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# PROBATE PRACTICE UNDER THE UNIFORM PROBATE CODE

ROBERT L. STROUP II

If you do not believe that the present probate system in North Dakota needs to be simplified and clarified; if you do not believe that a speedy and efficient system of liquidating the estates of decedents is a desirable objective; if you do not approve of, nor appreciate, uniformity of laws among the several states, you will probably not agree with the conclusions of this article and will also probably oppose the adoption of the Uniform Probate Code in North Dakota, because those are some of the express objectives sought to be attained by the Uniform Probate Code.<sup>1</sup>

The Uniform Probate Code was promulgated by the National Conference of Commissioners on Uniform State Laws and approved by the House of Delegates of the American Bar Association in August of 1969. A committee of the State Bar Association of the State of North Dakota is presently working to prepare a bill for consideration at the annual Bar meeting this year and to submit it to the next session of the Legislature. The effect of this proposed legislation will be to adopt the provisions of the Uniform Act as the law in North Dakota.

The purpose of this article is to highlight the salient provisions of the Uniform Act regarding probate practice and contrast it, in a general way, with the current practice in North Dakota. Other provisions of the Uniform Act will also be discussed briefly in order that a general familiarity with the Act will be imparted to the reader. Hopefully debate will be generated and stimulated with the result that the desirability of this revision will be recognized and passage of the proposed legislation will be accomplished during the next legislative session.

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1. Because copies of the text of the Uniform Probate Code, herein also referred to as the Uniform Act, are not generally available and the codification thereof will result in a change in section numbers, citations to the UNIFORM PROBATE CODE are omitted. Some excerpts from the Code appear in the Appendix following this article.

## I. NEW CONCEPTS

The Uniform Act creates some new concepts which must be explained before any attempt is made to outline the proposed probate procedure and contrast the present practice. There are a number of interesting provisions relating to wills and their execution. The Uniform Act makes some changes in the personnel charged with overseeing the administration of decedent's estates and, also, an innovation is made in the area of the administration of guardianship estates. In the realm of intestate succession, the Act will remove whatever question might have existed as to descent of intestate property by providing a clear system of descent.<sup>2</sup>

*Wills.* The Uniform Act requires that the witnesses be only "generally competent" and removes the disqualification of persons who are interested in the testator's estate. The Act also recognizes the general rule that a holographic will is valid if the signature and "material provisions" are in the handwriting of the testator, rather than the old concept which invalidated a holographic will if anything but the testator's handwriting appeared on the document offered as the will.

Perhaps the most unique creation of the Uniform Act, with respect to purely new innovations, is the "self-proved will". This provision permits a testator to obviate the necessity of attesting witnesses' testifying as to the execution of the will when it is ultimately offered for probate. A self-proved will is created by the addition of a certificate to the will itself which closely approximates that currently found on deeds.<sup>3</sup> It must be executed before a notary public, either at the time of execution of the will or at any later date, reciting that the testator and the witnesses appeared before the notary public, were sworn, and affirmed their signatures. Also the testator must republish his will, and the witnesses must state that, to the best of their knowledge, the testator was over the age of eighteen at the time of execution.

*Personnel.* The Uniform Act removes the mundane administration of minuscular details of probate from the responsibility of the County Judge. In fact, the County Judge is displaced entirely and his duties are handled by an officer to whom the Act gives the title of registrar. The registrar need not be legally trained. He acts as a branch of the District Court, which becomes the court of primary jurisdiction over probate matters. The Act contemplates that a majority of probates will be handled under the informal

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2. See Heckman, *The Treatment of Some Traditional Problems of Intestate Succession in the North Dakota Century Code*, 45 N.D. L. REV. 465 (1969).

3. See Appendix for proposed form of certificate.

probate provisions, the only area in which the registrar has authority. The Probate Branch of the District Court becomes involved when a contest is generated at any stage of the proceeding or when formal testacy or supervised probate are invoked.

*Intestate Succession.* Recognition of the pre-eminence of the surviving spouse is the foremost consideration of the provisions in the Uniform Act relating to intestate succession. The Uniform Act recognizes that generally all of a small or moderate estate, and at least half of a large estate, is left to the surviving spouse when a will has been executed, and provides accordingly in the event of intestacy. Consequently, under the Act, the surviving spouse receives the first \$50,000 and one-half of the remaining estate when the decedent is survived by a spouse and one or both parents or a spouse and issue, all of whom are issue of the surviving spouse as well. If there are surviving issue who are not also issue of the surviving spouse, the survivor receives only one-half of the intestate estate.

