CONTROL, TO ACCOUNT THEREFOR
25 AND TO DELIVER THE ASSETS. TERMINATION DOES NOT AFFECT THE JURISDIC-
26 TION OF THE COURT OVER THE PERSONAL REPRESENTATIVE, BUT TERMINATES HIS
27 AUTHORITY TO REPRESENT THE ESTATE IN ANY PENDING OR FUTURE PROCEEDING.

28 14-3609. Termination of appointment; death or disability

29 THE DEATH OF A PERSONAL REPRESENTATIVE OR THE APPOINTMENT OF A
30 CONSERVATOR FOR THE ESTATE OF A PERSONAL REPRESENTATIVE, TERMINATES
31 HIS APPOINTMENT. UNTIL APPOINTMENT AND QUALIFICATION OF A SUCCESSOR
32 OR SPECIAL REPRESENTATIVE TO REPLACE THE DECEASED OR PROTECTED REPRESENTATIVE,
33 THE REPRESENTATIVE OF THE ESTATE OF THE DECEASED OR PRO-
34 TECTED PERSONAL REPRESENTATIVE, IF ANY, HAS THE DUTY TO PROTECT THE

1 ESTATE POSSESSED AND BEING ADMINISTERED BY HIS DECEDENT OR WARD AT THE
2 TIME HIS APPOINTMENT TERMINATES, HAS THE POWER TO PERFORM ACTS NECESSARY
3 FOR PROTECTION AND SHALL ACCOUNT FOR AND DELIVER THE ESTATE ASSETS TO
4 A SUCCESSOR OR SPECIAL PERSONAL REPRESENTATIVE UPON HIS APPOINTMENT AND
5 QUALIFICATION.

6 14-3610. Termination of appointment; voluntary

7 A. AN APPOINTMENT OF A PERSONAL REPRESENTATIVE TERMINATES AS
8 PROVIDED IN SECTION 14-3933, ONE YEAR AFTER THE FILING OF A CLOSING
9 STATEMENT.

10 B. AN ORDER CLOSING AN ESTATE AS PROVIDED IN SECTION 14-3932
11 OR 14-3933 TERMINATES AN APPOINTMENT OF A PERSONAL REPRESENTATIVE.

12 C. A PERSONAL REPRESENTATIVE MAY RESIGN HIS POSITION BY FILING
13 A WRITTEN STATEMENT OF RESIGNATION WITH THE REGISTRAR AFTER HE HAS
14 GIVEN AT LEAST FIFTEEN DAYS WRITTEN NOTICE TO THE PERSONS KNOWN TO BE
15 INTERESTED IN THE ESTATE. IF NO ONE APPLIES OR PETITIONS FOR APPOINT-
16 MENT OF A SUCCESSOR REPRESENTATIVE WITHIN THE TIME INDICATED IN THE
17 NOTICE, THE FILED STATEMENT OF RESIGNATION IS INEFFECTIVE AS A TER-
18 MINATION OF APPOINTMENT AND IN ANY EVENT IS EFFECTIVE ONLY UPON THE
19 APPOINTMENT AND QUALIFICATION OF A SUCCESSOR REPRESENTATIVE AND
20 DELIVERY OF THE ASSETS TO HIM.

21 14-3611. Termination of appointment by removal;
22 cause; procedure

23 A. A PERSON INTERESTED IN THE ESTATE MAY PETITION FOR REMOVAL
24 OF A PERSONAL REPRESENTATIVE FOR CAUSE AT ANY TIME. UPON FILING OF
25 THE PETITION, THE COURT SHALL FIX A TIME AND PLACE FOR HEARING. NOTICE
26 SHALL BE GIVEN BY THE PETITIONER TO THE PERSONAL REPRESENTATIVE, AND
27 TO OTHER PERSONS AS THE COURT MAY ORDER. EXCEPT AS OTHERWISE ORDERED
28 AS PROVIDED IN SECTION 14-3607, AFTER RECEIPT OF NOTICE OF REMOVAL
29 PROCEEDINGS, THE PERSONAL REPRESENTATIVE SHALL NOT ACT EXCEPT TO AC-
30 COUNT, TO CORRECT MALADMINISTRATION OR PRESERVE THE ESTATE. IF REMOVAL
31 IS ORDERED, THE COURT ALSO SHALL DIRECT BY ORDER THE DISPOSITION OF THE
32 ASSETS REMAINING IN THE NAME OF, OR UNDER THE CONTROL OF, THE PERSONAL
33 REPRESENTATIVE BEING REMOVED.

1 B. CAUSE FOR REMOVAL EXISTS:
2 1. WHEN REMOVAL WOULD BE IN THE BEST INTERESTS OF THE ESTATE.
3 2. IF IT IS SHOWN THAT A PERSONAL REPRESENTATIVE OR THE PERSON
4 SEEKING HIS APPOINTMENT INTENTIONALLY MISREPRESENTED MATERIAL FACTS IN
5 THE PROCEEDINGS LEADING TO HIS APPOINTMENT.
6 3. IF IT IS SHOWN THAT THE PERSONAL REPRESENTATIVE HAS DISRE-
7 GARDERD AN ORDER OF THE COURT, HAS BECOME INCAPABLE OF DISCHARGING THE
8 DUTIES OF HIS OFFICE, HAS MISMANAGED THE ESTATE OR FAILED TO PERFORM
9 ANY DUTY PERTAINING TO THE OFFICE.
10 UNLESS THE DECEDENT'S WILL DIRECTS OTHERWISE, A PERSONAL REPRESENTATIVE
11 APPOINTED AT THE DECEDENT'S DOMICILE, INCIDENT TO SECURING APPOINTMENT
12 OF HIMSELF OR HIS NOMINEE AS ANCILLARY PERSONAL REPRESENTATIVE, MAY
13 OBTAIN REMOVAL OF ANOTHER WHO WAS APPOINTED PERSONAL REPRESENTATIVE
14 IN THIS STATE TO ADMINISTER LOCAL ASSETS.
15 14-3612. Termination of appointment; change of testacy status
16 EXCEPT AS OTHERWISE ORDERED IN FORMAL PROCEEDINGS, THE PROBATE
17 OF A WILL SUBSEQUENT TO THE APPOINTMENT OF A PERSONAL REPRESENTATIVE
18 IN INTESTACY OR UNDER A WILL WHICH IS SUPERSEDED BY FORMAL PROBATE OF
19 ANOTHER WILL, OR THE VACATION OF AN INFORMAL PROBATE OF A WILL SUBSE-
20 QUENT TO THE APPOINTMENT OF THE PERSONAL REPRESENTATIVE THEREUNDER,
21 DOES NOT TERMINATE THE APPOINTMENT OF THE PERSONAL REPRESENTATIVE
22 ALTHOUGH HIS POWERS MAY BE REDUCED AS PROVIDED IN SECTION 14-3401.
23 TERMINATION OCCURS UPON APPOINTMENT IN INFORMAL OR FORMAL APPOINTMENT
24 PROCEEDINGS OF A PERSON ENTITLED TO APPOINTMENT UNDER THE LATER ASSUMP-
25 TION CONCERNING TESTACY. IF NO REQUEST FOR NEW APPOINTMENT IS MADE
26 WITHIN THIRTY DAYS AFTER EXPIRATION OF TIME FOR APPEAL FROM THE ORDER
27 IN FORMAL TESTACY PROCEEDINGS, OR FROM THE INFORMAL PROBATE, CHANGING
28 THE ASSUMPTION CONCERNING TESTACY, THE PREVIOUSLY APPOINTED PERSONAL
29 REPRESENTATIVE UPON REQUEST MAY BE APPOINTED PERSONAL REPRESENTATIVE
30 UNDER THE SUBSEQUENTLY PROBATED WILL, OR AS IN INTESTACY AS THE CASE
31 MAY BE.
32 14-3613. Successor personal representative
33 ARTICLES 3 AND 4 OF THIS CHAPTER GOVERN PROCEEDINGS FOR APPOINT-
34 MENT OF A PERSONAL REPRESENTATIVE TO SUCCEED ONE WHOSE APPOINTMENT HAS

1 BEEN TERMINATED. AFTER APPOINTMENT AND QUALIFICATION, A SUCCESSOR
2 PERSONAL REPRESENTATIVE MAY BE SUBSTITUTED IN ALL ACTIONS AND PROCEED-
3 INGS TO WHICH THE FORMER PERSONAL REPRESENTATIVE WAS A PARTY, AND NO
4 NOTICE, PROCESS OR CLAIM WHICH WAS GIVEN OR SERVED UPON THE FORMER
5 PERSONAL REPRESENTATIVE NEED BE GIVEN TO OR SERVED UPON THE SUCCESSOR
6 IN ORDER TO PRESERVE ANY POSITION OR RIGHT THE PERSON GIVING THE NOTICE
7 OR FILING THE CLAIM MAY THEREBY HAVE OBTAINED OR PRESERVED WITH REFERENCE
8 TO THE FORMER PERSONAL REPRESENTATIVE. EXCEPT AS OTHERWISE ORDERED BY
9 THE COURT, THE SUCCESSOR PERSONAL REPRESENTATIVE HAS THE POWERS AND
10 DUTIES IN RESPECT TO THE CONTINUED ADMINISTRATION WHICH THE FORMER PER-
11 SONAL REPRESENTATIVE WOULD HAVE HAD IF HIS APPOINTMENT HAD NOT BEEN
12 TERMINATED.

13 14-3614. Special administrator; appointment

14 A SPECIAL ADMINISTRATOR MAY BE APPOINTED:

15 1. INFORMALLY BY THE REGISTRAR ON THE APPLICATION OF ANY INTER-
16 ESTED PERSON WHEN NECESSARY TO PROTECT THE ESTATE OF A DECEDENT PRIOR
17 TO THE APPOINTMENT OF A GENERAL PERSONAL REPRESENTATIVE OR IF A PRIOR
18 APPOINTMENT HAS BEEN TERMINATED AS PROVIDED IN SECTION 14-3609.

19 2. IN A FORMAL PROCEEDING BY ORDER OF THE COURT ON THE PETITION
20 OF ANY INTERESTED PERSON AND FINDING, AFTER NOTICE AND HEARING, THAT
21 APPOINTMENT IS NECESSARY TO PRESERVE THE ESTATE OR TO SECURE ITS PROPER
22 ADMINISTRATION INCLUDING ITS ADMINISTRATION IN CIRCUMSTANCES WHERE A
23 GENERAL PERSONAL REPRESENTATIVE CANNOT OR SHOULD NOT ACT. IF IT APPEARS
24 TO THE COURT THAT AN EMERGENCY EXISTS, APPOINTMENT MAY BE ORDERED WITH-
25 OUT NOTICE.

26 14-3615. Special administrator; who may be appointed

27 A. IF A SPECIAL ADMINISTRATOR IS TO BE APPOINTED PENDING THE
28 PROBATE OF A WILL WHICH IS THE SUBJECT OF A PENDING APPLICATION OR
29 PETITION FOR PROBATE, THE PERSON NAMED EXECUTOR IN THE WILL SHALL BE
30 APPOINTED IF AVAILABLE, AND QUALIFIED.

31 B. IN OTHER CASES, ANY PROPER PERSON MAY BE APPOINTED SPECIAL
32 ADMINISTRATOR.

1 14-3616. Special administrator; appointed informally;
2 powers and duties

3 A SPECIAL ADMINISTRATOR APPOINTED BY THE REGISTRAR IN INFORMAL
4 PROCEEDINGS PURSUANT TO SECTION 14-3614, PARAGRAPH 1 HAS THE DUTY TO
5 COLLECT AND MANAGE THE ASSETS OF THE ESTATE, TO PRESERVE THEM, TO
6 ACCOUNT THEREFOR AND TO DELIVER THEM TO THE GENERAL PERSONAL REPRESENTATIVE
7 UPON HIS QUALIFICATION. THE SPECIAL ADMINISTRATOR HAS THE
8 POWER OF A PERSONAL REPRESENTATIVE UNDER THIS TITLE NECESSARY TO
9 PERFORM HIS DUTIES.

10 14-3617. Special administrator; formal proceedings;
11 power and duties

12 A SPECIAL ADMINISTRATOR APPOINTED BY ORDER OF THE COURT IN ANY
13 FORMAL PROCEEDING HAS THE POWER OF A GENERAL PERSONAL REPRESENTATIVE
14 EXCEPT AS LIMITED IN THE APPOINTMENT AND DUTIES AS PRESCRIBED IN THE
15 ORDER. THE APPOINTMENT MAY BE FOR A SPECIFIED TIME, TO PERFORM PARTICULAR
16 ACTS OR ON OTHER TERMS AS THE COURT MAY DIRECT.

17 14-3618. Termination of appointment; special administrator
18 THE APPOINTMENT OF A SPECIAL ADMINISTRATOR TERMINATES IN ACCORDANCE
19 WITH THE PROVISIONS OF THE ORDER OF APPOINTMENT OR ON THE APPOINTMENT
20 OF A GENERAL PERSONAL REPRESENTATIVE. IN OTHER CASES, THE APPOINTMENT
21 OF A SPECIAL ADMINISTRATOR IS SUBJECT TO TERMINATION AS PROVIDED IN
22 SECTIONS 14-3608 THROUGH 14-3611.

23 ARTICLE 7. DUTIES AND POWERS OF
24 PERSONAL REPRESENTATIVES

25 14-3701. Time of accrual of duties and powers

26 THE DUTIES AND POWERS OF A PERSONAL REPRESENTATIVE COMMENCE UPON
27 HIS APPOINTMENT. THE POWERS OF A PERSONAL REPRESENTATIVE RELATE BACK
28 IN TIME TO GIVE ACTS BY THE PERSON APPOINTED WHICH ARE BENEFICIAL TO
29 THE ESTATE OCCURRING PRIOR TO APPOINTMENT THE SAME EFFECT AS THOSE OCCURRING
30 THEREAFTER. PRIOR TO APPOINTMENT, A PERSON NAMED EXECUTOR IN
31 A WILL MAY CARRY OUT WRITTEN INSTRUCTIONS OF THE DECEDENT RELATING TO
32 HIS BODY, FUNERAL AND BURIAL ARRANGEMENTS. A PERSONAL REPRESENTATIVE
33 MAY RATIFY AND ACCEPT ACTS ON BEHALF OF THE ESTATE DONE BY OTHERS
34 WHERE THE ACTS WOULD HAVE BEEN PROPER FOR A PERSONAL REPRESENTATIVE.

1 14-3702. Priority among different letters

2 A PERSON TO WHOM GENERAL LETTERS ARE ISSUED FIRST HAS EXCLUSIVE
3 AUTHORITY UNDER THE LETTERS UNTIL HIS APPOINTMENT IS TERMINATED OR MOD-
4 IFIED. IF, THROUGH ERROR, GENERAL LETTERS ARE AFTERWARDS ISSUED TO
5 ANOTHER, THE FIRST APPOINTED REPRESENTATIVE MAY RECOVER ANY PROPERTY
6 OF THE ESTATE IN THE HANDS OF THE REPRESENTATIVE SUBSEQUENTLY APPOINTED,
7 BUT THE ACTS OF THE LATTER DONE IN GOOD FAITH BEFORE NOTICE OF THE FIRST
8 LETTERS ARE NOT VOID FOR WANT OF VALIDITY OF APPOINTMENT.

9 14-3703. General duties; relation and liability to persons
10 interested in estate; standing to sue

11 A. A PERSONAL REPRESENTATIVE IS A FIDUCIARY WHO SHALL OBSERVE
12 THE STANDARDS OF CARE APPLICABLE TO TRUSTEES AS DESCRIBED BY SECTION
13 14-7302. A PERSONAL REPRESENTATIVE IS UNDER A DUTY TO SETTLE AND DIS-
14 TRIBUTE THE ESTATE OF THE DECEDENT IN ACCORDANCE WITH THE TERMS OF ANY
15 PROBATED AND EFFECTIVE WILL AND THIS TITLE, AND AS EXPEDITIOUSLY AND
16 EFFICIENTLY AS IS CONSISTENT WITH THE BEST INTERESTS OF THE ESTATE. HE
17 SHALL USE THE AUTHORITY CONFERRED UPON HIM BY THIS TITLE, THE TERMS OF
18 THE WILL, IF ANY, AND ANY ORDER IN PROCEEDINGS TO WHICH HE IS PARTY FOR
19 THE BEST INTERESTS OF SUCCESSORS TO THE ESTATE.

20 B. A PERSONAL REPRESENTATIVE SHALL NOT BE SURCHARGED FOR ACTS
21 OF ADMINISTRATION OR DISTRIBUTION IF THE CONDUCT IN QUESTION WAS AU-
22 THORIZED AT THE TIME. SUBJECT TO OTHER OBLIGATIONS OF ADMINISTRATION,
23 AN INFORMALLY PROBATED WILL IS AUTHORITY TO ADMINISTER AND DISTRIBUTE
24 THE ESTATE ACCORDING TO ITS TERMS. AN ORDER OF APPOINTMENT OF A PER-
25 SONAL REPRESENTATIVE, WHETHER ISSUED IN INFORMAL OR FORMAL PROCEEDINGS,
26 IS AUTHORITY TO DISTRIBUTE APPARENTLY INTESTATE ASSETS TO THE HEIRS OF
27 THE DECEDENT IF, AT THE TIME OF DISTRIBUTION, THE PERSONAL REPRESENTA-
28 TIVE IS NOT AWARE OF A PENDING TESTACY PROCEEDING, A PROCEEDING TO
29 VACATE AN ORDER ENTERED IN AN EARLIER TESTACY PROCEEDING, A FORMAL
30 PROCEEDING QUESTIONING HIS APPOINTMENT OR FITNESS TO CONTINUE, OR A
31 SUPERVISED ADMINISTRATION PROCEEDING. NOTHING IN THIS SECTION AFFECTS
32 THE DUTY OF THE PERSONAL REPRESENTATIVE TO ADMINISTER AND DISTRIBUTE
33 THE ESTATE IN ACCORDANCE WITH THE RIGHTS OF CLAIMANTS, THE SURVIVING

1 SPOUSE, ANY MINOR AND DEPENDENT CHILDREN AND ANY PRETERMITTED CHILD OF
2 THE DECEDENT AS DESCRIBED ELSEWHERE IN THIS TITLE.

3 C. EXCEPT AS TO PROCEEDINGS WHICH DO NOT SURVIVE THE DEATH OF
4 THE DECEDENT, A PERSONAL REPRESENTATIVE OF A DECEDENT DOMICILED IN THIS
5 STATE AT HIS DEATH HAS THE SAME STANDING TO SUE AND BE SUE IN THE COURTS
6 OF THIS STATE AND THE COURTS OF ANY OTHER JURISDICTION AS HIS DECEDENT
7 HAD IMMEDIATELY PRIOR TO DEATH.

8 14-3704. Personal representative to proceed without court
9 order; exception

10 A PERSONAL REPRESENTATIVE SHALL PROCEED EXPEDITIOUSLY WITH THE
11 SETTLEMENT AND DISTRIBUTION OF A DECEDENT'S ESTATE AND, EXCEPT AS OTHER-
12 WISE SPECIFIED OR ORDERED IN REGARD TO A SUPERVISED PERSONAL REPRESENTATIVE,
13 DO SO WITHOUT ADJUDICATION, ORDER OR DIRECTION OF THE COURT,
14 BUT HE MAY INVOKE THE JURISDICTION OF THE COURT, IN PROCEEDINGS AUTHO-
15 RIZED BY THIS TITLE, TO RESOLVE QUESTIONS CONCERNING THE ESTATE OR ITS
16 ADMINISTRATION.

17 14-3705. Duty of personal representative; information to
18 heirs and devisees

19 NOT LATER THAN TEN DAYS AFTER HIS APPOINTMENT EVERY PERSONAL REPRESENTATIVE,
20 EXCEPT ANY SPECIAL ADMINISTRATOR, SHALL GIVE INFORMATION
21 OF HIS APPOINTMENT TO THE HEIRS AND DEVISEES, INCLUDING, IF THERE HAS
22 BEEN NO FORMAL TESTACY PROCEEDING AND IF THE PERSONAL REPRESENTATIVE
23 WAS APPOINTED ON THE ASSUMPTION THAT THE DECEDENT DIED INTESTATE, THE
24 DEVISEES IN ANY WILL MENTIONED IN THE APPLICATION FOR APPOINTMENT OF
25 A PERSONAL REPRESENTATIVE. THE INFORMATION SHALL BE DELIVERED OR SENT
26 BY ORDINARY MAIL TO EACH OF THE HEIRS AND DEVISEES WHOSE ADDRESS IS
27 REASONABLY AVAILABLE TO THE PERSONAL REPRESENTATIVE. THE DUTY DOES NOT
28 EXTEND TO REQUIRE INFORMATION TO PERSONS WHO HAVE BEEN ADJUDICATED IN
29 A PRIOR FORMAL TESTACY PROCEEDING TO HAVE NO INTEREST IN THE ESTATE.
30 THE INFORMATION SHALL INCLUDE THE NAME AND ADDRESS OF THE PERSONAL REPRESENTATIVE,
31 INDICATE THAT IT IS BEING SENT TO PERSONS WHO HAVE OR MAY
32 HAVE SOME INTEREST IN THE ESTATE BEING ADMINISTERED, INDICATE WHETHER
33 BOND HAS BEEN FILED, AND DESCRIBE THE COURT WHERE PAPERS RELATING TO

1 THE ESTATE ARE ON FILE. THE PERSONAL REPRESENTATIVE'S FAILURE TO GIVE
2 THIS INFORMATION IS A BREACH OF HIS DUTY TO THE PERSONS CONCERNED BUT
3 DOES NOT AFFECT THE VALIDITY OF HIS APPOINTMENT, HIS POWERS OR OTHER
4 DUTIES. A PERSONAL REPRESENTATIVE MAY INFORM OTHER PERSONS OF HIS AP-
5 POINTMENT BY DELIVERY OR ORDINARY FIRST CLASS MAIL.

6 14-3706. Duty of personal representative; inventory and
7 appraisement

8 WITHIN THREE MONTHS AFTER HIS APPOINTMENT, A PERSONAL REPRESENTATIVE,
9 WHO IS NOT A SPECIAL ADMINISTRATOR OR A SUCCESSOR TO ANOTHER
10 REPRESENTATIVE WHO HAS PREVIOUSLY DISCHARGED THIS DUTY, SHALL PREPARE
11 AND FILE OR MAIL AN INVENTORY OF PROPERTY OWNED BY THE DECEDENT AT THE
12 TIME OF HIS DEATH, LISTING IT WITH REASONABLE DETAIL, AND INDICATING
13 AS TO EACH LISTED ITEM, ITS FAIR MARKET VALUE AS OF THE DATE OF THE
14 DECEDENT'S DEATH, ITS NATURE AS COMMUNITY OR SEPARATE PROPERTY AND THE
15 TYPE AND AMOUNT OF ANY ENCUMBRANCE THAT MAY EXIST WITH REFERENCE TO
16 ANY ITEM. THE PERSONAL REPRESENTATIVE SHALL SEND A COPY OF THE INVENTORY
17 TO INTERESTED PERSONS WHO REQUEST IT, OR HE MAY FILE THE ORIGINAL
18 OF THE INVENTORY WITH THE COURT.

19 14-3707. Employment of appraisers

20 THE PERSONAL REPRESENTATIVE MAY EMPLOY A QUALIFIED AND DISINTERESTED
21 APPRAISER TO ASSIST HIM IN ASCERTAINING THE FAIR MARKET VALUE AS
22 OF THE DATE OF THE DECEDENT'S DEATH OF ANY ASSET THE VALUE OF WHICH
23 MAY BE SUBJECT TO REASONABLE DOUBT. DIFFERENT PERSONS MAY BE EMPLOYED
24 TO APPRAISE DIFFERENT KINDS OF ASSETS INCLUDED IN THE ESTATE. THE
25 NAMES AND ADDRESSES OF ANY APPRAISER SHALL BE INDICATED ON THE INVENTORY
26 WITH THE ITEM OR ITEMS HE APPRAISED.

27 14-3708. Duty of personal representative; supplementary
28 inventory

29 IF ANY PROPERTY NOT INCLUDED IN THE ORIGINAL INVENTORY COMES TO
30 THE KNOWLEDGE OF A PERSONAL REPRESENTATIVE OR IF THE PERSONAL REPRESENTATIVE
31 LEARNS THAT THE VALUE OR DESCRIPTION INDICATED IN THE ORIGINAL
32 INVENTORY FOR ANY ITEM IS ERRONEOUS OR MISLEADING, HE SHALL MAKE A SUPPLEMENTARY
33 INVENTORY OR APPRAISEMENT SHOWING THE MARKET VALUE AS OF

1 THE DATE OF THE DECEDENT'S DEATH OF THE NEW ITEM OR THE REVISED MARKET
2 VALUE OR DESCRIPTIONS, AND THE APPRAISERS OR OTHER DATA RELIED UPON, IF
3 ANY, AND FILE IT WITH THE COURT IF THE ORIGINAL INVENTORY WAS FILED,
4 OR FURNISH COPIES THEREOF OR INFORMATION THEREOF TO PERSONS INTERESTED
5 IN THE NEW INFORMATION.

6 14-3709. Duty of personal representative; possession of estate

7 EXCEPT AS OTHERWISE PROVIDED BY A DECEDENT'S WILL, EVERY PERSONAL
8 REPRESENTATIVE HAS A RIGHT TO, AND SHALL TAKE POSSESSION OR CONTROL OF,
9 THE DECEDENT'S PROPERTY, EXCEPT THAT ANY REAL PROPERTY OR TANGIBLE PER-
10 SONAL PROPERTY MAY BE LEFT WITH OR SURRENDERED TO THE PERSON PRESUM-
11 TIVELY ENTITLED THERETO UNLESS OR UNTIL, IN THE JUDGMENT OF THE PERSONAL
12 REPRESENTATIVE, POSSESSION OF THE PROPERTY BY HIM WILL BE NECESSARY FOR
13 PURPOSES OF ADMINISTRATION. THE REQUEST BY A PERSONAL REPRESENTATIVE
14 FOR DELIVERY OF ANY PROPERTY POSSESSED BY AN HEIR OR DEVISEE IS CON-
15 CLUSIVE EVIDENCE, IN ANY ACTION AGAINST THE HEIR OR DEVISEE FOR POS-
16 SESSION THEREOF, THAT THE POSSESSION OF THE PROPERTY BY THE PERSONAL
17 REPRESENTATIVE IS NECESSARY FOR PURPOSES OF ADMINISTRATION. THE
18 PERSONAL REPRESENTATIVE SHALL PAY TAXES ON, AND TAKE ALL STEPS REASON-
19 ABLY NECESSARY FOR THE MANAGEMENT, PROTECTION AND PRESERVATION OF, THE
20 ESTATE IN HIS POSSESSION. HE MAY MAINTAIN AN ACTION TO RECOVER POSSES-
21 SION OF PROPERTY OR TO DETERMINE THE TITLE THERETO.

22 14-3710. Power to avoid transfers; action to set aside
23 fraudulent conveyances

24 A. THE PROPERTY LIABLE FOR THE PAYMENT OF UNSECURED DEBTS OF A
25 DECEDENT INCLUDES ALL PROPERTY TRANSFERRED BY HIM BY ANY MEANS WHICH
26 IS IN LAW VOID OR VOIDABLE AS AGAINST HIS CREDITORS AND SUBJECT TO
27 PRIOR LIENS. THE RIGHT TO RECOVER THIS PROPERTY, SO FAR AS NECESSARY
28 FOR THE PAYMENT OF UNSECURED DEBTS OF THE DECEDENT, IS EXCLUSIVELY
29 IN THE PERSONAL REPRESENTATIVE.

30 B. WHEN THERE IS A DEFICIENCY OF ASSETS IN CUSTODY OF AN EXECUTOR
31 OR ADMINISTRATOR, AND DECEDENT IN HIS LIFETIME HAS CONVEYED OR TRANS-
32 FERRED PROPERTY, OR ANY RIGHTS OR INTERESTS THEREIN, WITH INTENT TO DE-
33 FRAUD CREDITORS, OR TO AVOID A RIGHT, DEBT OR DUTY OF ANY PERSON, OR

1 THE DATE OF THE DECEDENT'S DEATH OF THE NEW ITEM OR THE REVISED MARKET
2 VALUE OR DESCRIPTIONS, AND THE APPRAISERS OR OTHER DATA RELIED UPON, IF
3 ANY, AND FILE IT WITH THE COURT IF THE ORIGINAL INVENTORY WAS FILED,
4 OR FURNISH COPIES THEREOF OR INFORMATION THEREOF TO PERSONS INTERESTED
5 IN THE NEW INFORMATION.

6 14-3709. Duty of personal representative; possession of estate
7 EXCEPT AS OTHERWISE PROVIDED BY A DECEDENT'S WILL, EVERY PERSONAL
8 REPRESENTATIVE HAS A RIGHT TO, AND SHALL TAKE POSSESSION OR CONTROL OF,
9 THE DECEDENT'S PROPERTY, EXCEPT THAT ANY REAL PROPERTY OR TANGIBLE PER-
10 SONAL PROPERTY MAY BE LEFT WITH OR SURRENDERED TO THE PERSON PRESUM-
11 TIVELY ENTITLED THERETO UNLESS OR UNTIL, IN THE JUDGMENT OF THE PERSONAL
12 REPRESENTATIVE, POSSESSION OF THE PROPERTY BY HIM WILL BE NECESSARY FOR
13 PURPOSES OF ADMINISTRATION. THE REQUEST BY A PERSONAL REPRESENTATIVE
14 FOR DELIVERY OF ANY PROPERTY POSSESSED BY AN HEIR OR DEVISEE IS CON-
15 CLUSIVE EVIDENCE, IN ANY ACTION AGAINST THE HEIR OR DEVISEE FOR POS-
16 SESSION THEREOF, THAT THE POSSESSION OF THE PROPERTY BY THE PERSONAL
17 REPRESENTATIVE IS NECESSARY FOR PURPOSES OF ADMINISTRATION. THE
18 PERSONAL REPRESENTATIVE SHALL PAY TAXES ON, AND TAKE ALL STEPS REASON-
19 ABLY NECESSARY FOR THE MANAGEMENT, PROTECTION AND PRESERVATION OF, THE
20 ESTATE IN HIS POSSESSION. HE MAY MAINTAIN AN ACTION TO RECOVER POSSES-
21 SION OF PROPERTY OR TO DETERMINE THE TITLE THERETO.

22 14-3710. Power to avoid transfers; action to set aside
23 fraudulent conveyances

24 A. THE PROPERTY LIABLE FOR THE PAYMENT OF UNSECURED DEBTS OF A
25 DECEDENT INCLUDES ALL PROPERTY TRANSFERRED BY HIM BY ANY MEANS WHICH
26 IS IN LAW VOID OR VOIDABLE AS AGAINST HIS CREDITORS AND SUBJECT TO
27 PRIOR LIENS. THE RIGHT TO RECOVER THIS PROPERTY, SO FAR AS NECESSARY
28 FOR THE PAYMENT OF UNSECURED DEBTS OF THE DECEDENT, IS EXCLUSIVELY
29 IN THE PERSONAL REPRESENTATIVE.

30 B. WHEN THERE IS A DEFICIENCY OF ASSETS IN CUSTODY OF AN EXECUTOR
31 OR ADMINISTRATOR, AND DECEDENT IN HIS LIFETIME HAS CONVEYED OR TRANS-
32 FERRED PROPERTY, OR ANY RIGHTS OR INTERESTS THEREIN, WITH INTENT TO DE-
33 FRAUD CREDITORS, OR TO AVOID A RIGHT, DEBT OR DUTY OF ANY PERSON, OR

1 HAS CONVEYED OR TRANSFERRED THE PROPERTY SO THAT THE CONVEYANCE OR TRANS-
2 FER BY LAW IS VOID AS AGAINST CREDITORS, THE EXECUTOR OR ADMINISTRATOR
3 SHALL COMMENCE AND PROSECUTE AN ACTION FOR THE RECOVERY OF THE PROPERTY
4 FOR THE BENEFIT OF THE CREDITORS, AND SHALL RECOVER PROPERTY WHICH HAS
5 BEEN SO CONVEYED OR TRANSFERRED, WHATEVER MAY HAVE BEEN THE MANNER OF
6 THE CONVEYANCE OR TRANSFER.

7 C. THE EXECUTOR OR ADMINISTRATOR IS NOT BOUND TO BRING THE ACTION
8 UNLESS THE CREDITORS PAY SUCH PART OF THE COSTS AND EXPENSES OF THE AC-
9 TION, OR GIVE SUCH SURETY TO THE EXECUTOR OR ADMINISTRATOR THEREFOR AS
10 THE COURT ON APPLICATION BY THE CREDITORS MAY DIRECT.

11 D. THE PROPERTY RECOVERED SHALL BE SUBJECT TO PAYMENT OF THE
12 DEBTS OF DECEDENT AS OTHER PROPERTY IN CUSTODY OF THE EXECUTOR OR ADMIN-
13 ISTRATOR.

14 14-3711. Powers of personal representatives; in general
15 UNTIL TERMINATION OF HIS APPOINTMENT A PERSONAL REPRESENTATIVE
16 HAS THE SAME POWER OVER THE TITLE TO PROPERTY OF THE ESTATE THAT AN
17 ABSOLUTE OWNER WOULD HAVE, IN TRUST HOWEVER, FOR THE BENEFIT OF THE
18 CREDITORS AND OTHERS INTERESTED IN THE ESTATE. THIS POWER MAY BE
19 EXERCISED WITHOUT NOTICE, HEARING OR ORDER OF COURT.

20 14-3712. Improper exercise of power; breach of fiduciary duty
21 IF THE EXERCISE OF POWER CONCERNING THE ESTATE IS IMPROPER, THE
22 PERSONAL REPRESENTATIVE IS LIABLE TO INTERESTED PERSONS FOR DAMAGE OR
23 LOSS RESULTING FROM BREACH OF HIS FIDUCIARY DUTY TO THE SAME EXTENT AS
24 A TRUSTEE OF AN EXPRESS TRUST. THE RIGHTS OF PURCHASERS AND OTHERS
25 DEALING WITH A PERSONAL REPRESENTATIVE SHALL BE DETERMINED AS PROVIDED
26 IN SECTIONS 14-3713 AND 14-3714.

27 14-3713. Sale, encumbrance or transaction involving conflict
28 of interest; voidable; exceptions

29 ANY SALE OR ENCUMBRANCE TO THE PERSONAL REPRESENTATIVE, HIS SPOUSE,
30 AGENT OR ATTORNEY, OR ANY CORPORATION OR TRUST IN WHICH HE HAS A SUB-
31 STANTIAL BENEFICIAL INTEREST, OR ANY TRANSACTION WHICH IS AFFECTED BY
32 A SUBSTANTIAL CONFLICT OF INTEREST ON THE PART OF THE PERSONAL REPRESENTATIVE,
33 IS VOIDABLE BY ANY PERSON INTERESTED IN THE ESTATE EXCEPT ONE

1 WHO HAS CONSENTED AFTER FAIR DISCLOSURE, UNLESS EITHER OF THE FOLLOWING:
2 1. THE WILL OR A CONTRACT ENTERED INTO BY THE DECEDENT EXPRESSLY
3 AUTHORIZED THE TRANSACTION.

4 2. THE TRANSACTION IS APPROVED BY THE COURT AFTER NOTICE TO
5 INTERESTED PERSONS.

6 14-3714. Persons dealing with personal representative;
7 protection

8 A PERSON WHO IN GOOD FAITH EITHER ASSISTS OR DEALS WITH ANOTHER
9 PERSON ACTING AS A PERSONAL REPRESENTATIVE, ON THE BASIS OF A COPY OF
10 LETTERS CERTIFIED BY OR UNDER THE DIRECTION OF THE COURT OR AN OFFICER
11 THEREOF WITHIN SIXTY DAYS OF THE TRANSACTION, IS PROTECTED AS IF THE
12 PERSONAL REPRESENTATIVE PROPERLY EXERCISED HIS POWER AND EVEN THOUGH
13 THE AUTHORITY OF THAT PERSON AS PERSONAL REPRESENTATIVE HAS BEEN TERMI-
14 NATED. THE FACT THAT A PERSON KNOWINGLY DEALS WITH ONE WHO PURPORTS
15 TO ACT AS A PERSONAL REPRESENTATIVE DOES NOT ALONE REQUIRE THE PERSON
16 TO INQUIRE INTO THE EXISTENCE OF A POWER, THE PROPRIETY OF ITS EXERCISE,
17 OR THE CURRENT AUTHORITY OF THE PURPORTED PERSONAL REPRESENTATIVE.
18 EXCEPT FOR RESTRICTIONS ON POWERS OF SUPERVISED PERSONAL REPRESENTATIVES
19 WHICH ARE ENDORSED ON LETTERS AS PROVIDED IN SECTION 14-3504, NO PRO-
20 VISION IN ANY WILL OR ORDER OF COURT PURPORTING TO LIMIT THE POWER OF
21 A PERSONAL REPRESENTATIVE IS EFFECTIVE EXCEPT AS TO PERSONS WITH ACTUAL
22 KNOWLEDGE THEREOF. A PERSON IS NOT BOUND TO SEE TO THE PROPER APPLI-
23 CATION OF ESTATE ASSETS PAID OR DELIVERED TO A PERSONAL REPRESENTATIVE.
24 THE PROTECTION HERE EXPRESSED EXTENDS TO INSTANCES IN WHICH SOME PRO-
25 CEDURAL IRREGULARITY OR JURISDICTIONAL DEFECT OCCURRED IN PROCEEDINGS
26 LEADING TO THE ISSUANCE OF LETTERS, INCLUDING A CASE IN WHICH THE
27 ALLEGED DECEDENT IS FOUND TO BE ALIVE. THE PROTECTION HERE EXPRESSED
28 IS NOT BY SUBSTITUTION FOR THAT PROVIDED BY COMPARABLE PROVISIONS OF
29 THE LAWS RELATING TO COMMERCIAL TRANSACTIONS AND LAWS SIMPLIFYING
30 TRANSFERS OF SECURITIES BY FIDUCIARIES.

