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.

/* This supplants the Uniform Simultaneous Death Act, and attempts to avoid pointless multiple probates. This contingency is more appropriately handled by estate planning if at all possible. */

2--105. No Taker

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

2--106. Representation

If representation is called for by this Code, the estate is divided into as many shares as there are surviving heirs in the nearest degree of kinship and deceased persons in the same degree who left issue who survive the decedent, each surviving heir in the nearest degree receiving one share and the share of each deceased person in the same degree being divided among his issue in the same manner.

2--107. Kindred of Half Blood

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

2--108. Afterborn Heirs

Relatives of the decedent conceived before his death but born thereafter inherit as they would if they had been born in the lifetime of the decedent.

2--109. Meaning of Child and Related Terms

If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person,

(1) an adopted person is the child of an adopting parent and not of the natural parents except that adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and that natural parent.

(2) In cases not covered by (1), a person born out of wedlock is a child of the mother.

That person is also a child of the father, if:

(i) the natural parents participated in a marriage ceremony before or after the birth of the child, even though the attempted marriage is void; or

(ii) the paternity is established by an adjudication before the death of the father or is established thereafter by clear and convincing proof, except that the paternity established under this subparagraph (ii) is ineffective to qualify the father or his kindred to inherit from or through the child unless the father has openly treated the child as his, and has not refused to support the child.

2--110. Advancements

If a person dies intestate as to all his estate, property which he gave in his lifetime to an heir is treated as an advancement against the latter's share of the estate only if declared in a contemporaneous writing by the decedent or acknowledge in writing by the heir to be an advancement. For this purpose the property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of death of the decedent, whichever first occurs. If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the intestate share to be received by the recipient's issue, unless the declaration or acknowledgement provides otherwise.

2--111. Debts to Decedent

A debt owed to the decedent is not charged against the intestate share of any person except the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's issue.

2--112. Alienage

No person is disqualified to take as an heir because he or a person through whom he claims is or has been an alien.

[2--113. Dower and Curtesy Abolished

The estates of dower and curtesy are abolished.]

Part 2
Elective Share of Surviving Spouse

2--201. Right to Elective Share

(a) If a married person domiciled in this state dies, the surviving spouse has a right of election to take an elective share of one-third of the augmented estate under the limitations and conditions hereinafter stated.

(b) If a married person not domiciled in this state dies, the right, if any, of the surviving spouse to take an elective share in property in this state is governed by the law of the decedent's domicile at death.

2--202. Augmented Estate

The augmented estate means the estate reduced by funeral and administration expenses, homestead allowance, family allowances and exemptions, and enforceable claims, to which is added the sum of the following amounts:

(1) The value of property transferred by the decedent at any time during marriage, to or for the benefit of any person other than the surviving spouse, to the extent that the decedent did not receive adequate and full consideration in money or money's worth for the transfer, if the transfer is of any of the following types:

(i) any transfer under which the decedent retained at the time of his death the possession or employment of, or right to income from, the property;

(ii) any transfer to the extent that the decedent retained at the time of his death a power, either alone or in conjunction with any other person, to revoke or to consume, invade or dispose of the principal for his own benefit;

(iii) any transfer whereby property is held at the time of decedent's death by decedent and another with right of survivorship;

(iv) any transfer made within two years of death of the decedent to the extent that the aggregate transfers to any one donee in either of the years exceed $3,000.

Any transfer is excluded if made with the written consent or joinder of the surviving spouse. Property is valued as of the decedent's death except that property given irrevocably to a donee during the lifetime of the decedent is valued as of the date the donee came into possession or enjoyment if that occurs first. Nothing herein shall cause to be included in the augmented estate any life insurance, accident insurance, joint annuity, or pension payable to a person other than the surviving spouse.