If no spouse survives, the intestate estate passes in the traditional manner to surviving issue, parents, brothers and sisters, and grandparents, each class being dependent upon there being no survivors of the preceding class for them to share in the estate. In the event that members of a class are not in the same degree, those of a lower degree take by representation.

The heir must survive the decedent by at least 120 hours to qualify for a share of the intestate estate, and the presumption is against such survival where the contrary cannot be established, unless such presumption would result in escheat to the state. If the heir does not survive by 120 hours, he is deemed to have predeceased the decedent for the purpose of determining intestate succession, among others.

## II. PROBATE PROCEDURE

### A. General

The Uniform Act provides for three terms relating to the administration of estates: informal probate proceedings, formal testacy proceedings and supervised probate. Each is designed to maintain the overall purpose of the Act—to keep the court in a passive role until called upon to interject its authority into the proceedings and to limit procedural and adjudicative safeguards to the fewest necessary under the circumstances. The personal representative is given the widest possible latitude in dealing with probate property in order to accomplish the most efficient and expeditious administration, subject to any limitations or restrictions which might be placed on the exercise of his powers either in a supervised probate or when he is appointed after a formal testacy proceeding.

*Informal Probate.* The "normal" scheme of probate is the informal probate and is intended as the procedure to be used in all probates unless one of the other methods is imposed upon petition of one of the interested persons or, in the case of supervised probate, under direction of the will. It proceeds in its entirety without interference from the court, all necessary judicial sanction for acts of the personal representative coming from the registrar.

*Formal Testacy.* Formal testacy proceedings are, in effect, a will contest, being a litigation to determine the validity of a proposed will or to establish the efficacy of a number of testamentary instruments left by a decedent. Additionally, the personal representative may be appointed in the formal proceeding and limitations placed on his exercise of powers granted to him under the Uniform Act.

*Supervised Probate.* The objective of supervised probate is to provide judicial supervision of the personal representative, for cause shown. The Act specifically provides that supervision is to be denied unless good cause exists for the interference of the court. Supervision may be limited to a few specific acts, or may be a general overseeing, and may be imposed on an *ad hoc* basis. It may become effective upon petition of an interested party or because the testator has provided in his will that the probate of his estate shall be supervised. Such provision, however, is still subject to cancellation upon the court's finding that the need therefor no longer exists or that supervision is unwarranted.

## B. Securing the Appointment

The appointment of a personal representative under the Uniform Act is accomplished by the proposed representative making application to the registrar, setting forth in the application the requisites specified in the Act. Generally the applicant must show the pertinent facts regarding the decedent including: name, age, date of death, domicile at date of death, and names and addresses of survivors with the ages of those known to be minors; the interest of the applicant; whether demand for notice has been made by anyone; and, when there is a will, statements showing a prima facie valid will. Notice must be given only to those who have made demand therefor as provided in the Act.

If the registrar is satisfied that the application and the facts indicate a proper subject for informal probate, the registrar issues a written statement of informal probate to the applicant who there-

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4. Again, because of the general nature of the references to North Dakota law, citations to North Dakota Century Code sections are omitted, except where they might be of value to the reader. Generally the provisions regarding Probate are found in Title 30, those of Wills and Succession are in Title 56.

upon is entitled to exercise all the powers granted to him by the Act.

By contrast, under North Dakota procedure,<sup>4</sup> a petition must be presented to the court setting forth all the essential allegations, including all persons who inherit under the will together with all heirs at law of the deceased; if any are minors, a guardian *ad litem* must be appointed for them; service must be made upon all the persons identified above, as well as notice being published twice in a newspaper; ten days after the last publication the hearing for appointment may be held; the will must be proved by the testimony of at least one of the attesting witnesses and testimony must also be given to establish the truth of the allegations of the petition; after the will is duly proven, allegations of the petition established, and proof of notice given, the personal representative may enter into the exercise of his office. Like procedures and proofs are required for intestate estates, except for those peculiar to testate estates.