31 14-3715. Transactions authorized for personal representatives;
32 exceptions

33 EXCEPT AS RESTRICTED OR OTHERWISE PROVIDED BY THE WILL OR BY AN

1 ORDER IN A FORMAL PROCEEDING AND SUBJECT TO THE PRIORITIES STATED IN
2 SECTION 14-3902, A PERSONAL REPRESENTATIVE, ACTING REASONABLY FOR THE
3 BENEFIT OF THE INTERESTED PERSONS, MAY PROPERLY:

- 4 1. RETAIN ASSETS OWNED BY THE DECEDENT PENDING DISTRIBUTION OR
5 LIQUIDATION INCLUDING THOSE IN WHICH THE REPRESENTATIVE IS PERSONALLY
6 INTERESTED OR WHICH ARE OTHERWISE IMPROPER FOR TRUST INVESTMENT.
- 7 2. RECEIVE ASSETS FROM FIDUCIARIES OR OTHER SOURCES.
- 8 3. PERFORM, COMPROMISE OR REFUSE PERFORMANCE OF THE DECEDENT'S
9 CONTRACTS THAT CONTINUE AS OBLIGATIONS OF THE ESTATE, AS HE MAY DETER-
10 MINE UNDER THE CIRCUMSTANCES. IN PERFORMING ENFORCEABLE CONTRACTS
11 BY THE DECEDENT TO CONVEY OR LEASE LAND, THE PERSONAL REPRESENTATIVE,
12 AMONG OTHER POSSIBLE COURSES OF ACTION, MAY EITHER:
 - 13 (a) EXECUTE AND DELIVER A DEED OF CONVEYANCE FOR CASH PAYMENT OF
14 ALL SUMS REMAINING DUE ON THE PURCHASER'S NOTE FOR THE SUM REMAINING DUE
15 SECURED BY A MORTGAGE OR DEED OF TRUST ON THE LAND.
 - 16 (b) DELIVER A DEED IN ESCROW WITH DIRECTIONS THAT THE PROCEEDS,
17 WHEN PAID IN ACCORDANCE WITH THE ESCROW AGREEMENT, BE PAID TO THE SUC-
18 CESSORS OF THE DECEDENT, AS DESIGNATED IN THE ESCROW AGREEMENT.
- 19 4. SATISFY WRITTEN CHARITABLE PLEDGES OF THE DECEDENT IRRESPEC-
20 TIVE OF WHETHER THE PLEDGES CONSTITUTED BINDING OBLIGATIONS OF THE DE-
21 CEDENT OR WERE PROPERLY PRESENTED AS CLAIMS, IF IN THE JUDGMENT OF THE
22 PERSONAL REPRESENTATIVE THE DECEDENT WOULD HAVE WANTED THE PLEDGES
23 COMPLETED UNDER THE CIRCUMSTANCES.
- 24 5. IF FUNDS ARE NOT NEEDED TO MEET DEBTS AND EXPENSES CURRENTLY
25 PAYABLE AND ARE NOT IMMEDIATELY DISTRIBUTABLE, DEPOSIT OR INVEST LI-
26 QUID ASSETS OF THE ESTATE, INCLUDING MONIES RECEIVED FROM THE SALE OF
27 OTHER ASSETS, IN FEDERALLY INSURED INTEREST-BEARING ACCOUNTS, READILY
28 MARKETABLE SECURED LOAN ARRANGEMENTS OR OTHER PRUDENT INVESTMENTS WHICH
29 WOULD BE REASONABLE FOR USE BY TRUSTEES GENERALLY.
- 30 6. ACQUIRE OR DISPOSE OF AN ASSET, INCLUDING LAND IN THIS OR AN-
31 OTHER STATE, FOR CASH OR ON CREDIT AND AT PUBLIC OR PRIVATE SALE AND
32 MANAGE, DEVELOP, IMPROVE, EXCHANGE, PARTITION, CHANGE THE CHARACTER OF
33 OR ABANDON AN ESTATE ASSET.

1 7. MAKE ORDINARY OR EXTRAORDINARY REPAIRS OR ALTERATIONS IN
2 BUILDINGS OR OTHER STRUCTURES, DEMOLISH ANY IMPROVEMENTS, RAZE EXISTING
3 OR ERECT NEW PARTY WALLS OR BUILDINGS.
4 8. SUBDIVIDE, DEVELOP OR DEDICATE LAND TO PUBLIC USE, MAKE OR
5 OBTAIN THE VACATION OF PLATS AND ADJUST BOUNDARIES, ADJUST DIFFERENCES
6 IN VALUATION ON EXCHANGE OR PARTITION BY GIVING OR RECEIVING CONSIDER-
7 ATIONS OR DEDICATE EASEMENTS TO PUBLIC USE WITHOUT CONSIDERATION.
8 9. ENTER FOR ANY PURPOSE INTO A LEASE AS LESSOR OR LESSEE, WITH
9 OR WITHOUT OPTION TO PURCHASE OR RENEW, FOR A TERM WITHIN OR EXTENDING
10 BEYOND THE PERIOD OF ADMINISTRATION.
11 10. ENTER INTO A LEASE OR ARRANGEMENT FOR EXPLORATION AND REMOVAL
12 OF MINERALS OR OTHER NATURAL RESOURCES OR ENTER INTO A POOLING OR UNIT-
13 IZATION AGREEMENT.
14 11. ABANDON PROPERTY WHEN, IN THE OPINION OF THE PERSONAL REPRESENTATIVE,
15 IT IS VALUELESS, IS SO ENCUMBERED, OR IS IN CONDITION THAT
16 IT IS OF NO BENEFIT TO THE ESTATE.
17 12. VOTE STOCKS OR OTHER SECURITIES IN PERSON OR BY GENERAL OR
18 LIMITED PROXY.
19 13. PAY CALLS, ASSESSMENTS, AND OTHER SUMS CHARGEABLE OR ACCRUING
20 AGAINST OR ON ACCOUNT OF SECURITIES, UNLESS BARRED BY THE PROVISIONS
21 RELATING TO CLAIMS.
22 14. HOLD A SECURITY IN THE NAME OF A NOMINEE OR IN OTHER FORM
23 WITHOUT DISCLOSURE OF THE INTEREST OF THE ESTATE BUT THE PERSONAL REPRESENTATIVE
24 IS LIABLE FOR ANY ACT OF THE NOMINEE IN CONNECTION WITH
25 THE SECURITY SO HELD.
26 15. INSURE THE ASSETS OF THE ESTATE AGAINST DAMAGE, LOSS AND
27 LIABILITY AND HIMSELF AGAINST LIABILITY AS TO THIRD PERSONS.
28 16. BORROW MONEY WITH OR WITHOUT SECURITY TO BE REPAYED FROM THE
29 ESTATE ASSETS OR OTHERWISE, AND ADVANCE MONEY FOR THE PROTECTION OF
30 THE ESTATE.
31 17. EFFECT A FAIR AND REASONABLE COMPROMISE WITH ANY DEBTOR OR
32 OBLIGOR, OR EXTEND, RENEW OR IN ANY MANNER MODIFY THE TERMS OF ANY OBLI-
33 GATION OWING TO THE ESTATE. IF THE PERSONAL REPRESENTATIVE HOLDS A

- 1 MORTGAGE, PLEDGE OR OTHER LIEN UPON PROPERTY OF ANOTHER PERSON, HE MAY,
2 IN LIEU OF FORECLOSURE, ACCEPT A CONVEYANCE OR TRANSFER OF ENCUMBERED
3 ASSETS FROM THE OWNER THEREOF IN SATISFACTION OF THE INDEBTEDNESS SE-
4 CURED BY LIEN.
- 5 18. PAY TAXES, ASSESSMENTS, COMPENSATION OF THE PERSONAL REPRESENTATIVE AND OTHER EXPENSES INCIDENT TO THE ADMINISTRATION OF THE
6 ESTATE.
7
- 8 19. SELL OR EXERCISE STOCK SUBSCRIPTION OR CONVERSION RIGHTS,
9 AND CONSENT, DIRECTLY OR THROUGH A COMMITTEE OR OTHER AGENT, TO THE RE-
10 ORGANIZATION, CONSOLIDATION, MERGER, DISSOLUTION OR LIQUIDATION OF A
11 CORPORATION OR OTHER BUSINESS ENTERPRISE.
- 12 20. ALLOCATE ITEMS OF INCOME OR EXPENSE TO EITHER ESTATE INCOME
13 OR PRINCIPAL, AS PERMITTED OR PROVIDED BY LAW.
- 14 21. EMPLOY PERSONS, INCLUDING ATTORNEYS, AUDITORS, INVESTMENT
15 ADVISORS OR AGENTS, EVEN IF THEY ARE ASSOCIATED WITH THE PERSONAL REPRESENTATIVE, TO ADVISE OR ASSIST THE PERSONAL REPRESENTATIVE IN THE
16 PERFORMANCE OF HIS ADMINISTRATIVE DUTIES, ACT WITHOUT INDEPENDENT INVESTIGATION UPON THEIR RECOMMENDATIONS AND INSTEAD OF ACTING PERSONALLY,
17 EMPLOY ONE OR MORE AGENTS TO PERFORM ANY ACT OF ADMINISTRATION, WHETHER
18 OR NOT DISCRETIONARY.
19
- 20 22. PROSECUTE OR DEFEND CLAIMS, OR PROCEEDINGS IN ANY JURISDICTION FOR THE PROTECTION OF THE ESTATE AND OF THE PERSONAL REPRESENTATIVE
21 IN THE PERFORMANCE OF HIS DUTIES.
22
- 23 23. SELL, MORTGAGE OR LEASE ANY REAL OR PERSONAL PROPERTY OF THE
24 ESTATE OR ANY INTEREST THEREIN FOR CASH, CREDIT OR FOR PART CASH AND
25 PART CREDIT, AND WITH OR WITHOUT SECURITY FOR UNPAID BALANCES.
- 26 24. CONTINUE ANY UNINCORPORATED BUSINESS OR VENTURE IN WHICH THE
27 DECEDENT WAS ENGAGED AT THE TIME OF HIS DEATH:
28
- 29 (a) IN THE SAME BUSINESS FORM FOR A PERIOD OF NOT MORE THAN FOUR
30 MONTHS FROM THE DATE OF APPOINTMENT OF A GENERAL PERSONAL REPRESENTATIVE
31 IF CONTINUATION IS A REASONABLE MEANS OF PRESERVING THE VALUE OF THE
32 BUSINESS INCLUDING GOODWILL.
- 33 (b) IN THE SAME BUSINESS FORM FOR ANY ADDITIONAL PERIOD OF TIME

1 THAT MAY BE APPROVED BY ORDER OF THE COURT IN A FORMAL PROCEEDING TO
2 WHICH THE PERSONS INTERESTED IN THE ESTATE ARE PARTIES.

3 (c) THROUGHOUT THE PERIOD OF ADMINISTRATION IF THE BUSINESS IS
4 INCORPORATED BY THE PERSONAL REPRESENTATIVE AND IF NONE OF THE PROBABLE
5 DISTRIBUTEES OF THE BUSINESS WHO ARE COMPETENT ADULTS OBJECT TO ITS
6 INCORPORATION AND RETENTION IN THE ESTATE.

7 25. INCORPORATE ANY BUSINESS OR VENTURE IN WHICH THE DECEDENT WAS
8 ENGAGED AT THE TIME OF HIS DEATH.

9 26. PROVIDE FOR EXONERATION OF THE PERSONAL REPRESENTATIVE FROM
10 PERSONAL LIABILITY IN ANY CONTRACT ENTERED INTO ON BEHALF OF THE ESTATE.

11 27. SATISFY AND SETTLE CLAIMS AND DISTRIBUTE THE ESTATE AS PRO-
12 VIDED IN THIS TITLE.

13 14-3716. Powers and duties of successor personal
14 representative

15 A SUCCESSOR PERSONAL REPRESENTATIVE HAS THE SAME POWER AND DUTY
16 AS THE ORIGINAL PERSONAL REPRESENTATIVE TO COMPLETE THE ADMINISTRATION
17 AND DISTRIBUTION OF THE ESTATE, AS EXPEDITIOUSLY AS POSSIBLE, BUT HE
18 SHALL NOT EXERCISE ANY POWER EXPRESSLY MADE PERSONAL TO THE EXECUTOR
19 NAMED IN THE WILL.

20 14-3717. Co-representatives; when joint action required

21 IF TWO OR MORE PERSONS ARE APPOINTED CO-REPRESENTATIVES AND UN-
22 LESS THE WILL PROVIDES OTHERWISE, THE CONCURRENCE OF ALL IS REQUIRED
23 ON ALL ACTS CONNECTED WITH THE ADMINISTRATION AND DISTRIBUTION OF THE
24 ESTATE. THIS RESTRICTION DOES NOT APPLY WHEN ANY CO-REPRESENTATIVE
25 RECEIVES AND RECEIPTS FOR PROPERTY DUE THE ESTATE, WHEN THE CONCURRENCE
26 OF ALL CANNOT READILY BE OBTAINED IN THE TIME REASONABLY AVAILABLE FOR
27 EMERGENCY ACTION NECESSARY TO PRESERVE THE ESTATE, OR WHEN A CO-REPRE-
28 SENTATIVE HAS BEEN DELEGATED TO ACT FOR THE OTHERS. PERSONS DEALING
29 WITH A CO-REPRESENTATIVE IF ACTUALLY UNAWARE THAT ANOTHER HAS BEEN
30 APPOINTED TO SERVE WITH HIM OR IF ADVISED BY THE PERSONAL REPRESENTATIVE
31 WITH WHOM THEY DEAL THAT HE HAS AUTHORITY TO ACT ALONE FOR ANY OF THE
32 REASONS MENTIONED HEREIN, ARE AS FULLY PROTECTED AS IF THE PERSON WITH
33 WHOM THEY DEALT HAD BEEN THE SOLE PERSONAL REPRESENTATIVE.

1 14-3718. Powers of surviving personal representative

2 UNLESS THE TERMS OF THE WILL OTHERWISE PROVIDE, EVERY POWER
3 EXERCISABLE BY PERSONAL CO-REPRESENTATIVES MAY BE EXERCISED BY THE ONE
4 OR MORE REMAINING AFTER THE APPOINTMENT OF ONE OR MORE IS TERMINATED,
5 AND IF ONE OF TWO OR MORE NOMINATED AS CO-EXECUTORS IS NOT APPOINTED,
6 THOSE APPOINTED MAY EXERCISE ALL THE POWERS INCIDENT TO THE OFFICE.

7 14-3719. Compensation of personal representative

8 A PERSONAL REPRESENTATIVE IS ENTITLED TO REASONABLE COMPENSATION
9 FOR HIS SERVICES. IN DETERMINING THE REASONABLENESS OF COMPENSATION
10 IN AN ESTATE INVOLVING COMMUNITY PROPERTY ONLY THE DECEDENT'S SHARE
11 OF COMMUNITY PROPERTY SHALL BE TAKEN INTO ACCOUNT. IF A WILL PRO-
12 VIDES FOR COMPENSATION OF THE PERSONAL REPRESENTATIVE AND THERE IS NO
13 CONTRACT WITH THE DECEDENT REGARDING COMPENSATION, HE MAY RENOUNCE
14 THE PROVISION BEFORE QUALIFYING AND BE ENTITLED TO REASONABLE COMPEN-
15 SATION. A PERSONAL REPRESENTATIVE ALSO MAY RENOUNCE HIS RIGHT TO ALL
16 OR ANY PART OF THE COMPENSATION. A WRITTEN RENUNCIATION OF FEE MAY
17 BE FILED WITH THE COURT.

18 14-3720. Expenses in estate litigation

19 IF ANY PERSONAL REPRESENTATIVE OR PERSON NOMINATED AS PERSONAL
20 REPRESENTATIVE DEFENDS OR PROSECUTES ANY PROCEEDING IN GOOD FAITH,
21 WHETHER SUCCESSFUL OR NOT HE IS ENTITLED TO RECEIVE FROM THE ESTATE
22 HIS NECESSARY EXPENSES AND DISBURSEMENTS INCLUDING REASONABLE ATTORNEYS'
23 FEES INCURRED.

24 14-3721. Proceedings for review of employment of
25 agents and compensation of personal
26 representatives and employees of
27 estate

28 AFTER NOTICE TO ALL INTERESTED PERSONS OR ON PETITION OF AN IN-
29 TERESTED PERSON OR ON APPROPRIATE MOTION IF ADMINISTRATION IS SUPER-
30 VISED, THE PROPRIETY OF EMPLOYMENT OF ANY PERSON BY A PERSONAL REPRE-
31 SENTATIVE INCLUDING ANY ATTORNEY, AUDITOR, INVESTMENT ADVISOR OR OTHER
32 SPECIALIZED AGENT OR ASSISTANT, THE REASONABLENESS OF THE COMPENSATION
33 OF ANY PERSON SO EMPLOYED, OR THE REASONABLENESS OF THE COMPENSATION

1 DETERMINED BY THE PERSONAL REPRESENTATIVE FOR HIS OWN SERVICES, MAY BE
2 REVIEWED BY THE COURT. ANY PERSON WHO HAS RECEIVED EXCESSIVE COMPEN-
3 SATION FROM AN ESTATE FOR SERVICES RENDERED MAY BE ORDERED TO MAKE
4 APPROPRIATE REFUNDS.

5 ARTICLE 8. CREDITORS' CLAIMS

6 14-3801. Notice to creditors

7 UNLESS NOTICE HAS ALREADY BEEN GIVEN UNDER THIS SECTION, A
8 PERSONAL REPRESENTATIVE UPON HIS APPOINTMENT SHALL PUBLISH A NOTICE
9 ONCE A WEEK FOR THREE SUCCESSIVE WEEKS IN A NEWSPAPER OF GENERAL
10 CIRCULATION IN THE COUNTY ANNOUNCING HIS APPOINTMENT AND ADDRESS AND
11 NOTIFYING CREDITORS OF THE ESTATE TO PRESENT THEIR CLAIMS WITHIN FOUR
12 MONTHS AFTER THE DATE OF THE FIRST PUBLICATION OF THE NOTICE OR BE
13 FOREVER BARRED.

14 14-3802. Statutes of limitations

15 UNLESS AN ESTATE IS INSOLVENT THE PERSONAL REPRESENTATIVE, WITH
16 THE CONSENT OF ALL SUCCESSORS, MAY WAIVE ANY DEFENSE OF LIMITATIONS
17 AVAILABLE TO THE ESTATE. IF THE DEFENSE IS NOT WAIVED, NO CLAIM WHICH
18 WAS BARRED BY ANY STATUTE OF LIMITATIONS AT THE TIME OF THE DECEDENT'S
19 DEATH SHALL BE ALLOWED OR PAID. THE RUNNING OF ANY STATUTE OF LIMITA-
20 TIONS MEASURED FROM SOME OTHER EVENT THAN DEATH AND ADVERTISEMENT FOR
21 CLAIMS AGAINST A DECEDENT IS SUSPENDED DURING THE FOUR MONTHS FOLLOWING
22 THE DECEDENT'S DEATH BUT RESUMES THEREAFTER AS TO CLAIMS NOT BARRED
23 PURSUANT TO THE SECTIONS WHICH FOLLOW. FOR PURPOSES OF ANY STATUTE
24 OF LIMITATIONS, THE PROPER PRESENTATION OF A CLAIM UNDER SECTION 14-
25 3804 IS EQUIVALENT TO COMMENCEMENT OF A PROCEEDING ON THE CLAIM.

26 14-3803. Limitations on presentation of claims

27 A. ALL CLAIMS AGAINST A DECEDENT'S ESTATE WHICH AROSE BEFORE
28 THE DEATH OF THE DECEDENT, INCLUDING CLAIMS OF THE STATE AND ANY
29 SUBDIVISION THEREOF, WHETHER DUE OR TO BECOME DUE, ABSOLUTE OR CON-
30 TINGENT, LIQUIDATED OR UNLIQUIDATED, FOUNDED ON CONTRACT, TORT OR
31 OTHER LEGAL BASIS, IF NOT BARRED EARLIER BY OTHER STATUTE OF LIMITA-
32 TIONS, ARE BARRED AGAINST THE ESTATE, THE PERSONAL REPRESENTATIVE AND
33 THE HEIRS AND DEVISEES OF THE DECEDENT, UNLESS PRESENTED AS FOLLOWS:

1 1. WITHIN FOUR MONTHS AFTER THE DATE OF THE FIRST PUBLICATION
2 OF NOTICE TO CREDITORS IF NOTICE IS GIVEN IN COMPLIANCE WITH SECTION
3 14-3801, EXCEPT CLAIMS BARRED BY THE NONCLAIM STATUTE AT THE DECEDENT'S
4 DOMICILE BEFORE THE FIRST PUBLICATION FOR CLAIMS IN THIS STATE ARE
5 ALSO BARRED IN THIS STATE.

6 2. WITHIN THREE YEARS AFTER THE DECEDENT'S DEATH, IF NOTICE
7 TO CREDITORS HAS NOT BEEN PUBLISHED.

8 B. ALL CLAIMS OTHER THAN ADMINISTRATION EXPENSES AGAINST A
9 DECEDENT'S ESTATE WHICH ARISE AT OR AFTER THE DEATH OF THE DECEDENT,
10 INCLUDING CLAIMS OF THE STATE AND ANY SUBDIVISION THEREOF, WHETHER
11 DUE OR TO BECOME DUE, ABSOLUTE OR CONTINGENT, LIQUIDATED OR UNLIQUIDATED,
12 FOUNDED ON CONTRACT, TORT OR OTHER LEGAL BASIS, ARE BARRED
13 AGAINST THE ESTATE, THE PERSONAL REPRESENTATIVE AND THE HEIRS AND
14 DEVISEES OF THE DECEDENT, UNLESS PRESENTED AS FOLLOWS:

15 1. A CLAIM BASED ON A CONTRACT WITH THE PERSONAL REPRESENTATIVE,
16 WITHIN FOUR MONTHS AFTER PERFORMANCE BY THE PERSONAL REPRESENTATIVE
17 IS DUE.

18 2. ANY OTHER CLAIM, WITHIN FOUR MONTHS AFTER IT ARISES.

19 C. NOTHING IN THIS SECTION AFFECTS OR PREVENTS:

20 1. ANY PROCEEDING TO ENFORCE ANY MORTGAGE, PLEDGE OR OTHER
21 LIEN UPON PROPERTY OF THE ESTATE.

22 2. TO THE LIMITS OF THE INSURANCE PROTECTION ONLY, ANY PROCEED-
23 ING TO ESTABLISH LIABILITY OF THE DECEDENT OR THE PERSONAL REPRESENTA-
24 TIVE FOR WHICH HE IS PROTECTED BY LIABILITY INSURANCE.

25 14-3804. Manner of presentation of claims

26 CLAIMS AGAINST A DECEDENT'S ESTATE MAY BE PRESENTED AS FOLLOWS:

27 1. THE CLAIMANT MAY DELIVER OR MAIL TO THE PERSONAL REPRESENTATIVE
28 A WRITTEN STATEMENT OF THE CLAIM INDICATING ITS BASIS, THE
29 NAME AND ADDRESS OF THE CLAIMANT AND THE AMOUNT CLAIMED, OR MAY FILE
30 A WRITTEN STATEMENT OF THE CLAIM, IN THE FORM PRESCRIBED BY RULE, WITH
31 THE CLERK OF THE COURT. THE CLAIM IS DEEMED PRESENTED ON THE FIRST
32 TO OCCUR OF RECEIPT OF THE WRITTEN STATEMENT OF CLAIM BY THE PERSONAL
33 REPRESENTATIVE, OR THE FILING OF THE CLAIM WITH THE COURT. IF A CLAIM

1 IS NOT YET DUE, THE DATE WHEN IT WILL BECOME DUE SHALL BE STATED. IF
2 THE CLAIM IS CONTINGENT OR UNLIQUIDATED, THE NATURE OF THE UNCERTAINTY
3 SHALL BE STATED. IF THE CLAIM IS SECURED, THE SECURITY SHALL BE DE-
4 SCRIBED. FAILURE TO DESCRIBE CORRECTLY THE SECURITY, THE NATURE OF
5 ANY UNCERTAINTY, AND THE DUE DATE OF A CLAIM NOT YET DUE DOES NOT
6 INVALIDATE THE PRESENTATION MADE.

7 2. THE CLAIMANT MAY COMMENCE A PROCEEDING AGAINST THE PERSONAL
8 REPRESENTATIVE IN ANY COURT WHERE THE PERSONAL REPRESENTATIVE MAY BE
9 SUBJECTED TO JURISDICTION, TO OBTAIN PAYMENT OF HIS CLAIM AGAINST THE
10 ESTATE, BUT THE COMMENCEMENT OF THE PROCEEDING MUST OCCUR WITHIN THE
11 TIME LIMITED FOR PRESENTING THE CLAIM. NO PRESENTATION OF CLAIM IS
12 REQUIRED IN REGARD TO MATTERS CLAIMED IN PROCEEDINGS AGAINST THE DE-
13 CEDENT WHICH WERE PENDING AT THE TIME OF HIS DEATH.

14 3. IF A CLAIM IS PRESENTED UNDER PARAGRAPH 1, NO PROCEEDING
15 THEREON MAY BE COMMENCED MORE THAN SIXTY DAYS AFTER THE PERSONAL
16 REPRESENTATIVE HAS MAILED A NOTICE OF DISALLOWANCE, BUT, IN THE CASE
17 OF A CLAIM WHICH IS NOT PRESENTLY DUE OR WHICH IS CONTINGENT OR UN-
18 LIQUIDATED, THE PERSONAL REPRESENTATIVE MAY CONSENT TO AN EXTENSION
19 OF THE SIXTY DAY PERIOD, OR TO AVOID INJUSTICE THE COURT, ON PETITION,
20 MAY ORDER AN EXTENSION OF THE SIXTY DAY PERIOD, EXCEPT NO EXTENSION
21 MAY RUN BEYOND THE APPLICABLE STATUTE OF LIMITATIONS.

22 14-3805. Classification of claims

23 A. IF THE APPLICABLE ASSETS OF THE ESTATE ARE INSUFFICIENT TO
24 PAY ALL CLAIMS IN FULL, THE PERSONAL REPRESENTATIVE SHALL MAKE PAY-
25 MENT IN THE FOLLOWING ORDER:

26 1. COSTS AND EXPENSES OF ADMINISTRATION.

27 2. REASONABLE FUNERAL EXPENSES AND REASONABLE AND NECESSARY
28 MEDICAL AND HOSPITAL EXPENSES OF THE LAST ILLNESS OF THE DECEDENT,
29 INCLUDING COMPENSATION OF PERSONS ATTENDING HIM.

30 3. DEBTS AND TAXES WITH PREFERENCE UNDER FEDERAL LAW OR THE
31 LAWS OF THIS STATE.

32 4. ALL OTHER CLAIMS.

33 B. NO PREFERENCE SHALL BE GIVEN IN THE PAYMENT OF ANY CLAIM

1 OVER ANY OTHER CLAIM OF THE SAME CLASS AND A CLAIM DUE AND PAYABLE
2 SHALL NOT BE ENTITLED TO A PREFERENCE OVER CLAIMS NOT DUE.

3 14-3806. Allowance of claims

4 A. AS TO CLAIMS PRESENTED IN THE MANNER DESCRIBED IN SECTION
5 14-3804 WITHIN THE TIME LIMIT PRESCRIBED IN SECTION 14-3803, THE PER-
6 SONAL REPRESENTATIVE MAY MAIL A NOTICE TO ANY CLAIMANT STATING THAT THE
7 CLAIM HAS BEEN DISALLOWED. IF, AFTER ALLOWING OR DISALLOWING A CLAIM,
8 THE PERSONAL REPRESENTATIVE CHANGES HIS DECISION CONCERNING THE CLAIM,
9 HE SHALL NOTIFY THE CLAIMANT. THE PERSONAL REPRESENTATIVE MAY NOT
10 CHANGE A DISALLOWANCE OF A CLAIM AFTER THE TIME FOR THE CLAIMANT TO
11 FILE A PETITION FOR ALLOWANCE OR TO COMMENCE A PROCEEDING ON THE CLAIM
12 HAS RUN AND THE CLAIM HAS BEEN BARRED. EVERY CLAIM WHICH IS DISALLOWED
13 IN WHOLE OR IN PART BY THE PERSONAL REPRESENTATIVE IS BARRED SO FAR AS
14 NOT ALLOWED UNLESS THE CLAIMANT FILES A PETITION FOR ALLOWANCE IN THE
15 COURT OR COMMENCES A PROCEEDING AGAINST THE PERSONAL REPRESENTATIVE NOT
16 LATER THAN SIXTY DAYS AFTER THE MAILING OF THE NOTICE OF DISALLOWANCE
17 OR PARTIAL ALLOWANCE IF THE NOTICE WARNS THE CLAIMANT OF THE IMPENDING
18 BAR. FAILURE OF THE PERSONAL REPRESENTATIVE TO MAIL NOTICE TO A CLAIMANT
19 OF ACTION ON HIS CLAIM FOR SIXTY DAYS AFTER THE TIME FOR ORIGINAL PRE-
20 SENTATION OF THE CLAIM HAS EXPIRED HAS THE EFFECT OF A NOTICE OF AL-
21 LOWANCE.

22 B. UPON THE PETITION OF THE PERSONAL REPRESENTATIVE OR OF A
23 CLAIMANT IN A PROCEEDING FOR THE PURPOSE, THE COURT MAY ALLOW IN
24 WHOLE OR IN PART ANY CLAIM OR CLAIMS PRESENTED TO THE PERSONAL REP-
25 RESENTATIVE OR FILED WITH THE CLERK OF THE COURT IN DUE TIME AND NOT
26 BARRED BY SUBSECTION A OF THIS SECTION. NOTICE IN THIS PROCEEDING
27 SHALL BE GIVEN TO THE CLAIMANT, THE PERSONAL REPRESENTATIVE AND THOSE
28 OTHER PERSONS INTERESTED IN THE ESTATE AS THE COURT MAY DIRECT BY ORDER
29 ENTERED AT THE TIME THE PROCEEDING IS COMMENCED.

30 C. A JUDGMENT IN A PROCEEDING IN ANOTHER COURT AGAINST A PER-
31 SONAL REPRESENTATIVE TO ENFORCE A CLAIM AGAINST A DECEDENT'S ESTATE
32 IS AN ALLOWANCE OF THE CLAIM.

33 D. UNLESS OTHERWISE PROVIDED IN ANY JUDGMENT IN ANOTHER COURT
34 ENTERED AGAINST THE PERSONAL REPRESENTATIVE, ALLOWED CLAIMS BEAR

1 INTEREST AT THE LEGAL RATE FOR THE PERIOD COMMENCING SIXTY DAYS AFTER
2 THE TIME FOR ORIGINAL PRESENTATION OF THE CLAIM HAS EXPIRED UNLESS BASED
3 ON A CONTRACT MAKING A PROVISION FOR INTEREST, IN WHICH CASE THEY BEAR
4 INTEREST IN ACCORDANCE WITH THAT PROVISION.

5 14-3807. Payment of claims

6 A. UPON THE EXPIRATION OF FOUR MONTHS FROM THE DATE OF THE
7 FIRST PUBLICATION OF THE NOTICE TO CREDITORS, THE PERSONAL REPRESENTATIVE SHALL PROCEED TO PAY THE CLAIMS ALLOWED AGAINST THE ESTATE IN
8 THE ORDER OF PRIORITY PRESCRIBED, AFTER MAKING PROVISION FOR HOMESTEAD,
9 FAMILY AND SUPPORT ALLOWANCES, FOR CLAIMS ALREADY PRESENTED WHICH HAVE
10 NOT YET BEEN ALLOWED OR WHOSE ALLOWANCE HAS BEEN APPEALED, AND FOR
11 UNBARRED CLAIMS WHICH MAY YET BE PRESENTED, INCLUDING COSTS AND EXPENSES OF ADMINISTRATION. BY PETITION TO THE COURT IN A PROCEEDING
12 FOR THE PURPOSE, OR BY APPROPRIATE MOTION IF THE ADMINISTRATION IS
13 SUPERVISED, A CLAIMANT WHOSE CLAIM HAS BEEN ALLOWED BUT NOT PAID AS
14 PROVIDED HEREIN MAY SECURE AN ORDER DIRECTING THE PERSONAL REPRESENTATIVE TO PAY THE CLAIM TO THE EXTENT THAT FUNDS OF THE ESTATE ARE
15 AVAILABLE FOR THE PAYMENT.

16 B. THE PERSONAL REPRESENTATIVE AT ANY TIME MAY PAY ANY JUST
17 CLAIM WHICH HAS NOT BEEN BARRED, WITH OR WITHOUT FORMAL PRESENTATION,
18 BUT HE IS PERSONALLY LIABLE TO ANY OTHER CLAIMANT WHOSE CLAIM IS
19 ALLOWED AND WHO IS INJURED BY SUCH PAYMENT IF:

20 1. THE PAYMENT WAS MADE BEFORE THE EXPIRATION OF THE TIME LIMIT
21 STATED IN SUBSECTION A AND THE PERSONAL REPRESENTATIVE FAILED TO REQUIRE
22 THE PAYEE TO GIVE ADEQUATE SECURITY FOR THE REFUND OF ANY OF THE PAYMENT NECESSARY TO PAY OTHER CLAIMANTS.

23 2. THE PAYMENT WAS MADE, DUE TO THE NEGLIGENCE OR WILFUL FAULT
24 OF THE PERSONAL REPRESENTATIVE, IN SUCH MANNER AS TO DEPRIVE THE
25 INJURED CLAIMANT OF HIS PRIORITY.

26 14-3808. Individual liability of personal representative

27 A. UNLESS OTHERWISE PROVIDED IN THE CONTRACT, A PERSONAL REPRESENTATIVE IS NOT INDIVIDUALLY LIABLE ON A CONTRACT PROPERLY ENTERED
28 INTO IN HIS FIDUCIARY CAPACITY IN THE COURSE OF ADMINISTRATION OF THE
29

1 ESTATE UNLESS HE FAILS TO REVEAL HIS REPRESENTATIVE CAPACITY AND
2 IDENTIFY THE ESTATE IN THE CONTRACT.

3 B. A PERSONAL REPRESENTATIVE IS INDIVIDUALLY LIABLE FOR OBLI-
4 GATIONS ARISING FROM OWNERSHIP OR CONTROL OF THE ESTATE OR FOR TORTS
5 COMMITTED IN THE COURSE OF ADMINISTRATION OF THE ESTATE ONLY IF HE
6 IS PERSONALLY AT FAULT.

7 C. CLAIMS BASED ON CONTRACTS ENTERED INTO BY A PERSONAL REP-
8 REPRESENTATIVE IN HIS FIDUCIARY CAPACITY, ON OBLIGATIONS ARISING FROM
9 OWNERSHIP OR CONTROL OF THE ESTATE OR ON TORTS COMMITTED IN THE COURSE
10 OF ESTATE ADMINISTRATION MAY BE ASSERTED AGAINST THE ESTATE BY PROCEED-
11 ING AGAINST THE PERSONAL REPRESENTATIVE IN HIS FIDUCIARY CAPACITY,
12 WHETHER OR NOT THE PERSONAL REPRESENTATIVE IS INDIVIDUALLY LIABLE
13 THEREFOR.

14 D. ISSUES OF LIABILITY AS BETWEEN THE ESTATE AND THE PERSONAL
15 REPRESENTATIVE INDIVIDUALLY MAY BE DETERMINED IN A PROCEEDING FOR
16 ACCOUNTING, SURCHARGE OR INDEMNIFICATION OR OTHER APPROPRIATE PRO-
17 CEEDING.

18 14-3809. Secured claims

19 PAYMENT OF A SECURED CLAIM IS UPON THE BASIS OF THE AMOUNT
20 ALLOWED IF THE CREDITOR SURRENDERS HIS SECURITY, OTHERWISE PAYMENT IS
21 UPON THE BASIS OF ONE OF THE FOLLOWING:

22 1. IF THE CREDITOR EXHAUSTS HIS SECURITY BEFORE RECEIVING PAY-
23 MENT, UNLESS PRECLUDED BY OTHER LAW, UPON THE AMOUNT OF THE CLAIM
24 ALLOWED LESS THE FAIR VALUE OF THE SECURITY.

25 2. IF THE CREDITOR DOES NOT HAVE THE RIGHT TO EXHAUST HIS
26 SECURITY OR HAS NOT DONE SO, UPON THE AMOUNT OF THE CLAIM ALLOWED
27 LESS THE VALUE OF THE SECURITY DETERMINED BY CONVERTING IT INTO
28 MONEY ACCORDING TO THE TERMS OF THE AGREEMENT PURSUANT TO WHICH THE
29 SECURITY WAS DELIVERED TO THE CREDITOR, OR BY THE CREDITOR AND PERSONAL
30 REPRESENTATIVE BY AGREEMENT, ARBITRATION, COMPROMISE OR LITIGATION.

31 14-3810. Claims not due and contingent or unliquidated claims

32 A. IF A CLAIM WHICH WILL BECOME DUE AT A FUTURE TIME OR A
33 CONTINGENT OR UNLIQUIDATED CLAIM BECOMES DUE OR CERTAIN BEFORE THE

1 DISTRIBUTION OF THE ESTATE, AND IF THE CLAIM HAS BEEN ALLOWED OR ES-
2 TABLISHED BY A PROCEEDING, IT IS PAID IN THE SAME MANNER AS PRESENTLY
3 DUE AND ABSOLUTE CLAIMS OF THE SAME CLASS.

4 B. IN OTHER CASES THE PERSONAL REPRESENTATIVE OR, ON PETITION
5 OF THE PERSONAL REPRESENTATIVE OR THE CLAIMANT IN A SPECIAL PROCEEDING
6 FOR THE PURPOSE, THE COURT MAY PROVIDE FOR PAYMENT AS FOLLOWS:

7 1. IF THE CLAIMANT CONSENTS, HE MAY BE PAID THE PRESENT OR
8 AGREED VALUE OF THE CLAIM, TAKING ANY UNCERTAINTY INTO ACCOUNT.

9 2. ARRANGEMENT FOR FUTURE PAYMENT, OR POSSIBLE PAYMENT, ON THE
10 HAPPENING OF THE CONTINGENCY OR ON LIQUIDATION MAY BE MADE BY CREATING
11 A TRUST, GIVING A MORTGAGE, OBTAINING A BOND OR SECURITY FROM A DIS-
12 TRIBUTE, OR OTHERWISE.

13 14-3811. Counterclaims

14 IN ALLOWING A CLAIM THE PERSONAL REPRESENTATIVE MAY DEDUCT ANY
15 COUNTERCLAIM WHICH THE ESTATE HAS AGAINST THE CLAIMANT. IN DETERMINING
16 A CLAIM AGAINST AN ESTATE A COURT SHALL REDUCE THE AMOUNT ALLOWED BY
17 THE AMOUNT OF ANY COUNTERCLAIMS AND, IF THE COUNTERCLAIMS EXCEED THE
18 CLAIM, RENDER A JUDGMENT AGAINST THE CLAIMANT IN THE AMOUNT OF THE
19 EXCESS. A COUNTERCLAIM, LIQUIDATED OR UNLIQUIDATED, MAY ARISE FROM
20 A TRANSACTION OTHER THAN THAT UPON WHICH THE CLAIM IS BASED. A
21 COUNTERCLAIM MAY GIVE RISE TO RELIEF EXCEEDING IN AMOUNT OR DIFFERENT
22 IN KIND FROM THAT SOUGHT IN THE CLAIM.

23 14-3812. Execution and levies prohibited

24 NO EXECUTION MAY ISSUE UPON NOR MAY ANY LEVY BE MADE AGAINST
25 ANY PROPERTY OF THE ESTATE UNDER ANY JUDGMENT AGAINST A DECEDENT OR
26 A PERSONAL REPRESENTATIVE, BUT THIS SECTION SHALL NOT BE CONSTRUED TO
27 PREVENT THE ENFORCEMENT OF MORTGAGES, PLEDGES OR LIENS UPON REAL OR
28 PERSONAL PROPERTY IN AN APPROPRIATE PROCEEDING.

29 14-3813. Compromise of claims

30 WHEN A CLAIM AGAINST THE ESTATE HAS BEEN PRESENTED IN ANY MANNER,
31 THE PERSONAL REPRESENTATIVE MAY, IF IT APPEARS FOR THE BEST INTEREST
32 OF THE ESTATE, COMPROMISE THE CLAIM, WHETHER DUE OR NOT DUE, ABSOLUTE
33 OR CONTINGENT, LIQUIDATED OR UNLIQUIDATED.

1 14-3814. Encumbered assets

2 IF ANY ASSETS OF THE ESTATE ARE ENCUMBERED BY MORTGAGE, PLEDGE,
3 LIEN OR OTHER SECURITY INTEREST, THE PERSONAL REPRESENTATIVE MAY PAY
4 THE ENCUMBRANCE OR ANY PART THEREOF, RENEW OR EXTEND ANY OBLIGATION
5 SECURED BY THE ENCUMBRANCE OR CONVEY OR TRANSFER THE ASSETS TO THE
6 CREDITOR IN SATISFACTION OF HIS LIEN, IN WHOLE OR IN PART, WHETHER
7 OR NOT THE HOLDER OF THE ENCUMBRANCE HAS FILED A CLAIM, IF IT APPEARS
8 TO BE FOR THE BEST INTEREST OF THE ESTATE. PAYMENT OF AN ENCUMBRANCE
9 DOES NOT INCREASE THE SHARE OF THE DISTRIBUTEES ENTITLED TO THE ENCUM-
10 BERED ASSETS UNLESS THE DISTRIBUTEES IS ENTITLED TO EXONERATION.