(2) The value of property owned by the surviving spouse at the decedent's death, plus the value of property transferred by the spouse at any time during marriage to any person other than the decedent which would have been includable in the spouse's augmented estate if the surviving spouse had predeceased the decedent, to the extent the owned or transferred property is derived from the decedent by any means other than testate or intestate succession without a full consideration in money or money's worth. For purposes of this subsection:

(i) Property derived from the decedent includes, but is not limited to, any beneficial interest of the surviving spouse in a trust created by the decedent during his lifetime, any property appointed to the spouse by the decedent's exercise of a general or special power of appointment also exercisable in favor of others than the spouse, any proceeds of insurance (including

accidental death benefits) on the life of the decedent attributable to premiums paid by him, any lump sum immediately payable and the commuted value of the proceeds of annuity contracts under which the decedent was the primary annuitant attributable to premiums paid by him, the commuted value of amounts payable after the decedent's death under any public or private pension, disability compensation, death benefit or retirement plan, exclusive of the Federal Social Security system, by reason of service performed or disabilities incurred by the decedent, and the value of the share of the surviving spouse resulting from rights in community property in this or any other state formerly owned with the decedent. Premiums paid by the decedent's employer, his partner, a partnership of which he was a member, or his creditors, are deemed to have been paid by the decedent.

(ii) Property owned by the spouse at the decedent's death is valued as of the date of death. Property transferred by the spouse is valued at the time the transfer became irrevocable, or at the decedent's death, whichever occurred first. Income earned by included property prior to the decedent's death is not treated as property derived from the decedent.

(iii) Property owned by the surviving spouse as of the decedent's death, or previously transferred by the surviving spouse, is presumed to have been derived from the decedent except to the extent that the surviving spouse establishes that it was derived from another source.

2--203. Right of Election Personal to Surviving Spouse

The right of election of the surviving spouse may be exercised only during his lifetime by him. In the case of a protected person, the right of election may be exercised only by order of the court in which protective proceedings as to his property are pending, after finding that exercise is necessary to provide adequate support for the protected person during his probable life expectancy.

2--204. Waiver of Right to Elect and Other Rights

The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance, exempt property and family allowance, or any of them, may be waived, wholly or partially, before or after marriage, by a written contract, agreement or waiver signed by the party waiving after fair disclosure. Unless it provides to the contrary, a waiver of "all rights" (or equivalent language) in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights to elective share, homestead allowance, exempt property and family allowance by each spouse in the property of the other and a renunciation by each of all benefits which would otherwise pass to him from the other by intestate succession or by virtue of the provisions of any will executed before the waiver or property settlement.

2--205. Proceeding for Elective Share; Time Limit

(a) The surviving spouse may elect to take his elective share in the augmented net estate by filing in the Court and mailing or delivering to the personal representative a petition for the elective share within 6 months after the first publication of notice to creditors for filing claims which arose before the death of the decedent. The Court may extend the time for election as it sees fit

for cause shown by the surviving spouse before the time for election has expired.

(b) The surviving spouse shall give notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the augmented net estate whose interests will be adversely affected by the taking of the elective share.

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

(d) After notice and hearing, the Court shall determine the amount of the elective share and shall order its payment from the assets of the augmented net estate or by contribution as appears appropriate under Section 2-207. If it appears that a fund or property included in the augmented net estate has not come into the possession of the person representative, the Court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than he would have been if relief had been secured against all persons subject to contribution.

(e) The order or judgment of the Court may be enforced as necessary in suit for contribution or payment in other courts of this state or other jurisdiction.

2--206. Effect of Election on Benefits by Will or Statute

(a) The surviving spouse's election of his elective share does not affect the share of the surviving spouse under the provisions of the decedent's will or intestate succession unless the surviving spouse also expressly renounces in the petition for an elective share the benefit of all or any of the provisions. If any provision is so renounced, the property or other benefit which would otherwise have passed to the surviving spouse thereunder is treated, subject to contribution under subsection 2-207(b), as if the surviving spouse had predeceased the testator.

(b) A surviving spouse is entitled to homestead allowance, exempt property and family allowance whether or not he elects to take an elective share and whether or not he renounces the benefits conferred upon him by the will except that, if it clearly appears from the will that a provision therein made for the surviving spouse was intended to be in lieu of these rights, he is not so entitled if he does not renounce the provision so made for him in the will.