### C. Administration

In the administration of the estate, the Uniform Act eliminates the plethora of court orders approving, appointing, directing and decreeing required under present probate practice. The personal representative is granted the broadest possible powers under the Act and he may exercise them entirely without court involvement unless restricted under one of the provisions noted earlier or requested by the representative himself. A bond is not required unless the will requires one or someone interested in the estate demands one, rather than the present practice of requiring one in all cases unless excused by waiver from all interested persons.

The creditors of the deceased are still given notice by three publications in a newspaper, with four months thereafter in which to file their claims, but the Act eliminates the court orders attendant thereto by merely stating that the representative shall publish the notice. The appraisal of the assets is also simplified with the services of appraisers being discretionary with the representative for those assets which he does not feel capable of appraising. This eliminates the court orders appointing the appraisers, the oath of the appraisers, and the allowance of their fees.

In dealing with the property of the decedent the Act eliminates the present limitations and restrictions on the authority of the personal representative. The Act provides that all of the decedent's property,<sup>5</sup> real and personal, passes directly to the heirs, devisees and legatees, subject to the needs of the personal representative for

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5. The UNIFORM PROBATE CODE actually eliminates the distinction between real and personal property and, consequently, attendant problems of allocation of income and taxes.

probate. The personal representative is given full authority to deal with the property with the only limitation being that he deal with it to the benefit of the estate and interested persons. He is permitted, however, to invoke the jurisdiction of the court ". . . to resolve questions concerning the estate or its administration."<sup>6</sup>

The foregoing broad grant of powers is, to be sure, subject to any limitations which might be imposed by the will, by the court appointing in a formal testacy proceeding or by the court in a supervised probate. It is interesting to note that the Uniform Act does away with the absolute prohibition against the personal representative entering into any self-dealings, making such transactions voidable and specifically permitting them when sanctioned by the court upon notice to interested persons.<sup>7</sup>

#### D. Termination

The personal representative has the alternative of terminating his administration either by an informal procedure without court sanction or by a formal proceeding before the court. Under the informal procedure he may terminate it by filing, not sooner than six months after his initial appointment, an affidavit stating that notice to creditors has been published, the estate has been fully administered and distributed and that a copy of his account has been mailed to distributees affected thereby. The formal proceeding is conducted upon notice to all interested persons and the court considers the final account, determines heirs and adjudicates the final distribution.

Again the current requirements of notice, hearing, approval, order and decree are displaced by a less cumbersome procedure, even in those cases in which the court makes the final determination. In formal testacy proceedings and supervised probates only the formal proceeding for termination is permitted. The personal representative is immediately discharged at the order of the court in formal proceedings to terminate, and claims against him are barred after six months in the informal proceeding.

#### E. Small Estates

In addition to the foregoing provisions for probate of estates generally, the Uniform Act also has provisions for the summary disposition of small estates. The first of these relates to estates in which the value of the assets, less liens and encumbrances, does not exceed \$5,000. This procedure is available only if the estate does not include any real estate, thirty days have elapsed after

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6. UNIFORM PROBATE CODE § 3-704.

7. Although N.D. CENT. CODE § 30-19-27 (1960) absolutely prohibits the personal representative's purchasing at a sale, there is no unequivocal indication that this means that such sales would be absolutely void.

death, no petition for probate is pending and the heirs are entitled to the assets. If all of the foregoing requisites are present, the successor of the decedent can obtain the property from anyone who has possession of it by presenting to such person an affidavit made by or on behalf of such successor stating the above noted requisites. This procedure is very similar to our present procedure in summary probate in which an affidavit is accepted in lieu of a petition, except that the order of the court is eliminated and the property is surrendered upon presentation of the affidavit itself.<sup>8</sup>

The second provision for small estates permits immediate distribution of the probate estate to the persons entitled thereto by the personal representative, without notice to creditors, when it appears that the net value of the assets of the estate do not exceed allowable exemptions, such as: homestead allowance, exempt property, family allowance, and last expenses and expenses of administration. This latter provision is nearly identical with our present summary administration practice,<sup>9</sup> with the elimination of the court again the most notable variation.

#### F. Miscellany

The Uniform Act also has extensive provisions relating to the situation in which a decedent died domiciled in another state leaving property in this state. The Act provides for both the action of the foreign personal representative in this state and for the ancillary administration of the non-domiciled decedent. Without going into protracted detail as to these provisions, the foreign representative may obtain property of the decedent by affidavit, may qualify to act in this state by filing his appointment and bond with the court and may be served with process in the same manner as the decedent could have been prior to his demise. Generally, the objective of the Act is to coerce the greatest respect possible for domiciliary procedures and administrative acts.