11 14-3815. Administration in more than one state; duty
12 of personal representative

13 A. ALL ASSETS OF ESTATES BEING ADMINISTERED IN THIS STATE ARE
14 SUBJECT TO ALL CLAIMS, ALLOWANCES AND CHARGES EXISTING OR ESTABLISHED
15 AGAINST THE PERSONAL REPRESENTATIVE WHEREVER APPOINTED.

16 B. IF THE ESTATE EITHER IN THIS STATE OR AS A WHOLE IS INSUF-
17 FICIENT TO COVER ALL FAMILY EXEMPTIONS AND ALLOWANCES DETERMINED BY
18 THE LAW OF THE DECEDENT'S DOMICILE, PRIOR CHARGES AND CLAIMS, AFTER
19 SATISFACTION OF THE EXEMPTIONS, ALLOWANCES AND CHARGES, EACH CLAIMANT
20 WHOSE CLAIM HAS BEEN ALLOWED EITHER IN THIS STATE OR ELSEWHERE IN
21 ADMINISTRATIONS OF WHICH THE PERSONAL REPRESENTATIVE IS AWARE, IS
22 ENTITLED TO RECEIVE PAYMENT OF AN EQUAL PROPORTION OF HIS CLAIM.
23 IF A PREFERENCE OR SECURITY IN REGARD TO A CLAIM IS ALLOWED IN ANOTHER
24 JURISDICTION BUT NOT IN THIS STATE, THE CREDITOR SO BENEFITED IS TO
25 RECEIVE DIVIDENDS FROM LOCAL ASSETS ONLY UPON THE BALANCE OF HIS
26 CLAIM AFTER DEDUCTING THE AMOUNT OF THE BENEFIT.

27 C. IN CASE THE FAMILY EXEMPTIONS AND ALLOWANCES, PRIOR CHARGES
28 AND CLAIMS OF THE ENTIRE ESTATE EXCEED THE TOTAL VALUE OF THE PORTIONS
29 OF THE ESTATE BEING ADMINISTERED SEPARATELY AND THIS STATE IS NOT THE
30 STATE OF THE DECEDENT'S LAST DOMICILE, THE CLAIMS ALLOWED IN THIS
31 STATE SHALL BE PAID THEIR PROPORTION IF LOCAL ASSETS ARE ADEQUATE FOR
32 THE PURPOSE, AND THE BALANCE OF LOCAL ASSETS SHALL BE TRANSFERRED TO
33 THE DOMICILIARY PERSONAL REPRESENTATIVE. IF LOCAL ASSETS ARE NOT

1 SUFFICIENT TO PAY ALL CLAIMS ALLOWED IN THIS STATE THE AMOUNT TO WHICH
2 THEY ARE ENTITLED, LOCAL ASSETS SHALL BE MARSHALLED SO THAT EACH CLAIM
3 ALLOWED IN THIS STATE IS PAID ITS PROPORTION AS FAR AS POSSIBLE, AFTER
4 TAKING INTO ACCOUNT ALL DIVIDENDS ON CLAIMS ALLOWED IN THIS STATE FROM
5 ASSETS IN OTHER JURISDICTIONS.

6 14-3816. Final distribution to domiciliary representative

7 THE ESTATE OF A NONRESIDENT DECEDENT BEING ADMINISTERED BY A
8 PERSONAL REPRESENTATIVE APPOINTED IN THIS STATE SHALL, IF THERE IS A
9 PERSONAL REPRESENTATIVE OF THE DECEDENT'S DOMICILE WILLING TO RECEIVE
10 IT, BE DISTRIBUTED TO THE DOMICILIARY PERSONAL REPRESENTATIVE FOR THE
11 BENEFIT OF THE SUCCESSORS OF THE DECEDENT UNLESS:

12 1. BY VIRTUE OF THE DECEDENT'S WILL, IF ANY, AND APPLICABLE
13 CHOICE OF LAW RULES, THE SUCCESSORS ARE IDENTIFIED PURSUANT TO THE LOCAL
14 LAW OF THIS STATE WITHOUT REFERENCE TO THE LOCAL LAW OF THE DECEDENT'S
15 DOMICILE.

16 2. THE PERSONAL REPRESENTATIVE OF THIS STATE, AFTER REASONABLE
17 INQUIRY, IS UNAWARE OF THE EXISTENCE OR IDENTITY OF A DOMICILIARY PER-
18 SONAL REPRESENTATIVE.

19 3. THE COURT ORDERS OTHERWISE IN A PROCEEDING FOR A CLOSING
20 ORDER UNDER SECTION 14-3931 OR INCIDENT TO THE CLOSING OF A SUPERVISED
21 ADMINISTRATION.

22 IN OTHER CASES, DISTRIBUTION OF THE ESTATE OF A DECEDENT SHALL BE
23 MADE IN ACCORDANCE WITH THE OTHER ARTICLES OF THIS CHAPTER.

24 ARTICLE 9. SPECIAL PROVISIONS RELATING TO DISTRIBUTION

25 14-3901. Successors' rights if no administration

26 IN THE ABSENCE OF ADMINISTRATION, THE HEIRS AND DEVISEES ARE
27 ENTITLED TO THE ESTATE IN ACCORDANCE WITH THE TERMS OF A PROBATED
28 WILL OR THE LAWS OF INTESTATE SUCCESSION. DEVISEES MAY ESTABLISH
29 TITLE BY THE PROBATED WILL TO DEVISED PROPERTY. PERSONS ENTITLED TO
30 PROPERTY BY HOMESTEAD ALLOWANCE, EXEMPTION OR INTESTACY MAY ESTABLISH
31 TITLE THERETO BY PROOF OF THE DECEDENT'S OWNERSHIP, HIS DEATH AND
32 THEIR RELATIONSHIP TO THE DECEDENT. SUCCESSORS TAKE SUBJECT TO ALL
33 CHARGES INCIDENT TO ADMINISTRATION, INCLUDING THE CLAIMS OF CREDITORS

1 AND ALLOWANCES OF SURVIVING SPOUSE AND DEPENDENT CHILDREN, AND SUBJECT
2 TO THE RIGHTS OF OTHERS RESULTING FROM ABATEMENT, RETAINER, ADVANCE-
3 MENT AND ADEMPMENT.

4 14-3902. Distribution; order in which assets
5 appropriated; abatement

6 A. EXCEPT AS PROVIDED IN SUBSECTION B AND EXCEPT AS PROVIDED
7 IN CONNECTION WITH THE SHARE OF THE SURVIVING SPOUSE WHO ELECTS TO
8 TAKE AN ELECTIVE SHARE, SHARES OF DISTRIBUTEES ABATE, WITHOUT ANY
9 PREFERENCE OR PRICRITY AS BETWEEN REAL AND PERSONAL PROPERTY, IN
10 THE FOLLOWING ORDER:

- 11 1. PROPERTY NOT DISPOSED OF BY THE WILL.
- 12 2. RESIDUARY DEVISES.
- 13 3. GENERAL DEVISES.
- 14 4. SPECIFIC DEVISES.

15 FOR PURPOSES OF ABATEMENT, A GENERAL DEVISE CHARGED ON ANY SPECIFIC
16 PROPERTY OR FUND IS A SPECIFIC DEVISE TO THE EXTENT OF THE VALUE OF
17 THE PROPERTY ON WHICH IT IS CHARGED, AND UPON THE FAILURE OR INSUF-
18 FICIENCY OF THE PROPERTY ON WHICH IT IS CHARGED, A GENERAL DEVISE TO
19 THE EXTENT OF THE FAILURE OR INSUFFICIENCY. ABATEMENT WITHIN EACH
20 CLASSIFICATION IS IN PROPORTION TO THE AMOUNTS OF PROPERTY EACH OF THE
21 BENEFICIARIES WOULD HAVE RECEIVED IF FULL DISYRIBUTION OF THE PROPERTY
22 HAD BEEN MADE IN ACCORDANCE WITH THE TERMS OF THE WILL.

23 B. IF THE WILL EXPRESSES AN ORDER OF ABATEMENT, OR IF THE
24 TESTAMENTARY PLAN OR THE EXPRESS OR IMPLIED PURPOSE OF THE DEVISE
25 WOULD BE DEFEATED BY THE ORDER OF ABATEMENT STATED IN SUBSECTION A,
26 THE SHARES OF THE DISTRIBUTEES ABATE AS MAY BE FOUND NECESSARY TO
27 GIVE EFFECT TO THE INTENTION OF THE TESTATOR.

28 C. IF AN ESTATE OF A DECEDENT CONSISTS PARTLY OF SEPARATE PROP-
29 ERTY AND PARTLY OF COMMUNITY PROPERTY:

- 30 1. COMMUNITY DEBTS SHALL BE CHARGED AGAINST COMMUNITY PROPERTY.
- 31 2. SEPARATE DEBTS SHALL BE CHARGED AGAINST SEPARATE PROPERTY
32 AND AGAINST THE BALANCE OF DECEDENT'S HALF OF COMMUNITY PROPERTY.
- 33 3. EXPENSES OF ADMINISTRATION SHALL BE CHARGED AGAINST SEPARATE

1 PROPERTY AND DECEDENT'S HALF OF COMMUNITY PROPERTY IN PROPORTION TO
2 THE RELATIVE VALUE THEREOF, BUT ANY SPECIAL EXPENSES ATTRIBUTABLE TO
3 MANAGEMENT COMMUNITY PROPERTY MAY BE CHARGED AGAINST THE ENTIRE COM-
4 MUNITY PROPERTY.

5 D. IF THE SUBJECT OF A PREFERRED DEVISE IS SOLD OR USED INCIDENT
6 TO ADMINISTRATION, ABATEMENT SHALL BE ACHIEVED BY APPROPRIATE ADJUST-
7 MENTS IN, OR CONTRIBUTION FROM, OTHER INTERESTS IN THE REMAINING ASSETS.

8 14-3903. Right of retainer

9 THE AMOUNT OF A NONCONTINGENT INDEBTEDNESS OF A SUCCESSOR TO
10 THE ESTATE IF DUE, OR ITS PRESENT VALUE IF NOT DUE, SHALL BE OFFSET
11 AGAINST THE SUCCESSOR'S INTEREST, BUT THE SUCCESSOR HAS THE BENEFIT OF
12 ANY DEFENSE WHICH WOULD BE AVAILABLE TO HIM IN A DIRECT PROCEEDING FOR
13 RECOVERY OF THE DEBT.

14 14-3904. Interest on general pecuniary devise

15 UNLESS A CONTRARY INTENTION IS INDICATED BY THE WILL, GENERAL
16 PECUNIARY DEVISES BEAR INTEREST AT THE LEGAL RATE BEGINNING ONE YEAR
17 AFTER THE FIRST APPOINTMENT OF A PERSONAL REPRESENTATIVE UNTIL PAYMENT.

18 14-3905. Penalty clause for contest

19 A PROVISION IN A WILL PURPORTING TO PENALIZE ANY INTERESTED PER-
20 SON FOR CONTESTING THE WILL OR INSTITUTING OTHER PROCEEDINGS RELATING
21 TO THE ESTATE IS UNENFORCEABLE IF PROBABLE CAUSE EXISTS FOR INSTITUTING
22 PROCEEDINGS.

23 14-3906. Distribution in kind; valuation; method

24 A. UNLESS A CONTRARY INTENTION IS INDICATED BY THE WILL, THE
25 DISTRIBUTABLE ASSETS OF A DECEDENT'S ESTATE SHALL BE DISTRIBUTED IN
26 KIND TO THE EXTENT POSSIBLE THROUGH APPLICATION OF THE FOLLOWING PRO-
27 VISIONS:

28 1. A SPECIFIC DEVISEE IS ENTITLED TO DISTRIBUTION OF THE
29 THING DEVISED TO HIM, AND A SPOUSE OR CHILD WHO HAS SELECTED PARTICU-
30 LAR ASSETS OF AN ESTATE AS PROVIDED IN SECTION 14-2402 SHALL RECEIVE
31 THE ITEMS SELECTED.

32 2. ANY ALLOWANCE IN LIEU OF HOMESTEAD OR FAMILY ALLOWANCE OR
33 DEVISE PAYABLE IN MONEY MAY BE SATISFIED BY VALUE IN KIND IF:

1 (a) THE PERSON ENTITLED TO THE PAYMENT HAS NOT DEMANDED PAYMENT
2 IN CASH.
3 (b) THE PROPERTY DISTRIBUTED IN KIND IS VALUED AT FAIR MARKET
4 VALUE AS OF THE DATE OF ITS DISTRIBUTION.
5 (c) NO RESIDUARY DEVISEE HAS REQUESTED THAT THE ASSET IN QUESTION
6 REMAIN A PART OF THE RESIDUE OF THE ESTATE.
7 3. FOR THE PURPOSE OF VALUATION UNDER PARAGRAPH 2 OF THIS SEC-
8 TION SECURITIES REGULARLY TRADED ON RECOGNIZED EXCHANGES, IF DISTRIBUTED
9 IN KIND, ARE VALUED AT THE PRICE FOR THE LAST SALE OF LIKE SECURITIES
10 TRADED ON THE BUSINESS DAY PRIOR TO DISTRIBUTION, OR IF THERE WAS NO
11 SALE ON THAT DAY, AT THE MEDIAN BETWEEN AMOUNTS BID AND OFFERED AT THE
12 CLOSE OF THAT DAY. ASSETS CONSISTING OF SUMS OWED THE DECEDENT OR
13 THE ESTATE BY SOLVENT DEBTORS AS TO WHICH THERE IS NO KNOWN DISPUTE OR
14 DEFENSE ARE VALUED AT THE SUM DUE WITH ACCRUED INTEREST OR DISCOUNTED
15 TO THE DATE OF DISTRIBUTION. FOR ASSETS WHICH DO NOT HAVE READILY
16 ASCERTAINABLE VALUES, A VALUATION AS OF A DATE NOT MORE THAN THIRTY
17 DAYS PRIOR TO THE DATE OF DISTRIBUTION, IF OTHERWISE REASONABLE, CON-
18 TROLS. FOR PURPOSES OF FACILITATING DISTRIBUTION, THE PERSONAL REPRESENTATIVE
19 MAY ASCERTAIN THE VALUE OF THE ASSETS AS OF THE TIME OF THE
20 PROPOSED DISTRIBUTION IN ANY REASONABLE WAY, INCLUDING THE EMPLOYMENT
21 OF QUALIFIED APPRAISERS, EVEN IF THE ASSETS MAY HAVE BEEN PREVIOUSLY
22 APPRAISED.
23 4. THE RESIDUARY ESTATE SHALL BE DISTRIBUTED IN KIND IF THERE
24 IS NO OBJECTION TO THE PROPOSED DISTRIBUTION AND IT IS PRACTICABLE
25 TO DISTRIBUTE UNDIVIDED INTERESTS. IN OTHER CASES, RESIDUARY PROPERTY
26 MAY BE CONVERTED INTO CASH FOR DISTRIBUTION.
27 B. AFTER THE PROBABLE CHARGES AGAINST THE ESTATE ARE KNOWN, THE
28 PERSONAL REPRESENTATIVE MAY MAIL OR DELIVER A PROPOSAL FOR DISTRIBUTION
29 TO ALL PERSONS WHO HAVE A RIGHT TO OBJECT TO THE PROPOSED DISTRIBUTION.
30 THE RIGHT OF ANY DISTRIBUTE TO OBJECT TO THE PROPOSED DISTRIBUTION
31 ON THE BASIS OF THE KIND OR VALUE OF ASSET HE IS TO RECEIVE,
32 IF NOT WAIVED EARLIER IN WRITING, TERMINATES IF HE FAILS TO OBJECT IN
33 WRITING RECEIVED BY THE PERSONAL REPRESENTATIVE WITHIN THIRTY DAYS

1 AFTER MAILING OR DELIVERY OF THE PROPOSAL.

2 14-3907. Distribution in kind; evidence

3 IF DISTRIBUTION IN KIND IS MADE, THE PERSONAL REPRESENTATIVE
4 SHALL EXECUTE AN INSTRUMENT OR DEED OF DISTRIBUTION ASSIGNING, TRANS-
5 FERRING OR RELEASING THE ASSETS TO THE DISTRIBUTEES AS EVIDENCE OF THE
6 DISTRIBUTEES TITLE TO THE PROPERTY.

7 14-3908. Distribution; right or title of distributee

8 PROOF THAT A DISTRIBUTEES HAS RECEIVED AN INSTRUMENT OR DEED OF
9 DISTRIBUTION OF ASSETS IN KIND, OR PAYMENT IN DISTRIBUTION FROM A
10 PERSONAL REPRESENTATIVE, IS CONCLUSIVE EVIDENCE THAT THE DISTRIBUTEES
11 HAS SUCCEEDED TO THE INTEREST OF THE ESTATE IN THE DISTRIBUTED ASSETS,
12 AS AGAINST ALL PERSONS INTERESTED IN THE ESTATE, EXCEPT THAT THE
13 PERSONAL REPRESENTATIVE MAY RECOVER THE ASSETS OR THEIR VALUE IF THE
14 DISTRIBUTION WAS IMPROPER.

15 14-3909. Improper distribution; liability of
16 distributee

17 UNLESS THE DISTRIBUTION OR PAYMENT NO LONGER CAN BE QUESTIONED
18 BECAUSE OF ADJUDICATION, ESTOPPEL OR LIMITATION, A DISTRIBUTEES OF
19 PROPERTY OR MONEY IMPROPERLY DISTRIBUTED OR PAID, OR A CLAIMANT WHO
20 WAS IMPROPERLY PAID, IS LIABLE TO RETURN THE PROPERTY IMPROPERLY RE-
21 CEIVED AND ITS INCOME SINCE DISTRIBUTION IF HE HAS THE PROPERTY. IF
22 SUCH A DISTRIBUTEES DOES NOT HAVE THE PROPERTY, HE IS LIABLE TO RETURN
23 THE VALUE AS OF THE DATE OF DISPOSITION OF THE PROPERTY IMPROPERLY RE-
24 CEIVED AND ITS INCOME AND GAIN RECEIVED BY HIM.

25 14-3910. Purchasers from distributees protected

26 IF PROPERTY DISTRIBUTED IN KIND OR A SECURITY INTEREST THEREIN
27 IS ACQUIRED BY A PURCHASER OR LENDER, FOR VALUE FROM A DISTRIBUTEES
28 WHO HAS RECEIVED AN INSTRUMENT OR DEED OF DISTRIBUTION FROM THE
29 PERSONAL REPRESENTATIVE, THE PURCHASER OR LENDER TAKES TITLE FREE OF
30 ANY CLAIMS OF THE ESTATE AND INCURS NO PERSONAL LIABILITY TO THE ESTATE,
31 WHETHER OR NOT THE DISTRIBUTION WAS PROPER AND WHETHER OR NOT THE
32 AUTHORITY OF THE PERSONAL REPRESENTATIVE WAS TERMINATED PRIOR TO
33 EXECUTION OF THE INSTRUMENT OR DEED. TO BE PROTECTED UNDER THIS

1 PROVISION, A PURCHASER NEED NOT INQUIRE WHETHER A PERSONAL REPRESENTA-
2 TIVE ACTED PROPERLY IN MAKING THE DISTRIBUTION IN KIND OR WHETHER
3 THE AUTHORITY OF THE PERSONAL REPRESENTATIVE HAD TERMINATED PRIOR
4 TO THE DISTRIBUTION.

5 14-3911. Partition for purpose of distribution

6 WHEN TWO OR MORE HEIRS OR DEVISEES ARE ENTITLED TO DISTRIBUTION
7 OF UNDIVIDED INTERESTS IN ANY REAL OR PERSONAL PROPERTY OF THE ESTATE,
8 THE PERSONAL REPRESENTATIVE OR ONE OR MORE OF THE HEIRS OR DEVISEES
9 MAY PETITION THE COURT PRIOR TO THE FORMAL OR INFORMAL CLOSING OF THE
10 ESTATE, TO MAKE PARTITION. AFTER NOTICE TO THE INTERESTED HEIRS OR
11 DEVISEES, THE COURT SHALL PARTITION THE PROPERTY IN THE SAME MANNER
12 AS PROVIDED BY THE LAW FOR CIVIL ACTIONS OF PARTITION. THE COURT
13 MAY DIRECT THE PERSONAL REPRESENTATIVE TO SELL ANY PROPERTY WHICH
14 CANNOT BE PARTITIONED WITHOUT PREJUDICE TO THE OWNERS AND WHICH CANNOT
15 CONVENIENTLY BE ALLOTTED TO ANY ONE PARTY.

16 14-3912. Private agreements among successors to

17 decedent binding on personal representative

18 SUBJECT TO THE RIGHTS OF CREDITORS AND TAXING AUTHORITIES,
19 COMPETENT SUCCESSORS MAY AGREE AMONG THEMSELVES TO ALTER THE INTERESTS,
20 SHARES, OR AMOUNTS TO WHICH THEY ARE ENTITLED UNDER THE WILL OF THE
21 DECEDENT OR UNDER THE LAWS OF INTESTACY, IN ANY WAY THAT THEY PROVIDE
22 IN A WRITTEN CONTRACT EXECUTED BY ALL WHO ARE AFFECTED BY ITS PROVI-
23 SIONS. THE PERSONAL REPRESENTATIVE SHALL ABIDE BY THE TERMS OF THE
24 AGREEMENT SUBJECT TO HIS OBLIGATION TO ADMINISTER THE ESTATE FOR THE
25 BENEFIT OF CREDITORS, TO PAY ALL TAXES AND COSTS OF ADMINISTRATION,
26 AND TO CARRY OUT THE RESPONSIBILITIES OF HIS OFFICE FOR THE BENEFIT
27 OF ANY SUCCESSORS OF THE DECEDENT WHO ARE NOT PARTIES. PERSONAL REP-
28 RESENTATIVES OF DECEDENTS' ESTATES ARE NOT REQUIRED TO SEE TO THE
29 PERFORMANCE OF TRUSTS IF THE TRUSTEE THEREOF IS ANOTHER PERSON WHO
30 IS WILLING TO ACCEPT THE TRUST. ACCORDINGLY, TRUSTEES OF A TESTAMEN-
31 TARY TRUST ARE SUCCESSORS FOR THE PURPOSES OF THIS SECTION. THIS
32 SECTION DOES NOT RELIEVE TRUSTEES OF ANY DUTIES OWED TO BENEFICIARIES
33 OF TRUSTS.

1 14-3913. Distributions to trustee

2 A. BEFORE DISTRIBUTING TO A TRUSTEE, THE PERSONAL REPRESENTA-
3 TIVE MAY REQUIRE THAT THE TRUST BE REGISTERED IF THE STATE IN WHICH IT
4 IS TO BE ADMINISTERED PROVIDES FOR BOTH REGISTRATION AND THAT THE
5 TRUSTEE INFORM THE BENEFICIARIES AS PROVIDED IN SECTION 14-7303.

6 B. IF THE TRUST INSTRUMENT DOES NOT EXCUSE THE TRUSTEE FROM
7 GIVING BOND, THE PERSONAL REPRESENTATIVE MAY PETITION THE APPROPRIATE
8 COURT TO REQUIRE THAT THE TRUSTEE POST BOND IF HE APPREHENDS THAT
9 DISTRIBUTION MIGHT JEOPARDIZE THE INTERESTS OF PERSONS WHO ARE NOT
10 ABLE TO PROTECT THEMSELVES, AND HE MAY WITHHOLD DISTRIBUTION UNTIL
11 THE COURT HAS ACTED.

12 C. NO INFERENCE OF NEGLIGENCE ON THE PART OF THE PERSONAL REP-
13 REPRESENTATIVE SHALL BE DRAWN FROM HIS FAILURE TO EXERCISE THE AUTHORITY
14 CONFERRED BY SUBSECTIONS A AND B OF THIS SECTION.

15 14-3914. Disposition of unclaimed assets

16 A. IF AN HEIR, DEVISEE OR CLAIMANT CANNOT BE FOUND, THE PERSONAL
17 REPRESENTATIVE SHALL DISTRIBUTE THE SHARE OF THE MISSING PERSON TO
18 HIS CONSERVATOR, IF ANY, OTHERWISE IN CASH TO THE ESTATE TAX COMMISSIONER
19 FOR DEPOSIT INTO THE TREASURY OF THE STATE TO BE CREDITED TO THE
20 PERMANENT SCHOOL FUND.

21 B. IF A PERSON LATER APPEARS AND CLAIMS AS THE MISSING PERSON,
22 HE SHALL PROCEED IN THE SAME MANNER AS AN HEIR, DEVISEE OR LEGATEE
23 CLAIMING ESCHEATED PROPERTY UNDER SECTION 12-886 AND JUDGMENT AND
24 PAYMENT SHALL BE MADE IN THE SAME MANNER AS FOR ESCHEATED PROPERTY
25 UNDER SECTION 12-887.

26 14-3915. Distribution to person under disability

27 A PERSONAL REPRESENTATIVE MAY DISCHARGE HIS OBLIGATION TO DIS-
28 TRIBUTE TO ANY PERSON UNDER LEGAL DISABILITY BY DISTRIBUTING TO
29 HIS CONSERVATOR, OR ANY OTHER PERSON AUTHORIZED BY THIS TITLE OR
30 OTHERWISE TO GIVE A VALID RECEIPT AND DISCHARGE FOR THE DISTRIBUTION.

31 14-3916. (Blank)

32 ARTICLE 10. CLOSING ESTATES

33

1 14-3931. Formal proceedings terminating administration;
2 testate or intestate; order of general
3 protection

4 A. A PERSONAL REPRESENTATIVE OR ANY INTERESTED PERSON MAY PETI-
5 TION FOR AN ORDER OF COMPLETE SETTLEMENT OF THE ESTATE. THE PERSONAL
6 REPRESENTATIVE MAY PETITION AT ANY TIME, AND ANY OTHER INTERESTED
7 PERSON MAY PETITION AFTER ONE YEAR FROM THE APPOINTMENT OF THE ORIGINAL
8 PERSONAL REPRESENTATIVE EXCEPT THAT NO PETITION UNDER THIS SECTION
9 MAY BE ENTERTAINED UNTIL THE TIME FOR PRESENTING CLAIMS WHICH AROSE
10 PRIOR TO THE DEATH OF THE DECEDENT HAS EXPIRED. THE PETITION MAY
11 REQUEST THE COURT TO DETERMINE TESTACY, IF NOT PREVIOUSLY DETERMINED,
12 TO CONSIDER THE FINAL ACCOUNT OR COMPEL OR APPROVE AN ACCOUNTING AND
13 DISTRIBUTION, TO CONSTRUCE ANY WILL OR DETERMINE HEIRS AND ADJUDICATE
14 THE FINAL SETTLEMENT AND DISTRIBUTION OF THE ESTATE. NOTICE MUST
15 BE GIVEN TO ALL INTERESTED PERSONS, AND A COPY OF THE FINAL ACCOUNT
16 MUST ALSO BE SENT TO THE DISTRIBUTEES WHOSE INTERESTS ARE AFFECTED
17 THEREBY. AFTER HEARING THE COURT MAY ENTER AN ORDER OR ORDERS, ON
18 APPROPRIATE CONDITIONS, DETERMINING THE PERSONS ENTITLED TO DISTRIBU-
19 TION OF THE ESTATE, AND, AS CIRCUMSTANCES REQUIRE, APPROVING SETTLE-
20 MENT AND DIRECTING, APPROVING OR DECREETING DISTRIBUTION OF THE ESTATE
21 AND DISCHARGING THE PERSONAL REPRESENTATIVE FROM FURTHER CLAIM OR
22 DEMAND OF ANY INTERESTED PERSON.

23 B. IF ONE OR MORE HEIRS OR DEVISEES WERE OMITTED AS PARTIES
24 IN, OR WERE NOT GIVEN NOTICE OF, A PREVIOUS FORMAL TESTACY PROCEED-
25 ING, THE COURT, ON PROPER PETITION FOR AN ORDER OF COMPLETE SETTLE-
26 MENT OF THE ESTATE UNDER THIS SECTION, AND AFTER NOTICE TO THE
27 OMITTED OR UNNOTIFIED PERSONS AND OTHER INTERESTED PARTIES DETERMINED
28 TO BE INTERESTED ON THE ASSUMPTION THAT THE PREVIOUS ORDER CONCERNING
29 TESTACY IS CONCLUSIVE AS TO THOSE GIVEN NOTICE OF THE EARLIER PRO-
30 CEEDING, MAY DETERMINE TESTACY AS IT AFFECTS THE OMITTED PERSONS
31 AND CONFIRM OR ALTER THE PREVIOUS ORDER OF TESTACY AS IT AFFECTS ALL
32 INTERESTED PERSONS AS APPROPRIATE IN THE LIGHT OF THE NEW PROOFS. IN
33 THE ABSENCE OF OBJECTION BY AN OMITTED OR UNNOTIFIED PERSON, EVIDENCE

1 RECEIVED IN THE ORIGINAL TESTACY PROCEEDING SHALL CONSTITUTE PRIMA
2 FACIE PROOF OF DUE EXECUTION OF ANY WILL PREVIOUSLY ADMITTED TO
3 PROBATE, OR OF THE FACT THAT THE DECEDENT LEFT NO VALID WILL IF THE
4 PRIOR PROCEEDINGS DETERMINED THIS FACT.

5 14-3932. Formal proceedings terminating testate administration;
6 order construing will without adjudicating testacy

7 A PERSONAL REPRESENTATIVE ADMINISTERING AN ESTATE UNDER AN
8 INFORMALLY PROBATED WILL OR ANY DEVISEE UNDER AN INFORMALLY PROBATED
9 WILL MAY PETITION FOR AN ORDER OF SETTLEMENT OF THE ESTATE WHICH WILL
10 NOT ADJUDICATE THE TESTACY STATUS OF THE DECEDENT. THE PERSONAL REP-
11 REPRESENTATIVE MAY PETITION AT ANY TIME, AND A DEVISEE MAY PETITION AFTER
12 ONE YEAR, FROM THE APPOINTMENT OF THE ORIGINAL PERSONAL REPRESENTATIVE,
13 EXCEPT THAT NO PETITION UNDER THIS SECTION MAY BE ENTERTAINED UNTIL
14 THE TIME FOR PRESENTING CLAIMS WHICH AROSE PRIOR TO THE DEATH OF THE
15 DECEDENT HAS EXPIRED. THE PETITION MAY REQUEST THE COURT TO CONSIDER
16 THE FINAL ACCOUNT OR COMPEL OR APPROVE AN ACCOUNTING AND DISTRIBUTION,
17 TO CONSTRUE THE WILL AND ADJUDICATE FINAL SETTLEMENT AND DISTRIBUTION
18 OF THE ESTATE. AFTER NOTICE TO ALL DEVISEES AND THE PERSONAL REPRESENTATIVE
19 AND HEARING, THE COURT MAY ENTER AN ORDER OR ORDERS, ON
20 APPROPRIATE CONDITIONS, DETERMINING THE PERSONS ENTITLED TO DISTRIBUTION
21 OF THE ESTATE UNDER THE WILL, AND, AS CIRCUMSTANCES REQUIRE,
22 APPROVING SETTLEMENT AND DIRECTING, APPROVING OR DECREERING DISTRIBUTION
23 OF THE ESTATE AND DISCHARGING THE PERSONAL REPRESENTATIVE FROM
24 FURTHER CLAIM OR DEMAND OF ANY DEVISEE WHO IS A PARTY TO THE PROCEED-
25 ING AND THOSE HE REPRESENTS. IF IT APPEARS THAT A PART OF THE ESTATE
26 IS INTESTATE, THE PROCEEDINGS SHALL BE DISMISSED OR AMENDMENTS MADE
27 TO MEET THE PROVISIONS OF SECTION 14-3931.

28 14-3933. Closing estates; by sworn statement of
29 personal representative

30 A. UNLESS PROHIBITED BY ORDER OF THE COURT AND EXCEPT FOR
31 ESTATES BEING ADMINISTERED IN SUPERVISED ADMINISTRATION PROCEEDINGS,
32 A PERSONAL REPRESENTATIVE MAY CLOSE AN ESTATE BY FILING WITH THE
33 COURT NO EARLIER THAN FOUR MONTHS AFTER THE DATE OF ORIGINAL APPOINTMENT

1 OF A GENERAL PERSONAL REPRESENTATIVE FOR THE ESTATE, A VERIFIED STATE-
2 MENT STATING THAT HE, OR A PRIOR PERSONAL REPRESENTATIVE WHOM HE HAS
3 SUCCEEDED, HAVE:

4 1. PUBLISHED NOTICE TO CREDITORS AS PROVIDED BY SECTION 14-
5 3801 AND THAT THE FIRST PUBLICATION OCCURRED MORE THAN SIX MONTHS
6 PRIOR TO THE DATE OF THE STATEMENT.

7 2. FULLY ADMINISTERED THE ESTATE OF THE DECEDENT BY MAKING
8 PAYMENT, SETTLEMENT OR OTHER DISPOSITION OF ALL CLAIMS WHICH WERE
9 PRESENTED, EXPENSES OF ADMINISTRATION AND ESTATE, INHERITANCE AND
10 OTHER DEATH TAXES, EXCEPT AS SPECIFIED IN THE STATEMENT, AND THAT
11 THE ASSETS OF THE ESTATE HAVE BEEN DISTRIBUTED TO THE PERSONS EN-
12 TITLED. IF ANY CLAIMS REMAIN UNDISCHARGED, THE STATEMENT SHALL
13 STATE WHETHER THE PERSONAL REPRESENTATIVE HAS DISTRIBUTED THE ESTATE
14 SUBJECT TO POSSIBLE LIABILITY WITH THE AGREEMENT OF THE DISTRIBUTEES
15 OR IT SHALL STATE IN DETAIL OTHER ARRANGEMENTS WHICH HAVE BEEN MADE
16 TO ACCOMMODATE OUTSTANDING LIABILITIES.

17 3. SENT A COPY THEREOF TO ALL DISTRIBUTEES OF THE ESTATE AND
18 TO ALL CREDITORS OR OTHER CLAIMANTS OF WHOM HE IS AWARE WHOSE CLAIMS
19 ARE NEITHER PAID NOT BARRED AND HAS FURNISHED A FULL ACCOUNT IN WRITING
20 OF HIS ADMINISTRATION TO THE DISTRIBUTEES WHOSE INTERESTS ARE AFFECTED
21 THEREBY.

22 B. IF NO PROCEEDINGS INVOLVING THE PERSONAL REPRESENTATIVE
23 ARE PENDING IN THE COURT ONE YEAR AFTER THE CLOSING STATEMENT IS FILED,
24 THE APPOINTMENT OF THE PERSONAL REPRESENTATIVE TERMINATES.

25 14-3934. Liability of distributees to claimants

26 AFTER ASSETS OF AN ESTATE HAVE BEEN DISTRIBUTED AND SUBJECT TO
27 SECTION 14-3936, AN UNDISCHARGED CLAIM NOT BARRED MAY BE PROSECUTED
28 IN A PROCEEDING AGAINST ONE OR MORE DISTRIBUTEES. NO DISTRIBUTE
29 SHALL BE LIABLE TO CLAIMANTS FOR AMOUNTS IN EXCESS OF THE VALUE OF
30 HIS DISTRIBUTION AS OF THE TIME OF DISTRIBUTION. AS BETWEEN DISTRIBU-
31 TEES, EACH SHALL BEAR THE COST OF SATISFACTION OF UNBARRED CLAIMS AS
32 IF THE CLAIM HAD BEEN SATISFIED IN THE COURSE OF ADMINISTRATION. ANY
33 DISTRIBUTE WHO SHALL HAVE FAILED TO NOTIFY OTHER DISTRIBUTEES OF THE

1 DEMAND MADE UPON HIM BY THE CLAIMANT IN SUFFICIENT TIME TO PERMIT THEM
2 TO JOIN IN ANY PROCEEDING IN WHICH THE CLAIM WAS ASSERTED AGAINST HIM
3 LOSES HIS RIGHT OF CONTRIBUTION AGAINST OTHER DISTRIBUTEES.

4 14-3935. Limitations on proceedings against
5 personal representative

6 UNLESS PREVIOUSLY BARRED BY ADJUDICATION AND EXCEPT AS PROVIDED
7 IN THE CLOSING STATEMENT, THE RIGHTS OF SUCCESSORS AND OF CREDITORS
8 WHOSE CLAIMS HAVE NOT OTHERWISE BEEN BARRED AGAINST THE PERSONAL REP-
9 REPRESENTATIVE FOR BREACH OF FIDUCIARY DUTY ARE BARRED UNLESS A PROCEED-
10 ING TO ASSERT THE SAME IS COMMENCED WITHIN SIX MONTHS AFTER THE FILING
11 OF THE CLOSING STATEMENT. THE RIGHTS THUS BARRED DO NOT INCLUDE
12 RIGHTS TO RECOVER FROM A PERSONAL REPRESENTATIVE FOR FRAUD, MISREP-
13 RESENTATION OR INADEQUATE DISCLOSURE RELATED TO THE SETTLEMENT OF
14 THE DECEDENT'S ESTATE.

15 14-3936. Limitations on actions and proceedings
16 against distributees

17 UNLESS PREVIOUSLY ADJUDICATED IN A FORMAL TESTACY PROCEEDING OR
18 IN A PROCEEDING SETTLING THE ACCOUNTS OF A PERSONAL REPRESENTATIVE OR
19 OTHERWISE BARRED, THE CLAIM OF ANY CLAIMANT TO RECOVER FROM A DIS-
20 TRIBUTEES WHO IS LIABLE TO PAY THE CLAIM, AND THE RIGHT OF ANY HEIR
21 OR DEVISEE OR OF A SUCCESSOR PERSONAL REPRESENTATIVE ACTING IN THEIR
22 BEHALF, TO RECOVER PROPERTY IMPROPERLY DISTRIBUTED OR THE VALUE THEREOF
23 FROM ANY DISTRIBUTEES IS FOREVER BARRED AT THE LATER OF:

- 24 1. THREE YEARS AFTER THE DECEDENT'S DEATH.
25 2. ONE YEAR AFTER THE TIME OF DISTRIBUTION THEREOF.

26 THIS SECTION DOES NOT BAR AN ACTION TO RECOVER PROPERTY OR VALUE RE-
27 CEIVED AS THE RESULT OF FRAUD.

28 14-3937. Certificate discharging liens securing
29 fiduciary performance

30 AFTER HIS APPOINTMENT HAS TERMINATED, THE PERSONAL REPRESENTATIVE,
31 HIS SURETIES OR ANY SUCCESSOR OF EITHER, UPON THE FILING OF A VERIFIED
32 APPLICATION SHOWING, SO FAR AS IS KNOWN BY THE APPLICANT, THAT NO
33 ACTION CONCERNING THE ESTATE IS PENDING IN ANY COURT, IS ENTITLED TO

1 RECEIVE A CERTIFICATE FROM THE REGISTRAR THAT THE PERSONAL REPRESENTA-
2 TIVE APPEARS TO HAVE FULLY ADMINISTERED THE ESTATE IN QUESTION. THE
3 CERTIFICATE EVIDENCES DISCHARGE OF ANY LIEN ON ANY PROPERTY GIVEN TO
4 SECURE THE OBLIGATION OF THE PERSONAL REPRESENTATIVE IN LIEU OF BOND
5 OR ANY SURETY, BUT DOES NOT PRECLUDE ACTION AGAINST THE PERSONAL REP-
6 RESENTATIVE OR THE SURETY.