2--207. Charging Spouse With Gifts Received; Liability of Others For Balance of Elective Share

(a) In the proceeding for an elective share, property which is part of the augmented estate which passes or has passed to the surviving spouse by testate or intestate succession or other means and which has not been renounced, including that described in Section 2-202(2), is applied first to satisfy the elective share and to reduce the amount due from other recipients of portions of the augmented estate.

(b) Remaining property of the augmented estate is so applied that liability for the balance of the elective share of the surviving spouse is equitably apportioned among the recipients of the

augmented estate in proportion to the value of their interests therein.

(c) Only original transferees from, or appointees of, the decedent and their donees, to the extent the donees have the property or its proceeds, are subject to the contribution may choose to give up the property transferred to him or to pay its value as of the time it is considered in computing the augmented estate.

Part 3
Spouse and Children Unprovided for in Wills

2--301. Omitted Spouse

(a) If a testator fails to provide by will for his surviving spouse who married the testator after the execution of the will, the omitted spouse shall receive the same share of the estate he would have received if the decedent left no will unless it appears from the will that the omission was intentional or the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

(b) In satisfying a share provided by this section, the devises made by the will abate as provided in Section 3-902.

2--302. Pretermitted Children

(a) If a testator fails to provide in his will for any of his children born or adopted after the execution of his will, the omitted child receives a share in the estate equal in value to that which he would have received if the testator had died intestate unless:

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

(2) when the will was executed the testator had one or more children and devised substantially all his estate to the other parent of the omitted child; or

(3) the testator provided for the child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

(b) If at the time of execution of the will the testator fails to provided in his will for a living child solely because he believes the child to be dead, the child receives a share in the estate equal in value to that which he would have received if the testator had died intestate.

(c) In satisfying a share provided by this section, the devises made by the will abate as provided in Section 3-902.

Part 4
Exempt Property and Allowances

2--401. Homestead Allowance

A surviving spouse of a decedent who was domiciled in this state is entitled to a homestead allowance of [$5,000]. If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance amount to [$5,000] divided by the number of minor and dependent children of the decedent. The homestead allowance is exempt from and has priority over all claims against the estate. Homestead allowance is in addition to any share passing to the surviving spouse or minor or dependent child by the will of the decedent unless otherwise provided, by intestate succession or by way of elective share.

[2--401A. Constitutional Homestead

The value of any constitutional right of homestead in the family home received by a surviving spouse or child shall be charged against that spouse or child's homestead allowance to the extent that the family home is part of the decedent's estate or would have been but for the homestead provision of the constitution.]

2--402. Exempt Property

In addition to the homestead allowance, the surviving spouse of a decedent who was domiciled in this state is entitled from the estate to value not exceeding $3,500 in excess of any security interests therein in household furniture, automobiles, furnishings, appliances and personal effects. If there is no surviving spouse, children of the decedent are entitled jointly to the same value. If encumbered chattels are selected and if the value in excess of security interests, plus that of other exempt property, is less than $3,500, or if the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the $3,500 value. Rights to exempt property and assets needed to make up a deficiency of exempt property shall abate as necessary to permit prior payment of homestead allowance and family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share.

2--403. Family Allowance

In addition to the right to homestead allowance and exempt property, if the decedent was domiciled in this state, the surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by him are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than one year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments. It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children; otherwise to the children, or persons having their care and custody; but in case any minor child or dependent child is not living with the surviving spouse, the allowance may be made partially to the child or his guardian or other person having his care and custody, and partially to the spouse, as their needs may appear. The family allowance is exempt from and has priority over all claims but not over the homestead allowance.

The family allowance is not chargeable against any benefit or share passing to the surviving

spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share. The death of any person entitled to family allowance terminates his right to allowance not yet paid.