The Act provides a streamlined procedure for guardianship, the effect of which is to make guardianship as efficient and expeditious as is probate practice under the Act. The appointment of a guardian is effected either by acceptance of an appointment under a will or by the court upon notice to the minor, if over fourteen, and to the person having custody of the minor. The guardian is given the same authority as a parent, except that he has no duty to provide for the support and maintenance of the minor from his own funds. Only if the assets of the minor are such that require management is a conservator appointed to handle the assets of the minor's estate,

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8. N.D. CENT. CODE § 30-17-07 (Supp. 1969).

9. N.D. CENT. CODE §§ 30-17-01 to -07 (1960, Supp. 1969).

otherwise the guardian handles the assets, making reports to the court as it may order. Termination results upon the death, adoption, marriage or attainment of majority.

### III. CONCLUSION

There are, of necessity, many interesting and important provisions in the Uniform Act which have been omitted from this article, either because they are beyond the scope of the article, or because space does not permit sufficient treatment to do them justice.<sup>10</sup> It has been my objective, rather than to attempt an exhaustive discussion, to present the general provisions of the Act in order to somewhat familiarize the reader with the provisions of the Act and to generate discussion as to the desirability and necessity of change.

Most of our present provisions regarding probate, wills, intestate succession and guardianship have their origin in concepts which were formulated centuries before man even dreamed that the North American Continent existed and little has been done to adapt them to more modern philosophy since then. Even when improvements have been made they are most often codifications of court adopted rules of construction created out of necessity to do justice under antiquated laws, or are stopgap measures to meet a current exigency not in evidence at the time the original concepts were evolved.

The need for a wholesale revision of our laws in this area is long overdue and the Commissioners have spent a great deal of time drafting and redrafting to arrive at a uniform law which would update exceedingly decrepit probate laws and at the same time offer a law which could be accepted by the states.

Many questions remain to be resolved before the Act can be adopted in North Dakota, not the least of which is the needed Constitutional revision which must be made to eliminate the county court provisions and replace them with some which permit the system contemplated by the Act. Another problem which looms large upon the path to adoption is the future of those county judges who are not legally trained. Neither of these problems is insurmountable and a workable solution can be attained without undue hardship to anyone.

The provisions of the Act are certainly worthy of consideration by the members of the bar and the legislature. That the Act will expedite the administration of estates and simplify and moder-

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10. For example, a chapter on Trusts is included in the UNIFORM PROBATE CODE; provisions are included regarding non-probate transfers, powers of attorney, compromise of controversies and notices and parties; also there are many sections which provide in detail for interpreting the Code and allocating income, distributing assets and like problems which arise during administration but are too specific to be included in this general discussion.

nize many other antiquated institutions cannot be denied. The need for such change should also be self-evident and result in the whole-hearted support of the practicing bar. Hopefully the attitude that "what we have was good enough all these years and, therefore, does not need to be changed" should have no place in this time when the obstacles and costs of probate are gaining an increasing awareness among the general public.

## APPENDIX

The following are selected sections of the Uniform Probate Code. These sections are provided to illustrate the provisions contained in the Code. A full text, with comments, can probably be obtained from Prentice-Hall, Inc., Englewood Cliffs, N. J.

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

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

- (a) if there is no surviving issue or parent of the decedent, the entire intestate estate;
- (b) if there is no surviving issue but the decedent is survived by a parent or parents, the first [\$50,000], plus one-half of the balance of the intestate estate;
- (c) if there are surviving issue all of whom are issue of the surviving spouse also, the first [\$50,000], plus one-half of the balance of the intestate estate;
- (d) if there are surviving issue one or more of whom are not issue of the surviving spouse, one half of the intestate estate.