7 14-3938. Subsequent administration

8 IF OTHER PROPERTY OF THE ESTATE IS DISCOVERED AFTER AN ESTATE
9 HAS BEEN SETTLED AND THE PERSONAL REPRESENTATIVE DISCHARGED OR AFTER
10 ONE YEAR AFTER A CLOSING STATEMENT HAS BEEN FILED, THE COURT UPON
11 PETITION OF ANY INTERESTED PERSON AND UPON NOTICE AS IT DIRECTS MAY
12 APPOINT THE SAME OR A SUCCESSOR PERSONAL REPRESENTATIVE TO ADMINISTER
13 THE SUBSEQUENTLY DISCOVERED ESTATE. IF A NEW APPOINTMENT IS MADE,
14 UNLESS THE COURT ORDERS OTHERWISE, THE PROVISIONS OF THIS TITLE APPLY
15 AS APPROPRIATE, BUT NO CLAIM PREVIOUSLY BARRED MAY BE ASSERTED IN THE
16 SUBSEQUENT ADMINISTRATION.

17 ARTICLE 11. COMPROMISE OF CONTROVERSIES

18 14-3951. Effect of approval of agreements involving
19 trusts, inalienable interests, or interests
20 of third persons

21 A COMPROMISE OF ANY CONTROVERSY AS TO ADMISSION TO PROBATE OF
22 ANY INSTRUMENT OFFERED FOR FORMAL PROBATE AS THE WILL OF A DECEDENT,
23 THE CONSTRUCTION, VALIDITY OR EFFECT OF ANY PROBATED WILL, THE RIGHTS
24 OR INTERESTS IN THE ESTATE OF THE DECEDENT, OF ANY SUCCESSOR, OR THE
25 ADMINISTRATION OF THE ESTATE, IF APPROVED IN A FORMAL PROCEEDING IN
26 THE COURT FOR THAT PURPOSE, IS BINDING ON ALL THE PARTIES THERETO IN-
27 CLUDING THOSE UNBORN, UNASCERTAINED OR WHO COULD NOT BE LOCATED. AN
28 APPROVED COMPROMISE IS BINDING EVEN THOUGH IT MAY AFFECT A TRUST OR
29 AN INALIENABLE INTEREST. A COMPROMISE DOES NOT IMPAIR THE RIGHTS OF
30 CREDITORS OR OF TAXING AUTHORITIES WHO ARE NOT PARTIES TO IT.

31 14-3952. Procedure for securing court approval
32 of compromise

33 THE PROCEDURE FOR SECURING COURT APPROVAL OF A COMPROMISE IS AS

1 FOLLOWS:

2 1. THE TERMS OF THE COMPROMISE SHALL BE SET FORTH IN AN AGREE-
3 MENT IN WRITING WHICH SHALL BE EXECUTED BY ALL COMPETENT PERSONS AND
4 PARENTS ACTING FOR ANY MINOR CHILD HAVING BENEFICIAL INTERESTS OR
5 HAVING CLAIMS WHICH WILL OR MAY BE AFFECTED BY THE COMPROMISE. EXE-
6 CUTION IS NOT REQUIRED BY ANY PERSON WHOSE IDENTITY CANNOT BE ASCER-
7 TAINED OR WHOSE WHEREABOUTS IS UNKNOWN AND CANNOT REASONABLY BE AS-
8 CERTAINED.

9 2. ANY INTERESTED PERSON, INCLUDING THE PERSONAL REPRESENTATIVE
10 OR A TRUSTEE, THEN MAY SUBMIT THE AGREEMENT TO THE COURT FOR ITS AP-
11 PROVAL AND FOR EXECUTION BY THE PERSONAL REPRESENTATIVE, THE TRUSTEE
12 OF EVERY AFFECTED TESTAMENTARY TRUST AND OTHER FIDUCIARIES AND REPRESENTATIVES.

13
14 3. AFTER NOTICE TO ALL INTERESTED PERSONS OR THEIR REPRESENTA-
15 TIVES, INCLUDING THE PERSONAL REPRESENTATIVE OF THE ESTATE AND ALL
16 AFFECTED TRUSTEES OF TRUSTS, THE COURT, IF IT FINDS THAT THE CONTEST
17 OR CONTROVERSY IS IN GOOD FAITH AND THAT THE EFFECT OF THE AGREEMENT
18 UPON THE INTERESTS OF PERSONS REPRESENTED BY FIDUCIARIES OR OTHER
19 REPRESENTATIVES IS JUST AND REASONABLE, SHALL MAKE AN ORDER APPROVING
20 THE AGREEMENT AND DIRECTING ALL FIDUCIARIES UNDER ITS SUPERVISION
21 TO EXECUTE THE AGREEMENT. MINOR CHILDREN REPRESENTED ONLY BY THEIR
22 PARENTS MAY BE BOUND ONLY IF THEIR PARENTS JOIN WITH OTHER COMPETENT
23 PERSONS IN EXECUTION OF THE COMPROMISE. UPON THE MAKING OF THE ORDER
24 AND THE EXECUTION OF THE AGREEMENT, ALL FURTHER DISPOSITION OF THE
25 ESTATE IS IN ACCORDANCE WITH THE TERMS OF THE AGREEMENT.

26 ARTICLE 12. COLLECTION OF PERSONAL PROPERTY,

27 BY AFFIDAVIT, SUMMARY ADMINISTRATION

28 PROCEDURE FOR SMALL ESTATES AND PAYMENT

29 OF WAGES TO SURVIVING SPOUSE

30 14-3971. Collection of personal property by affidavit

31 A. THIRTY DAYS AFTER THE DEATH OF A DECEDENT, ANY PERSON INDEBTED
32 TO THE DECEDENT OR HAVING POSSESSION OF TANGIBLE PERSONAL PROPERTY OR
33 AN INSTRUMENT EVIDENCING A DEBT, OBLIGATION, STOCK OR CHOSE IN ACTION

1 BELONGING TO THE DECEDENT SHALL MAKE PAYMENT OF THE INDEBTEDNESS OR
2 DELIVER THE TANGIBLE PERSONAL PROPERTY OR AN INSTRUMENT EVIDENCING A
3 DEBT, OBLIGATION, STOCK OR CHOSE IN ACTION TO A PERSON CLAIMING TO BE
4 THE SUCCESSOR OF THE DECEDENT UPON BEING PRESENTED AN AFFIDAVIT MADE
5 BY OR ON BEHALF OF THE SUCCESSOR STATING THAT:

6 1. THE VALUE OF THE ENTIRE ESTATE, WHEREVER LOCATED, LESS LIENS
7 AND ENCUMBRANCES, DOES NOT EXCEED FIVE THOUSAND DOLLARS.

8 2. THIRTY DAYS HAVE ELAPSED SINCE THE DEATH OF THE DECEDENT.

9 3. NO APPLICATION OR PETITION FOR THE APPOINTMENT OF A PERSONAL
10 REPRESENTATIVE IS PENDING OR HAS BEEN GRANTED IN ANY JURISDICTION.

11 4. THE CLAIMING SUCCESSOR IS ENTITLED TO PAYMENT OR DELIVERY
12 OF THE PROPERTY.

13 B. A TRANSFER AGENT OF ANY SECURITY SHALL CHANGE THE REGISTERED
14 OWNERSHIP ON THE BOOKS OF A CORPORATION FROM THE DECEDENT TO THE SUC-
15 CESSOR OR SUCCESSORS UPON THE PRESENTATION OF AN AFFIDAVIT AS PROVIDED
16 IN SUBSECTION A.

17 14-3972. Effect of affidavit

18 THE PERSON PAYING, DELIVERING, TRANSFERRING OR ISSUING PERSONAL
19 PROPERTY OR THE EVIDENCE THEREOF PURSUANT TO AFFIDAVIT IS DISCHARGED
20 AND RELEASED TO THE SAME EXTENT AS IF HE DEALT WITH A PERSONAL REP-
21 RESENTATIVE OF THE DECEDENT. HE IS NOT REQUIRED TO SEE TO THE APPLI-
22 CATION OF THE PERSONAL PROPERTY OR EVIDENCE THEREOF OR TO INQUIRE
23 INTO THE TRUTH OF ANY STATEMENT IN THE AFFIDAVIT. IF ANY PERSON TO
24 WHOM AN AFFIDAVIT IS DELIVERED REFUSES TO PAY, DELIVER, TRANSFER OR
25 ISSUE ANY PERSONAL PROPERTY OR EVIDENCE THEREOF, IT MAY BE RECOVERED
26 OR ITS PAYMENT, DELIVERY, TRANSFER OR ISSUANCE COMPELLED UPON PROOF
27 OF THEIR RIGHT IN A PROCEEDING BROUGHT FOR THE PURPOSE BY OR ON BEHALF
28 OF THE PERSONS ENTITLED THERETO. ANY PERSON TO WHOM PAYMENT, DELIVERY,
29 TRANSFER OR ISSUANCE IS MADE IS ANSWERABLE AND ACCOUNTABLE THEREFOR
30 TO ANY PERSONAL REPRESENTATIVE OF THE ESTATE OR TO ANY OTHER PERSON
31 HAVING A SUPERIOR RIGHT.

32 14-3973. Small estates; summary administrative procedure

33 IF IT APPEARS FROM THE INVENTORY AND APPRAISAL THAT THE VALUE

1 OF THE ENTIRE ESTATE, LESS LIENS AND ENCUMBRANCES, DOES NOT EXCEED
2 ALLOWANCE IN LIEU OF HOMESTEAD, EXEMPT PROPERTY, FAMILY ALLOWANCE, COSTS
3 AND EXPENSES OF ADMINISTRATION, REASONABLE FUNERAL EXPENSES, AND REASON-
4 ABLE AND NECESSARY MEDICAL AND HOSPITAL EXPENSES OF THE LAST ILLNESS
5 OF THE DECEDENT, THE PERSONAL REPRESENTATIVE, WITHOUT GIVING NOTICE
6 TO CREDITORS, MAY IMMEDIATELY DISBURSE AND DISTRIBUTE THE ESTATE TO THE
7 PERSONS ENTITLED THERETO AND FILE A CLOSING STATEMENT AS PROVIDED IN
8 SECTION 14-3974.

9 14-3974. Small estates; closing by sworn statement
10 of personal representative

11 A. UNLESS PROHIBITED BY ORDER OF THE COURT AND EXCEPT FOR
12 ESTATES BEING ADMINISTERED BY SUPERVISED PERSONAL REPRESENTATIVES,
13 A PERSONAL REPRESENTATIVE MAY CLOSE AN ESTATE ADMINISTERED UNDER
14 THE SUMMARY PROCEDURES OF SECTION 14-3973 BY FILING WITH THE COURT,
15 AT ANY TIME AFTER DISBURSEMENT AND DISTRIBUTION OF THE ESTATE, A
16 VERIFIED STATEMENT STATING THAT:

17 1. TO THE BEST KNOWLEDGE OF THE PERSONAL REPRESENTATIVE, THE
18 VALUE OF THE ENTIRE ESTATE, LESS LIENS AND ENCUMBRANCES, DID NOT
19 EXCEED ALLOWANCE IN LIEU OF HOMESTEAD, EXEMPT PROPERTY, FAMILY ALLOW-
20 ANCE, COSTS AND EXPENSES OF ADMINISTRATION, REASONABLE FUNERAL EXPENSES
21 AND REASONABLE, NECESSARY MEDICAL AND HOSPITAL EXPENSES OF THE LAST ILL-
22 NESS OF THE DECEDENT.

23 2. THE PERSONAL REPRESENTATIVE HAS FULLY ADMINISTERED THE ES-
24 TATE BY DISBURSING AND DISTRIBUTING IT TO THE PERSONS ENTITLED THERETO.

25 3. THE PERSONAL REPRESENTATIVE HAS SENT A COPY OF THE CLOSING
26 STATEMENT TO ALL DISTRIBUTEES OF THE ESTATE AND TO ALL CREDITORS OR
27 OTHER CLAIMANTS OF WHOM HE IS AWARE WHOSE CLAIMS ARE NEITHER PAID NOR
28 BARRED AND HAS FURNISHED A FULL ACCOUNT IN WRITING OF HIS ADMINISTRATION
29 TO THE DISTRIBUTEES WHOSE INTERESTS ARE AFFECTED.

30 B. IF NO ACTIONS OR PROCEEDINGS INVOLVING THE PERSONAL REPRESENTATIVE
31 ARE PENDING IN THE COURT ONE YEAR AFTER THE CLOSING STATEMENT
32 IS FILED, THE APPOINTMENT OF THE PERSONAL REPRESENTATIVE TERMINATES.
33

1 C. A CLOSING STATEMENT FILED UNDER THIS SECTION HAS THE SAME
2 EFFECT AS ONE FILED UNDER SECTION 14-3934.

3 CHAPTER 4.

4 FOREIGN PERSONAL REPRESENTATIVES;

5 ANCILLARY ADMINISTRATION

6 ARTICLE 1. DEFINITIONS

7 14-4101. Definitions

8 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

9 1. "LOCAL ADMINISTRATION" MEANS ADMINISTRATION BY A PERSONAL
10 REPRESENTATIVE APPOINTED IN THIS STATE PURSUANT TO APPOINTMENT PRO-
11 CEEDINGS DESCRIBED IN CHAPTER 3.

12 2. "LOCAL PERSONAL REPRESENTATIVE" INCLUDES ANY PERSONAL REP-
13 RESENTATIVE APPOINTED IN THIS STATE PURSUANT TO APPOINTMENT PROCEED-
14 INGS DESCRIBED IN CHAPTER 3 AND EXCLUDES FOREIGN PERSONAL REPRESENTA-
15 TIVES WHO ACQUIRE THE POWER OF A LOCAL PERSONAL REPRESENTATIVE PURSUANT
16 TO SECTION 14-4205.

17 3. "RESIDENT CREDITOR" MEANS A PERSON DOMICILED IN, OR DOING
18 BUSINESS IN THIS STATE, WHO IS, OR COULD BE, A CLAIMANT AGAINST AN
19 ESTATE OF A NONRESIDENT DECEDENT.

20 ARTICLE 2. POWERS OF FOREIGN

21 PERSONAL REPRESENTATIVES

22 14-4201. Payment of debt and delivery of property
23 to domiciliary foreign personal repre-
24 sentative without local administration

25 AT ANY TIME AFTER THE EXPIRATION OF SIXTY DAYS FROM THE DEATH
26 OF A NONRESIDENT DECEDENT, ANY PERSON INDEBTED TO THE ESTATE OF THE
27 NONRESIDENT DECEDENT OR HAVING POSSESSION OR CONTROL OF PERSONAL
28 PROPERTY, OR OF AN INSTRUMENT EVIDENCING A DEBT, OBLIGATION, STOCK
29 OR CHOSE IN ACTION BELONGING TO THE ESTATE OF THE NONRESIDENT DECEDENT
30 MAY PAY THE DEBT, DELIVER THE PERSONAL PROPERTY, OR THE INSTRUMENT
31 EVIDENCING THE DEBT, OBLIGATION, STOCK OR CHOSE IN ACTION, TO THE
32 DOMICILIARY FOREIGN PERSONAL REPRESENTATIVE OF THE NONRESIDENT DECE-
33 DENT UPON BEING PRESENTED WITH PROOF OF HIS APPOINTMENT AND AN AFFIDAVIT

1 MADE BY OR ON BEHALF OF THE REPRESENTATIVE STATING:
2 1. THE DATE OF THE DEATH OF THE NONRESIDENT DECEDENT.
3 2. THAT NO LOCAL ADMINISTRATION, OR APPLICATION OR PETITION
4 THEREFOR, IS PENDING IN THIS STATE.
5 3. THAT THE DOMICILIARY FOREIGN PERSONAL REPRESENTATIVE IS
6 ENTITLED TO PAYMENT OR DELIVERY.
7 14-4202. Payment or delivery discharges
8 PAYMENT OR DELIVERY MADE IN GOOD FAITH ON THE BASIS OF THE PROOF
9 OF AUTHORITY AND AFFIDAVIT RELEASES THE DEBTOR OR PERSON HAVING POS-
10 SESSION OF THE PERSONAL PROPERTY TO THE SAME EXTENT AS IF PAYMENT OR
11 DELIVERY HAD BEEN MADE TO A LOCAL PERSONAL REPRESENTATIVE.
12 14-4203. Resident creditor notice
13 PAYMENT OR DELIVERY UNDER SECTION 14-4201 MAY NOT BE MADE IF
14 A RESIDENT CREDITOR OF THE NONRESIDENT DECEDENT HAS NOTIFIED THE
15 DEBTOR OF THE NONRESIDENT DECEDENT OR THE PERSON HAVING POSSESSION
16 OF THE PERSONAL PROPERTY BELONGING TO THE NONRESIDENT DECEDENT THAT
17 THE DEBT SHOULD NOT BE PAID NOR THE PROPERTY DELIVERED TO THE DOMI-
18 CILIARY FOREIGN PERSONAL REPRESENTATIVE.
19 14-4204. Proof of authority-bond
20 IF NO LOCAL ADMINISTRATION OR APPLICATION OR PETITION THEREFOR
21 IS PENDING IN THIS STATE, A DOMICILIARY FOREIGN PERSONAL REPRESENTA-
22 TIVE MAY FILE WITH A COURT IN THIS STATE IN A COUNTY IN WHICH PROPERTY
23 BELONGING TO THE DECEDENT IS LOCATED, AUTHENTICATED COPIES OF HIS AP-
24 POINTMENT AND OF ANY OFFICIAL BOND HE HAS GIVEN.
25 14-4205. Powers
26 A DOMICILIARY FOREIGN PERSONAL REPRESENTATIVE WHO HAS COMPLIED
27 WITH SECTION 14-4204 MAY EXERCISE AS TO ASSETS IN THIS STATE ALL
28 POWERS OF A LOCAL PERSONAL REPRESENTATIVE AND MAY MAINTAIN ACTIONS
29 AND PROCEEDINGS IN THIS STATE SUBJECT TO ANY CONDITIONS IMPOSED UPON
30 NONRESIDENT PARTIES GENERALLY.
31 14-4206. Power of representatives in transition
32 THE POWER OF A DOMICILIARY FOREIGN PERSONAL REPRESENTATIVE UNDER
33 SECTION 14-4201 OR SECTION 14-4205 SHALL BE EXERCISED ONLY IF THERE IS

1 NO ADMINISTRATION OR APPLICATION THEREFOR PENDING IN THIS STATE. AN
2 APPLICATION OR PETITION FOR LOCAL ADMINISTRATION OF THE ESTATE TER-
3 MINATES THE POWER OF THE FOREIGN PERSONAL REPRESENTATIVE TO ACT UNDER
4 SECTION 14-4205, BUT THE LOCAL COURT MAY ALLOW THE FOREIGN PERSONAL
5 REPRESENTATIVE TO EXERCISE LIMITED POWERS TO PRESERVE THE ESTATE. NO
6 PERSON WHO, BEFORE RECEIVING ACTUAL NOTICE OF A PENDING LOCAL ADMIN-
7 ISTRATION, HAS CHANGED HIS POSITION IN RELIANCE UPON THE POWERS OF A
8 FOREIGN PERSONAL REPRESENTATIVE SHALL BE PREJUDICED BY REASON OF THE
9 APPLICATION OR PETITION FOR, OR GRANT OF, LOCAL ADMINISTRATION. THE
10 LOCAL PERSONAL REPRESENTATIVE IS SUBJECT TO ALL DUTIES AND OBLIGATIONS
11 WHICH HAVE ACCRUED BY VIRTUE OF THE EXERCISE OF THE POWERS BY THE
12 FOREIGN PERSONAL REPRESENTATIVE AND MAY BE SUBSTITUTED FOR HIM IN
13 ANY ACTION OR PROCEEDINGS IN THIS STATE.

14 14-4207. Ancillary and other local administrations;
15 provisions governing

16 IN RESPECT TO A NONRESIDENT DECEDENT, THE PROVISIONS OF CHAPTER
17 3 OF THIS TITLE GOVERN BOTH:

18 1. PROCEEDINGS, IF ANY, IN A COURT OF THIS STATE FOR PROBATE
19 OF THE WILL, APPOINTMENT, REMOVAL, SUPERVISION AND DISCHARGE OF THE
20 LOCAL PERSONAL REPRESENTATIVE, AND ANY OTHER ORDER CONCERNING THE
21 ESTATE.

22 2. THE STATUS, POWERS, DUTIES AND LIABILITIES OF ANY LOCAL
23 PERSONAL REPRESENTATIVE AND THE RIGHTS OF CLAIMANTS, PURCHASERS,
24 DISTRIBUTEES AND OTHERS IN REGARD TO A LOCAL ADMINISTRATION.

25 ARTICLE 3. JURISDICTION OVER
26 FOREIGN REPRESENTATIVES

27 14-4301. Jurisdiction by act of foreign personal
28 representative

29 A FOREIGN PERSONAL REPRESENTATIVE SUBMITS HIMSELF TO THE JURIS-
30 DICTION OF THE COURTS OF THIS STATE BY:

31 1. FILING AUTHENTICATED COPIES OF HIS APPOINTMENT AS PROVIDED
32 IN SECTION 14-4204.

33 2. RECEIVING PAYMENT OF MONEY OR TAKING DELIVERY OF PERSONAL

1 PROPERTY UNDER SECTION 14-4201.

2 3. DOING ANY ACT AS A PERSONAL REPRESENTATIVE IN THIS STATE
3 WHICH WOULD HAVE GIVEN THE STATE JURISDICTION OVER HIM AS AN INDIVID-
4 UAL.

5 JURISDICTION UNDER PARAGRAPH 2 OF THIS SUBSECTION IS LIMITED TO THE
6 MONEY OR VALUE OF PERSONAL PROPERTY COLLECTED.

7 14-4302. Jurisdiction by act of decedent

8 IN ADDITION TO JURISDICTION CONFERRED BY SECTION 14-4301, A
9 FOREIGN PERSONAL REPRESENTATIVE IS SUBJECT TO THE JURISDICTION OF THE
10 COURTS OF THIS STATE TO THE SAME EXTENT THAT HIS DECEDENT WAS SUBJECT
11 TO JURISDICTION IMMEDIATELY PRIOR TO DEATH.

12 14-4303. Service on foreign personal representative

13 A. SERVICE OF PROCESS MAY BE MADE UPON THE FOREIGN PERSONAL
14 REPRESENTATIVE BY REGISTERED OR CERTIFIED MAIL, ADDRESSED TO HIS LAST
15 REASONABLY ASCERTAINABLE ADDRESS, REQUESTING A RETURN RECEIPT SIGNED
16 BY ADDRESSEE ONLY. NOTICE BY ORDINARY FIRST CLASS MAIL IS SUFFICIENT
17 IF REGISTERED OR CERTIFIED MAIL SERVICE TO THE ADDRESSEE IS UNAVAIL-
18 ABLE. SERVICE MAY BE MADE UPON A FOREIGN PERSONAL REPRESENTATIVE IN
19 THE MANNER IN WHICH SERVICE COULD HAVE BEEN MADE UNDER OTHER LAWS OF
20 THIS STATE ON EITHER THE FOREIGN PERSONAL REPRESENTATIVE OR HIS DECE-
21 DENT IMMEDIATELY PRIOR TO DEATH.

22 B. IF SERVICE IS MADE UPON A FOREIGN PERSONAL REPRESENTATIVE
23 AS PROVIDED IN SUBSECTION A, HE SHALL BE ALLOWED AT LEAST THIRTY
24 DAYS WITHIN WHICH TO APPEAR OR RESPOND.

25 ARTICLE 4. JUDGMENTS AND
26 PERSONAL REPRESENTATIVE

27 14-4401. Effect of adjudication for or against
28 personal representative

29 AN ADJUDICATION RENDERED IN ANY JURISDICTION IN FAVOR OF OR
30 AGAINST ANY PERSONAL REPRESENTATIVE OF THE ESTATE IS AS BINDING ON
31 THE LOCAL PERSONAL REPRESENTATIVE AS IF HE WERE A PARTY TO THE
32 ADJUDICATION.
33

1 CHAPTER 5.
2 PROTECTION OF PERSONS UNDER DISABILITY
3 AND THEIR PROPERTY
4 ARTICLE 1. GENERAL PROVISIONS
5 14-5101. Definitions and use of terms
6 IN THIS TITLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:
7 1. "INCAPACITATED PERSON" MEANS ANY PERSON WHO IS IMPAIRED BY
8 REASON OF MENTAL ILLNESS, MENTAL DEFICIENCY, PHYSICAL ILLNESS OR
9 DISABILITY, ADVANCED AGE, CHRONIC USE OF DRUGS, CHRONIC INTOXICATION
10 OR OTHER CAUSE, EXCEPT MINORITY, TO THE EXTENT THAT HE LACKS SUFFI-
11 CIENT UNDERSTANDING OR CAPACITY TO MAKE OR COMMUNICATE RESPONSIBLE
12 DECISIONS CONCERNING HIS PERSON.
13 2. "PROTECTED PERSON" IS A MINOR OR OTHER PERSON FOR WHOM A
14 CONSERVATOR HAS BEEN APPOINTED OR OTHER PROTECTIVE ORDER HAS BEEN
15 MADE.
16 3. "PROTECTIVE PROCEEDING" IS A PROCEEDING UNDER THE PROVISIONS
17 OF SECTION 14-5401 TO DETERMINE THAT A PERSON CANNOT EFFECTIVELY MAN-
18 AGE OR APPLY HIS ESTATE TO NECESSARY ENDS, EITHER BECAUSE HE LACKS
19 THE ABILITY OR IS OTHERWISE INCONVENIENCED, OR BECAUSE HE IS A MINOR,
20 AND TO SECURE ADMINISTRATION OF HIS ESTATE BY A CONSERVATOR OR OTHER
21 APPROPRIATE RELIEF.
22 4. "WARD" IS A PERSON FOR WHOM A GUARDIAN HAS BEEN APPOINTED.
23 A "MINOR WARD" IS A MINOR FOR WHOM A GUARDIAN HAS BEEN APPOINTED
24 SOLELY BECAUSE OF MINORITY.
25 14-5102. Jurisdiction of subject matter;
26 consolidation of proceedings
27 A. THE COURT HAS JURISDICTION OVER PROTECTIVE PROCEEDINGS AND
28 GUARDIANSHIP PROCEEDINGS.
29 B. WHEN BOTH GUARDIANSHIP AND PROTECTIVE PROCEEDINGS AS TO
30 THE SAME PERSON ARE COMMENCED OR PENDING IN THE SAME COURT, THE PRO-
31 CEEDINGS MAY BE CONSOLIDATED.
32 14-5103. Facility of payment or delivery
33 ANY PERSON UNDER A DUTY TO PAY OR DELIVER MONEY OR PERSONAL

1 PROPERTY TO A MINOR MAY PERFORM THIS DUTY, IN AMOUNTS NOT EXCEEDING
2 FIVE THOUSAND DOLLARS PER ANNUM, BY PAYING OR DELIVERING THE MONEY
3 OR PROPERTY TO:

4 1. THE MINOR, IF HE HAS ATTAINED THE AGE OF EIGHTEEN YEARS OR
5 IS MARRIED.

6 2. ANY PERSON HAVING THE CARE AND CUSTODY OF THE MINOR WITH
7 WHOM THE MINOR RESIDES.

8 3. A GUARDIAN OF THE MINOR.

9 4. A FINANCIAL INSTITUTION INCIDENT TO A DEPOSIT IN A FEDERALLY
10 INSURED SAVINGS ACCOUNT IN THE SOLE NAME OF THE MINOR AND GIVING
11 NOTICE OF THE DEPOSIT TO THE MINOR.

12 THIS SECTION DOES NOT APPLY IF THE PERSON MAKING PAYMENT OR DELIVERY
13 HAS ACTUAL KNOWLEDGE THAT A CONSERVATOR HAS BEEN APPOINTED OR PRO-
14 CEEDINGS FOR APPOINTMENT OF A CONSERVATOR OF THE ESTATE OF THE MINOR
15 ARE PENDING. THE PERSONS, OTHER THAN THE MINOR OR ANY FINANCIAL
16 INSTITUTION UNDER PARAGRAPH 4, RECEIVING MONEY OR PROPERTY FOR A
17 MINOR ARE OBLIGATED TO APPLY THE MONEY TO THE SUPPORT AND EDUCATION
18 OF THE MINOR, BUT MAY NOT PAY THEMSELVES EXCEPT BY WAY OF REIMBURSE-
19 MENT FOR OUT-OF-POCKET EXPENSES FOR GOODS AND SERVICES NECESSARY FOR
20 THE MINOR'S SUPPORT. ANY EXCESS SUMS SHALL BE PRESERVED FOR FUTURE
21 SUPPORT OF THE MINOR AND ANY BALANCE NOT SO USED AND ANY PROPERTY
22 RECEIVED FOR THE MINOR MUST BE TURNED OVER TO THE MINOR WHEN HE
23 ATTAINS MAJORITY. PERSONS WHO PAY OR DELIVER IN ACCORDANCE WITH
24 PROVISIONS OF THIS SECTION ARE NOT RESPONSIBLE FOR THE PROPER APPLI-
25 CATION THEREOF.

26 14-5104. Delegation of powers by parent or guardian

27 A PARENT OR A GUARDIAN OF A MINOR OR INCAPACITATED PERSON, BY A
28 PROPERLY EXECUTED POWER OF ATTORNEY, MAY DELEGATE TO ANOTHER PERSON,
29 FOR A PERIOD NOT EXCEEDING SIX MONTHS, ANY OF HIS POWERS REGARDING
30 CARE, CUSTODY OR PROPERTY OF THE MINOR CHILD OR WARD, EXCEPT HIS
31 POWER TO CONSENT TO MARRIAGE OR ADOPTION OF A MINOR WARD.

32 ARTICLE 2. GUARDIANS OF MINORS

33 14-5201. Status of guardian of minor; general

1 A PERSON BECOMES A GUARDIAN OF A MINOR BY ACCEPTANCE OF A TES-
2 TAMENTARY APPOINTMENT OR UPON APPOINTMENT BY THE COURT. THE GUARDIAN-
3 SHIP STATUS CONTINUES UNTIL TERMINATED, WITHOUT REGARD TO THE LOCATION
4 FROM TIME TO TIME OF THE GUARDIAN AND MINOR WARD.

5 14-5202. Testamentary appointment of guardian
6 of minor

7 THE PARENT OF A MINOR MAY APPOINT BY WILL A GUARDIAN OF AN
8 UNMARRIED MINOR. SUBJECT TO THE RIGHT OF THE MINOR UNDER SECTION
9 14-5203, A TESTAMENTARY APPOINTMENT BECOMES EFFECTIVE UPON FILING
10 THE GUARDIAN'S ACCEPTANCE IN THE COURT IN WHICH THE WILL IS PRO-
11 BATED, IF BEFORE ACCEPTANCE, BOTH PARENTS ARE DEAD OR THE SURVIVING
12 PARENT IS ADJUDGED INCAPACITATED. IF BOTH PARENTS ARE DEAD, AN
13 EFFECTIVE APPOINTMENT BY THE PARENT WHO DIED LATER HAS PRIORITY.
14 THIS STATE RECOGNIZES A TESTAMENTARY APPOINTMENT EFFECTED BY FILING
15 THE GUARDIAN'S ACCEPTANCE UNDER A WILL PROBATED IN ANOTHER STATE
16 WHICH IS THE TESTATOR'S DOMICILE.

17 14-5203. Objection by minor of fourteen or older
18 to testamentary appointment

19 A MINOR OF FOURTEEN OR MORE YEARS MAY PREVENT AN APPOINTMENT OF
20 HIS TESTAMENTARY GUARDIAN FROM BECOMING EFFECTIVE, OR MAY CAUSE A
21 PREVIOUSLY ACCEPTED APPOINTMENT TO TERMINATE, BY FILING WITH THE COURT
22 IN WHICH THE WILL IS PROBATED A WRITTEN OBJECTION TO THE APPOINTMENT
23 BEFORE IT IS ACCEPTED OR WITHIN THIRTY DAYS AFTER ITS ACCEPTANCE. AN
24 OBJECTION MAY BE WITHDRAWN. AN OBJECTION DOES NOT PRECLUDE APPOINT-
25 MENT BY THE COURT IN A PROPER PROCEEDING OF THE TESTAMENTARY NOMINEE
26 OR ANY OTHER SUITABLE PERSON.

27 14-5204. Court appointment of guardian of minor;
28 conditions for appointment

29 THE COURT MAY APPOINT A GUARDIAN FOR AN UNMARRIED MINOR IF ALL
30 PARENTAL RIGHTS OF CUSTODY HAVE BEEN TERMINATED OR SUSPENDED BY CIR-
31 CUMSTANCES OR PRIOR COURT ORDER. A GUARDIAN APPOINTED BY WILL AS
32 PROVIDED IN SECTION 14-5202 WHOSE APPOINTMENT HAS NOT BEEN PREVENTED
33 OR NULLIFIED UNDER SECTION 14-5203 HAS PRIORITY OVER ANY GUARDIAN

1 WHO MAY BE APPOINTED BY THE COURT BUT THE COURT MAY PROCEED WITH
2 AN APPOINTMENT UPON A FINDING THAT THE TESTAMENTARY GUARDIAN HAS
3 FAILED TO ACCEPT THE TESTAMENTARY APPOINTMENT WITHIN THIRTY DAYS
4 AFTER NOTICE OF THE GUARDIANSHIP PROCEEDING.

5 14-5205. Court appointment of guardian of minor;

6 venue

7 THE VENUE FOR GUARDIANSHIP PROCEEDINGS FOR A MINOR IS IN THE
8 PLACE WHERE THE MINOR RESIDES OR IS PRESENT.

9 14-5206. Court appointment of guardian of minor;

10 qualifications; priority of minor's

11 nominee

12 THE COURT MAY APPOINT AS GUARDIAN ANY PERSON WHOSE APPOINTMENT
13 WOULD BE IN THE BEST INTERESTS OF THE MINOR. THE COURT SHALL APPOINT
14 A PERSON NOMINATED BY THE MINOR, IF THE MINOR IS FOURTEEN YEARS OF
15 AGE OR OLDER, UNLESS THE COURT FINDS THE APPOINTMENT CONTRARY TO THE
16 BEST INTERESTS OF THE MINOR.

17 14-5207. Court appointment of guardian of minor; procedure

18 A. NOTICE OF THE TIME AND PLACE OF HEARING OF A PETITION FOR THE
19 APPOINTMENT OF A GUARDIAN OF A MINOR IS TO BE GIVEN BY THE PETITIONER
20 IN THE MANNER PRESCRIBED BY SECTION 14-1401 TO:

- 21 1. THE MINOR, IF HE IS FOURTEEN OR MORE YEARS OF AGE.
- 22 2. THE PERSON WHO HAS HAD THE PRINCIPAL CARE AND CUSTODY OF THE
- 23 MINOR DURING THE SIXTY DAYS PRECEDING THE DATE OF THE PETITION.
- 24 3. ANY LIVING PARENT OF THE MINOR.

25 B. UPON HEARING, IF THE COURT FINDS THAT A QUALIFIED PERSON SEEKS
26 APPOINTMENT, VENUE IS PROPER, THE REQUIRED NOTICES HAVE BEEN GIVEN, THE
27 REQUIREMENTS OF SECTION 14-5204 HAVE BEEN MET AND THE WELFARE AND BEST
28 INTERESTS OF THE MINOR WILL BE SERVED BY THE REQUESTED APPOINTMENT, IT
29 SHALL MAKE THE APPOINTMENT. IN OTHER CASES THE COURT MAY DISMISS THE
30 PROCEEDINGS OR MAKE ANY OTHER DISPOSITION OF THE MATTER THAT WILL BEST
31 SERVE THE INTEREST OF THE MINOR.

32 C. IF NECESSARY, THE COURT MAY APPOINT A TEMPORARY GUARDIAN, WITH
33 THE STATUS OF AN ORDINARY GUARDIAN OF A MINOR, BUT THE AUTHORITY OF A

1 TEMPORARY GUARDIAN SHALL NOT LAST LONGER THAN SIX MONTHS.

2 D. IF, AT ANY TIME IN THE PROCEEDING, THE COURT DETERMINES THAT
3 THE INTERESTS OF THE MINOR ARE OR MAY BE INADEQUATELY REPRESENTED, IT
4 MAY APPOINT AN ATTORNEY TO REPRESENT THE MINOR, GIVING CONSIDERATION TO
5 THE PREFERENCE OF THE MINOR IF THE MINOR IS FOURTEEN YEARS OF AGE OR
6 OLDER.

7 14-5208. Consent to service by acceptance of appointment;
8 notice

9 BY ACCEPTING A TESTAMENTARY OR COURT APPOINTMENT AS GUARDIAN, A
10 GUARDIAN SUBMITS PERSONALLY TO THE JURISDICTION OF THE COURT IN ANY
11 PROCEEDING RELATING TO THE GUARDIANSHIP THAT MAY BE INSTITUTED BY ANY
12 INTERESTED PERSON. NOTICE OF ANY PROCEEDING SHALL BE DELIVERED TO THE
13 GUARDIAN, OR MAILED TO HIM BY ORDINARY MAIL AT HIS ADDRESS AS LISTED IN
14 THE COURT RECORDS AND TO HIS ADDRESS AS THEN KNOWN TO THE PETITIONER.
15 LETTERS OF GUARDIANSHIP MUST INDICATE WHETHER THE GUARDIAN WAS APPOINTED
16 BY WILL OR BY COURT ORDER.

17 14-5209. Powers and duties of guardian of minor

18 A GUARDIAN OF A MINOR HAS THE POWERS AND RESPONSIBILITIES OF A
19 PARENT WHO HAS NOT BEEN DEPRIVED OF CUSTODY OF HIS UNEMANCIPATED MINOR
20 CHILD, EXCEPT THAT A GUARDIAN IS NOT LEGALLY OBLIGATED TO PROVIDE FROM
21 HIS OWN FUNDS FOR THE WARD AND IS NOT LIABLE TO THIRD PERSONS FOR ACTS
22 OF THE WARD SOLELY BY REASON OF THE GUARDIANSHIP. IN PARTICULAR, AND
23 WITHOUT QUALIFYING THE FOREGOING, A GUARDIAN HAS THE FOLLOWING POWERS
24 AND DUTIES:

25 1. HE MUST TAKE REASONABLE CARE OF HIS WARD'S PERSONAL EFFECTS
26 AND COMMENCE PROTECTIVE PROCEEDINGS IF NECESSARY TO PROTECT OTHER PROP-
27 ERTY OF THE WARD.

28 2. HE MAY RECEIVE MONEY PAYABLE FOR THE SUPPORT OF THE WARD TO
29 THE WARD'S PARENT, GUARDIAN OR CUSTODIAN UNDER THE TERMS OF ANY STATU-
30 TORY BENEFIT OR INSURANCE SYSTEM, OR ANY PRIVATE CONTRACT, DEVISE, TRUST,
31 CONSERVATORSHIP OR CUSTODIANSHIP. HE ALSO MAY RECEIVE MONEY OR PROP-
32 ERTY OF THE WARD PAID OR DELIVERED BY VIRTUE OF SECTION 14-5103. ANY
33 SUMS SO RECEIVED SHALL BE APPLIED TO THE WARD'S CURRENT NEEDS FOR

1 SUPPORT, CARE AND EDUCATION. HE MUST EXERCISE DUE CARE TO CONSERVE ANY
2 EXCESS FOR THE WARD'S FUTURE NEEDS UNLESS A CONSERVATOR HAS BEEN APPOINT-
3 ED FOR THE ESTATE OF THE WARD, IN WHICH CASE EXCESS SHALL BE PAID OVER
4 AT LEAST ANNUALLY TO THE CONSERVATOR. SUMS SO RECEIVED BY THE GUARDIAN
5 ARE NOT TO BE USED FOR COMPENSATION FOR HIS SERVICES EXCEPT AS APPROVED
6 BY ORDER OF COURT OR AS DETERMINED BY A DULY APPOINTED CONSERVATOR OTHER
7 THAN THE GUARDIAN. A GUARDIAN MAY INSTITUTE PROCEEDINGS TO COMPEL THE
8 PERFORMANCE BY ANY PERSON OF A DUTY TO SUPPORT THE WARD OR TO PAY SUMS
9 FOR THE WELFARE OF THE WARD.