2--404. Source, Determination and Documentation

If the estate is otherwise sufficient, property specifically devised is not used to satisfy rights to homestead and exempt property. Subject to this restriction, the surviving spouse, the guardians of the minor children, or children who are adults may select property of the estate as homestead allowance and exempt property. The personal representative may make these selections if the surviving spouse, the children or the guardians of the minor children are unable or fail to do so within a reasonable time or if there are no guardians of the minor children. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as homestead allowance or exempt property. He may determine the family allowance in a lump sum not exceeding $500 per month for one year, and may disburse funds of the estate in payment of the family allowance and any part of the homestead allowance payable in cash. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the Court for appropriate relief, which relief may provide a family allowance larger or smaller than that which the personal representative determined or could have determined.

Part 5
Wills

2--501. Who May Make a Will

Any person 18 or more years of age who is of sound mind may make a will.

2--502. Execution

Except as provided for holographic wills, writings within Section 2-513, and wills within Section 2-506, every will shall be in writing signed by the testator or in the testator's name by some other person in the testator's presence and by his direction, and shall be signed by at least 2 persons each of whom witnessed either the signing or the testator's acknowledgement of the signature or, of the will.

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.

2--504. Self-proved Will

An attested will may at the time of its execution or at any subsequent date by 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 _____
We, _____ _____, and _____, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as his last will and that he had signed willingly or directed another to sign for him, and that he executed it as his free and voluntary act for the purposes therein expressed; and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of his knowledge the testator was at that time 18 or more years of age, of sound mind and under no constraint or undue influence.

_____
Testator

_____
Witness

_____
Witness

Subscribed, sworn to and acknowledge before me by _____, the testator, and subscribed and sworn to before me by _____ and
_____ witnesses, this _____ day of _____.

_____
(SEAL) (Signed) _____

_____
(Official capacity of officer)

2--505. Who May Witness

(a) Any person generally competent to be a witness may act as a witness to a will.

(b) A will or any provision thereof is not invalid because the will is signed by an interested witness.

/* One of the ideas of the UPrC was to avoid intent defeating rules, like invalidating wills where one of the beneficiaries was a witness. Many persons (and reasonably so) think that to make a will effective they must even give the will to the personal representative or let the beneficiaries know (a good idea in any event) that it was prepared. This rule provides for this contingency. Quite obviously if the will is invalid for some good reason then the challenge may still be heard, even if a beneficiary witnessed it. */

2--506. Choice of Law as to Execution

A written will is valid if executed in compliance with Section 2-502 or 2-503 or if its execution complies with the law at the time of execution of the place where the will is executed, or of the

law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode or is a national.

2--507. Revocation by Writing or by Act

A will or any part thereof is revoked

(1) by a subsequent will which revokes the prior will or part expressly or by inconsistency; or

(2) by being burned, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking it by the testator or by another person in his presence and by his direction.

2--508. Revocation by Divorce; No Revocation by Other Changes of Circumstances

If after executing a will the testator is divorced or his marriage annulled, the divorce or annulment revokes any disposition or appointment of property made by the will to the former spouse, any provisions conferring a general or special power of appointment on the former spouse, and any nomination of the former spouse as executor, trustee, conservator, or guardian, unless the will expressly provides otherwise. Property prevented form passing to a former spouse because of revocation by divorce or annulment passes as if the former spouse failed to survive the decedent, and other provisions conferring some power or office on the former spouse are interpreted as if the spouse failed to survive the decedent. If provisions are revoked solely by this section, they are revived by testator's remarriage to the former spouse. For purposes of this section, divorce or annulment means any divorce or annulment which would exclude the spouse as a surviving spouse within the meaning of Section 2-802(b). A decree of separation which does not terminate the status of husband and wife is not a divorce for the purposes of this section. No change of circumstances other than as described in this section revokes a will.

/* A new addition to the laws. This one may not be obvious to even those experienced in estate planning. */

2--509. Revival of Revoked Will

(a) If a second will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked by acts under Section 2-507, the first will is revoked in whole or in part unless it is evident from the circumstances of the revocation of the second will or from testator's contemporary or subsequent declarations that he intended the first will to take effect as executed.