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

- (a) to the issue of the decedent; if they are all of the same degree of kinship to the decedent they take equally, but if of unequal degree, then those of more remote degree take by representation;
- (b) if there is no surviving issue, to his parent or parents equally;
- (c) if there is no surviving issue or parent, to the brothers and sisters and the issue of each deceased brother or sister by representation; if there is no surviving brother or sister, the issue of brothers and sisters take equally if they are all of the same degree of kinship to the decedent, but if of unequal degree than those of more remote degree take by representation;
- (d) if there is no surviving issue, parent or issue of a parent, but the decedent is survived by one or more grandparents or issue of grandparents, half of the estate passes to the paternal grandparents if both survive, or to the surviving paternal grandparent, or to the issue of the paternal grandparents if both are deceased, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree than those of more remote degree take by representation; and the other half passes to the maternal relatives in the same manner; but if there be no surviving grandparent or issue of grandparent on either the paternal or the maternal side, the entire estate passes to the relatives on the other side in the same manner as the half.

**Sec. 2-104 [Requirement that heir survive decedent for 120 hours]** Any person who fails to survive the decedent by 120 hours is deemed to have predeceased the decedent for purposes of homestead allowance, exempt property and intestate succession, and the decedent's heirs are determined accordingly. If the time of death of the decedent or of the person who would otherwise be an heir, or the times of death of both, cannot be determined, and it cannot be established that the person who would otherwise be an heir has survived the decedent by 120 hours, it is deemed that the person failed to survive for the required period. This section is not to be applied where its application would result in a taking of intestate estate by the state under Section 2-105.

**Sec. 2-503. [Holographic will]** A will which does not comply with Section 2-502 is valid as a holographic will, whether or not witnessed, if the signature and the material provisions are in the handwriting of the testator.

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

THE STATE OF .....
COUNTY OF .....

Before me, the undersigned authority, on this day personally appeared ....., and ..... known to me to be the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument and, all of these persons being by me first duly sworn, ....., the testator, declared to me and to the witnesses in my presence that the instrument is his last will and that he had willingly signed or directed another to sign for him, and that he executed it as his free and voluntary act for the purposes therein expressed; and each of the witnesses stated to me, in the presence and hearing of the testator, that he signed the will as witness and that to the best of his knowledge the testator was eighteen years of age or over, of sound mind and under no constraint or undue influence.

..... Testator
..... Witness
..... Witness

Subscribed, sworn and acknowledged before me by ..... the testator, subscribed and sworn before me by ....., and ..... witnesses, this ..... day of ....., A.D., ..... (SEAL) (SIGNED) .....

(OFFICIAL CAPACITY OF OFFICER)

ARTICLE III

PROBATE OF WILLS AND ADMINISTRATION

Part 3.—Informal Probate and Appointment Proceedings

Sec. 3-301. [Informal probate or appointment proceedings; application; contents] Applications for informal probate or informal appointment shall be directed to the Registrar, and shall be stated by the applicant to be accurate and complete to the best of his knowledge and belief in respect to the following information:

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

- (1) a statement of the interest of the applicant;
(2) the name, and date of death of the decedent, his age, and the county and state of his domicile at the time of death, and the names and addresses of the spouse, children, heirs and devisees and the ages of any who are minors so far as known or unascertainable with reasonable diligence by the applicant;
(3) if the decedent was not domiciled in the state at the time of his death, a statement showing venue;
(4) a statement identifying and indicating the address of any personal representative of the decedent appointed in this state or elsewhere whose appointment has not been terminated;
(5) a statement indicating whether the applicant has received a demand for

notice, or is aware of any demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere.

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

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

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

(3) that after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the will, and that the applicant believes that the instrument which is the subject of the application is the decedent's last will;

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

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

(d) An application for informal appointment of an administrator in intestacy shall state in addition to the statements required by (a):

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

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

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

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

**Sec. 3-302. [Informal probate; duty of registrar; effect of informal probate]** Upon receipt of an application requesting informal probate of a will, the Registrar, upon making the findings required by Section 3-303 shall, if at least 120 hours have elapsed since the decedent's death, issue a written statement of informal probate. Informal probate is conclusive as to all persons until superseded by an order in a formal testacy proceeding. No defect in the application or procedure relating thereto which leads to informal probate of a will renders the probate void.

**Sec. 3-303. [Informal probate; proof and findings required]** (a) In an informal proceeding for the original probate of a will, the Registrar shall determine:

(1) that the application is complete;

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

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

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

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

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

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

If the application indicates that a personal representative has been appointed in another [county] of this state, the application shall be denied.

A will which appears to have the required signatures and which contains an attestation clause showing that requirements of execution under 2-502, 2-503 or 2-506 have been met shall be probated without further proof. In other cases, the Registrar may presume due execution if the will appears to have been duly executed, or he may accept a sworn statement or affidavit of any person with knowledge of the circumstances of execution, whether or not the person was a witness to the will.