10 3. THE GUARDIAN IS EMPOWERED TO FACILITATE THE WARD'S EDUCATION,
11 SOCIAL OR OTHER ACTIVITIES AND TO AUTHORIZE MEDICAL OR OTHER PROFES-
12 SIONAL CARE, TREATMENT OR ADVICE. A GUARDIAN IS NOT LIABLE BY REASON
13 OF THIS CONSENT FOR INJURY TO THE WARD RESULTING FROM THE NEGLIGENCE OR
14 ACTS OF THIRD PERSONS UNLESS IT WOULD HAVE BEEN ILLEGAL FOR A PARENT TO
15 HAVE CONSENTED. A GUARDIAN MAY CONSENT TO THE MARRIAGE OR ADOPTION OF
16 HIS WARD.

17 4. A GUARDIAN MUST REPORT THE CONDITION OF HIS WARD AND OF THE
18 WARD'S ESTATE WHICH HAS BEEN SUBJECT TO HIS POSSESSION OR CONTROL, AS
19 ORDERED BY COURT ON PETITION OF ANY PERSON INTERESTED IN THE MINOR'S
20 WELFARE OR AS REQUIRED BY COURT RULE.

21 14-5210. Termination of appointment of guardian; general

22 A GUARDIAN'S AUTHORITY AND RESPONSIBILITY TERMINATES UPON THE
23 DEATH, RESIGNATION OR REMOVAL OF THE GUARDIAN OR UPON THE MINOR'S DEATH,
24 ADOPTION, MARRIAGE OR ATTAINMENT OF MAJORITY, BUT TERMINATION DOES NOT
25 AFFECT HIS LIABILITY FOR PRIOR ACTS, NOR HIS OBLIGATION TO ACCOUNT FOR
26 FUNDS AND ASSETS OF HIS WARD. RESIGNATION OF A GUARDIAN DOES NOT TERMI-
27 NATE THE GUARDIANSHIP UNTIL IT HAS BEEN APPROVED BY THE COURT. A TESTA-
28 MENTARY APPOINTMENT UNDER AN INFORMALLY PROBATED WILL TERMINATES IF THE
29 WILL IS LATER DENIED PROBATE IN A FORMAL PROCEEDING.

30 14-5211. Proceedings subsequent to appointment; venue

31 A. THE COURT WHERE THE WARD RESIDES HAS CONCURRENT JURISDICTION
32 WITH THE COURT WHICH APPOINTED THE GUARDIAN, OR IN WHICH ACCEPTANCE OF A
33 TESTAMENTARY APPOINTMENT WAS FILED, OVER RESIGNATION, REMOVAL, ACCOUNTING

1 AND OTHER PROCEEDINGS RELATING TO THE GUARDIANSHIP.

2 B. IF THE COURT LOCATED WHERE THE WARD RESIDES IS NOT THE COURT
3 IN WHICH ACCEPTANCE OF APPOINTMENT IS FILED, THE COURT IN WHICH PROCEED-
4 INGS SUBSEQUENT TO APPOINTMENT ARE COMMENCED SHALL IN ALL APPROPRIATE
5 CASES NOTIFY THE OTHER COURT, IN THIS OR ANOTHER STATE, AND AFTER CONSUL-
6 TATION WITH THAT COURT DETERMINE WHETHER TO RETAIN JURISDICTION OR TRANS-
7 FER THE PROCEEDINGS TO THE OTHER COURT, WHICHEVER IS IN THE BEST INTEREST
8 OF THE WARD. A COPY OF ANY ORDER ACCEPTING A RESIGNATION OR REMOVING A
9 GUARDIAN SHALL BE SENT TO THE COURT IN WHICH ACCEPTANCE OF APPOINTMENT
10 IS FILED.

11 14-5212. Resignation or removal proceedings

12 A. ANY PERSON INTERESTED IN THE WELFARE OF A WARD OR THE WARD, IF
13 FOURTEEN OR MORE YEARS OF AGE, MAY PETITION FOR REMOVAL OF A GUARDIAN ON
14 THE GROUND THAT REMOVAL WOULD BE IN THE BEST INTEREST OF THE WARD. A
15 GUARDIAN MAY PETITION FOR PERMISSION TO RESIGN. A PETITION FOR REMOVAL
16 OR FOR PERMISSION TO RESIGN MAY, BUT NEED NOT, INCLUDE A REQUEST FOR
17 APPOINTMENT OF A SUCCESSOR GUARDIAN.

18 B. AFTER NOTICE AND HEARING ON A PETITION FOR REMOVAL OR FOR
19 PERMISSION TO RESIGN, THE COURT MAY TERMINATE THE GUARDIANSHIP AND
20 MAKE ANY FURTHER ORDER THAT MAY BE APPROPRIATE.

21 C. IF, AT ANY TIME IN THE PROCEEDING, THE COURT DETERMINES THAT
22 THE INTERESTS OF THE WARD ARE, OR MAY BE, INADEQUATELY REPRESENTED, IT
23 MAY APPOINT AN ATTORNEY TO REPRESENT THE MINOR, GIVING CONSIDERATION
24 TO THE PREFERENCE OF THE MINOR IF THE MINOR IS FOURTEEN OR MORE YEARS
25 OF AGE.

26 ARTICLE 3. GUARDIANS OF INCAPACITATED PERSONS

27 14-5301. Testamentary appointment of guardian for incapacitated
28 person

29 A. THE PARENT OF AN INCAPACITATED PERSON MAY BY WILL APPOINT A
30 GUARDIAN OF THE INCAPACITATED PERSON. A TESTAMENTARY APPOINTMENT BY A
31 PARENT BECOMES EFFECTIVE WHEN, AFTER HAVING GIVEN SEVEN DAYS PRIOR
32 WRITTEN NOTICE OF HIS INTENTION TO DO SO TO THE INCAPACITATED PERSON
33 AND TO THE PERSON HAVING HIS CARE OR TO HIS NEAREST ADULT RELATIVE, THE

1 GUARDIAN FILES ACCEPTANCE OF APPOINTMENT IN THE COURT IN WHICH THE WILL
2 IS INFORMALLY OR FORMALLY PROBATED, IF PRIOR THERETO, BOTH PARENTS ARE
3 DEAD OR THE SURVIVING PARENT IS ADJUDGED INCAPACITATED. IF BOTH PARENTS
4 ARE DEAD, AN EFFECTIVE APPOINTMENT BY THE PARENT WHO DIED LATER HAS PRIOR-
5 ITY UNLESS IT IS TERMINATED BY THE DENIAL OF PROBATE IN FORMAL PROCEED-
6 INGS.

7 B. THE SPOUSE OF A MARRIED INCAPACITATED PERSON MAY BY WILL AP-
8 POINT A GUARDIAN OF THE INCAPACITATED PERSON. THE APPOINTMENT BECOMES
9 EFFECTIVE WHEN, AFTER HAVING GIVEN SEVEN DAYS PRIOR WRITTEN NOTICE OF HIS
10 INTENTION TO DO SO TO THE INCAPACITATED PERSON AND TO THE PERSON HAVING
11 HIS CARE OR TO HIS NEAREST ADULT RELATIVE, THE GUARDIAN FILES ACCEPTANCE
12 OF APPOINTMENT IN THE COURT IN WHICH THE WILL IS INFORMALLY OR FORMALLY
13 PROBATED. AN EFFECTIVE APPOINTMENT BY A SPOUSE HAS PRIORITY OVER AN AP-
14 POINTMENT BY A PARENT UNLESS IT IS TERMINATED BY THE DENIAL OF PROBATE
15 IN FORMAL PROCEEDINGS.

16 C. THIS STATE SHALL RECOGNIZE A TESTAMENTARY APPOINTMENT EFFECTED
17 BY FILING ACCEPTANCE UNDER A WILL PROBATED AT THE TESTATOR'S DOMICILE IN
18 ANOTHER STATE.

19 D. ON THE FILING WITH THE COURT IN WHICH THE WILL WAS PROBATED OF
20 WRITTEN OBJECTION TO THE APPOINTMENT BY THE PERSON FOR WHOM A TESTAMEN-
21 TARY APPOINTMENT OF GUARDIAN HAS BEEN MADE, THE APPOINTMENT IS TERMI-
22 NATED. AN OBJECTION DOES NOT PREVENT APPOINTMENT BY THE COURT IN A
23 PROPER PROCEEDING OF THE TESTAMENTARY NOMINEE OR ANY OTHER SUITABLE PER-
24 SON UPON AN ADJUDICATION OF INCAPACITY IN PROCEEDINGS UNDER THE SUCCEED-
25 ING SECTIONS OF THIS ARTICLE.

26 14-5302. Venue

27 THE VENUE FOR GUARDIANSHIP PROCEEDINGS FOR AN INCAPACITATED PERSON
28 IS IN THE PLACE WHERE THE INCAPACITATED PERSON RESIDES OR IS PRESENT.
29 IF THE INCAPACITATED PERSON IS ADMITTED TO AN INSTITUTION PURSUANT TO
30 ORDER OF A COURT OF COMPETENT JURISDICTION, VENUE IS ALSO IN THE COUNTY
31 IN WHICH THAT COURT SITS.

32 14-5303. Procedure for court appointment of a guardian of an
33 incapacitated person

1 A. THE INCAPACITATED PERSON OR ANY PERSON INTERESTED IN HIS WEL-
2 FARE MAY PETITION FOR A FINDING OF INCAPACITY AND APPOINTMENT OF A
3 GUARDIAN.

4 B. UPON THE FILING OF A PETITION, THE COURT SHALL SET A DATE FOR
5 HEARING ON THE ISSUES OF INCAPACITY AND UNLESS THE ALLEGEDLY INCAPACI-
6 TATED PERSON HAS COUNSEL OF HIS OWN CHOICE, IT SHALL APPOINT AN APPRO-
7 PRIATE OFFICIAL OR ATTORNEY TO REPRESENT HIM IN THE PROCEEDING, WHO SHALL
8 HAVE THE POWERS AND DUTIES OF A GUARDIAN AD LITEM. THE PERSON ALLEGED TO
9 BE INCAPACITATED SHALL BE EXAMINED BY A PHYSICIAN APPOINTED BY THE COURT
10 WHO SHALL SUBMIT HIS REPORT IN WRITING TO THE COURT AND BE INTERVIEWED BY
11 A VISITOR SENT BY THE COURT. THE VISITOR ALSO SHALL INTERVIEW THE PERSON
12 SEEKING APPOINTMENT AS GUARDIAN, AND VISIT THE PRESENT PLACE OF ABODE OF
13 THE PERSON ALLEGED TO BE INCAPACITATED AND THE PLACE IT IS PROPOSED THAT
14 HE WILL BE DETAINED OR RESIDE IF THE REQUESTED APPOINTMENT IS MADE AND
15 SUBMIT HIS REPORT IN WRITING TO THE COURT. THE PERSON ALLEGED TO BE IN-
16 CAPACITATED IS ENTITLED TO BE PRESENT AT THE HEARING IN PERSON, AND TO
17 SEE OR HEAR ALL EVIDENCE BEARING UPON HIS CONDITION. HE IS ENTITLED TO
18 BE REPRESENTED BY COUNSEL, TO PRESENT EVIDENCE, TO CROSS-EXAMINE WIT-
19 NESSES, INCLUDING THE COURT-APPOINTED PHYSICIAN AND THE VISITOR, AND TO
20 TRIAL BY JURY. THE ISSUE MAY BE DETERMINED AT A CLOSED HEARING WITHOUT
21 A JURY IF THE PERSON ALLEGED TO BE INCAPACITATED OR HIS COUNSEL SO RE-
22 QUESTS.

23 14-5304. Findings; order of appointment

24 THE COURT MAY APPOINT A GUARDIAN AS REQUESTED IF IT IS SATISFIED
25 THAT THE PERSON FOR WHOM A GUARDIAN IS SOUGHT IS INCAPACITATED AND THAT
26 THE APPOINTMENT IS NECESSARY OR DESIRABLE AS A MEANS OF PROVIDING CON-
27 TINUING CARE AND SUPERVISION OF THE PERSON OF THE INCAPACITATED PERSON.
28 ALTERNATIVELY, THE COURT MAY DISMISS THE PROCEEDING OR ENTER ANY OTHER
29 APPROPRIATE ORDER.

30 14-5305. Acceptance of appointment; consent to jurisdiction

31 BY ACCEPTING APPOINTMENT, A GUARDIAN SUBMITS PERSONALLY TO THE
32 JURISDICTION OF THE COURT IN ANY PROCEEDING RELATING TO THE GUARDIAN-
33 SHIP THAT MAY BE INSTITUTED BY ANY INTERESTED PERSON. NOTICE OF ANY

1 PROCEEDING SHALL BE DELIVERED TO THE GUARDIAN OR MAILED TO HIM BY ORDINARY MAIL AT HIS ADDRESS AS LISTED IN THE COURT RECORDS AND TO HIS ADDRESS AS THEN KNOWN TO THE PETITIONER.

4 14-5306. Termination of guardianship for incapacitated person

5 THE AUTHORITY AND RESPONSIBILITY OF A GUARDIAN FOR AN INCAPACITATED PERSON TERMINATES UPON THE DEATH OF THE GUARDIAN OR WARD, THE DETERMINATION OF INCAPACITY OF THE GUARDIAN, OR UPON REMOVAL OR RESIGNATION AS PROVIDED IN SECTION 14-5307. TESTAMENTARY APPOINTMENT UNDER AN INFORMALLY PROBATED WILL TERMINATES IF THE WILL IS LATER DENIED PROBATE IN A FORMAL PROCEEDING.

11 14-5307. Removal or resignation of guardian; termination of incapacity

13 A. ON PETITION OF THE WARD OR ANY PERSON INTERESTED IN HIS WELFARE, THE COURT MAY REMOVE A GUARDIAN AND APPOINT A SUCCESSOR IF IN THE BEST INTERESTS OF THE WARD. ON PETITION OF THE GUARDIAN, THE COURT MAY ACCEPT HIS RESIGNATION AND MAKE ANY OTHER ORDER WHICH MAY BE APPROPRIATE.

17 B. AN ORDER ADJUDICATING INCAPACITY MAY SPECIFY A MINIMUM PERIOD, NOT EXCEEDING ONE YEAR, DURING WHICH NO PETITION FOR AN ADJUDICATION THAT THE WARD IS NO LONGER INCAPACITATED MAY BE FILED WITHOUT SPECIAL LEAVE. SUBJECT TO THIS RESTRICTION, THE WARD OR ANY PERSON INTERESTED IN HIS WELFARE MAY PETITION FOR AN ORDER THAT HE IS NO LONGER INCAPACITATED, AND FOR REMOVAL OR RESIGNATION OF THE GUARDIAN. A REQUEST FOR THIS ORDER MAY BE MADE BY INFORMAL LETTER TO THE COURT OR JUDGE AND ANY PERSON WHO KNOWINGLY INTERFERES WITH TRANSMISSION OF THIS KIND OF REQUEST TO THE COURT OR JUDGE MAY BE ADJUDGED GUILTY OF CONTEMPT OF COURT.

26 C. BEFORE REMOVING A GUARDIAN, ACCEPTING THE RESIGNATION OF A GUARDIAN, OR ORDERING THAT A WARD'S INCAPACITY HAS TERMINATED, THE COURT, FOLLOWING THE SAME PROCEDURES TO SAFEGUARD THE RIGHTS OF THE WARD AS APPLY TO A PETITION FOR APPOINTMENT OF A GUARDIAN, MAY SEND A VISITOR TO THE RESIDENCE OF THE PRESENT GUARDIAN AND TO THE PLACE WHERE THE WARD RESIDES OR IS DETAINED, TO OBSERVE CONDITIONS AND REPORT IN WRITING TO THE COURT.

33 14-5308. Visitor in guardianship proceeding

1 A VISITOR IS, WITH RESPECT TO GUARDIANSHIP PROCEEDINGS, A PERSON
2 WHO IS TRAINED IN LAW, NURSING OR SOCIAL WORK AND IS AN OFFICER, EMPLOYEE
3 OR SPECIAL APPOINTEE OF THE COURT WITH NO PERSONAL INTEREST IN THE PRO-
4 CEEDINGS.

5 14-5309. Notices in guardianship proceedings

6 A. IN A PROCEEDING FOR THE APPOINTMENT OR REMOVAL OF A GUARDIAN
7 OF AN INCAPACITATED PERSON OTHER THAN THE APPOINTMENT OF A TEMPORARY
8 GUARDIAN OR TEMPORARY SUSPENSION OF A GUARDIAN, NOTICE OF HEARING SHALL
9 BE GIVEN TO EACH OF THE FOLLOWING:

10 1. THE WARD OR THE PERSON ALLEGED TO BE INCAPACITATED AND HIS
11 SPOUSE, PARENTS AND ADULT CHILDREN.

12 2. ANY PERSON WHO IS SERVING AS HIS GUARDIAN, CONSERVATOR OR WHO
13 HAS HIS CARE AND CUSTODY.

14 3. IN CASE NO OTHER PERSON IS NOTIFIED UNDER PARAGRAPH 1 OF THIS
15 SUBSECTION, AT LEAST ONE OF HIS CLOSEST ADULT RELATIVES, IF ANY CAN BE
16 FOUND.

17 B. NOTICE SHALL BE SERVED PERSONALLY ON THE ALLEGED INCAPACITATED
18 PERSON, AND HIS SPOUSE AND PARENTS IF THEY CAN BE FOUND WITHIN THE STATE.
19 NOTICE TO THE SPOUSE AND PARENTS, IF THEY CANNOT BE FOUND WITHIN THE
20 STATE, AND TO ALL OTHER PERSONS EXCEPT THE ALLEGED INCAPACITATED PERSON
21 SHALL BE GIVEN AS PROVIDED IN SECTION 14-1401. WAIVER OF NOTICE BY THE
22 PERSON ALLEGED TO BE INCAPACITATED IS NOT EFFECTIVE UNLESS HE ATTENDS
23 THE HEARING OR HIS WAIVER OF NOTICE IS CONFIRMED IN AN INTERVIEW WITH
24 THE VISITOR. REPRESENTATION OF THE ALLEGED INCAPACITATED PERSON BY A
25 GUARDIAN AD LITEM IS NOT NECESSARY.

26 14-5310. Temporary guardians

27 IF AN INCAPACITATED PERSON HAS NO GUARDIAN AND AN EMERGENCY EXISTS,
28 THE COURT MAY EXERCISE THE POWER OF A GUARDIAN PENDING NOTICE AND HEAR-
29 ING. IF AN APPOINTED GUARDIAN IS NOT EFFECTIVELY PERFORMING HIS DUTIES
30 AND THE COURT FURTHER FINDS THAT THE WELFARE OF THE INCAPACITATED PERSON
31 REQUIRES IMMEDIATE ACTION, IT MAY, WITH OR WITHOUT NOTICE, APPOINT A TEM-
32 PORARY GUARDIAN FOR THE INCAPACITATED PERSON FOR A SPECIFIED PERIOD NOT
33 TO EXCEED SIX MONTHS. A TEMPORARY GUARDIAN IS ENTITLED TO THE CARE AND
34 CUSTODY OF THE WARD AND THE AUTHORITY OF ANY PERMANENT GUARDIAN PREVIOUSLY

1 APPOINTED BY THE COURT IS SUSPENDED SO LONG AS A TEMPORARY GUARDIAN
2 HAS AUTHORITY. A TEMPORARY GUARDIAN MAY BE REMOVED AT ANY TIME. A TEM-
3 PORARY GUARDIAN SHALL MAKE ANY REPORT THE COURT REQUIRES. IN OTHER RE-
4 SPECTS THE PROVISIONS OF THIS TITLE CONCERNING GUARDIANS APPLY TO TEM-
5 PORARY GUARDIANS.

6 14-5311. Who may be guardian; priorities

7 A. ANY COMPETENT PERSON OR A SUITABLE INSTITUTION MAY BE APPOINTED
8 GUARDIAN OF AN INCAPACITATED PERSON.

9 B. PERSONS WHO ARE NOT DISQUALIFIED HAVE PRIORITY FOR APPOINT-
10 MENT AS GUARDIAN IN THE FOLLOWING ORDER:

11 1. THE SPOUSE OF THE INCAPACITATED PERSON.

12 2. AN ADULT CHILD OF THE INCAPACITATED PERSON.

13 3. A PARENT OF THE INCAPACITATED PERSON, INCLUDING A PERSON NO-
14 MINATED BY WILL OR OTHER WRITING SIGNED BY A DECEASED PARENT.

15 4. ANY RELATIVE OF THE INCAPACITATED PERSON WITH WHOM HE HAS
16 RESIDED FOR MORE THAN SIX MONTHS PRIOR TO THE FILING OF THE PETITION.

17 5. A PERSON NOMINATED BY THE PERSON WHO IS CARING FOR HIM OR
18 PAYING BENEFITS TO HIM.

19 14-5312. General powers and duties of guardian

20 A. A GUARDIAN OF AN INCAPACITATED PERSON HAS THE SAME POWERS,
21 RIGHTS AND DUTIES RESPECTING HIS WARD THAT A PARENT HAS RESPECTING HIS
22 UNEMANCIPATED MINOR CHILD EXCEPT THAT A GUARDIAN IS NOT LIABLE TO THIRD
23 PERSONS FOR ACTS OF THE WARD SOLELY BY REASON OF THE GUARDIANSHIP. IN
24 PARTICULAR, AND WITHOUT QUALIFYING THE FOREGOING, A GUARDIAN HAS THE
25 FOLLOWING POWERS AND DUTIES, EXCEPT AS MODIFIED BY ORDER OF THE COURT:

26 1. TO THE EXTENT THAT IT IS CONSISTENT WITH THE TERMS OF ANY
27 ORDER BY A COURT OF COMPETENT JURISDICTION RELATING TO DETENTION OR
28 COMMITMENT OF THE WARD, HE IS ENTITLED TO CUSTODY OF THE PERSON OF HIS
29 WARD AND MAY ESTABLISH THE WARD'S PLACE OF ABODE WITHIN OR WITHOUT THIS
30 STATE.

31 2. IF ENTITLED TO CUSTODY OF HIS WARD HE SHALL MAKE PROVISION FOR
32 THE CARE, COMFORT AND MAINTENANCE OF HIS WARD AND, WHENEVER APPROPRIATE,
33 ARRANGE FOR HIS TRAINING AND EDUCATION. WITHOUT REGARD TO CUSTODIAL

1 RIGHTS OF THE WARD'S PERSON, HE SHALL TAKE REASONABLE CARE OF HIS WARD'S
2 CLOTHING, FURNITURE, VEHICLES AND OTHER PERSONAL EFFECTS AND COMMENCE
3 PROTECTIVE PROCEEDINGS IF OTHER PROPERTY OF HIS WARD IS IN NEED OF PRO-
4TECTION.

5 3. A GUARDIAN MAY GIVE ANY CONSENTS OR APPROVALS THAT MAY BE NEC-
6CESSARY TO ENABLE THE WARD TO RECEIVE MEDICAL OR OTHER PROFESSIONAL CARE,
7COUNSEL, TREATMENT OR SERVICE.

8 4. IF NO CONSERVATOR FOR THE ESTATE OF THE WARD HAS BEEN AP-
9POINTED, HE MAY:

10 (a) INSTITUTE PROCEEDINGS TO COMPEL ANY PERSON UNDER A DUTY TO
11SUPPORT THE WARD OR TO PAY SUMS FOR THE WELFARE OF THE WARD TO PERFORM
12HIS DUTY.

13 (b) RECEIVE MONEY AND TANGIBLE PROPERTY DELIVERABLE TO THE WARD
14AND APPLY THE MONEY AND PROPERTY FOR SUPPORT, CARE AND EDUCATION OF THE
15WARD, BUT, HE MAY NOT USE FUNDS FROM HIS WARD'S ESTATE FOR ROOM AND BOARD
16WHICH HE, HIS SPOUSE, PARENT OR CHILD HAVE FURNISHED THE WARD UNLESS
17A CHARGE FOR THE SERVICE IS APPROVED BY ORDER OF THE COURT MADE UPON
18NOTICE TO AT LEAST ONE OF THE NEXT OF KIN OF THE INCOMPETENT WARD, IF
19NOTICE IS POSSIBLE. HE MUST EXERCISE CARE TO CONSERVE ANY EXCESS FOR
20THE WARD'S NEEDS.

21 5. A GUARDIAN IS REQUIRED TO REPORT THE CONDITION OF HIS WARD
22AND OF THE ESTATE WHICH HAS BEEN SUBJECT TO HIS POSSESSION OR CONTROL,
23AS REQUIRED BY THE COURT OR COURT RULE.

24 6. IF A CONSERVATOR HAS BEEN APPOINTED, ALL OF THE WARD'S ESTATE
25RECEIVED BY THE GUARDIAN IN EXCESS OF THOSE FUNDS EXPENDED TO MEET CUR-
26RENT EXPENSES FOR SUPPORT, CARE AND EDUCATION OF THE WARD MUST BE PAID
27TO THE CONSERVATOR FOR MANAGEMENT AS PROVIDED IN THIS CHAPTER AND THE
28GUARDIAN MUST ACCOUNT TO THE CONSERVATOR FOR FUNDS EXPENDED.

29 B. ANY GUARDIAN OF ONE FOR WHOM A CONSERVATOR ALSO HAS BEEN AP-
30POINTED SHALL CONTROL THE CUSTODY AND CARE OF THE WARD, AND IS ENTITLED
31TO RECEIVE REASONABLE SUMS FOR HIS SERVICES AND FOR ROOM AND BOARD
32FURNISHED TO THE WARD AS AGREED UPON BETWEEN HIM AND THE CONSERVATOR IF
33THE AMOUNTS AGREED UPON ARE REASONABLE UNDER THE CIRCUMSTANCES. THE

1 GUARDIAN MAY REQUEST THE CONSERVATOR TO EXPEND THE WARD'S ESTATE BY
2 PAYMENT TO THIRD PERSONS OR INSTITUTIONS FOR THE WARD'S CARE AND
3 MAINTENANCE.

4 14-5313. Proceedings subsequent to appointment; venue

5 A. THE COURT WHERE THE WARD RESIDES HAS CONCURRENT JURISDICTION
6 WITH THE COURT WHICH APPOINTED THE GUARDIAN, OR IN WHICH ACCEPTANCE OF
7 A TESTAMENTARY APPOINTMENT WAS FILED, OVER RESIGNATION, REMOVAL, AC-
8 COUNTING AND OTHER PROCEEDINGS RELATING TO THE GUARDIANSHIP.

9 B. IF THE COURT LOCATED WHERE THE WARD RESIDES IS NOT THE COURT
10 IN WHICH ACCEPTANCE OF APPOINTMENT IS FILED, THE COURT IN WHICH PROCEED-
11 INGS SUBSEQUENT TO APPOINTMENT ARE COMMENCED SHALL IN ALL APPROPRIATE
12 CASES NOTIFY THE OTHER COURT, IN THIS OR ANOTHER STATE, AND AFTER COM-
13 SULTATION WITH THAT COURT DETERMINE WHETHER TO RETAIN JURISDICTION OR
14 TRANSFER THE PROCEEDINGS TO THE OTHER COURT, WHICHEVER MAY BE IN THE
15 BEST INTEREST OF THE WARD. A COPY OF ANY ORDER ACCEPTING A RESIGNATION
16 OR REMOVING A GUARDIAN SHALL BE SENT TO THE COURT IN WHICH ACCEPTANCE
17 OF APPOINTMENT IS FILED.

18 ARTICLE 4. PROTECTION OF PROPERTY OF PERSONS
19 UNDER DISABILITY AND MINORS

20 14-5401. Protective proceedings

21 UPON PETITION AND AFTER NOTICE AND HEARING IN ACCORDANCE WITH
22 THE PROVISIONS OF THIS ARTICLE, THE COURT MAY APPOINT A CONSERVATOR OR
23 MAKE OTHER PROTECTIVE ORDER FOR CAUSE AS FOLLOWS:

24 1. APPOINTMENT OF A CONSERVATOR OR OTHER PROTECTIVE ORDER MAY BE
25 MADE IN RELATION TO THE ESTATE AND AFFAIRS OF A MINOR IF THE COURT DE-
26 TERMINES THAT A MINOR OWNS MONEY OR PROPERTY THAT REQUIRES MANAGEMENT
27 OR PROTECTION WHICH CANNOT OTHERWISE BE PROVIDED, HAS OR MAY HAVE BUSI-
28 NESS AFFAIRS WHICH MAY BE JEOPARDIZED OR PREVENTED BY HIS MINORITY, OR
29 THAT FUNDS ARE NEEDED FOR HIS SUPPORT AND EDUCATION AND THAT PROTECTION
30 IS NECESSARY OR DESIRABLE TO OBTAIN OR PROVIDE FUNDS.

31 2. APPOINTMENT OF A CONSERVATOR OR OTHER PROTECTIVE ORDER MAY BE
32 MADE IN RELATION TO THE ESTATE AND AFFAIRS OF A PERSON IF THE COURT DE-
33 TERMINES THAT BOTH:

1 (a) THE PERSON IS UNABLE TO MANAGE HIS PROPERTY AND AFFAIRS EF-
2 FECTIVELY FOR REASONS SUCH AS MENTAL ILLNESS, MENTAL DEFICIENCY, PHY-
3 SICAL ILLNESS OR DISABILITY, ADVANCED AGE, CHRONIC USE OF DRUGS, CHRONIC
4 INTOXICATION, CONFINEMENT, DETENTION BY A FOREIGN POWER OR DISAPPEARANCE.

5 (b) THE PERSON HAS PROPERTY WHICH WILL BE WASTED OR DISSIPATED
6 UNLESS PROPER MANAGEMENT IS PROVIDED, OR THAT FUNDS ARE NEEDED FOR THE
7 SUPPORT, CARE AND WELFARE OF THE PERSON OR THOSE ENTITLED TO BE SUP-
8 PORTED BY HIM AND THAT PROTECTION IS NECESSARY OR DESIRABLE TO OBTAIN OR
9 PROVIDE FUNDS.

10 14-5402. Protective proceedings; jurisdiction of affairs
11 of protected persons

12 AFTER THE SERVICE OF NOTICE IN A PROCEEDING SEEKING THE AP-
13 POINTMENT OF A CONSERVATOR OR OTHER PROTECTIVE ORDER AND UNTIL TERMINA-
14 TION OF THE PROCEEDING, THE COURT IN WHICH THE PETITION IS FILED HAS:

15 1. EXCLUSIVE JURISDICTION TO DETERMINE THE NEED FOR A CONSERVA-
16 TOR OR OTHER PROTECTIVE ORDER UNTIL THE PROCEEDINGS ARE TERMINATED.

17 2. EXCLUSIVE JURISDICTION TO DETERMINE HOW THE ESTATE OF THE
18 PROTECTED PERSON WHICH IS SUBJECT TO THE LAWS OF THIS STATE SHALL BE
19 MANAGED, EXPENDED OR DISTRIBUTED TO OR FOR THE USE OF THE PROTECTED
20 PERSON OR ANY OF HIS DEPENDENTS.

21 3. CONCURRENT JURISDICTION TO DETERMINE THE VALIDITY OF CLAIMS
22 AGAINST THE PERSON OR ESTATE OF THE PROTECTED PERSON AND HIS TITLE TO
23 ANY PROPERTY OR CLAIM.

24 14-5403. Venue

25 VENUE FOR PROCEEDINGS UNDER THIS ARTICLE IS:

26 1. IN THE PLACE IN THIS STATE WHERE THE PERSON TO BE PROTECTED
27 RESIDES WHETHER OR NOT A GUARDIAN HAS BEEN APPOINTED IN ANOTHER PLACE.

28 2. IF THE PERSON TO BE PROTECTED DOES NOT RESIDE IN THIS STATE,
29 IN ANY PLACE WHERE HE HAS PROPERTY.

30 14-5404. Original petition for appointment or
31 protective order

32 A. THE PERSON TO BE PROTECTED, ANY PERSON WHO IS INTERESTED
33 IN HIS ESTATE, AFFAIRS OR WELFARE INCLUDING HIS PARENT, GUARDIAN OR

1 CUSTODIAN, OR ANY PERSON WHO WOULD BE ADVERSELY AFFECTED BY LACK OF
2 EFFECTIVE MANAGEMENT OF HIS PROPERTY AND AFFAIRS MAY PETITION FOR
3 THE APPOINTMENT OF A CONSERVATOR OR FOR OTHER APPROPRIATE PROTECTIVE
4 ORDER.

5 B. THE PETITION SHALL SET FORTH:

6 1. TO THE EXTENT KNOWN, THE INTEREST OF THE PETITIONER.

7 2. THE NAME, AGE, RESIDENCE AND ADDRESS OF THE PERSON TO BE
8 PROTECTED.

9 3. THE NAME AND ADDRESS OF THE GUARDIAN, IF ANY, OF THE PERSON
10 TO BE PROTECTED.

11 4. THE NAME AND ADDRESS OF THE NEAREST RELATIVE KNOWN TO THE
12 PETITIONER.

13 5. A GENERAL STATEMENT OF THE PROPERTY OF THE PERSON TO BE PRO-
14 TECTED WITH AN ESTIMATE OF THE VALUE THEREOF, INCLUDING ANY COMPENSA-
15 TION, INSURANCE, PENSION OR ALLOWANCE TO WHICH HE IS ENTITLED.

16 6. THE REASON WHY APPOINTMENT OF A CONSERVATOR OR OTHER PRO-
17 TECTIVE ORDER IS NECESSARY.

18 IF THE APPOINTMENT OF A CONSERVATOR IS REQUESTED, THE PETITION ALSO
19 SHALL SET FORTH THE NAME AND ADDRESS OF THE PERSON WHOSE APPOINTMENT
20 IS SOUGHT AND THE BASIS OF HIS PRIORITY FOR APPOINTMENT.

21 14-5405. Notice

22 A. ON A PETITION FOR APPOINTMENT OF A CONSERVATOR OR OTHER
23 PROTECTIVE ORDER, THE PERSON TO BE PROTECTED AND HIS SPOUSE OR,
24 IF NONE, HIS PARENTS, MUST BE SERVED PERSONALLY WITH NOTICE OF THE
25 PROCEEDING AT LEAST FOURTEEN DAYS BEFORE THE DATE OF HEARING IF THEY
26 CAN BE FOUND WITHIN THE STATE, OR, IF THEY CANNOT BE FOUND WITHIN THE
27 STATE, THEY MUST BE GIVEN NOTICE IN ACCORDANCE WITH SECTION 14-1401.
28 WAIVER BY THE PERSON TO BE PROTECTED IS NOT EFFECTIVE UNLESS HE ATTENDS
29 THE HEARING OR, UNLESS MINORITY IS THE REASON FOR THE PROCEEDING,
30 WAIVER IS CONFIRMED IN AN INTERVIEW WITH THE VISITOR.

31 B. NOTICE OF A PETITION FOR APPOINTMENT OF A CONSERVATOR OR
32 OTHER INITIAL PROTECTIVE ORDER, AND OF ANY SUBSEQUENT HEARING, MUST
33 BE GIVEN TO ANY PERSON WHO HAS FILED A REQUEST FOR NOTICE UNDER

1 SECTION 14-5406 AND TO INTERESTED PERSONS AND OTHER PERSONS AS THE
2 COURT MAY DIRECT. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION A, OF
3 THIS SECTION, NOTICE SHALL BE GIVEN IN ACCORDANCE WITH SECTION 14-
4 1401.

5 14-5406. Protective proceedings; request for notice;
6 interested person

7 ANY INTERESTED PERSON WHO DESIRES TO BE NOTIFIED BEFORE ANY
8 ORDER IS MADE IN A PROTECTIVE PROCEEDING MAY FILE WITH THE REGISTRAR
9 A REQUEST FOR NOTICE SUBSEQUENT TO PAYMENT OF ANY FEE REQUIRED BY
10 STATUTE OR COURT RULE. THE CLERK SHALL MAIL A COPY OF THE DEMAND
11 TO THE CONSERVATOR IF ONE HAS BEEN APPOINTED. A REQUEST IS NOT EF-
12 FECTIVE UNLESS IT CONTAINS A STATEMENT SHOWING THE INTEREST OF THE
13 PERSON MAKING IT AND HIS ADDRESS, OR THAT OF HIS ATTORNEY, AND IS
14 EFFECTIVE ONLY AS TO MATTERS OCCURRING AFTER THE FILING. ANY GOVERN-
15 MENTAL AGENCY PAYING OR PLANNING TO PAY BENEFITS TO THE PERSON TO BE
16 PROTECTED IS AN INTERESTED PERSON IN PROTECTIVE PROCEEDINGS.

17 14-5407. Procedure concerning hearing and order
18 on original petition

19 A. UPON RECEIPT OF A PETITION FOR APPOINTMENT OF A CONSERVATOR
20 OR OTHER PROTECTIVE ORDER BECAUSE OF MINORITY, THE COURT SHALL SET A
21 DATE FOR HEARING ON THE MATTERS ALLEGED IN THE PETITION. IF, AT ANY
22 TIME IN THE PROCEEDING, THE COURT DETERMINES THAT THE INTERESTS OF
23 THE MINOR ARE OR MAY BE INADEQUATELY REPRESENTED, IT MAY APPOINT AN
24 ATTORNEY TO REPRESENT THE MINOR, GIVING CONSIDERATION TO THE CHOICE
25 OF THE MINOR IF FOURTEEN YEARS OF AGE OR OLDER. A LAWYER APPOINTED
26 BY THE COURT TO REPRESENT A MINOR HAS THE POWERS AND DUTIES OF A GUARD-
27 IAN AD LITEM. AFTER HEARING, UPON FINDING THAT A BASIS FOR THE APPOINT-
28 MENT OF A CONSERVATOR OR OTHER PROTECTIVE ORDER HAS BEEN ESTABLISHED,
29 THE COURT SHALL MAKE AN APPOINTMENT OR OTHER APPROPRIATE PROTECTIVE
30 ORDER.

31 B. UPON RECEIPT OF A PETITION FOR APPOINTMENT OF A CONSERVATOR
32 OR OTHER PROTECTIVE ORDER FOR REASONS OTHER THAN MINORITY, THE COURT
33 SHALL SET A DATE FOR HEARING.

1 C. UNLESS THE PERSON TO BE PROTECTED HAS COUNSEL OF HIS OWN
2 CHOICE, THE COURT MUST APPOINT A LAWYER TO REPRESENT HIM WHO THEN
3 HAS THE POWERS AND DUTIES OF A GUARDIAN AD LITEM. IF THE ALLEGED
4 DISABILITY IS MENTAL ILLNESS, MENTAL DEFICIENCY, PHYSICAL ILLNESS OR
5 DISABILITY, ADVANCED AGE, CHRONIC USE OF DRUGS, OR CHRONIC INTOXICA-
6 TION, THE COURT MAY DIRECT THAT THE PERSON TO BE PROTECTED BE EXAMINED
7 BY A PHYSICIAN DESIGNATED BY THE COURT, PREFERABLY A PHYSICIAN WHO IS
8 NOT CONNECTED WITH ANY INSTITUTION IN WHICH THE PERSON IS A PATIENT OR
9 IS DETAINED. THE COURT MAY SEND A VISITOR TO INTERVIEW THE PERSON
10 TO BE PROTECTED. THE VISITOR MAY BE GUARDIAN AD LITEM OR AN OFFICER
11 OR EMPLOYEE OF THE COURT.