(b) If a second will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked by a third will, the first will is revoked in whole or in part, except to the extent it appears from the terms of the third will that the testator intended the first will to take effect.

2--510. Incorporation by Reference

Any writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permits its identification.

2--511. Testamentary Additions to Trusts

A devise or bequest, the validity of which is determinable by the law of this state, may be made by a will to the trustee of a trust established or to be established by the testator or by the testator and some other person or by some other person (including a funded or unfunded life insurance trust, although the trustor has reserved any or all rights of ownership of the insurance contracts) if the trust is identified in the testator's will and its terms are set forth in a written instrument (other than a will) executed before or concurrently with the execution of the testator's will or in the valid last will of a person who has predeceased the testator (regardless of the existence, size, or character of the corpus of the trust). The devise is not invalid because the trust is amendable or revocable, or because the trust was amended after the execution of the will or after the death of the testator. Unless the testator's will provides otherwise, the property so devised (1) is not deemed to be held under a testamentary trust of the testator, but becomes a part of he trust to which it is given and (2) shall be administered and disposed of in accordance with the provisions of the instrument or will setting forth the terms of the trust, including any amendments thereto made before the death of the testator (regardless of whether made before or after the execution of the testator's will), and, if the testator's will so provides, including any amendments to the trust made after the death of the testator. A revocation or termination of the trust before the death of the testator causes the devise to lapse.

2--512. Events of Independent Significance

A will may dispose of property by reference to acts and events which have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of a will of another person is such an event.

/* An unusual provision when one considers the common law which required wills to be complete, in and of themselves. */

2--513. Separate Writing Identifying Bequest of Tangible Property

Whether or not the provisions relating to holographic wills apply, a will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money, evidences of indebtedness, documents of title, and securities, and property used in trade or business. To be admissable under this section as evidence of the intended disposition, the writing must either be in the handwriting of the testator or be signed by him and must describe the items and the devisees with reasonable certainty. The writing may be referred to as one to be in existence at the time of the testator's death; it may be prepared before or after the execution of the will; it may be altered by the testator after its preparation; and it may be a writing which has no significance apart from its effect upon the dispositions made by the will.

/* Another rule making a significant change from the common law. Even in states which have not adopted the UPrC the right to refer in a will to a separate list for the disposal of personal effects is now common. */

Part 6
Rules of Construction

2--601. Requirement That Devisee Survive Testator by 120 Hours

A devisee who does not survive the testator by 120 hours is treated as if he predeceased the testator, unless the will of decedent contains some language dealing explicitly with simultaneous deaths or deaths in a common disaster, or requiring that the devisee survive the testator or survive the testator for a stated period in order to take under the will.

/* To avoid multiple probates in the case in which there is a common disaster and it can be proven which person died first. Similar to the Uniform Simultaneous Death Act. */

2--602. Choice of Law as to Meaning and Effect of Wills

The meaning and legal effect of a disposition in a will shall be determined by the local law of a particular state selected by the testator in his instrument unless the application of that law is contrary to the public policy of this state otherwise applicable to the disposition.

2--603. Rules of Construction and Intention

The intention of a testator as expressed in his will controls the legal effect of his dispositions. The rules of construction expressed in the succeeding sections of this Part apply unless a contrary intention is indicated by the will.

2--604. Construction That Will Passes All Property After-Acquired Property

A will is construed to pass all property which the testator owns at his death including property acquired after the execution of the will.

/* Giving property away in a manner not entirely desired by the testator is better than a partial intestacy any day. */

2--605. Anti-lapse; Deceased Devisee; Class Gifts

If a devisee who is a grandparent or a lineal descendent of a grandparent of the testator is dead at the time of execution of the will, fails to survive the testator, or is treated as if he predeceased the testator, the issue of the deceased devisee who survive the testator by 120 hours take in place of the deceased devisee and if they are all of the same degree of kinship to the devisee they take equally, but if of unequal degree than those of more remote degree take by representation. One who would have been a devisee under a class gift if he had survived the testator is treated as a devisee for purposes of this section whether this death occurred before or after the execution of the will.