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

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

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

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

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

(3) complete, compromise or refuse performance of the decedent's contracts that continue as obligations of the estate, as he may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:

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

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

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

(5) when funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate,

including moneys received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements or other prudent investments which would be reasonable for use by trustees generally;

(6) acquire or dispose of an asset, including land in another state, for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset for a term within or extending beyond the period of administration;

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

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

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

(10) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement.

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

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

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

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

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

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

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

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

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

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

(21) employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of his administrative duties; to act without independent investigation upon their recommendations; and instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary;

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

(23) sell, mortgage, or lease any real or personal property of the estate,

or any interest therein for cash, credit, or for part cash and part credit, and with or without security for unpaid balances;

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

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

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

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

### ARTICLE III

#### Part 10.—Closing Estates

**Sec. 3-1001. [Formal proceedings terminating administration; testate or intestate; order of general protection]** (a) A personal representative or any interested person may petition for an order of complete settlement of the estate. The personal representative may petition at any time, and any other interested person may petition after one year from the appointment of the original personal representative except that no petition under this section may be entertained until the time for presenting claims which arose prior to the death of the decedent has expired. The petition may request the Court to determine testacy, if not previously determined, to consider the final account or compel or approve an accounting and distribution, to construe any will or determine heirs and adjudicate the final settlement and distribution of the estate. After notice to all interested persons and hearing the Court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate, and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any interested person.

(b) If one or more heirs or devisees were omitted as parties in, or were not given notice of, a previous formal testacy proceeding, the Court, on proper petition for an order of complete settlement of the estate under this section, and after notice to the omitted or unnotified persons and other interested parties determined to be interested on the assumption that the previous order concerning testacy is conclusive as to those given notice of the earlier proceeding, may determine testacy as it affects the omitted persons and confirm or alter the previous order of testacy as it affects all interested persons as appropriate in the light of the new proofs. In the absence of objection by an omitted or unnotified person, evidence received in the original testacy proceeding shall constitute prima facie proof of due execution of any will previously admitted to probate, or of the fact that the decedent left no valid will if the prior proceedings determined this fact.

**Sec. 3-1002. [Formal proceedings terminating testate administration; order construing will without adjudicating testacy]** A personal representative administering an estate under an informally probated will or any devisee under an informally probated will may petition for an order of settlement of the estate which will not adjudicate the testacy status of the decedent. The personal representative may petition at any time, and a devisee may petition after one year, from the appointment of the original personal representative, except that no petition under this section may be entertained until the time for presenting claims which arose prior to the death of the decedent has expired. The petition may request the

Court to consider the final account or compel or approve an accounting and distribution, to construe the will and adjudicate final settlement and distribution of the estate. After notice to all devisees and the personal representative and hearing, the Court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate under the will, and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any devisee who is a party to the proceeding and those he represents. If it appears that a part of the estate is intestate, the proceedings shall be dismissed or amendments made to meet the provisions of Section 3-1001.

**Sec. 3-1003. [Closing estates; by sworn statement of personal representative]** (a) Unless prohibited by order of the Court and except for estates being administered in supervised administration proceedings, a personal representative may close an estate by filing with the court no earlier than 6 months from the date of original appointment of a general personal representative for the estate, a verified statement stating that he, or a prior personal representative whom he has succeeded, has or have:

(1) published notice to creditors as provided by Section 3-801 and that the first publication occurred more than 6 months prior to the date of the statement.

(2) fully administered the estate of the decedent by making payment, settlement or other disposition of all claims which were presented, expenses of administration and estate, inheritance and other death taxes, except as specified in the statement, and that the assets of the estate have been distributed to the persons entitled. If certain claims remain undischarged, it shall state whether the personal representative has distributed the estate subject to possible liability with the agreement of the distributees, or state in detail other arrangements which have been made to accommodate outstanding liabilities.

(3) sent a copy thereof to all distributees of the estate and to all creditors or other claimants of whom he is aware whose claims are neither paid nor barred, and has furnished a full account in writing of his administration to the distributees whose interests are affected thereby.

(b) After one year has elapsed from the filing of a statement closing administration, and if no proceedings involving the personal representative are then pending in the Court the appointment of the personal representative terminates.