12 D. IN ANY CASE WHERE THE VETERANS' ADMINISTRATION IS OR MAY BE
13 AN INTERESTED PARTY, A CERTIFICATE OF AN AUTHORIZED OFFICIAL OF THE
14 VETERANS' ADMINISTRATION THAT THE PERSON TO BE PROTECTED HAS BEEN
15 FOUND INCAPABLE OF HANDLING THE BENEFITS PAYABLE ON EXAMINATION IN
16 ACCORDANCE WITH THE LAWS AND REGULATIONS GOVERNING THE VETERANS' AD-
17 MINISTRATION SHALL BE PRIMA FACIE EVIDENCE OF THE NECESSITY FOR APPOINT-
18 MENT OF A CONSERVATOR.

19 14-5408. Permissible court orders

20 THE COURT HAS THE FOLLOWING POWERS WHICH MAY BE EXERCISED DIRECTLY
21 OR THROUGH A CONSERVATOR IN RESPECT TO THE ESTATE AND AFFAIRS OF PRO-
22 TECTED PERSONS:

23 1. WHILE A PETITION FOR APPOINTMENT OF A CONSERVATOR OR OTHER
24 PROTECTIVE ORDER IS PENDING AND AFTER PRELIMINARY HEARING AND WITHOUT
25 NOTICE TO OTHERS, THE COURT HAS POWER TO PRESERVE AND APPLY THE PROP-
26 erty OF THE PERSON TO BE PROTECTED AS MAY BE REQUIRED FOR HIS BENEFIT
27 OR THE BENEFIT OF HIS DEPENDENTS.

28 2. AFTER HEARING AND UPON DETERMINING THAT A BASIS FOR AN
29 APPOINTMENT OR OTHER PROTECTIVE ORDER EXISTS WITH RESPECT TO A MINOR
30 WITHOUT OTHER DISABILITY, THE COURT HAS ALL THOSE POWERS OVER THE
31 ESTATE AND AFFAIRS OF THE MINOR WHICH ARE OR MIGHT BE NECESSARY FOR
32 THE BEST INTERESTS OF THE MINOR, HIS FAMILY AND MEMBERS OF HIS HOUSE-
33 HOLD.

1 3. AFTER HEARING AND UPON DETERMINING THAT A BASIS FOR AN
2 APPOINTMENT OR OTHER PROTECTIVE ORDER EXISTS WITH RESPECT TO A
3 PERSON FOR REASONS OTHER THAN MINORITY, THE COURT HAS, FOR THE BENEFIT
4 OF THE PERSON AND MEMBERS OF HIS HOUSEHOLD, ALL THE POWERS OVER HIS
5 ESTATE AND AFFAIRS WHICH HE COULD EXERCISE IF PRESENT AND NOT UNDER
6 DISABILITY, EXCEPT THE POWER TO MAKE A WILL OR TO MAKE GIFTS OTHER THAN
7 THOSE AUTHORIZED BY THIS SECTION.

8 4. THE COURT HAS POWER TO MAKE GIFTS TO SUCH DONEES AND IN
9 SUCH AMOUNTS AS WOULD CONTINUE A PROGRAM OF GIVING ESTABLISHED BY
10 THE PROTECTED PERSON PRIOR TO DISABILITY, IF, AFTER NOTICE AND HEARING,
11 THE COURT IS SATISFIED THAT THE MAKING OF GIFTS IS IN THE BEST INTER-
12 ESTS OF THE PROTECTED PERSON AND THAT HE EITHER IS INCAPABLE OF CON-
13 SENTING OR HAS CONSENTED TO THE PROPOSED GIFTS.

14 5. AN ORDER MADE PURSUANT TO THIS SECTION DETERMINING THAT A
15 BASIS FOR APPOINTMENT OF A CONSERVATOR OR OTHER PROTECTIVE ORDER
16 EXISTS, HAS NO EFFECT ON THE CAPACITY OF THE PROTECTED PERSON.

17 14-5409. Protective arrangements and single
18 transactions authorized

19 A. IF IT IS ESTABLISHED IN A PROPER PROCEEDING THAT A BASIS
20 EXISTS AS DESCRIBED IN SECTION 14-5401 FOR AFFECTING THE PROPERTY
21 AND AFFAIRS OF A PERSON THE COURT, WITHOUT APPOINTING A CONSERVATOR,
22 MAY AUTHORIZE, DIRECT OR RATIFY ANY TRANSACTION NECESSARY OR DESIRABLE
23 TO ACHIEVE ANY SECURITY, SERVICE OR CARE ARRANGEMENT MEETING THE
24 FORESEEABLE NEEDS OF THE PROTECTED PERSON. PROTECTIVE ARRANGEMENTS
25 INCLUDE, BUT ARE NOT LIMITED TO, PAYMENT, DELIVERY, DEPOSIT OR RETEN-
26 TION OF FUNDS OR PROPERTY, SALE, MORTGAGE, LEASE OR OTHER TRANSFER OF
27 PROPERTY, ENTRY INTO AN ANNUITY CONTRACT, A CONTRACT FOR LIFE CARE,
28 A DEPOSIT CONTRACT, A CONTRACT FOR TRAINING AND EDUCATION, OR ADDI-
29 TION TO OR ESTABLISHMENT OF A SUITABLE TRUST.

30 B. WHEN IT HAS BEEN ESTABLISHED IN A PROPER PROCEEDING THAT A
31 BASIS EXISTS AS DESCRIBED IN SECTION 14-5401 FOR AFFECTING THE PROPERTY
32 AND AFFAIRS OF A PERSON THE COURT, WITHOUT APPOINTING A CONSERVATOR,
33 MAY AUTHORIZE, DIRECT OR RATIFY ANY CONTRACT, TRUST OR OTHER TRANSACTION

1 RELATING TO THE PROTECTED PERSON'S FINANCIAL AFFAIRS OR INVOLVING HIS
2 ESTATE IF THE COURT DETERMINES THAT THE TRANSACTION IS IN THE BEST
3 INTERESTS OF THE PROTECTED PERSON.

4 C. BEFORE APPROVING A PROTECTIVE ARRANGEMENT OR OTHER TRANSAC-
5 TION UNDER THIS SECTION, THE COURT SHALL CONSIDER THE INTERESTS OF
6 CREDITORS AND DEPENDENTS OF THE PROTECTED PERSON AND, IN VIEW OF HIS
7 DISABILITY, WHETHER THE PROTECTED PERSON NEEDS THE CONTINUING PROTEC-
8 TION OF A CONSERVATOR. THE COURT MAY APPOINT A SPECIAL CONSERVATOR
9 TO ASSIST IN THE ACCOMPLISHMENT OF ANY PROTECTIVE ARRANGEMENT OR
10 OTHER TRANSACTION AUTHORIZED UNDER THIS SECTION WHO SHALL HAVE THE
11 AUTHORITY CONFERRED BY THE ORDER AND SERVE UNTIL DISCHARGED BY ORDER
12 AFTER REPORT TO THE COURT OF ALL MATTERS DONE PURSUANT TO THE ORDER
13 OF APPOINTMENT.

14 14-5410. Who may be appointed conservator; priorities

15 A. THE COURT MAY APPOINT AN INDIVIDUAL OR A CORPORATION, WITH
16 GENERAL POWER TO SERVE AS TRUSTEE, AS CONSERVATOR OF THE ESTATE OF A
17 PROTECTED PERSON. THE FOLLOWING ARE ENTITLED TO CONSIDERATION FOR
18 APPOINTMENT IN THE ORDER LISTED:

19 1. A CONSERVATOR, GUARDIAN OF PROPERTY OR OTHER LIKE FIDUCIARY
20 APPOINTED OR RECOGNIZED BY THE APPROPRIATE COURT OF ANY OTHER JURIS-
21 DICTION IN WHICH THE PROTECTED PERSON RESIDES.

22 2. AN INDIVIDUAL OR CORPORATION NOMINATED BY THE PROTECTED PER-
23 SON IF HE IS FOURTEEN OR MORE YEARS OF AGE AND HAS, IN THE OPINION OF
24 THE COURT, SUFFICIENT MENTAL CAPACITY TO MAKE AN INTELLIGENT CHOICE.

25 3. THE SPOUSE OF THE PROTECTED PERSON.

26 4. AN ADULT CHILD OF THE PROTECTED PERSON.

27 5. A PARENT OF THE PROTECTED PERSON, OR A PERSON NOMINATED BY
28 THE WILL OF A DECEASED PARENT.

29 6. ANY RELATIVE OF THE PROTECTED PERSON WITH WHOM HE HAS
30 RESIDED FOR MORE THAN SIX MONTHS PRIOR TO THE FILING OF THE PETITION.

31 7. A PERSON NOMINATED BY THE PERSON WHO IS CARING FOR HIM OR
32 PAYING BENEFITS TO HIM.

33 B. A PERSON IN PRIORITIES 1, 3, 4, 5 OR 6 MAY NOMINATE IN

1 WRITING A PERSON TO SERVE IN HIS STEAD. WITH RESPECT TO PERSONS HAVING
2 EQUAL PRIORITY, THE COURT IS TO SELECT THE ONE WHO IS BEST QUALIFIED
3 OF THOSE WILLING TO SERVE. THE COURT, FOR GOOD CAUSE, MAY PASS OVER
4 A PERSON HAVING PRIORITY AND APPOINT A PERSON HAVING LESS PRIORITY OR
5 NO PRIORITY.

6 14-5411. Bond

7 A. THE COURT MAY REQUIRE A CONSERVATOR TO FURNISH A BOND CON-
8 DITIONED UPON FAITHFUL DISCHARGE OF ALL DUTIES OF THE TRUST ACCORDING
9 TO LAW, WITH SURETIES AS IT SHALL SPECIFY. UNLESS OTHERWISE DIRECTED,
10 THE BOND SHALL BE IN THE AMOUNT OF THE AGGREGATE CAPITAL VALUE OF
11 THE PROPERTY OF THE ESTATE IN HIS CONTROL PLUS ONE YEAR'S ESTIMATED
12 INCOME MINUS THE VALUE OF SECURITIES DEPOSITED UNDER ARRANGEMENTS
13 REQUIRING AN ORDER OF THE COURT FOR THEIR REMOVAL AND THE VALUE OF
14 ANY LAND WHICH THE FIDUCIARY, BY EXPRESS LIMITATION OF POWER, LACKS
15 POWER TO SELL OR CONVEY WITHOUT COURT AUTHORIZATION. THE COURT IN
16 LIEU OF SURETIES ON A BOND, MAY ACCEPT OTHER SECURITY FOR THE PER-
17 FORMANCE OF THE BOND, INCLUDING A PLEDGE OF SECURITIES OR A MORTGAGE
18 OF LAND.

19 B. IF THE VETERANS' ADMINISTRATION IS PAYING OR PLANNING TO
20 PAY BENEFITS TO A PERSON TO BE PROTECTED, THE COURT SHALL, UPON THE
21 REQUEST OF THE VETERANS' ADMINISTRATION, REQUIRE A BOND, PREFERABLY A
22 CORPORATE SURETY BOND, CONDITIONED UPON FAITHFUL DISCHARGE OF ALL
23 DUTIES OF THE TRUST ACCORDING TO LAW, WITH SURETIES IT SHALL SPECIFY.

24 14-5412. Terms and requirements of bonds

25 A. THE FOLLOWING REQUIREMENTS AND PROVISIONS APPLY TO ANY BOND
26 REQUIRED UNDER SECTION 14-5411:

27 1. UNLESS OTHERWISE PROVIDED BY THE TERMS OF THE APPROVED BOND,
28 SURETIES ARE JOINTLY AND SEVERALLY LIABLE WITH THE CONSERVATOR AND
29 WITH EACH OTHER.

30 2. BY EXECUTING AN APPROVED BOND OF A CONSERVATOR, THE SURETY
31 CONSENTS TO THE JURISDICTION OF THE COURT WHICH ISSUED LETTERS TO THE
32 PRIMARY OBLIGOR IN ANY PROCEEDING PERTAINING TO THE FIDUCIARY DUTIES
33 OF THE CONSERVATOR AND NAMING THE SURETY AS A PARTY DEFENDANT. NOTICE

1 OF ANY PROCEEDING SHALL BE DELIVERED TO THE SURETY OR MAILED TO HIM
2 BY REGISTERED OR CERTIFIED MAIL AT HIS ADDRESS AS LISTED WITH THE
3 COURT WHERE THE BOND IS FILED AND TO HIS ADDRESS AS THEN KNOWN TO THE
4 PETITIONER.

5 3. ON PETITION OF A SUCCESSOR CONSERVATOR OR ANY INTERESTED
6 PERSON, A PROCEEDING MAY BE INITIATED AGAINST A SURETY FOR BREACH
7 OF THE OBLIGATION OF THE BOND OF THE CONSERVATOR.

8 4. THE BOND OF THE CONSERVATOR IS NOT VOID AFTER THE FIRST
9 RECOVERY BUT MAY BE PROCEEDED AGAINST FROM TIME TO TIME UNTIL THE
10 WHOLE PENALTY IS EXHAUSTED.

11 5. NO PROCEEDING MAY BE COMMENCED AGAINST THE SURETY ON ANY
12 MATTER AS TO WHICH AN ACTION OR PROCEEDING AGAINST THE PRIMARY OBLIGOR
13 IS BARRED BY ADJUDICATION OR LIMITATION.

14 14-5413. Acceptance of appointment; consent to jurisdiction

15 BY ACCEPTING APPOINTMENT, A CONSERVATOR SUBMITS PERSONALLY TO
16 THE JURISDICTION OF THE COURT IN ANY PROCEEDING RELATING TO THE ESTATE
17 THAT MAY BE INSTITUTED BY ANY INTERESTED PERSON. NOTICE OF ANY PRO-
18 CEEDING SHALL BE DELIVERED TO THE CONSERVATOR, OR MAILED TO HIM BY
19 REGISTERED OR CERTIFIED MAIL AT HIS ADDRESS AS LISTED IN THE PETITION
20 FOR APPOINTMENT OR AS THEREAFTER REPORTED TO THE COURT AND TO HIS
21 ADDRESS AS THEN KNOWN TO THE PETITIONER.

22 14-5414. Compensation and expenses

23 IF NOT OTHERWISE COMPENSATED FOR SERVICES RENDERED, ANY VISITOR,
24 LAWYER, PHYSICIAN, CONSERVATOR OR SPECIAL CONSERVATOR APPOINTED IN
25 A PROTECTIVE PROCEEDING IS ENTITLED TO REASONABLE COMPENSATION FROM
26 THE ESTATE.

27 14-5415. Death, resignation or removal of conservator

28 THE COURT MAY REMOVE A CONSERVATOR FOR GOOD CAUSE, UPON NOTICE
29 AND HEARING, OR ACCEPT THE RESIGNATION OF A CONSERVATOR. AFTER HIS
30 DEATH, RESIGNATION OR REMOVAL THE COURT MAY APPOINT ANOTHER CONSERVATOR.
31 A CONSERVATOR SO APPOINTED SUCCEEDS TO THE TITLE AND POWERS OF HIS
32 PREDECESSOR.

33 14-5416. Petitions for orders subsequent to appointment

1 A. ANY PERSON INTERESTED IN THE WELFARE OF A PERSON FOR WHOM
2 A CONSERVATOR HAS BEEN APPOINTED MAY FILE A PETITION IN THE APPOINT-
3 ING COURT FOR AN ORDER:

4 1. REQUIRING BOND OR SECURITY OR ADDITIONAL BOND OR SECURITY,
5 OR REDUCING BOND.

6 2. REQUIRING AN ACCOUNTING FOR THE ADMINISTRATION OF THE TRUST.

7 3. DIRECTING DISTRIBUTION.

8 4. REMOVING THE CONSERVATOR AND APPOINTING A TEMPORARY OR
9 SUCCESSOR CONSERVATOR.

10 5. GRANTING OTHER APPROPRIATE RELIEF.

11 B. A CONSERVATOR MAY PETITION THE APPOINTING COURT FOR INSTRU-
12 TIONS CONCERNING HIS FIDUCIARY RESPONSIBILITY.

13 C. UPON NOTICE AND HEARING, THE COURT MAY GIVE APPROPRIATE
14 INSTRUCTIONS OR MAKE ANY APPROPRIATE ORDER.

15 14-5417. General duty of conservator

16 IN THE EXERCISE OF HIS POWERS, A CONSERVATOR IS TO ACT AS A FI-
17 DUCIARY AND SHALL OBSERVE THE STANDARDS OF CARE APPLICABLE TO TRUSTEES
18 AS DESCRIBED BY SECTION 14-7302.

19 14-5418. Inventory and records

20 WITHIN NINETY DAYS AFTER HIS APPOINTMENT, EVERY CONSERVATOR SHALL
21 PREPARE AND FILE WITH THE APPOINTING COURT A COMPLETE INVENTORY OF THE
22 ESTATE OF THE PROTECTED PERSON TOGETHER WITH HIS OATH OR AFFIRMATION
23 THAT IT IS COMPLETE AND ACCURATE SO FAR AS HE IS INFORMED. THE CON-
24 SERVATOR SHALL PROVIDE A COPY THEREOF TO THE PROTECTED PERSON IF HE CAN
25 BE LOCATED, HAS ATTAINED THE AGE OF FOURTEEN YEARS, AND HAS SUFFICIENT
26 MENTAL CAPACITY TO UNDERSTAND THESE MATTERS, AND TO ANY PARENT OR GUARD-
27 IAN WITH WHOM THE PROTECTED PERSON RESIDES. THE CONSERVATOR SHALL KEEP
28 SUITABLE RECORDS OF HIS ADMINISTRATION AND EXHIBIT THE SAME ON REQUEST
29 OF ANY INTERESTED PERSON.

30 14-5419. Accounts

31 A. EVERY CONSERVATOR MUST ACCOUNT TO THE COURT FOR HIS ADMIN-
32 ISTRATION OF THE TRUST UPON HIS RESIGNATION OR REMOVAL, AND AT OTHER
33 TIMES AS THE COURT MAY DIRECT. ON TERMINATION OF THE PROTECTED PERSON'S

1 MINORITY OR DISABILITY, A CONSERVATOR MAY ACCOUNT TO THE COURT,
2 OR HE MAY ACCOUNT TO THE FORMER PROTECTED PERSON OR HIS PERSONAL REP-
3 RESENTATIVE. SUBJECT TO APPEAL OR VACATION WITHIN THE TIME PERMITTED,
4 AN ORDER, MADE UPON NOTICE AND HEARING, ALLOWING AN INTERMEDIATE
5 ACCOUNT OF A CONSERVATOR, ADJUDICATES AS TO HIS LIABILITIES CONCERNING
6 THE MATTERS CONSIDERED IN CONNECTION THEREWITH. AN ORDER, MADE UPON
7 NOTICE AND HEARING, ALLOWING A FINAL ACCOUNT ADJUDICATES AS TO ALL
8 PREVIOUSLY UNSETTLED LIABILITIES OF THE CONSERVATOR TO THE PROTECTED
9 PERSON OR HIS SUCCESSORS RELATING TO THE CONSERVATORSHIP. IN CONNEC-
10 TION WITH ANY ACCOUNT, THE COURT MAY REQUIRE A CONSERVATOR TO SUBMIT
11 TO A PHYSICAL CHECK OF THE ESTATE IN HIS CONTROL, TO BE MADE IN ANY
12 MANNER THE COURT MAY SPECIFY.

13 B. IN ANY CASE IN WHICH THE ESTATE CONSISTS, IN WHOLE OR IN
14 PART, OF BENEFITS PAID BY THE VETERANS' ADMINISTRATION TO THE CONSER-
15 VATOR OR HIS PREDECESSOR FOR THE BENEFIT OF THE PROTECTED PERSON,
16 THE VETERANS' ADMINISTRATION OFFICE WHICH HAS JURISDICTION OVER THE
17 AREA IS ENTITLED TO A COPY OF ANY ACCOUNT FILED UNDER CHAPTER 5,
18 ARTICLE 4 OF THIS TITLE. EACH YEAR IN WHICH AN ACCOUNT IS NOT FILED
19 WITH THE COURT, THE CONSERVATOR SHALL, IF REQUESTED, SUBMIT AN ACCOUNT
20 TO THE APPROPRIATE VETERANS' ADMINISTRATION OFFICE. IF SUCH AN AC-
21 COUNT IS NOT SUBMITTED AS REQUESTED, OR IF IT IS FOUND UNSATISFACTORY
22 BY THE VETERANS' ADMINISTRATION, THE COURT SHALL, UPON RECEIPT OF
23 NOTICE THEREOF, REQUIRE THE CONSERVATOR FORTHWITH TO FILE AN ACCOUNT
24 WITH THE COURT.

25 14-5420. Conservators; title by appointment

26 THE APPOINTMENT OF A CONSERVATOR VESTS IN HIM TITLE AS TRUSTEE
27 TO ALL PROPERTY OF THE PROTECTED PERSON, PRESENTLY HELD OR THEREAFTER
28 ACQUIRED, INCLUDING TITLE TO ANY PROPERTY PREVIOUSLY HELD FOR THE
29 PROTECTED PERSON BY CUSTODIANS OR ATTORNEYS IN FACT. THE APPOINTMENT
30 OF A CONSERVATOR IS NOT A TRANSFER OR ALIENATION WITHIN THE MEANING
31 OF GENERAL PROVISIONS OF ANY FEDERAL OR STATE STATUTE OR REGULATION,
32 INSURANCE POLICY, PENSION PLAN, CONTRACT, WILL OR TRUST INSTRUMENT,
33 IMPOSING RESTRICTIONS UPON OR PENALTIES FOR TRANSFER OR ALIENATION BY

1 THE PROTECTED PERSON OF HIS RIGHTS OR INTEREST, BUT THIS SECTION DOES
2 NOT RESTRICT THE ABILITY OF PERSONS TO MAKE SPECIFIC PROVISION BY
3 CONTRACT OR DISPOSITIVE INSTRUMENT RELATING TO A CONSERVATOR.

4 14-5421. Recording of conservator's letters

5 LETTERS OF CONSERVATORSHIP ARE EVIDENCE OF TRANSFER OF ALL
6 ASSETS OF A PROTECTED PERSON TO THE CONSERVATOR. AN ORDER TERMINATING
7 A CONSERVATORSHIP IS EVIDENCE OF TRANSFER OF ALL ASSETS OF THE ESTATE
8 FROM THE CONSERVATOR TO THE PROTECTED PERSON, OR HIS SUCCESSORS. SUBJECT
9 TO THE REQUIREMENTS OF GENERAL STATUTES GOVERNING THE FILING OR
10 RECORDATION OF DOCUMENTS OF TITLE TO LAND OR OTHER PROPERTY, LETTERS
11 OF CONSERVATORSHIP AND ORDERS TERMINATING CONSERVATORSHIPS, MAY BE
12 FILED OR RECORDED TO GIVE RECORD NOTICE OF TITLE AS BETWEEN THE CON-
13 SERVATOR AND THE PROTECTED PERSON.

14 14-5422. Sale, encumbrance or transaction involving conflict
15 of interest; voidable; exceptions

16 ANY SALE OR ENCUMBRANCE TO A CONSERVATOR, HIS SPOUSE, AGENT OR
17 ATTORNEY, OR ANY CORPORATION OR TRUST IN WHICH HE HAS A SUBSTANTIAL
18 BENEFICIAL INTEREST, OR ANY TRANSACTION WHICH IS AFFECTED BY A SUB-
19 STANTIAL CONFLICT OF INTEREST IS VOIDABLE UNLESS THE TRANSACTION IS
20 APPROVED BY THE COURT AFTER NOTICE TO INTERESTED PERSONS AND OTHERS
21 AS DIRECTED BY THE COURT.

22 14-5423. Persons dealing with conservators; protection

23 A PERSON WHO IN GOOD FAITH EITHER ASSISTS OR DEALS WITH ANOTHER
24 PERSON ACTING AS A CONSERVATOR, ON THE BASIS OF A COPY OF LETTERS
25 CERTIFIED BY OR UNDER THE DIRECTION OF THE COURT OR AN OFFICER THEREOF
26 WITHIN SIXTY DAYS OF THE TRANSACTION, IS PROTECTED AS IF THE CONSERVA-
27 TOR PROPERLY EXERCISED HIS POWER AND EVEN THOUGH THE AUTHORITY OF THAT
28 PERSON AS CONSERVATOR HAS BEEN TERMINATED. THE FACT THAT A PERSON
29 KNOWINGLY DEALS WITH ONE WHO PURPORTS TO ACT AS A CONSERVATOR DOES NOT
30 ALONE REQUIRE THE PERSON TO INQUIRE INTO THE EXISTENCE OF A POWER,
31 THE PROPRIETY OF ITS EXERCISE, OR THE CURRENT AUTHORITY OF THE PURPORTED
32 PERSONAL REPRESENTATIVE, EXCEPT THAT RESTRICTIONS ON POWERS OF CON-
33 SERVATORS WHICH ARE ENDORSED ON LETTERS AS PROVIDED IN SECTION 14-5426

1 ARE EFFECTIVE AS TO THIRD PERSONS. A PERSON IS NOT BOUND TO SEE TO
2 THE PROPER APPLICATION OF ESTATE ASSETS PAID OR DELIVERED TO A CONSER-
3 VATOR. THE PROTECTION HERE EXPRESSED EXTENDS TO INSTANCES IN WHICH
4 SOME PROCEDURAL IRREGULARITY OR JURISDICTIONAL DEFECT OCCURRED IN
5 PROCEEDINGS LEADING TO THE ISSUANCE OF LETTERS. THE PROTECTION HERE
6 EXPRESSED IS NOT BY SUBSTITUTION FOR THAT PROVIDED BY COMPARABLE PRO-
7 VISIONS OF THE LAWS RELATING TO COMMERCIAL TRANSACTIONS AND LAWS
8 SIMPLIFYING TRANSFERS OF SECURITIES BY FIDUCIARIES.

9 14-5424. Powers of conservator in administration

10 A. A CONSERVATOR HAS ALL THE POWERS CONFERRED HEREIN AND ANY
11 ADDITIONAL POWERS CONFERRED BY LAW ON TRUSTEES IN THIS STATE. IN
12 ADDITION, A CONSERVATOR OF THE ESTATE OF AN UNMARRIED MINOR UNDER
13 THE AGE OF EIGHTEEN YEARS, AS TO WHOM NO ONE HAS PARENTAL RIGHTS,
14 HAS THE DUTIES AND POWERS OF A GUARDIAN OF A MINOR DESCRIBED IN SECTION
15 14-5209 UNTIL THE MINOR ATTAINS THE AGE OF EIGHTEEN OR MARRIES, BUT
16 THE PARENTAL RIGHTS SO CONFERRED ON A CONSERVATOR DO NOT PRECLUDE
17 APPOINTMENT OF A GUARDIAN AS PROVIDED BY ARTICLE 2.

18 B. A CONSERVATOR HAS POWER WITHOUT COURT AUTHORIZATION OR
19 CONFIRMATION, TO INVEST AND REINVEST FUNDS OF THE ESTATE AS WOULD A
20 TRUSTEE.

21 C. A CONSERVATOR, ACTING REASONABLY IN EFFORTS TO ACCOMPLISH
22 THE PURPOSE FOR WHICH HE WAS APPOINTED, MAY ACT WITHOUT COURT AUTHO-
23 RIZATION OR CONFIRMATION, TO:

24 1. COLLECT, HOLD AND RETAIN ASSETS OF THE ESTATE INCLUDING
25 LAND IN ANOTHER STATE, UNTIL, IN HIS JUDGMENT, DISPOSITION OF THE
26 ASSETS SHOULD BE MADE, AND THE ASSETS MAY BE RETAINED EVEN THOUGH
27 THEY INCLUDE AN ASSET IN WHICH HE IS PERSONALLY INTERESTED.

28 2. RECEIVE ADDITIONS TO THE ESTATE.

29 3. CONTINUE OR PARTICIPATE IN THE OPERATION OF ANY BUSINESS OR
30 OTHER ENTERPRISE.

31 4. ACQUIRE AN UNDIVIDED INTEREST IN AN ESTATE ASSET IN WHICH
32 THE CONSERVATOR, IN ANY FIDUCIARY CAPACITY, HOLDS AN UNDIVIDED INTEREST.

33 5. INVEST AND REINVEST ESTATE ASSETS IN ACCORDANCE WITH SUBSECTION

1 B OF THIS SECTION.
2 6. DEPOSIT ESTATE FUNDS IN A BANK INCLUDING A BANK OPERATED BY
3 THE CONSERVATOR.
4 7. ACQUIRE OR DISPOSE OF AN ESTATE ASSET INCLUDING LAND IN AN-
5 OTHER STATE FOR CASH OR ON CREDIT, AT PUBLIC OR PRIVATE SALE, AND TO
6 MANAGE, DEVELOP, IMPROVE, EXCHANGE, PARTITION, CHANGE THE CHARACTER
7 OF, OR ABANDON AN ESTATE ASSET FOR A TERM WITHIN OR EXTENDING BEYOND
8 THE TERM OF THE CONSERVATORSHIP IN CONNECTION WITH THE EXERCISE OF
9 ANY POWER VESTED IN THE CONSERVATOR.
10 8. MAKE ORDINARY OR EXTRAORDINARY REPAIRS OR ALTERATIONS IN
11 BUILDINGS OR OTHER STRUCTURES, TO DEMOLISH ANY IMPROVEMENTS, TO RAZE
12 EXISTING OR ERECT NEW PARTY WALLS OR BUILDINGS.
13 9. SUBDIVIDE, DEVELOP, OR DEDICATE LAND TO PUBLIC USE, TO MAKE
14 OR OBTAIN THE VACATION OF PLATS AND ADJUST BOUNDARIES, TO ADJUST
15 DIFFERENCES IN VALUATION ON EXCHANGE OR TO PARTITION BY GIVING OR
16 RECEIVING CONSIDERATIONS, AND TO DEDICATE EASEMENTS TO PUBLIC USE
17 WITHOUT CONSIDERATION.
18 10. ENTER FOR ANY PURPOSE INTO A LEASE AS LESSOR OR LESSEE WITH
19 OR WITHOUT OPTION TO PURCHASE OR RENEW FOR A TERM WITHIN OR EXTENDING
20 BEYOND THE TERM OF THE CONSERVATORSHIP.
21 11. ENTER INTO A LEASE OR ARRANGEMENT FOR EXPLORATION AND RE-
22 MOVAL OF MINERALS OR OTHER NATURAL RESOURCES OR ENTER INTO A POOLING
23 OR UNITIZATION AGREEMENT.
24 12. GRANT AN OPTION INVOLVING DISPOSITION OF AN ESTATE ASSET,
25 TO TAKE AN OPTION FOR THE ACQUISITION OF ANY ASSET.
26 13. VOTE A SECURITY, IN PERSON OR BY GENERAL OR LIMITED PROXY.
27 14. PAY CALLS, ASSESSMENTS AND ANY OTHER SUMS CHARGEABLE OR
28 ACCRUING AGAINST OR ON ACCOUNT OF SECURITIES.
29 15. SELL OR EXERCISE STOCK SUBSCRIPTION OR CONVERSION RIGHTS
30 TO CONSENT, DIRECTLY OR THROUGH A COMMITTEE OR OTHER AGENT, TO THE
31 REORGANIZATION, CONSOLIDATION, MERGER, DISSOLUTION OR LIQUIDATION
32 OF A CORPORATION OR OTHER BUSINESS ENTERPRISE.
33 16. HOLD A SECURITY IN THE NAME OF A NUNEEE OR IN OTHER FORM

1 WITHOUT DISCLOSURE OF THE CONSERVATORSHIP SO THAT TITLE TO THE
2 SECURITY MAY PASS BY DELIVERY, BUT THE CONSERVATOR IS LIABLE FOR ANY
3 ACT OF THE NOMINEE IN CONNECTION WITH THE STOCK SO HELD.

4 17. INSURE THE ASSETS OF THE ESTATE AGAINST DAMAGE OR LOSS,
5 AND THE CONSERVATOR AGAINST LIABILITY WITH RESPECT TO THIRD PERSONS.

6 18. BORROW MONEY TO BE REPAID FROM ESTATE ASSETS OR OTHERWISE
7 TO ADVANCE MONEY FOR THE PROTECTION OF THE ESTATE OR THE PROTECTED
8 PERSON, AND FOR ALL EXPENSES, LOSSES, AND LIABILITY SUSTAINED IN THE
9 ADMINISTRATION OF THE ESTATE OR BECAUSE OF THE HOLDING OR OWNERSHIP
10 OF ANY ESTATE ASSETS AND THE CONSERVATOR HAS A LIEN ON THE ESTATE AS
11 AGAINST THE PROTECTED PERSON FOR ADVANCES SO MADE.

12 19. PAY OR CONTEST ANY CLAIM TO SETTLE A CLAIM BY OR AGAINST THE
13 ESTATE OR THE PROTECTED PERSON BY COMPROMISE, ARBITRATION, OR OTHERWISE
14 AND TO RELEASE, IN WHOLE OR IN PART, ANY CLAIM BELONGING TO THE ESTATE
15 TO THE EXTENT THAT THE CLAIM IS UNCOLLECTIBLE.

16 20. PAY TAXES, ASSESSMENTS, COMPENSATION OF THE CONSERVATOR AND
17 OTHER EXPENSES INCURRED IN THE COLLECTION, CARE, ADMINISTRATION AND
18 PROTECTION OF THE ESTATE.

19 21. ALLOCATE ITEMS OF INCOME OR EXPENSE TO EITHER ESTATE INCOME
20 OR PRINCIPAL, AS PROVIDED BY LAW, INCLUDING CREATION OF RESERVES OUT
21 OF INCOME FOR DEPRECIATION, OBSOLESCENCE OR AMORTIZATION, OR FOR DE-
22 PLETION IN MINERAL OR TIMBER PROPERTIES.

23 22. PAY ANY SUM DISTRIBUTABLE TO A PROTECTED PERSON OR A DEPENDENT
24 OF THE PERSON WHO IS A MINOR OR INCOMPETENT, WITHOUT LIABILITY TO
25 THE CONSERVATOR, BY PAYING THE SUM TO THE DISTRIBUTEE OR BY PAYING THE
26 SUM FOR THE USE OF THE DISTRIBUTEE EITHER TO HIS GUARDIAN OR IF NONE,
27 TO A RELATIVE OR OTHER PERSON WITH CUSTODY OF HIS PERSON.

28 23. EMPLOY PERSONS INCLUDING ATTORNEYS, AUDITORS, INVESTMENT
29 ADVISORS OR AGENTS, EVEN THOUGH THEY ARE ASSOCIATED WITH THE CONSERVATOR,
30 TO ADVISE OR ASSIST HIM IN THE PERFORMANCE OF HIS ADMINISTRATIVE
31 DUTIES TO ACT UPON THEIR RECOMMENDATION WITHOUT INDEPENDENT INVESTIGATION
32 AND INSTEAD OF ACTING PERSONALLY, TO EMPLOY ONE OR MORE AGENTS TO
33 PERFORM ANY ACT OF ADMINISTRATION, WHETHER OR NOT DISCRETIONARY.

1 24. PROSECUTE OR DEFEND ACTIONS, CLAIMS OR PROCEEDINGS IN ANY
2 JURISDICTION FOR THE PROTECTION OF ESTATE ASSETS AND OF THE CONSER-
3 VATOR IN THE PERFORMANCE OF HIS DUTIES.

4 25. EXECUTE AND DELIVER ALL INSTRUMENTS WHICH WILL ACCOMPLISH
5 OR FACILITATE THE EXERCISE OF THE POWERS VESTED IN THE CONSERVATOR.

6 14-5425. Distributive duties and powers of conservator

7 A. A CONSERVATOR MAY EXPEND OR DISTRIBUTE INCOME OR PRINCIPAL OF
8 THE ESTATE WITHOUT COURT AUTHORIZATION OR CONFIRMATION FOR THE SUPPORT,
9 EDUCATION, CARE OR BENEFIT OF THE PROTECTED PERSON AND HIS DEPENDENTS
10 IN ACCORDANCE WITH THE FOLLOWING PRINCIPLES:

11 1. THE CONSERVATOR IS TO CONSIDER RECOMMENDATIONS RELATING TO
12 THE APPROPRIATE STANDARD OF SUPPORT, EDUCATION AND BENEFIT FOR THE PRO-
13 TECTED PERSON MADE BY A PARENT OR GUARDIAN, IF ANY. HE MAY NOT BE SUR-
14 CHARGED FOR SUMS PAID TO PERSONS OR ORGANIZATIONS ACTUALLY FURNISHING
15 SUPPORT, EDUCATION OR CARE TO THE PROTECTED PERSON PURSUANT TO THE RECOM-
16 MENDATIONS OF A PARENT OR GUARDIAN OF THE PROTECTED PERSON UNLESS HE
17 KNOWS THAT THE PARENT OR GUARDIAN IS DERIVING PERSONAL FINANCIAL BENEFIT
18 THEREFROM, INCLUDING RELIEF FROM ANY PERSONAL DUTY OF SUPPORT, OR UNLESS
19 THE RECOMMENDATIONS ARE CLEARLY NOT IN THE BEST INTERESTS OF THE PRO-
20 TECTED PERSON.

21 2. THE CONSERVATOR IS TO EXPEND OR DISTRIBUTE SUMS REASONABLY
22 NECESSARY FOR THE SUPPORT, EDUCATION, CARE OR BENEFIT OF THE PROTECTED
23 PERSON WITH DUE REGARD TO:

24 (a) THE SIZE OF THE ESTATE, THE PROBABLE DURATION OF THE CONSER-
25 VATORSHIP AND THE LIKELIHOOD THAT THE PROTECTED PERSON, AT SOME FUTURE
26 TIME, MAY BE FULLY ABLE TO MANAGE HIS AFFAIRS AND THE ESTATE WHICH HAS
27 BEEN CONSERVED FOR HIM.

28 (b) THE ACCUSTOMED STANDARD OF LIVING OF THE PROTECTED PERSON AND
29 MEMBERS OF HIS HOUSEHOLD.

30 (c) OTHER FUNDS OR SOURCES USED FOR THE SUPPORT OF THE PROTECTED
31 PERSON.

32 3. THE CONSERVATOR MAY EXPEND FUNDS OF THE ESTATE FOR THE SUP-
33 PORT OF PERSONS LEGALLY DEPENDENT ON THE PROTECTED PERSON AND OTHERS WHO

1 ARE MEMBERS OF THE PROTECTED PERSON'S HOUSEHOLD WHO ARE UNABLE TO SUP-
2 PORT THEMSELVES, AND WHO ARE IN NEED OF SUPPORT. IF BENEFITS ARE BEING
3 PAID BY THE VETERANS' ADMINISTRATION TO THE CONSERVATOR, SUCH INCOME
4 MAY BE EXPENDED ONLY FOR THE SUPPORT OF THE PROTECTED PERSON, HIS SPOUSE
5 AND MINOR CHILDREN, EXCEPT UPON PETITION TO AND PRIOR ORDER OF THE COURT
6 AFTER HEARING.

7 4. FUNDS EXPENDED UNDER THIS SUBSECTION MAY BE PAID BY THE
8 CONSERVATOR TO ANY PERSON, INCLUDING THE PROTECTED PERSON TO REIMBURSE
9 FOR EXPENDITURES WHICH THE CONSERVATOR MIGHT HAVE MADE, OR IN ADVANCE
10 FOR SERVICES TO BE RENDERED TO THE PROTECTED PERSON WHEN IT IS REASON-
11 ABLE TO EXPECT THAT THEY WILL BE PERFORMED AND WHERE ADVANCE PAYMENTS
12 ARE CUSTOMARY OR REASONABLY NECESSARY UNDER THE CIRCUMSTANCES.

13 8. WHEN A MINOR WHO HAS NOT BEEN ADJUDGED DISABLED UNDER SECTION
14 14-5401, PARAGRAPH 2, ATTAINS HIS MAJORITY, HIS CONSERVATOR, AFTER
15 MEETING ALL PRIOR CLAIMS AND EXPENSES OF ADMINISTRATION, SHALL PAY OVER
16 AND DISTRIBUTE ALL FUNDS AND PROPERTIES TO THE FORMER PROTECTED PERSON
17 AS SOON AS POSSIBLE.