2--606. Failure of Testamentary Provision

(a) Except as provided in Section 2-605 if a devise other than a residuary devise fails for any reason, it becomes a part of the residue.

(b) Except as provided in Section 2-605 if the residue is devised to two or more persons and the share of one of the residuary devisees fails for any reason, his share passes to the other residuary devisee, or to other residuary devisees in proportion to their interests in the residue.

2--607. Change in Securities; Accessions; Nonademption

(a) If the testator intended a specific devise of certain securities rather than the equivalent value thereof, the specific devisee is entitled only to:

(1) as much of the devised securities as is a part of the estate at time of the testator's death;

(2) any additional or other securities of the same entity owned by the testator by reason of action initiated by the entity excluding any acquired by exercise of purchase options;

(3) securities of another entity owned by the testator as a result of a merger, consolidation, reorganization or other similar action initiated by the entity; and

(4) any additional securities of the entity owned by the testator as a result of a plan of reinvestment if it is a regulated investment company.

(b) Distributions prior to death with respect to a specifically devised security not provided for in subsection (1) are not part of the specific devise.

2--608. Nonademption of Specific Devises in Certain Cases; Sale by Conservator; Unpaid Proceeds of Sale, Condemnation or Insurance

(a) If specifically devised property is sold by a conservator, or if a condemnation award or insurance proceeds are paid to a conservator as a result of condemnation, fire, or casualty, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the condemnation award, or the insurance proceeds. This subsection does not apply if subsequent to the sale, condemnation, or casualty, it is adjudicated that the disability of the testator has ceased and the testator survives the adjudication by one year. The right of the specific devisee under this subsection is reduced by any right he has under subsection (b).

/* This requires that the will be changed within a year to allow this section to take effect. */

(b) A specific devisee has the right to the remaining specifically devised property and:

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

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

(3) any proceeds unpaid at death on fire or casualty insurance on the property; and of foreclosure, or obtained in lieu of foreclosure, of the security for a specifically devised obligation.

2--609. Non-Exoneration

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

/* This is because of the horrendous possibility of the entire estate being consumed by the payment of liens on mortgaged property. */

2--610. Exercise of Power of Appointment

A general residuary clause in a will, or a will making general disposition of all of the testator's property, does not exercise a power of appointment held by the testator unless specific reference is made to the power or there is some other indication of intention to include the property subject to the power.

2--611. Construction of Generic Terms to Accord with Relationships as Defined for Intestate Succession

Halfbloods, adopted persons and persons born out of wedlock are included in class gift terminology and terms of relationship in accordance with rules for determining relationships for purposes of intestate succession, but a person born out of wedlock is not treated as the child of the father unless the person is openly and notoriously so treated by the father.

2--612. Ademption by Satisfaction

Property which a testator gave in his lifetime to a person is treated as a satisfaction of a devise to that person in whole or in part, only if the will provides for deduction of the lifetime gift, or the testator declares in a contemporaneous writing that the gift is to be deducted from the devise or is in satisfaction of the devise, or the devisee acknowledges in writing that the gift is in satisfaction. For purpose of partial satisfaction, property given during lifetime is valued as of the time the devisee came into possession or enjoyment of the property or as of the time of death of the testator, whichever occurs first.

Part 7
Contractual Arrangements Relating to Death

2--701. Contracts Concerning Succession

A contract to make a will or devise, or not to revoke a will or devise, or to die intestate, if executed after the effective date of this Act, can be established only by (1) provisions of a will stating material provisions of the contract; (2) an express reference in a will to a contract and

extrinsic evidence providing the terms of the contract; or (3) a writing signed by the decedent evidencing the contract. The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.

