

/\* The full text of the Uniform Probate Code follows with light annotations. \*/

## UNIFORM PROBATE CODE

Official Text Approved by the National Conference of Commissioners on Uniform State Laws

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ARTICLE I

General Provisions, Definitions and Probate Jurisdiction of Court

PART 1

Short Title, Construction, General Provisions

1--101. Short Title

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

1--102. Purposes: Rule of Construction

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

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

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

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

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

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

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

#### 1--103. Supplementary General Principles of Law Applicable

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

#### 1--104. Severability

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

#### 1--105. Construction Against Implied Repeal

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Code is a general act intended as a unified coverage of this subject matter and no part of it shall be deemed impliedly repealed by subsequent legislation if it can reasonably be avoided.

#### 1--106. Effect of Fraud and Evasion

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

#### 1--107. Evidence as to Death or Status

In proceedings under this Code the rules of evidence in courts of general jurisdiction including any relating to simultaneous deaths, are applicable unless specifically displaced by the Code. In addition, the following rules relating to determination of death and status are applicable:

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

(2) a certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that a person is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances and places disclosed by the record or report;

(3) a person who is absent for a continuous period of 5 years, during which he has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead. His death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

#### 1--108. Acts by Holder of General Power

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

## Part 2

### Definitions

#### 1--201. General Definitions

Subject to additional definitions contained in the subsequent Articles which are applicable to specific Articles or parts, and unless the context otherwise requires, in this Code:

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

(2) "Beneficiary", as it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer and as it relates to a charitable trust, includes any person entitled to enforce the trust.

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

/\* Huh? \*/

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

(5) "Court" means the Court of branch having jurisdiction in matters relating to the affairs of decedents. This Court in this state is known as [\_\_\_\_\_].

(6) "Conservator" means a person who is appointed by a Court to manage the estate of a protected

person.

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

(8) "Devisee" means any person designated in a will to receive a devise. In the case of a devise to an existing trust or trustee, or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

(9) "Disability" means cause for a protective order as described by Section 5-401.

(10) "Distributee" means any person who has received property of a decedent from his personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative.

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

(12) "Exempt property" means that property of a decedent's estate which is described in Section 2-402.

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

(14) "Foreign personal representative" means a personal representative of another jurisdiction.

(15) "Formal proceedings" means those conducted before a judge with notice to interested persons.

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

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

(18) "Incapacitated person" is as defined in Section 5-101.

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

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

(21) "Issue" of a person means all his lineal descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in this Code.

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

(23) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

(24) "Minor" means a person who is under [21] years of age.

(25) "Mortgage" means any conveyance, agreement or arrangement in which property is used as security.

/\* This includes security agreements and thus comprises both real and personal property. \*/

(26) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of his death.

(27) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, 2 or more persons having a joint or common interest, or any other legal entity.

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

(29) "Person" means an individual, a corporation, an organization, or other legal entity.

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

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

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

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

(34) "Protected person" is as deemed in Section 5-101.

(35) "Protective proceeding" is as defined in Section 5-101.

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

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

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

(39) "Special administrator" means a personal representative as described by Sections 3-614 through 3-618.

(40) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

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

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

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

(44) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

(45) "Trust" includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in Article VI, custodial arrangements pursuant to [each state should list its legislation, including that relating to gifts to minors, dealing with special custodial situations], business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

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

(47) "Ward" is as defined in Section 5-101.

(48) "Will" includes codicil and any testamentary instrument which merely appoints an executor or revokes or revises another will.

[FOR ADOPTION IN COMMUNITY PROPERTY STATES]



[(49) "Separate property" (if necessary, to be defined locally in accordance with existing concept in adopting state).

(50) "Community property" (if necessary, to be defined locally in accordance with existing concept in adopting state).]

### Part 3 Scope, Jurisdiction and Courts

#### 1--301. Territorial Application

Except as otherwise provided in this Code, this Code applies to

- (1) the affairs and estates of decedents, missing persons, and persons to be protected, domiciled in this state,
- (2) the property of nonresidents located in this state or property coming into the control of a fiduciary who is subject to the laws of this state,
- (3) incapacitated persons and minors in this state,
- (4) survivorship and related accounts in this state, and
- (5) trusts subject to administration in this state.

#### 1--302. Subject Matter Jurisdiction

- (a) To the full extent permitted by the constitution, the Court has jurisdiction over all subject matter relating to (1) estates of decedents, including construction of wills and determination of heirs and successors of decedents, and estates of protected persons; (2) protection of minors and incapacitated persons; and (3) trusts.
- (b) The Court has full power to make orders, judgments and decrees and take all other action necessary and proper to administer justice in the matters which come before it.

#### 1--303. Venue; Multiple Proceedings; Transfer

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

/\* The rush to the courthouse syndrome. \*/

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

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

#### 1--304. Practice in Court

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

#### 1--305. Records and Certified Copies

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

#### 1--306. Jury Trial

(a) If duly demanded, a party is entitled to trial by jury in [a formal testacy proceeding and] any proceeding in which any controverted question of fact arises as to which any party has a constitutional right to trial by jury.

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

#### 1--307. Registrar; Powers

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

#### 1--308. Appeals

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

## 1--309. Qualifications of Judge

A judge of the court must have the same qualifications as a judge of the [court of general jurisdiction].

/\* At one time in many states had probate courts in each county or hamlet and these persons were often not even attorneys. The Code here manifests a desire to increase the level of competence of the Judges of the courts. \*/

## 1--310. Oath or Affirmation on Filed Documents

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

## Part 4

### Notice, Parties and Representation in Estate, Litigation and Other Matters

#### 1--401. Notice; Method and Time of Giving

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

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

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

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

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

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

#### 1--402. Notice; Waiver

A person, including a guardian ad litem, conservator, or other fiduciary, may waive notice by a writing signed by him or his attorney and filed in the proceeding.

#### 1--403. Pleadings; When Parties Bound by Others; Notice

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

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

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

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

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

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

(3) Notice is required as follows:

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

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

/\* A provision which tries to handle the circumstances as best it can be in a practical manner. Under the laws of many states, guardians ad litem are appointed for the unborn etc. \*/

(4) At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of

a minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown, if the Court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interest, a guardian ad litem may be appointed to represent several persons or interests. The Court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding.

## ARTICLE II

### Intestate Succession and Wills

#### Part 1

#### Intestate Succession

##### 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.

##### 2--102. Share of the Spouse

The intestate share of the surviving spouse is:

- (1) if there is no surviving issue or parent of the decedent, the entire intestate estate;
- (2) 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;
- (3) 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;
- (4) if there are surviving issue one or more of whom are not issue of the surviving spouse, one-half of the intestate estate.

#### ALTERNATE PROVISION FOR COMMUNITY PROPERTY STATES

##### 2--102A. Share of the Spouse

The intestate share of the surviving spouse is as follows:

- (1) as to separate property
  - (i) if there is no surviving issue or parent of the decedent, the entire intestate estate;
  - (ii) 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;
  - (iii) 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.
  - (iv) if there are surviving issue one or more of whom are not issue of the surviving spouse, one-half

of the intestate estate.

(2) as to community property

(i) The one-half of community property which belongs to the decedent passes to the [surviving spouse].

## 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 not surviving spouse, passes as follows:

(1) 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;

(2) if there is no surviving issue, to his parent or parents equally;

(3) 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 then those of more remote degree take by representation;

(4) 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 then 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.