18 C. WHEN THE CONSERVATOR IS SATISFIED THAT A PROTECTED PERSON'S
19 DISABILITY, OTHER THAN MINORITY, HAS CEASED, THE CONSERVATOR, AFTER MEET-
20 ING ALL PRIOR CLAIMS AND EXPENSES OF ADMINISTRATION, SHALL PAY OVER AND
21 DISTRIBUTE ALL FUNDS AND PROPERTIES TO THE FORMER PROTECTED PERSON AS
22 SOON AS POSSIBLE.

23 D. IF A PROTECTED PERSON DIES, THE CONSERVATOR SHALL DELIVER TO
24 THE COURT FOR SAFEKEEPING ANY WILL OF THE DECEASED PROTECTED PERSON WHICH
25 MAY HAVE COME INTO HIS POSSESSION, INFORM THE EXECUTOR OR A BENEFICIARY
26 NAMED THEREIN THAT HE HAS DONE SO, AND RETAIN THE ESTATE FOR DELIVERY TO
27 A DULY APPOINTED PERSONAL REPRESENTATIVE OF THE DECEDENT OR OTHER PERSONS
28 ENTITLED THERETO. IF AFTER FORTY DAYS FROM THE DEATH OF THE PROTECTED
29 PERSON NO OTHER PERSON HAS BEEN APPOINTED PERSONAL REPRESENTATIVE AND NO
30 APPLICATION OR PETITION FOR APPOINTMENT IS BEFORE THE COURT, THE CONSER-
31 VATOR MAY APPLY TO EXERCISE THE POWERS AND DUTIES OF A PERSONAL REPRESENTATIVE SO THAT HE MAY PROCEED TO ADMINISTER AND DISTRIBUTE THE DECEDENT'S
32 ESTATE WITHOUT ADDITIONAL OR FURTHER APPOINTMENT. UPON APPLICATION FOR
33

1 AN ORDER GRANTING THE POWERS OF A PERSONAL REPRESENTATIVE TO A CONSER-
2 VATOR, AFTER NOTICE TO ANY PERSON DEMANDING NOTICE UNDER SECTION 14-
3 3204 AND TO ANY PERSON NOMINATED EXECUTOR IN ANY WILL OF WHICH THE AP-
4 PPLICANT IS AWARE, THE COURT MAY ORDER THE CONFERRAL OF THE POWER UPON
5 DETERMINING THAT THERE IS NO OBJECTION, AND ENDORSE THE LETTERS OF THE
6 CONSERVATOR TO NOTE THAT THE FORMERLY PROTECTED PERSON IS DECEASED AND
7 THAT THE CONSERVATOR HAS ACQUIRED ALL OF THE POWERS AND DUTIES OF A
8 PERSONAL REPRESENTATIVE. THE MAKING AND ENTRY OF AN ORDER UNDER THIS
9 SECTION SHALL HAVE THE EFFECT OF AN ORDER OF APPOINTMENT OF A PERSONAL
10 REPRESENTATIVE AS PROVIDED IN SECTION 14-3308 AND ARTICLES 6 THROUGH
11 10 OF CHAPTER 3 EXCEPT THAT ESTATE IN THE NAME OF THE CONSERVATOR,
12 AFTER ADMINISTRATION, MAY BE DISTRIBUTED TO THE DECEDENT'S SUCCESSORS
13 WITHOUT PRIOR RE-TRANSFER TO THE CONSERVATOR AS PERSONAL REPRESENTATIVE.

14 14-5426. Enlargement or limitation of powers of conservator

15 A. SUBJECT TO THE RESTRICTIONS IN SECTION 14-5408, PARAGRAPH 4,
16 THE COURT MAY CONFER ON A CONSERVATOR AT THE TIME OF APPOINTMENT OR
17 LATER, IN ADDITION TO THE POWERS CONFERRED ON HIM BY SECTIONS 14-5424
18 AND 14-5425, ANY POWER WHICH THE COURT ITSELF COULD EXERCISE UNDER
19 SECTION 14-5408, PARAGRAPHS 2 AND 3. THE COURT MAY, AT THE TIME OF AP-
20 POINTMENT OR LATER, LIMIT THE POWERS OF A CONSERVATOR OTHERWISE CON-
21 FERRED BY SECTIONS 14-5424 AND 14-5425, OR PREVIOUSLY CONFERRED BY THE
22 COURT, AND MAY AT ANY TIME RELIEVE HIM OF ANY LIMITATION. IF THE COURT
23 LIMITS ANY POWER CONFERRED ON THE CONSERVATOR BY SECTION 14-5424 OR
24 14-5425, THE LIMITATION SHALL BE ENDORSED UPON HIS LETTERS OF APPOINT-
25 MENT.

26 B. UPON APPOINTMENT OF A CONSERVATOR FOR A PROTECTED SPOUSE,
27 THE COURT MAY DETERMINE WHETHER THE SPOUSE'S SHARE OF COMMUNITY PROP-
28 ERTY SHALL BE MANAGED BY THE CONSERVATOR OR BY THE SURVIVING SPOUSE.
29 IF THE COURT DETERMINES THAT THE COMMUNITY PROPERTY SHALL BE MANAGED
30 BY THE SURVIVING SPOUSE, AND IF THE PROTECTED SPOUSE IS THE HUSBAND,
31 THE WIFE MAY BECOME THE MANAGER OF THE COMMUNITY PROPERTY DURING THE
32 CONSERVATORSHIP AND MAY DISPOSE OF COMMUNITY PERSONAL PROPERTY IN THE
33 INTERESTS OF THE COMMUNITY.

1 14-5427. Preservation of estate plan
2 IN INVESTING THE ESTATE, AND IN SELECTING ASSETS OF THE ESTATE
3 FOR DISTRIBUTION UNDER SECTION 14-5425, SUBSECTIONS A AND B, IN UTI-
4 LIZING POWERS OF REVOCATION OR WITHDRAWAL AVAILABLE FOR THE SUPPORT OF
5 THE PROTECTED PERSON, AND EXERCISABLE BY THE CONSERVATOR OR THE COURT,
6 THE CONSERVATOR AND THE COURT SHOULD TAKE INTO ACCOUNT ANY KNOWN ESTATE
7 PLAN OF THE PROTECTED PERSON, INCLUDING HIS WILL, ANY REVOCABLE TRUST OF
8 WHICH HE IS SETTLOR, AND ANY CONTRACT, TRANSFER OR JOINT OWNERSHIP AR-
9 RANGEMENT WITH PROVISIONS FOR PAYMENT OR TRANSFER OF BENEFITS OR IN-
10 TERESTS AT HIS DEATH TO ANOTHER OR OTHERS WHICH HE MAY HAVE ORIGINATED.
11 THE CONSERVATOR MAY EXAMINE THE WILL OF THE PROTECTED PERSON.

12 14-5428. Claims against protected person; enforcement
13 A. A CONSERVATOR MUST PAY FROM THE ESTATE ALL JUST CLAIMS AGAINST
14 THE ESTATE AND AGAINST THE PROTECTED PERSON ARISING BEFORE OR AFTER THE
15 CONSERVATORSHIP UPON THEIR PRESENTATION AND ALLOWANCE. A CLAIM MAY BE
16 PRESENTED BY EITHER OF THE FOLLOWING METHODS:

17 1. THE CLAIMANT MAY DELIVER OR MAIL TO THE CONSERVATOR A WRITTEN
18 STATEMENT OF THE CLAIM INDICATING ITS BASIS, THE NAME AND ADDRESS OF THE
19 CLAIMANT AND THE AMOUNT CLAIMED.

20 2. THE CLAIMANT MAY FILE A WRITTEN STATEMENT OF THE CLAIM, IN THE
21 FORM PRESCRIBED BY RULE, WITH THE CLERK OF THE COURT AND DELIVER OR MAIL
22 A COPY OF THE STATEMENT TO THE CONSERVATOR.

23 A PRESENTED CLAIM IS ALLOWED IF IT IS NOT DISALLOWED BY WRITTEN STATE-
24 MENT MAILED BY THE CONSERVATOR TO THE CLAIMANT WITHIN SIXTY DAYS AFTER
25 ITS PRESENTATION. THE PRESENTATION OF A CLAIM TOLLS ANY STATUTE OF LIM-
26 ITATION RELATING TO THE CLAIM UNTIL THIRTY DAYS AFTER ITS DISALLOWANCE.

27 B. A CLAIMANT WHOSE CLAIM HAS NOT BEEN PAID MAY PETITION THE
28 COURT FOR DETERMINATION OF HIS CLAIM AT ANY TIME BEFORE IT IS BARRED BY
29 THE APPLICABLE STATUTE OF LIMITATION, AND, UPON DUE PROOF, PROCURE AN
30 ORDER FOR ITS ALLOWANCE AND PAYMENT FROM THE ESTATE. IF A PROCEEDING
31 IS PENDING AGAINST A PROTECTED PERSON AT THE TIME OF APPOINTMENT OF A
32 CONSERVATOR OR IS INITIATED AGAINST THE PROTECTED PERSON THEREAFTER, THE
33 MOVING PARTY MUST GIVE NOTICE OF THE PROCEEDING TO THE CONSERVATOR IF

1 THE OUTCOME IS TO CONSTITUTE A CLAIM AGAINST THE ESTATE.

2 C. IF IT APPEARS THAT THE ESTATE IN CONSERVATORSHIP IS LIKELY TO
3 BE EXHAUSTED BEFORE ALL EXISTING CLAIMS ARE PAID, PREFERENCE IS TO BE
4 GIVEN TO PRIOR CLAIMS FOR THE CARE, MAINTENANCE AND EDUCATION OF THE PRO-
5 TECTED PERSON OR HIS DEPENDENTS AND EXISTING CLAIMS FOR EXPENSES OF
6 ADMINISTRATION.

7 14-5429. Individual liability of conservator

8 A. UNLESS OTHERWISE PROVIDED IN THE CONTRACT, A CONSERVATOR IS
9 NOT INDIVIDUALLY LIABLE ON A CONTRACT PROPERLY ENTERED INTO IN HIS
10 FIDUCIARY CAPACITY IN THE COURSE OF ADMINISTRATION OF THE ESTATE UNLESS
11 HE FAILS TO REVEAL HIS REPRESENTATIVE CAPACITY AND IDENTIFY THE ESTATE
12 IN THE CONTRACT.

13 B. THE CONSERVATOR IS INDIVIDUALLY LIABLE FOR OBLIGATIONS ARISING
14 FROM OWNERSHIP OR CONTROL OF PROPERTY OF THE ESTATE OR FOR TORTS
15 COMMITTED IN THE COURSE OF ADMINISTRATION OF THE ESTATE ONLY IF HE IS
16 PERSONALLY AT FAULT.

17 C. CLAIMS BASED ON CONTRACTS ENTERED INTO BY A CONSERVATOR IN
18 HIS FIDUCIARY CAPACITY, ON OBLIGATIONS ARISING FROM OWNERSHIP OR CONTROL
19 OF THE ESTATE, OR ON TORTS COMMITTED IN THE COURSE OF ADMINISTRATION OF
20 THE ESTATE MAY BE ASSERTED AGAINST THE ESTATE BY PROCEEDING AGAINST THE
21 CONSERVATOR IN HIS FIDUCIARY CAPACITY, WHETHER OR NOT THE CONSERVATOR IS
22 INDIVIDUALLY LIABLE THEREFOR.

23 D. ANY QUESTION OF LIABILITY BETWEEN THE ESTATE AND THE CONSER-
24 VATOR INDIVIDUALLY MAY BE DETERMINED IN A PROCEEDING FOR ACCOUNTING,
25 SURCHARGE OR INDEMNIFICATION, OR OTHER APPROPRIATE PROCEEDING OR ACTION.

26 14-5430. Termination of proceeding

27 THE PROTECTED PERSON, HIS PERSONAL REPRESENTATIVE, THE CONSERVATOR
28 OR ANY OTHER INTERESTED PERSON MAY PETITION THE COURT TO TERMINATE THE
29 CONSERVATORSHIP. A PROTECTED PERSON SEEKING TERMINATION IS ENTITLED TO
30 THE SAME RIGHTS AND PROCEDURES AS IN AN ORIGINAL PROCEEDING FOR A PROTEC-
31 TIVE ORDER. THE COURT, UPON DETERMINING AFTER NOTICE AND HEARING THAT
32 THE MINORITY OR DISABILITY OF THE PROTECTED PERSON HAS CEASED, MAY TER-
33 MINATE THE CONSERVATORSHIP. UPON TERMINATION, TITLE TO ASSETS OF THE

1 ESTATE PASSES TO THE FORMER PROTECTED PERSON OR TO HIS SUCCESSORS SUBJECT
2 TO PROVISION IN THE ORDER FOR EXPENSES OF ADMINISTRATION OR TO CONVEY-
3 ANCES FROM THE CONSERVATOR TO THE FORMER PROTECTED PERSON OR HIS SUCCE-
4 SORS, TO EVIDENCE THE TRANSFER.

5 14-5431. Payment of debt and delivery of property to foreign
6 conservator without local proceedings

7 ANY PERSON INDEBTED TO A PROTECTED PERSON, OR HAVING POSSESSION
8 OF PROPERTY OR OF AN INSTRUMENT EVIDENCING A DEBT, STOCK OR CHOSE IN
9 ACTION BELONGING TO A PROTECTED PERSON MAY PAY OR DELIVER TO A CONSER-
10 VATOR, GUARDIAN OF THE ESTATE OR OTHER LIKE FIDUCIARY APPOINTED BY A
11 COURT OF THE STATE OR RESIDENCE OF THE PROTECTED PERSON, UPON BEING
12 PRESENTED WITH PROOF OF HIS APPOINTMENT AND AN AFFIDAVIT MADE BY HIM
13 OR ON HIS BEHALF STATING BOTH:

14 1. THAT NO PROTECTIVE PROCEEDING RELATING TO THE PROTECTED PER-
15 SON IS PENDING IN THIS STATE.

16 2. THAT THE FOREIGN CONSERVATOR IS ENTITLED TO PAYMENT OR TO RE-
17 CEIVE DELIVERY.

18 IF THE PERSON TO WHOM THE AFFIDAVIT IS PRESENTED IS NOT AWARE OF ANY
19 PROTECTIVE PROCEEDING PENDING IN THIS STATE, PAYMENT OR DELIVERY IN
20 RESPONSE TO THE DEMAND AND AFFIDAVIT DISCHARGES THE DEBTOR OR POSSESSOR.

21 ARTICLE 5. POWERS OF ATTORNEY

22 14-5501. When power of attorney not affected by disability

23 WHENEVER A PRINCIPAL DESIGNATES ANOTHER HIS ATTORNEY-IN-FACT OR
24 AGENT BY A POWER OF ATTORNEY IN WRITING AND THE WRITING CONTAINS THE
25 WORDS "THIS POWER OF ATTORNEY SHALL NOT BE AFFECTED BY DISABILITY OF THE
26 PRINCIPAL," OR "THIS POWER OF ATTORNEY SHALL BECOME EFFECTIVE UPON THE
27 DISABILITY OF THE PRINCIPAL," OR SIMILAR WORDS SHOWING THE INTENT OF THE
28 PRINCIPAL THAT THE AUTHORITY CONFERRED SHALL BE EXERCISABLE NOTWITHSTAND-
29 ING HIS DISABILITY, THE AUTHORITY OF THE ATTORNEY-IN-FACT OR AGENT IS
30 EXERCISABLE BY HIM AS PROVIDED IN THE POWER ON BEHALF OF THE PRINCIPAL
31 NOTWITHSTANDING LATER DISABILITY OR INCAPACITY OF THE PRINCIPAL AT LAW
32 OR LATER UNCERTAINTY AS TO WHETHER THE PRINCIPAL IS DEAD OR ALIVE. ALL
33 ACTS DONE BY THE ATTORNEY-IN-FACT OR AGENT PURSUANT TO THE POWER DURING

1 ANY PERIOD OF DISABILITY OR INCOMPETENCE OR UNCERTAINTY AS TO WHETHER
2 THE PRINCIPAL IS DEAD OR ALIVE HAVE THE SAME EFFECT AND INURE TO THE
3 BENEFIT OF AND BIND THE PRINCIPAL OR HIS HEIRS, DEVISEES AND PERSONAL REP-
4 RESENTATIVE AS IF THE PRINCIPAL WERE ALIVE, COMPETENT AND NOT DISABLED.
5 IF A CONSERVATOR THEREAFTER IS APPOINTED FOR THE PRINCIPAL, THE ATTORNEY-
6 IN-FACT OR AGENT, DURING THE CONTINUANCE OF THE APPOINTMENT, SHALL
7 ACCOUNT TO THE CONSERVATOR RATHER THAN THE PRINCIPAL. THE CONSERVATOR
8 HAS THE SAME POWER THE PRINCIPAL WOULD HAVE HAD IF HE WERE NOT PROTECTED,
9 TO REVOKE, SUSPEND OR TERMINATE ALL OR ANY PART OF THE POWER OF ATTORNEY
10 OR AGENCY.

11 14-5502. Other powers of attorney not revoked until notice of
12 death or disability

13 A. THE DEATH, DISABILITY, OR INCOMPETENCE OF ANY PRINCIPAL WHO
14 HAS EXECUTED A POWER OF ATTORNEY IN WRITING OTHER THAN A POWER AS DE-
15 SCRIBED BY SECTION 14-5501, DOES NOT REVOKE OR TERMINATE THE AGENCY AS
16 TO THE ATTORNEY-IN-FACT, AGENT OR OTHER PERSON WHO, WITHOUT ACTUAL KNOWL-
17 EDGE OF THE DEATH, DISABILITY OR INCOMPETENCE OF THE PRINCIPAL, ACTS IN
18 GOOD FAITH UNDER THE POWER OF ATTORNEY OR AGENCY. ANY ACTION SO TAKEN,
19 UNLESS OTHERWISE INVALID OR UNENFORCEABLE, BINDS THE PRINCIPAL AND HIS
20 HEIRS, DEVISEES AND PERSONAL REPRESENTATIVES.

21 B. AN AFFIDAVIT, EXECUTED BY THE ATTORNEY-IN-FACT OR AGENT STATING
22 THAT HE DID NOT HAVE, AT THE TIME OF DOING AN ACT PURSUANT TO THE POWER
23 OF ATTORNEY, ACTUAL KNOWLEDGE OF THE REVOCATION OR TERMINATION OF THE
24 POWER OF ATTORNEY BY DEATH, DISABILITY OR INCOMPETENCE, IS, IN THE AB-
25 SENCE OF FRAUD, CONCLUSIVE PROOF OF THE NONREVOCATION OR NONTERMINATION
26 OF THE POWER AT THAT TIME. IF THE EXERCISE OF THE POWER REQUIRES EXECU-
27 TION AND DELIVERY OF ANY INSTRUMENT WHICH IS RECORDABLE, THE AFFIDAVIT
28 WHEN AUTHENTICATED FOR RECORD IS LIKEWISE RECORDABLE.

29 C. THIS SECTION SHALL NOT BE CONSTRUED TO ALTER OR AFFECT ANY
30 PROVISION FOR REVOCATION OR TERMINATION CONTAINED IN THE POWER OF ATTOR-
31 NEY.

32 CHAPTER 6.
33 NONPROBATE TRANSFERS

ARTICLE 1. MULTIPLE-PARTY ACCOUNTS

14-6101. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "ACCOUNT" MEANS A CONTRACT OF DEPOSIT OF FUNDS BETWEEN A DEPOSITOR AND A FINANCIAL INSTITUTION, AND INCLUDES A CHECKING ACCOUNT, SAVINGS ACCOUNT, CERTIFICATE OF DEPOSIT, SHARE ACCOUNT AND OTHER LIKE ARRANGEMENT.

2. "BENEFICIARY" MEANS A PERSON NAMED IN A TRUST ACCOUNT AS ONE FOR WHOM A PARTY TO THE ACCOUNT IS NAMED AS TRUSTEE.

3. "FINANCIAL INSTITUTION" MEANS ANY ORGANIZATION AUTHORIZED TO DO BUSINESS UNDER STATE OR FEDERAL LAWS RELATING TO FINANCIAL INSTITUTIONS, INCLUDING, WITHOUT LIMITATION, BANKS AND TRUST COMPANIES, SAVINGS BANKS, BUILDING AND LOAN ASSOCIATIONS, SAVINGS AND LOAN COMPANIES OR ASSOCIATIONS, AND CREDIT UNIONS.

4. "JOINT ACCOUNT" MEANS AN ACCOUNT PAYABLE ON REQUEST TO ONE OR MORE OF TWO OR MORE PARTIES WHETHER OR NOT MENTION IS MADE OF ANY RIGHT OF SURVIVORSHIP.

5. "MULTIPLE-PARTY ACCOUNT" IS ANY OF THE FOLLOWING TYPES OF ACCOUNT:

(a) A JOINT ACCOUNT.

(b) A P.O.D. ACCOUNT.

(c) A TRUST ACCOUNT.

IT DOES NOT INCLUDE ACCOUNTS ESTABLISHED FOR DEPOSIT OF FUNDS OF A PARTNERSHIP, JOINT VENTURE OR OTHER ASSOCIATION FOR BUSINESS PURPOSES, OR ACCOUNTS CONTROLLED BY ONE OR MORE PERSONS AS THE DULY AUTHORIZED AGENT OR TRUSTEE FOR A CORPORATION, UNINCORPORATED ASSOCIATION, CHARITABLE OR CIVIC ORGANIZATION OR A REGULAR FIDUCIARY OR TRUST ACCOUNT WHERE THE RELATIONSHIP IS ESTABLISHED OTHER THAN BY DEPOSIT AGREEMENT.

6. "NET CONTRIBUTION" OF A PARTY TO A JOINT ACCOUNT AS OF ANY GIVEN TIME IS THE SUM OF ALL DEPOSITS THERETO MADE BY OR FOR HIM, LESS ALL WITHDRAWALS MADE BY OR FOR HIM WHICH HAVE NOT BEEN PAID TO OR APPLIED TO THE USE OF ANY OTHER PARTY, PLUS A PRO RATA SHARE OF ANY INTEREST OR DIVIDENDS INCLUDED IN THE CURRENT BALANCE. THE TERM INCLUDES, IN ADDITION,

1 ANY PROCEEDS OF DEPOSIT LIFE INSURANCE ADDED TO THE ACCOUNT BY REASON
2 OF THE DEATH OF THE PARTY WHOSE NET CONTRIBUTION IS IN QUESTION.

3 7. "PARTY" MEANS A PERSON WHO, BY THE TERMS OF THE ACCOUNT, HAS
4 A PRESENT RIGHT, SUBJECT TO REQUEST, TO PAYMENT FROM A MULTIPLE-PARTY
5 ACCOUNT. A P.O.D. PAYEE OR BENEFICIARY OF A TRUST ACCOUNT IS A PARTY
6 ONLY AFTER THE ACCOUNT BECOMES PAYABLE TO HIM BY REASON OF HIS SURVIVING
7 THE ORIGINAL PAYEE OR TRUSTEE. UNLESS THE CONTEXT OTHERWISE REQUIRES,
8 IT INCLUDES A GUARDIAN, CONSERVATOR, PERSONAL REPRESENTATIVE OR ASSIGN-
9 EE, INCLUDING AN ATTACHING CREDITOR, OF A PARTY. IT ALSO INCLUDES
10 A PERSON IDENTIFIED AS A TRUSTEE OF AN ACCOUNT FOR ANOTHER WHETHER OR
11 NOT A BENEFICIARY IS NAMED, BUT IT DOES NOT INCLUDE ANY NAMED BENEFI-
12 CIARY UNLESS HE HAS A PRESENT RIGHT OF WITHDRAWAL.

13 8. "PAYMENT" OF SUMS ON DEPOSIT INCLUDES WITHDRAWAL, PAYMENT ON
14 CHECK OR OTHER DIRECTIVE OF A PARTY, AND ANY PLEDGE OF SUMS ON DEPOSIT
15 BY A PARTY AND ANY SET-OFF, OR REDUCTION OR OTHER DISPOSITION OF ALL OR
16 PART OF AN ACCOUNT PURSUANT TO A PLEDGE.

17 9. "PROOF OF DEATH" INCLUDES A DEATH CERTIFICATE OR RECORD OR
18 REPORT WHICH IS PRIMA FACIE PROOF OF DEATH UNDER SECTION 14-1107.

19 10. "P.O.D. ACCOUNT" MEANS AN ACCOUNT PAYABLE ON REQUEST TO ONE
20 PERSON DURING LIFETIME AND ON HIS DEATH TO ONE OR MORE P.O.D. PAYEES,
21 OR TO ONE OR MORE PERSONS DURING THEIR LIFETIMES AND ON THE DEATH OF ALL
22 OF THEM TO ONE OR MORE P.O.D. PAYEES.

23 11. "P.O.D. PAYEE" MEANS A PERSON DESIGNATED ON A P.O.D. ACCOUNT
24 AS ONE TO WHOM THE ACCOUNT IS PAYABLE ON REQUEST AFTER THE DEATH OF ONE
25 OR MORE PERSONS.

26 12. "REQUEST" MEANS A PROPER REQUEST FOR WITHDRAWAL, OR A CHECK
27 OR ORDER FOR PAYMENT, WHICH COMPLIES WITH ALL CONDITIONS OF THE ACCOUNT,
28 INCLUDING SPECIAL REQUIREMENTS CONCERNING NECESSARY SIGNATURES AND REG-
29 ULATIONS OF THE FINANCIAL INSTITUTION, BUT IF THE FINANCIAL INSTITUTION
30 CONDITIONS WITHDRAWAL OR PAYMENT ON ADVANCE NOTICE, FOR PURPOSES OF THIS
31 PART THE REQUEST FOR WITHDRAWAL OR PAYMENT IS TREATED AS IMMEDIATELY
32 EFFECTIVE AND A NOTICE OF INTENT TO WITHDRAW IS TREATED AS A REQUEST
33 FOR WITHDRAWAL.

1 13. "SUMS ON DEPOSIT" MEANS THE BALANCE PAYABLE ON A MULTIPLE-
2 PARTY ACCOUNT INCLUDING INTEREST, DIVIDENDS AND IN ADDITION ANY DEPOSIT
3 LIFE INSURANCE PROCEEDS ADDED TO THE ACCOUNT BY REASON OF THE DEATH OF
4 A PARTY.

5 14. "TRUST ACCOUNT" MEANS AN ACCOUNT IN THE NAME OF ONE OR MORE
6 PARTIES AS TRUSTEE FOR ONE OR MORE BENEFICIARIES WHERE THE RELATIONSHIP
7 IS ESTABLISHED BY THE FORM OF THE ACCOUNT AND THE DEPOSIT AGREEMENT
8 WITH THE FINANCIAL INSTITUTION AND THERE IS NO SUBJECT OF THE TRUST
9 OTHER THAN THE SUMS ON DEPOSIT IN THE ACCOUNT. IN A TRUST ACCOUNT IT
10 IS NOT ESSENTIAL THAT PAYMENT TO THE BENEFICIARY BE MENTIONED IN THE
11 DEPOSIT AGREEMENT. A TRUST ACCOUNT DOES NOT INCLUDE A REGULAR TRUST
12 ACCOUNT UNDER A TESTAMENTARY TRUST OR A TRUST AGREEMENT WHICH HAS SIG-
13 NIFICANCE APART FROM THE ACCOUNT, OR A FIDUCIARY ACCOUNT ARISING FROM
14 A FIDUCIARY RELATION SUCH AS ATTORNEY-CLIENT.

15 15. "WITHDRAWAL" INCLUDES PAYMENT TO A THIRD PERSON PURSUANT TO
16 CHECK OR OTHER DIRECTIVE OF A PARTY.

17 14-6102. Ownership as between parties, and others; protection
18 of financial institutions

19 THE PROVISIONS OF SECTIONS 14-6103 THROUGH 14-6105 CONCERNING
20 BENEFICIAL OWNERSHIP AS BETWEEN PARTIES, OR AS BETWEEN PARTIES AND
21 P.O.D. PAYEES OR BENEFICIARIES OF MULTIPLE-PARTY ACCOUNTS, ARE RELEVANT
22 ONLY TO CONTROVERSIES BETWEEN THESE PERSONS AND THEIR CREDITORS AND
23 OTHER SUCCESSORS, AND HAVE NO BEARING ON THE POWER OF WITHDRAWAL OF
24 THESE PERSONS AS DETERMINED BY THE TERMS OF ACCOUNT CONTRACTS. THE PRO-
25 VISIONS OF SECTIONS 14-6108 THROUGH 14-6113 GOVERN THE LIABILITY OF
26 FINANCIAL INSTITUTIONS WHO MAKE PAYMENTS PURSUANT THERETO, AND THEIR
27 SET-OFF RIGHTS.

28 14-6103. Ownership during lifetime

29 A. A JOINT ACCOUNT BELONGS, DURING THE LIFETIME OF ALL PARTIES,
30 TO THE PARTIES IN PROPORTION TO THE NET CONTRIBUTIONS BY EACH TO THE
31 SUMS ON DEPOSIT, UNLESS THERE IS CLEAR AND CONVINCING EVIDENCE OF A
32 DIFFERENT INTENT.

33 B. A P.O.D. ACCOUNT BELONGS TO THE ORIGINAL PAYEE DURING HIS

1 LIFETIME AND NOT TO THE P.O.D. PAYEE OR PAYEES. IF TWO OR MORE
2 PARTIES ARE NAMED AS ORIGINAL PAYEES, DURING THEIR LIFETIMES RIGHTS AS
3 BETWEEN THEM ARE GOVERNED BY SUBSECTION A.

4 C. UNLESS A CONTRARY INTENT IS MANIFESTED BY THE TERMS OF THE
5 ACCOUNT OR THE DEPOSIT AGREEMENT OR THERE IS OTHER CLEAR AND CONVINCING
6 EVIDENCE OF AN IRREVOCABLE TRUST, A TRUST ACCOUNT BELONGS BENEFICIALLY
7 TO THE TRUSTEE DURING HIS LIFETIME, AND IF TWO OR MORE PARTIES ARE NAMED
8 AS TRUSTEE ON THE ACCOUNT, DURING THEIR LIFETIMES BENEFICIAL RIGHTS AS
9 BETWEEN THEM ARE GOVERNED BY SUBSECTION A. IF THERE IS AN IRREVOCABLE
10 TRUST, THE ACCOUNT BELONGS BENEFICIALLY TO THE BENEFICIARY.

11 14-6104. Right of survivorship

12 A. SUMS REMAINING ON DEPOSIT AT THE DEATH OF A PARTY TO A JOINT
13 ACCOUNT BELONG TO THE SURVIVING PARTY OR PARTIES AS AGAINST THE ESTATE
14 OF THE DECEDENT UNLESS THERE IS CLEAR AND CONVINCING EVIDENCE OF A DIF-
15 FERENT INTENTION AT THE TIME THE ACCOUNT IS CREATED. IF THE DEPOSIT
16 AGREEMENT CLEARLY PROVIDES A RIGHT OF SURVIVORSHIP, ORAL EVIDENCE OF A
17 CONTRARY INTENT SHALL NOT BE ADMISSIBLE EXCEPT TO PROVE MISTAKE OR
18 FRAUD. IF THERE ARE TWO OR MORE SURVIVING PARTIES, THEIR RESPECTIVE
19 OWNERSHIPS DURING LIFETIME SHALL BE IN PROPORTION TO THEIR PREVIOUS
20 OWNERSHIP INTERESTS UNDER SECTION 14-6103 AUGMENTED BY AN EQUAL SHARE
21 FOR EACH SURVIVOR OF ANY INTEREST THE DECEDENT MAY HAVE OWNED IN THE AC-
22 COUNT IMMEDIATELY BEFORE HIS DEATH, AND THE RIGHT OF SURVIVORSHIP CON-
23 TINUES BETWEEN THE SURVIVING PARTIES.

24 B. IF THE ACCOUNT IS A P.O.D. ACCOUNT, ON DEATH OF THE ORIGINAL
25 PAYEE OR OF THE SURVIVOR OF TWO OR MORE ORIGINAL PAYEES, ANY SUMS
26 REMAINING ON DEPOSIT BELONG TO THE P.O.D. PAYEE OR PAYEES IF SURVIVING,
27 OR TO THE SURVIVOR OF THEM IF ONE OR MORE DIE BEFORE THE ORIGINAL PAYEE.
28 IF TWO OR MORE P.O.D. PAYEES SURVIVE, THERE IS NO RIGHT OF SURVIVORSHIP
29 IN EVENT OF DEATH OF A P.O.D. PAYEE THEREAFTER UNLESS THE TERMS OF THE
30 ACCOUNT OR DEPOSIT AGREEMENT EXPRESSLY PROVIDE FOR SURVIVORSHIP BETWEEN
31 THEM.

32 C. IF THE ACCOUNT IS A TRUST ACCOUNT, ON DEATH OF THE TRUSTEE OR
33 THE SURVIVOR OF TWO OR MORE TRUSTEES, ANY SUMS REMAINING ON DEPOSIT BELONG

1 TO THE PERSON OR PERSONS NAMED AS BENEFICIARIES, IF SURVIVING, OR TO THE
2 SURVIVOR OF THEM IF ONE OR MORE DIE BEFORE THE TRUSTEE, UNLESS THERE IS
3 CLEAR AND CONVINCING EVIDENCE OF A CONTRARY INTENT. IF TWO OR MORE BEN-
4 EFICIARIES SURVIVE, THERE IS NO RIGHT OF SURVIVORSHIP IN EVENT OF DEATH
5 OF ANY BENEFICIARY THEREAFTER UNLESS THE TERMS OF THE ACCOUNT OR DEPOSIT
6 AGREEMENT EXPRESSLY PROVIDE FOR SURVIVORSHIP BETWEEN THEM.

7 D. IN OTHER CASES, THE DEATH OF ANY PARTY TO A MULTIPLE-PARTY
8 ACCOUNT HAS NO EFFECT ON BENEFICIAL OWNERSHIP OF THE ACCOUNT OTHER THAN
9 TO TRANSFER THE RIGHTS OF THE DECEDENT AS PART OF HIS ESTATE.

10 E. A RIGHT OF SURVIVORSHIP ARISING FROM THE EXPRESS TERMS OF THE
11 ACCOUNT OR UNDER THIS SECTION, A BENEFICIARY DESIGNATION IN A TRUST AC-
12 COUNT OR A P.O.D. PAYEE DESIGNATION CANNOT BE CHANGED BY WILL.

13 14-6105. Effect of written notice to financial institution

14 PRIOR TO DEATH OF A PARTY, THE FORM OF AN ACCOUNT MAY BE ALTERED
15 BY WRITTEN ORDER TO CHANGE THE FORM OR TO STOP OR VARY PAYMENT UNDER THE
16 TERMS OF THE ACCOUNT. THE ORDER MUST BE SIGNED BY A PARTY, RECEIVED BY
17 THE FINANCIAL INSTITUTION PRIOR TO THE DEATH, AND NOT COUNTERMANDED BY
18 OTHER WRITTEN ORDER OF THE SAME PARTY PRIOR TO THE DEATH. AT THE DEATH
19 OF A PARTY, RIGHTS OF SURVIVORSHIP UNDER SECTION 14-6104 ARE DETERMINED
20 BY THE FORM OF THE ACCOUNT AT THAT TIME.

21 14-6106. Accounts and transfers nontestamentary

22 ANY TRANSFERS RESULTING FROM THE APPLICATION OF SECTION 14-6104
23 ARE EFFECTIVE BY REASON OF THE ACCOUNT CONTRACTS INVOLVED AND THIS STAT-
24 UTE AND ARE NOT TO BE CONSIDERED AS TESTAMENTARY OR SUBJECT TO CHAPTERS
25 1 THROUGH 4 OF THIS TITLE.

26 14-6107. Rights of creditors

27 NO MULTIPLE-PARTY ACCOUNT WILL BE EFFECTIVE AGAINST AN ESTATE
28 OF A DECEASED PARTY TO TRANSFER TO A SURVIVOR SUMS NEEDED TO PAY
29 DEBTS, TAXES AND EXPENSES OF ADMINISTRATION, INCLUDING STATUTORY
30 ALLOWANCES TO THE SURVIVING SPOUSE, MINOR CHILDREN AND DEPENDENT
31 CHILDREN, IF OTHER ASSETS OF THE ESTATE ARE INSUFFICIENT. A SUR-
32 VIVING PARTY, P.O.D. PAYEE OR BENEFICIARY WHO RECEIVES PAYMENT FROM A
33 MULTIPLE-PARTY ACCOUNT AFTER THE DEATH OF / DECEASED PARTY SHALL BE

1 LIABLE TO ACCOUNT TO HIS PERSONAL REPRESENTATIVE FOR AMOUNTS THE DE-
2 CEDENT OWNED BENEFICIALLY IMMEDIATELY BEFORE HIS DEATH TO THE EXTENT
3 NECESSARY TO DISCHARGE THE CLAIMS AND CHARGES MENTIONED ABOVE REMAIN-
4 ING UNPAID AFTER APPLICATION OF THE DECEDENT'S ESTATE. NO PROCEEDING
5 TO ASSERT THIS LIABILITY SHALL BE COMMENCED UNLESS THE PERSONAL REP-
6 REPRESENTATIVE HAS RECEIVED A WRITTEN DEMAND BY A SURVIVING SPOUSE, A
7 CREDITOR OR ONE ACTING FOR A MINOR OR DEPENDENT CHILD OF THE DECEDENT,
8 AND NO PROCEEDING SHALL BE COMMENCED LATER THAN TWO YEARS FOLLOWING THE
9 DEATH OF THE DECEDENT. SUMS RECOVERED BY THE PERSONAL REPRESENTATIVE
10 SHALL BE ADMINISTERED AS PART OF THE DECEDENT'S ESTATE. THIS SECTION
11 SHALL NOT AFFECT THE RIGHT OF A FINANCIAL INSTITUTION TO MAKE PAYMENT
12 ON MULTIPLE-PARTY ACCOUNTS ACCORDING TO THE TERMS THEREOF, OR MAKE IT
13 LIABLE TO THE ESTATE OF A DECEASED PARTY UNLESS BEFORE PAYMENT THE INSTI-
14 TUTION HAS BEEN SERVED WITH PROCESS IN A PROCEEDING BY THE PERSONAL REP-
15 REPRESENTATIVE.

16 14-6108. Financial institution protection; payment on
17 signature of one party

18 FINANCIAL INSTITUTIONS MAY ENTER INTO MULTIPLE-PARTY ACCOUNTS
19 TO THE SAME EXTENT THAT THEY MAY ENTER INTO SINGLE-PARTY ACCOUNTS.
20 ANY MULTIPLE-PARTY ACCOUNT MAY BE PAID, ON REQUEST, TO ANY ONE OR
21 MORE OF THE PARTIES. A FINANCIAL INSTITUTION SHALL NOT BE REQUIRED
22 TO INQUIRE AS TO THE SOURCE OF FUNDS RECEIVED FOR DEPOSIT TO A
23 MULTIPLE-PARTY ACCOUNT, OR TO INQUIRE AS TO THE PROPOSED APPLICATION
24 OF ANY SUM WITHDRAWN FROM AN ACCOUNT, FOR PURPOSES OF ESTABLISHING
25 NET CONTRIBUTIONS.

26 14-6109. Financial institution protection; payment
27 after death or disability; joint account

28 ANY SUMS IN A JOINT ACCOUNT MAY BE PAID, ON REQUEST, TO ANY
29 PARTY WITHOUT REGARD TO WHETHER ANY OTHER PARTY IS INCAPACITATED
30 OR DECEASED AT THE TIME THE PAYMENT IS DEMANDED, BUT PAYMENT MAY
31 NOT BE MADE TO THE PERSONAL REPRESENTATIVE OR HEIRS OF A DECEASED
32 PARTY UNLESS PROOF OF DEATH IS PRESENTED TO THE FINANCIAL INSTITU-
33 TION SHOWING THAT THE DECEDENT WAS THE LAST SURVIVING PARTY OR UNLESS

1 THERE IS NO RIGHT OF SURVIVORSHIP UNDER SECTION 14-6104.

2 14-6110. Financial institution protection; payment
3 of P.O.D. account

4 ANY P.O.D. ACCOUNT MAY BE PAID, ON REQUEST, TO ANY ORIGINAL PARTY
5 TO THE ACCOUNT. PAYMENT MAY BE MADE, ON REQUEST, TO THE P.O.D. PAYEE OR
6 TO THE PERSONAL REPRESENTATIVE OR HEIRS OF A DECEASED P.O.D. PAYEE UPON
7 PRESENTATION TO THE FINANCIAL INSTITUTION OF PROOF OF DEATH SHOWING THAT
8 THE P.O.D. PAYEE SURVIVED ALL PERSONS NAMED AS ORIGINAL PAYEES. PAYMENT
9 MAY BE MADE TO THE PERSONAL REPRESENTATIVE OR HEIRS OF A DECEASED ORIGINAL
10 PAYEE IF PROOF OF DEATH IS PRESENTED TO THE FINANCIAL INSTITUTION SHOWING
11 THAT HIS DECEDENT WAS THE SURVIVOR OF ALL OTHER PERSONS NAMED ON THE
12 ACCOUNT EITHER AS AN ORIGINAL PAYEE OR AS P.O.D. PAYEE.

13 14-6111. Financial institution protection; payment
14 of trust account

15 ANY TRUST ACCOUNT MAY BE PAID, ON REQUEST, TO ANY TRUSTEE. UN-
16 LESS THE FINANCIAL INSTITUTION HAS RECEIVED WRITTEN NOTICE THAT THE
17 BENEFICIARY HAS A VESTED INTEREST NOT DEPENDENT UPON HIS SURVIVING THE
18 TRUSTEE, PAYMENT MAY BE MADE TO THE PERSONAL REPRESENTATIVE OR HEIRS
19 OF A DECEASED TRUSTEE IF PROOF OF DEATH IS PRESENTED TO THE FINANCIAL
20 INSTITUTION SHOWING THAT HIS DECEDENT WAS THE SURVIVOR OF ALL OTHER
21 PERSONS NAMED ON THE ACCOUNT EITHER AS TRUSTEE OR BENEFICIARY. PAYMENT
22 MAY BE MADE, ON REQUEST, TO THE BENEFICIARY UPON PRESENTATION TO THE
23 FINANCIAL INSTITUTION OF PROOF OF DEATH SHOWING THAT THE BENEFICIARY
24 OR BENEFICIARIES SURVIVED ALL PERSONS NAMED AS TRUSTEES.

25 14-6112. Financial institution protection; discharge

26 PAYMENT MADE PURSUANT TO SECTION 14-6108, 14-6109, 14-6110
27 OR 14-6111 DISCHARGES THE FINANCIAL INSTITUTION FROM ALL CLAIMS FOR
28 AMOUNTS SO PAID WHETHER OR NOT THE PAYMENT IS CONSISTENT WITH THE
29 BENEFICIAL OWNERSHIP OF THE ACCOUNT AS BETWEEN PARTIES, P.O.D. PAYEES
30 OR BENEFICIARIES OR THEIR SUCCESSORS. THE PROTECTION HERE GIVEN DOES
31 NOT EXTEND TO PAYMENTS MADE AFTER A FINANCIAL INSTITUTION HAS RECEIVED
32 WRITTEN NOTICE FROM ANY PARTY ABLE TO REQUEST PRESENT PAYMENT TO
33

1 THE EFFECT THAT WITHDRAWALS IN ACCORDANCE WITH THE TERMS OF THE AC-
2 COUNT SHOULD NOT BE PERMITTED. UNLESS THE NOTICE IS WITHDRAWN BY THE
3 PERSON GIVING IT, THE SUCCESSOR OF ANY DECEASED PARTY MUST CONCUR IN
4 ANY DEMAND FOR WITHDRAWAL IF THE FINANCIAL INSTITUTION IS TO BE PRO-
5 TECTED UNDER THIS SECTION. NO OTHER NOTICE OR ANY OTHER INFORMATION
6 SHOWN TO HAVE BEEN AVAILABLE TO A FINANCIAL INSTITUTION SHALL AFFECT
7 ITS RIGHT TO THE PROTECTION PROVIDED HERE. THE PROTECTION HERE PRO-
8 VIDED SHALL HAVE NO BEARING ON THE RIGHTS OF PARTIES IN DISPUTES BE-
9 TWEEN THEMSELVES OR THEIR SUCCESSORS CONCERNING THE BENEFICIAL OWNER-
10 SHIP OF FUNDS IN, OR WITHDRAWN FROM, MULTIPLE-PARTY ACCOUNTS.

11 14-6113. Financial institution protection; set-off

12 WITHOUT QUALIFYING ANY OTHER STATUTORY RIGHT TO SET-OFF OR LIEN
13 AND SUBJECT TO ANY CONTRACTUAL PROVISION, IF A PARTY TO A MULTIPLE-
14 PARTY ACCOUNT IS INDEBTED TO A FINANCIAL INSTITUTION, THE FINANCIAL
15 INSTITUTION HAS A RIGHT TO SET-OFF AGAINST THE ACCOUNT IN WHICH THE
16 PARTY HAS OR HAD IMMEDIATELY BEFORE HIS DEATH A PRESENT RIGHT OF
17 WITHDRAWAL. THE AMOUNT OF THE ACCOUNT SUBJECT TO SET-OFF IS THAT
18 PROPORTION TO WHICH THE DEBTOR IS, OR WAS IMMEDIATELY BEFORE HIS DEATH,
19 BENEFICIALLY ENTITLED, AND IN THE ABSENCE OF PROOF OF NET CONTRIBUTIONS,
20 TO AN EQUAL SHARE WITH ALL PARTIES HAVING PRESENT RIGHTS OF WITHDRAWAL.

21 14-6114. Rights in community property

22 NOTHING IN THIS CHAPTER DEFEATS THE RIGHTS OF A SPOUSE IN COM-
23 MUNITY PROPERTY.

24 ARTICLE 2. PROVISIONS RELATING TO EFFECT OF DEATH

25 14-6201. Provisions for payment or transfer at death

26 A. ANY OF THE FOLLOWING PROVISIONS IN AN INSURANCE POLICY,
27 CONTRACT OF EMPLOYMENT, BOND, MORTGAGE, PROMISSORY NOTE, DEPOSIT
28 AGREEMENT, PENSION PLAN, TRUST AGREEMENT, CONVEYANCE OR ANY OTHER
29 WRITTEN INSTRUMENT EFFECTIVE AS A CONTRACT, GIFT, CONVEYANCE, OR
30 TRUST IS DEEMED TO BE NONTESTAMENTARY, AND THIS TITLE DOES NOT
31 INVALIDATE THE INSTRUMENT OR ANY PROVISION:

32 1. THAT MONEY OR OTHER BENEFITS THEREFORE DUE TO, CON-
33 TROLLED OR OWNED BY A DECEDENT SHALL BE PAID AFTER HIS DEATH TO A

1 PERSON DESIGNATED BY THE DECEDENT IN EITHER THE INSTRUMENT OR A
2 SEPARATE WRITING, INCLUDING A WILL, EXECUTED AT THE SAME TIME AS THE
3 INSTRUMENT OR SUBSEQUENTLY.

4 2. THAT ANY MONEY DUE OR TO BECOME DUE UNDER THE INSTRUMENT
5 SHALL CEASE TO BE PAYABLE IN EVENT OF THE DEATH OF THE PROMISEE OR
6 THE PROMISSOR BEFORE PAYMENT OR DEMAND.

7 3. THAT ANY PROPERTY WHICH IS THE SUBJECT OF THE INSTRUMENT
8 SHALL PASS TO A PERSON DESIGNATED BY THE DECEDENT IN EITHER THE
9 INSTRUMENT OR A SEPARATE WRITING, INCLUDING A WILL, EXECUTED AT THE
10 SAME TIME AS THE INSTRUMENT OR SUBSEQUENTLY.

11 B. NOTHING IN THIS SECTION LIMITS THE RIGHTS OF CREDITORS
12 UNDER OTHER LAWS OF THIS STATE.

13 C. ANY PROVISION IN A LEASE OR OTHER CONTRACT RELATIVE TO A
14 SAFETY DEPOSIT BOX TO THE EFFECT THAT TWO OR MORE PERSONS SHALL HAVE
15 ACCESS TO THE BOX, OR THAT PURPORTS TO CREATE A JOINT TENANCY IN
16 THE BOX OR IN THE CONTENTS OF THE BOX, OR THAT PURPORTS TO VEST OWNER-
17 SHIP OF THE CONTENTS OF THE BOX IN THE SURVIVING LESSEE, IS INEFFECTIVE
18 TO CREATE JOINT OWNERSHIP OF THE CONTENTS OF THE BOX OR TO TRANSFER
19 OWNERSHIP AT DEATH OF ONE OF THE LESSEES TO THE SURVIVOR. OWNERSHIP
20 OF THE CONTENTS OF THE BOX AND DEVOLUTION OF TITLE TO THOSE CONTENTS
21 IS DETERMINED ACCORDING TO RULES OF LAW WITHOUT REGARD TO THE LEASE
22 OR CONTRACT PROVISIONS.

23 CHAPTER 7.

24 TRUST ADMINISTRATION

25 ARTICLE 1. (BLANK)

26 ARTICLE 2. PROCEEDINGS CONCERNING TRUSTS

27 14-7201. Court; exclusive jurisdiction of trusts

28 A. THE COURT HAS EXCLUSIVE JURISDICTION OF PROCEEDINGS INITIATED
29 BY INTERESTED PARTIES CONCERNING THE INTERNAL AFFAIRS OF TRUSTS. PRO-
30 CEEDINGS WHICH MAY BE MAINTAINED UNDER THIS SECTION ARE THOSE CONCERN-
31 ING THE ADMINISTRATION AND DISTRIBUTION OF TRUSTS, THE DECLARATION
32 OF RIGHTS AND THE DETERMINATION OF OTHER MATTERS INVOLVING TRUSTEES AND
33 BENEFICIARIES OF TRUSTS. THESE INCLUDE, BUT ARE NOT LIMITED TO, PROCEED-
34 INGS TO:

1 1. APPOINT OR REMOVE A TRUSTEE.
2 2. REVIEW TRUSTEES' FEES AND REVIEW AND SETTLE INTERIM OR FINAL
3 ACCOUNTS.
4 3. ASCERTAIN BENEFICIARIES, DETERMINE ANY QUESTION ARISING IN
5 THE ADMINISTRATION OR DISTRIBUTION OF ANY TRUST INCLUDING QUESTIONS OF
6 CONSTRUCTION OF TRUST INSTRUMENTS, INSTRUCT TRUSTEES AND DETERMINE THE
7 EXISTENCE OR NONEXISTENCE OF ANY IMMUNITY, POWER, PRIVILEGE, DUTY OR
8 RIGHT.
9 4. ORDER TRANSFER OF ADMINISTRATION OF THE TRUST TO ANOTHER
10 STATE UPON APPROPRIATE CONDITIONS AS MAY BE DETERMINED BY THE COURT,
11 OR ACCEPT TRANSFER OF ADMINISTRATION OF A TRUST FROM ANOTHER STATE TO
12 THIS STATE UPON SUCH CONDITIONS AS MAY BE IMPOSED BY THE SUPERVISING
13 COURT OF THE OTHER STATE, UNLESS THE COURT IN THIS STATE DETERMINES
14 THAT SUCH CONDITIONS ARE INCOMPATIBLE WITH ITS OWN RULES AND PROCEDURES.
15 B. A PROCEEDING UNDER THIS SECTION DOES NOT RESULT IN CONTINUING
16 SUPERVISION BY THE COURT OVER THE ADMINISTRATION OF THE TRUST. THE
17 MANAGEMENT AND DISTRIBUTION OF A TRUST ESTATE, SUBMISSION OF ACCOUNTS
18 AND REPORTS TO BENEFICIARIES, PAYMENT OF TRUSTEE'S FEES AND OTHER
19 OBLIGATIONS OF A TRUST, ACCEPTANCE AND CHANGE OF TRUSTEESHIP, AND
20 OTHER ASPECTS OF THE ADMINISTRATION OF A TRUST SHALL PROCEED EXPEDI-
21 TIOUSLY CONSISTENT WITH THE TERMS OF THE TRUST, FREE OF JUDICIAL
22 INTERVENTION AND WITHOUT ORDER, APPROVAL OR OTHER ACTION OF ANY COURT,
23 SUBJECT TO THE JURISDICTION OF THE COURT AS INVOKED BY INTERESTED
24 PARTIES OR AS OTHERWISE EXERCISED AS PROVIDED BY LAW.
25 14-7202. Effect of administration in this state;
26 consent to jurisdiction
27 A. BY ACCEPTING THE TRUSTEESHIP OF A TRUST OF WHICH THE PRINCIPAL
28 PLACE OF ADMINISTRATION IS IN THIS STATE, OR BY MOVING THE PRINCIPAL
29 PLACE OF ADMINISTRATION OF A TRUST TO THIS STATE, THE TRUSTEE
30 SUBMITS PERSONALLY TO THE JURISDICTION OF THE COURTS OF THIS STATE IN
31 ANY PROCEEDING UNDER SECTION 14-7201 AS TO ANY MATTER RELATING TO THE
32 TRUST ARISING WHILE THE PRINCIPAL PLACE OF BUSINESS IS LOCATED IN THIS
33 STATE.

1 B. TO THE EXTENT OF THE BENEFICIAL INTERESTS IN A TRUST OF WHICH
2 THE PRINCIPAL PLACE OF ADMINISTRATION IS IN THIS STATE, THE BENEFICIARIES
3 OF THE TRUST ARE SUBJECT TO THE JURISDICTION OF THE COURTS OF THIS
4 STATE FOR PURPOSES OF PROCEEDINGS UNDER SECTION 14-7201.

5 C. UNLESS OTHERWISE DESIGNATED IN THE TRUST INSTRUMENT, THE
6 PRINCIPAL PLACE OF ADMINISTRATION OF A TRUST IS THE TRUSTEE'S USUAL
7 PLACE OF BUSINESS WHERE THE RECORDS PERTAINING TO THE TRUST ARE KEPT,
8 OR AT THE TRUSTEE'S RESIDENCE IF HE HAS NO SUCH PLACE OF BUSINESS. IN
9 THE CASE OF CO-TRUSTEES, THE PRINCIPAL PLACE OF ADMINISTRATION, IF NOT
10 OTHERWISE DESIGNATED IN THE TRUST INSTRUMENT, IS:

11 1. THE USUAL PLACE OF BUSINESS OF THE CORPORATE TRUSTEE IF THERE
12 IS BUT ONE CORPORATE CO-TRUSTEE.

13 2. THE USUAL PLACE OF BUSINESS OR RESIDENCE OF THE INDIVIDUAL
14 TRUSTEE WHO IS A PROFESSIONAL FIDUCIARY IF THERE IS BUT ONE SUCH PERSON
15 AND NO CORPORATE CO-TRUSTEE.

16 3. THE USUAL PLACE OF BUSINESS OR RESIDENCE OF ANY OF THE CO-
17 TRUSTEES AS AGREED UPON BY THEM.

18 14-7203. Trust proceedings; venue

19 VENUE FOR PROCEEDINGS UNDER SECTION 14-7201 IS IN THE COUNTY
20 WHERE THE TRUST HAS ITS PRINCIPAL PLACE OF ADMINISTRATION OF THE
21 TRUST, OR AS OTHERWISE PROVIDED BY THE RULES OF CIVIL PROCEDURE.

22 14-7204. Trust proceedings; initiation by notice;
23 necessary parties

24 PROCEEDINGS UNDER SECTION 14-7201 ARE INITIATED BY FILING A
25 PETITION IN THE COURT AND GIVING NOTICE PURSUANT TO SECTION 14-1401
26 TO INTERESTED PARTIES. NOTICE TO THE TRUSTEE BY MAIL MAY BE ADDRESSED
27 TO HIM AT THE PRINCIPAL PLACE OF ADMINISTRATION OF THE TRUST AS DEFINED
28 IN SECTION 14-7202, SUBSECTION C. THE COURT MAY ORDER NOTIFICATION
29 OF ADDITIONAL PERSONS. A DECREE IS VALID AS TO ALL WHO ARE GIVEN NOTICE
30 OF THE PROCEEDING THOUGH FEWER THAN ALL INTERESTED PARTIES ARE NOTIFIED.

31 14-7205. Trust proceedings; dismissal of matters
32 relating to foreign trusts

33 THE COURT WILL NOT, OVER THE OBJECTION OF A PARTY, ENTERTAIN

1 PROCEEDINGS UNDER SECTION 14-7201 INVOLVING A TRUST WHICH IS UNDER THE
2 CONTINUING SUPERVISION OF A FOREIGN COURT, IS REGISTERED IN ANOTHER STATE
3 OR HAS ITS PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE, EXCEPT:

4 1. IF ALL APPROPRIATE PARTIES COULD NOT BE BOUND BY LITIGATION
5 IN THE COURTS OF THE OTHER STATE.

6 2. IF THE INTERESTS OF JUSTICE WOULD BE SERIOUSLY IMPAIRED.
7 THE COURT MAY CONDITION A STAY OR DISMISSAL OF A PROCEEDING ON THE CON-
8 SENT OF ANY PARTY TO THE JURISDICTION OF THE COURTS OF ANOTHER STATE,
9 OR THE COURT MAY GRANT A CONTINUANCE OR ENTER ANY OTHER APPROPRIATE OR-
10 DER.

11 14-7206. Proceedings for review of employment of agents
12 and review of compensation of trustee and
13 employees of trust

14 ON PETITION OF AN INTERESTED PERSON, AFTER NOTICE TO ALL INTER-
15 ESTED PERSONS, THE COURT MAY REVIEW THE PROPRIETY OF EMPLOYMENT OF ANY
16 PERSON BY A TRUSTEE INCLUDING ANY ATTORNEY, AUDITOR, INVESTMENT ADVISOR
17 OR OTHER SPECIALIZED AGENT OR ASSISTANT, AND THE REASONABLENESS OF THE
18 COMPENSATION OF ANY PERSON SO EMPLOYED, AND THE REASONABLENESS OF THE
19 COMPENSATION DETERMINED BY THE TRUSTEE FOR HIS OWN SERVICES. ANY PER-
20 SON WHO HAS RECEIVED EXCESSIVE COMPENSATION FROM A TRUST MAY BE ORDERED
21 TO MAKE APPROPRIATE REFUNDS.

22 14-7207. Concurrent jurisdiction of litigation
23 involving trusts and third parties

24 THE COURT OF THE PLACE OF PRINCIPAL ADMINISTRATION OF THE TRUST
25 HAS CONCURRENT JURISDICTION WITH OTHER COURTS OF THIS STATE OVER ACTIONS
26 OR PROCEEDINGS TO DETERMINE THE EXISTENCE OR NONEXISTENCE OF TRUSTS
27 CREATED OTHER THAN BY WILL, OF ACTIONS BY OR AGAINST CREDITORS OR
28 DEBTORS OF TRUSTS, AND OF OTHER ACTIONS AND PROCEEDINGS INVOLVING
29 TRUSTEES AND THIRD PARTIES. VENUE IS DETERMINED BY THE RULES GEN-
30 ERALLY APPLICABLE TO CIVIL ACTIONS.

31 ARTICLE 3. DUTIES AND LIABILITIES OF TRUSTEES

32 14-7301. General duties not limited

33 EXCEPT AS SPECIFICALLY PROVIDED, THE GENERAL DUTY OF THE

1 TRUSTEE TO ADMINISTER A TRUST EXPEDITIOUSLY FOR THE BENEFIT OF THE
2 BENEFICIARIES IS NOT ALTERED BY THIS TITLE.

3 14-7302. Trustee's standard of care and performance

4 EXCEPT AS OTHERWISE PROVIDED BY THE TERMS OF THE TRUST, THE
5 TRUSTEE SHALL OBSERVE THE STANDARDS IN DEALING WITH THE TRUST ASSETS
6 THAT WOULD BE OBSERVED BY A PRUDENT MAN DEALING WITH THE PROPERTY OF
7 ANOTHER, AND IF THE TRUSTEE HAS SPECIAL SKILLS OR IS NAMED TRUSTEE ON
8 THE BASIS OF REPRESENTATIONS OF SPECIAL SKILLS OR EXPERTISE, HE IS
9 UNDER A DUTY TO USE THOSE SKILLS.

10 14-7303. Duty to inform and account to beneficiaries

11 THE TRUSTEE SHALL KEEP THE BENEFICIARIES OF THE TRUST REASONABLY
12 INFORMED OF THE TRUST AND ITS ADMINISTRATION. IN ADDITION:

13 1. WITHIN THIRTY DAYS AFTER HIS ACCEPTANCE OF THE TRUST, THE
14 TRUSTEE SHALL INFORM IN WRITING THE CURRENT BENEFICIARIES AND IF
15 POSSIBLE, ONE OR MORE PERSONS WHO UNDER SECTION 14-1403 MAY REPRESENT
16 BENEFICIARIES WITH FUTURE INTERESTS, OF THE COURT IN WHICH THE TRUST
17 IS REGISTERED AND OF HIS NAME AND ADDRESS.

18 2. UPON REASONABLE REQUEST, THE TRUSTEE SHALL PROVIDE THE
19 BENEFICIARY WITH A COPY OF THE TERMS OF THE TRUST WHICH DESCRIBE
20 OR AFFECT HIS INTEREST AND WITH RELEVANT INFORMATION ABOUT THE ASSETS
21 OF THE TRUST AND THE PARTICULARS RELATING TO THE ADMINISTRATION.

22 3. UPON REASONABLE REQUEST, A BENEFICIARY IS ENTITLED TO A
23 STATEMENT OF THE ACCOUNTS OF THE TRUST ANNUALLY AND ON TERMINATION OF
24 THE TRUST OR CHANGE OF THE TRUSTEE.

25 14-7304. Duty to provide bond

26 A TRUSTEE NEED NOT PROVIDE BOND TO SECURE PERFORMANCE OF HIS
27 DUTIES UNLESS REQUIRED BY THE TERMS OF THE TRUST, REASONABLY REQUESTED
28 BY A BENEFICIARY OR FOUND BY THE COURT TO BE NECESSARY TO PROTECT THE
29 INTERESTS OF THE BENEFICIARIES WHO ARE NOT ABLE TO PROTECT THEMSELVES
30 AND WHOSE INTERESTS OTHERWISE ARE NOT ADEQUATELY REPRESENTED. ON
31 PETITION OF THE TRUSTEE OR OTHER INTERESTED PERSON THE COURT MAY EXCUSE
32 A REQUIREMENT OF BOND, REDUCE THE AMOUNT OF THE BOND, RELEASE THE SURETY
33 OR PERMIT THE SUBSTITUTION OF ANOTHER BOND WITH THE SAME OR DIFFERENT

1 SURETIES. IF BOND IS REQUIRED, IT SHALL BE FILED IN THE COURT OF THE
2 COUNTY WHERE THE TRUST HAS ITS PRINCIPAL PLACE OF ADMINISTRATION, OR
3 OTHER APPROPRIATE COURT, IN AMOUNTS AND WITH SURETIES AND LIABILITIES
4 AS PROVIDED IN SECTIONS 14-3604 AND 14-3606 RELATING TO BONDS OF PER-
5 SONAL REPRESENTATIVES.

6 14-7305. Trustee's duties; appropriate place of
7 administration; deviation

8 A TRUSTEE IS UNDER A CONTINUING DUTY TO ADMINISTER THE TRUST
9 AT A PLACE APPROPRIATE TO THE PURPOSES OF THE TRUST AND TO ITS SOUND,
10 EFFICIENT MANAGEMENT. IF THE PRINCIPAL PLACE OF ADMINISTRATION BE-
11 COMES INAPPROPRIATE FOR ANY REASON, THE COURT MAY ENTER ANY ORDER
12 FURTHERING EFFICIENT ADMINISTRATION AND THE INTERESTS OF BENEFICIARIES,
13 INCLUDING, IF APPROPRIATE, RELEASE OF REGISTRATION, REMOVAL OF THE
14 TRUSTEE AND APPOINTMENT OF A TRUSTEE IN ANOTHER STATE. TRUST PROVI-
15 SIONS RELATING TO THE PLACE OF ADMINISTRATION AND TO CHANGES IN THE
16 PLACE OF ADMINISTRATION OR OF TRUSTEE CONTROL UNLESS COMPLIANCE WOULD
17 BE CONTRARY TO EFFICIENT ADMINISTRATION OR THE PURPOSES OF THE TRUST.
18 VIEWS OF ADULT BENEFICIARIES SHALL BE GIVEN WEIGHT IN DETERMINING THE
19 SUITABILITY OF THE TRUSTEE AND THE PLACE OF ADMINISTRATION.

20 14-7306. Personal liability of trustee to third parties

21 A. UNLESS OTHERWISE PROVIDED IN THE CONTRACT, A TRUSTEE IS NOT
22 PERSONALLY LIABLE ON CONTRACTS PROPERLY ENTERED INTO IN HIS FIDUCIARY
23 CAPACITY IN THE COURSE OF ADMINISTRATION OF THE TRUST ESTATE UNLESS HE
24 FAILS TO REVEAL HIS REPRESENTATIVE CAPACITY AND IDENTIFY THE TRUST
25 ESTATE IN THE CONTRACT.

26 B. A TRUSTEE IS PERSONALLY LIABLE FOR OBLIGATIONS ARISING FROM
27 OWNERSHIP OR CONTROL OF PROPERTY OF THE TRUST ESTATE OR FOR TORTS
28 COMMITTED IN THE COURSE OF ADMINISTRATION OF THE TRUST ESTATE ONLY IF
29 HE IS PERSONALLY AT FAULT.

30 C. CLAIMS BASED ON CONTRACTS ENTERED INTO BY A TRUSTEE IN HIS
31 FIDUCIARY CAPACITY, ON OBLIGATIONS ARISING FROM OWNERSHIP OR CONTROL
32 OF THE TRUST ESTATE, OR ON TORTS COMMITTED IN THE COURSE OF TRUST AD-
33 MINISTRATION MAY BE ASSERTED AGAINST THE TRUST ESTATE BY PROCEEDING

1 AGAINST THE TRUSTEE IN HIS FIDUCIARY CAPACITY, WHETHER OR NOT THE
2 TRUSTEE IS PERSONALLY LIABLE THEREFOR.

3 D. THE QUESTION OF LIABILITY AS BETWEEN THE TRUST ESTATE AND
4 THE TRUSTEE INDIVIDUALLY MAY BE DETERMINED IN A PROCEEDING FOR ACCOUNT-
5 ING, SURCHARGE OR INDEMNIFICATION OR OTHER APPROPRIATE PROCEEDING.

6 14-7307. Limitations on proceedings against trustees
7 after final account

8 UNLESS PREVIOUSLY BARRED BY ADJUDICATION, CONSENT OR LIMITATION,
9 ANY CLAIM AGAINST A TRUSTEE FOR BREACH OF TRUST IS BARRED AS TO ANY
10 BENEFICIARY WHO HAS RECEIVED A FINAL ACCOUNT OR OTHER STATEMENT FULLY
11 DISCLOSING THE MATTER AND SHOWING TERMINATION OF THE TRUST RELATIONSHIP
12 BETWEEN THE TRUSTEE AND THE BENEFICIARY UNLESS A PROCEEDING TO ASSERT
13 THE CLAIM IS COMMENCED WITHIN SIX MONTHS AFTER RECEIPT OF THE FINAL
14 ACCOUNT OR STATEMENT. IN ANY EVENT AND NOTWITHSTANDING LACK OF FULL
15 DISCLOSURE A TRUSTEE WHO HAS ISSUED A FINAL ACCOUNT OR STATEMENT RE-
16 CEIVED BY THE BENEFICIARY AND HAS INFORMED THE BENEFICIARY OF THE
17 LOCATION AND AVAILABILITY OF RECORDS FOR HIS EXAMINATION IS PROTECTED
18 AFTER THREE YEARS. A BENEFICIARY IS DEEMED TO HAVE RECEIVED A FINAL
19 ACCOUNT OR STATEMENT IF, BEING AN ADULT, IT IS RECEIVED BY HIM PER-
20 SONALLY OR IF, BEING A MINOR OR DISABLED PERSON, IT IS RECEIVED BY HIS
21 REPRESENTATIVE AS DESCRIBED IN SECTION 14-1403, PARAGRAPHS 1 AND 2.

22 Sec. 4. Section 6-267, Arizona Revised Statutes, is amended
23 to read:

24 6-267. Bank deposits in two or more names; payment to
25 survivor; estate tax

26 A. Bank deposits may be made, IN ANY OF THE FORMS AUTHORIZED
27 UNDER TITLE 14, CHAPTER 6, ARTICLE 1, in the name of two or more persons,
28 including minors, payable to either or any of them, or payable to
29 either or any of the survivors or the sole survivor, and the deposits
30 or any part thereof and any interest thereon, may be paid to or on
31 order of any of the persons whether the other or others are living or
32 not. The receipt, order or acquittance of the persons so paid is
33 valid and sufficient release and discharge to the bank for any payments

1 so made. The term "deposits" includes certificates of deposit.

2 B. Nothing in this section shall be construed to affect the
3 provisions of sections 42-1530 and 42-1531.

4 Sec. 5. Section 6-508, Arizona Revised Statutes, is amended
5 to read:

6 6-508. Issuance of shares; survivorship; minors;
7 trust and joint accounts

8 A. Shares shall be issued in the name of the owner or may be
9 issued in the name of two or more persons in ~~joint-tenancy~~ ACCORDANCE
10 WITH TITLE 14, CHAPTER 6, ARTICLE 1, with right of survivorship, in
11 which case payment may be made, in whole or in part, to any of such
12 persons whether the others be living, or dead, and payment by the
13 credit union to any such person shall be a complete discharge of the
14 credit union's obligation as to the amount paid, provided that an
15 agreement permitting such payment was signed by all persons when the
16 shares were issued or thereafter. Only one of such persons need have
17 the common bond of interest or association or occupation specified in
18 this chapter, and only that person may vote in a meeting of the members.
19 A ~~joint-owner~~ MULTIPLE OWNER not in the field of membership cannot be-
20 come a member of the credit union. Such persons shall have no voting
21 rights and shall not borrow from the credit union nor continue beyond
22 the current dividend period the share account in the credit union after
23 the death of the ~~joint-owner~~ MULTIPLE OWNER member. Shares may be
24 issued in the name of a minor or in trust in such manner as the bylaws
25 may provide, provided the name of the actual beneficiary is disclosed
26 to the credit union.

27 B. Upon authorization of the board of directors, the partial
28 share holdings of a member in excess of one dollar which is carried
29 on the books of the credit union at less than par value for a period
30 of two whole years may be credited to the legal reserve of the credit
31 union if upon written notice mailed to the member at his last known
32 address no action to withdraw such funds is taken by the member within
33 thirty days after the mailing of such notice. All like share accounts

1 of one dollar or less may be credited to the legal reserve without
2 notice.

3 Sec. 6. Section 12-1224, Arizona Revised Statutes, is amended
4 to read:

5 12-1224. Proceedings not exclusive; rules of procedure

6 A. The provisions of this article shall not ~~affect-the-mode-of~~
7 ~~proceeding-prescribed-by-law-for-partition-of-estates-of-decedents,-nor~~
8 ~~shall-such-provisions~~ preclude partition in any other manner authorized
9 by law.

10 B. The rules of pleading and procedure which govern other civil
11 actions shall govern actions for partition when not in conflict with
12 the proceedings provided by this article.

13 Sec. 7. Section 12-1251, Arizona Revised Statutes, is amended
14 to read:

15 12-1251. Right of recovery; procedure

16 A. A person having a valid subsisting interest in real property
17 and a right to immediate possession thereof may recover the property
18 by action against any person acting as owner, landlord or tenant of
19 the property claimed.

20 B. The action shall be commenced and prosecuted as other civil
21 actions.

22 C. THE HEIRS OR DEVISEES MAY THEMSELVES, OR JOINTLY WITH THE
23 EXECUTOR OR ADMINISTRATOR, MAINTAIN AN ACTION FOR POSSESSION OF THE
24 REAL PROPERTY, OR TO QUIET TITLE THERETO AGAINST ANY PERSON EXCEPT THE
25 EXECUTOR OR ADMINISTRATOR.

26 D. AN ACTION INVOLVING TITLE OR RIGHT TO POSSESSION OF REAL
27 PROPERTY BELONGING TO THE ESTATE OF DECEDENT MAY BE BROUGHT BY OR
28 AGAINST THE EXECUTOR OR ADMINISTRATOR WITHOUT JOINING THE HEIRS.

29 Sec. 8. Section 12-2101, Arizona Revised Statutes, is amended
30 to read:

31 12-2101. Judgments and orders which may be appealed

32 A. An appeal may be taken to the court of appeals from the su-
33 perior court in the instances specified in this section.

1 B. From a final judgment entered in an action or special pro-
2 ceeding commenced in a superior court, or brought into a superior court
3 from any other court, except in actions of forcible entry and detainer
4 when the annual rental value of the property is less than three hundred
5 dollars.

6 C. From any special order made after final judgment.

7 D. From any order affecting a substantial right made in any
8 action when the order in effect determines the action and prevents
9 judgment from which an appeal might be taken.

10 E. From a final order affecting a substantial right made in
11 a special proceeding or upon a summary application in an action after
12 judgment.

13 F. From an order:

14 1. Granting or refusing a new trial, or granting a motion in
15 arrest of judgment.

16 2. Granting or dissolving an injunction, or refusing to grant
17 or dissolve an injunction, or appointing a receiver.

18 3. Dissolving or refusing to dissolve an attachment or garnish-
19 ment.

20 G. From an interlocutory judgment which determines the rights
21 of the parties and directs an accounting or other proceeding to deter-
22 mine the amount of the recovery.

23 H. From an interlocutory judgment in any action for partition
24 which determines the rights and interests of the respective parties,
25 and directs partition to be made.

26 I. From any interlocutory judgment, decree, or order made or
27 entered in actions to redeem real or personal property from a mortgage
28 thereof or lien thereon, determining such right to redeem and directing
29 an accounting.

30 J. From a judgment DECREE or order- ENTERED IN ANY FORMAL
31 PROCEEDINGS UNDER TITLE 14.

32 |--Granting-or-refusing-to-grant,-revoking-or-refusing-to-revoke,
33 letters-testamentary,-or-of-administration,-or-of-guardianship,

1 2.---Admitting-or-refusing-to-admit-a-will-to-probate,-or-against
2 or-in-favor-of-the-validity-of-a-will,-or-revoking-or-refusing-to-revoke
3 the-probate-thereof.

4 3.---Against-or-in-favor-of-setting-apart-property,-or-making
5 allowance-for-a-widow-or-child.

6 4.---Against-or-in-favor-of-directing-the-partition,-sale,-or
7 conveyance-of-real-property,-or-settling-an-account-of-an-executor,
8 administrator,-guardian,-or-trustee.

9 5.---Refusing,-allowing,-or-directing-the-distribution-or-partition
10 of-an-estate,-or-any-part-thereof,-or-payment-of-a-debt,-claim,-legacy,
11 or-distributive-share.

12 6.---Confirming-or-refusing-to-confirm-a-report-of-an-appraiser
13 or-appraisers-setting-apart-a-homestead.

14 7.---Determining-heirship.

15 K. From an order or judgment:

16 1. Adjudging a person insane or incompetent, or committing a
17 person to the state hospital.

18 2. Revoking or refusing to revoke an order or judgment adjudging
19 a person insane or incompetent, or restoring or refusing to restore to
20 competency any person who has been declared insane or incompetent.

21 L. From an order or judgment made and entered on habeas corpus
22 proceedings:

23 1. The petitioner may appeal from an order or judgment refusing
24 his discharge.

25 2. The officer having the custody of the petitioner, or the
26 county attorney on behalf of the state, from an order or judgment
27 discharging the petitioner whereupon the court may admit the petitioner
28 to bail pending the appeal.

29 M. If any of the orders or judgments referred to in this section
30 are made or rendered by a judge they are appealable as if made by the
31 court.

32 Sec. 9. Title 14, chapter 2, article 2, Arizona Revised Statutes,
33 is transferred for placement in the new title 14, chapter 2, article 8,

1 Arizona Revised Statutes, and the involved sections renumbered, the
2 first number being replaced by the second number as follows: 14-221 as
3 14-2804, 14-222 as 14-2805, 14-223 as 14-2806, 14-224 as 14-2807, 14-225
4 as 14-2808, 14-226 as 14-2809 and 14-227 as 14-2810.

5 Sec. 10. Title 14, chapter 7, article 7, Arizona Revised Statutes,
6 is transferred for placement in the new title 14, chapter 7, Arizona
7 Revised Statutes, as article 4, entitled UNIFORM PRINCIPAL AND INCOME
8 ACT, and the involved sections renumbered, the first number being re-
9 placed by the second number as follows: 14-1081 as 14-7401, 14-1082
10 as 14-7402, 14-1083 as 14-7403, 14-1084 as 14-7404, 14-1085 as 14-7405,
11 14-1086 as 14-7406, 14-1087 as 14-7407, 14-1088 as 14-7408, 14-1089
12 as 14-7409, 14-1090 as 14-7410, 14-1091 as 14-7411, 14-1092 as 14-7412,
13 14-1093 as 14-7413, 14-1094 as 14-7414, 14-1095 as 14-7415 and 14-1096
14 as 14-7416.

15 Sec. 11. Title 14, chapter 7, article 8, Arizona Revised Statutes,
16 except sections 14-1110 through 14-1114, is transferred for placement
17 in the new title 14, chapter 7, Arizona Revised Statutes, as article
18 5, entitled UNIFORM FIDUCIARIES ACT, and the involved sections renumbered,
19 the first number being replaced by the second number as follows: 14-1101
20 as 14-7501, 14-1102 as 14-7502, 14-1104 as 14-7503, 14-1105 as 14-7504,
21 14-1106 as 14-7505, 14-1107 as 14-7506, 14-1108 as 14-7507 and 14-1109
22 as 14-7508.

23 Sec. 12. Title 14, chapter 7, article 9, Arizona Revised Statutes,
24 is transferred for placement in the new title 14, chapter 7, Arizona
25 Revised Statutes, as article 6, entitled UNIFORM SIMPLIFICATION OF
26 SECURITY TRANSFERS, and the involved sections renumbered, the first num-
27 ber being replaced by the second number as follows: 14-1121 as 14-7601,
28 14-1122 as 14-7602, 14-1123 as 14-7603, 14-1124 as 14-7604, 14-1125 as
29 14-7605, 14-1126 as 14-7606, 14-1127 as 14-7607, 14-1128 as 14-7608,
30 14-1129 as 14-7609 and 14-1130 as 14-7610.

31 Sec. 13. Section 14-477, Arizona Revised Statutes, is trans-
32 ferred for placement in the new title 14, chapter 3, article 1, Arizona
33 Revised Statutes, as section 14-3110.

1 Sec. 14. Section 14-511, Arizona Revised Statutes, is trans-
2 ferred for placement in the new title 14, chapter 3, article 12, Arizona
3 Revised Statutes, as section 14-3975.

4 Sec. 15. Section 14-898, Arizona Revised Statutes, is trans-
5 ferred for placement in title 36, chapter 5, article 1, Arizona Revised
6 Statutes, as section 36-510.01.

7 Sec. 16. Repeal

8 Sections 6-268, 6-431 and 12-504, Arizona Revised Statutes, are
9 repealed.

10 Sec. 17. Effective date

11 The provisions of this act shall become effective January 1, 1973.