Part 8
General Provisions

2--801. Renunciation of Succession

A devisee, person succeeding to a renounced interest, beneficiary under a testamentary instrument or person designated to take pursuant to a power or appointment exercised by testamentary instrument may renounce in whole or in part the succession to any property or interest therein by filing a written instrument within the time and at the place hereinafter provided. The instrument shall (i) describe the property or part thereof or interest therein renounced, (ii) be signed by the person renouncing and (iii) declare the renunciation and the extent thereof.

/* Why would someone do this? There may be tax advantages, or the residuary gift may be to that person's children etc. One other good reason- if the property is a tax waste dump, you wouldn't want to hold title. */

(b) The writing specified in (a) must be filed within [6] months after the death of the decedent or the donee of the power, or if the taker of the property is not then finally ascertained not later than [6] months after the event by which the taker of the interest is finally ascertained. The writing must be filed in the Court of the county where proceedings concerning the decedent's estate are pending, or where they would be pending if commenced. A copy of the writing also shall be mailed to the personal representative of the decedent.

(c) Unless the decedent or donee of the power has otherwise indicated by his will, the interest renounced, and future interest which is to take effect in possession or enjoyment at or after the termination of the interest renounced, passes as if the person renouncing had predeceased the decedent, or if the person renouncing is one designated to take pursuant to a power of appointment exercised by a testamentary instrument, as if the person renouncing has predeceased the donee of the power. In every case the renunciation relates back for all purposes to the date of death of the decedent of the donee, as the case may be.

(d) Any (1) assignment, conveyance, encumbrance, pledge or transfer of property therein or any contract therefor, (2) written waiver of the right to renounce or any acceptance of property by an heir, devisee, person succeeding to a renounced interest, beneficiary or person designated to take pursuant to a power of appointment exercised by testamentary instrument, or (3) sale or other disposition of property pursuant to judicial process, made before the expiration of the period in which he is permitted to renounce, bars the right to renounce as to the property.

(e) The right to renounce granted by this section exists irrespective of any limitation on the interest of the person renouncing in the nature of a spendthrift provision or similar restrictions.

(f) This section does not abridge the right of any person to assign, release, or renounce any

property arising under any other section of this Code or other statute.

(g) Any interest in property which exists on the effective date of this section, but which has not then become indefeasibly fixed both in quality and quantity, or the taker of which has not then become finally ascertained, may be renounced after the effective date of this section as provided herein. An interest which has arisen prior to the effective date of this section in any person other than the person renouncing is not destroyed or diminished by any action of the person renouncing taken under this section.

2--802. Effect of Divorce, Annulment and Decree of Separation

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

(b) For purposes of Parts 1, 2, 3 & 4 of this Article, a surviving spouse does not include:

(1) a person who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless they subsequently participate in a marriage ceremony purporting to marry each to the other, or subsequently live together as man and wife.

(2) a person who, following a decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third person; or

(3) a person who was a party to a valid proceeding concluded by an order purporting to terminate all martial property rights.

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

(a) A surviving spouse, heir or devisee who feloniously and intentionally kills the decedent is not entitled to any benefits under the will or under this Article, and the estate of decedent passes as if the killer had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of the killer passes as if the killer had predeceased the decedent.

(b) Any joint tenant who feloniously and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as to his property and the killer has no rights by survivorship. This provision applies to joint tenancies [and tenancies by the entirety] in real and personal property, joint accounts in banks, savings and loan associations, credit unions and other institutions, and any other form of co-ownership with survivorship incidents.

(c) A named beneficiary of a bond, life insurance policy, or other contractual arrangement who feloniously and intentionally kills the principal obligee or the person upon whose life the policy

is issued is not entitled to any benefit under the bond, policy, or other contractual arrangement, and it becomes payable as though the killer had predeceased the decedent.

(d) Any other acquisition of property or interest by the killer shall be treated in accordance with the principles of this section.

(e) A final judgment of conviction of felonious and intentional killing is conclusive for purposes of this section. In the absence of a conviction of felonious and intentional killing the Court may determine by a preponderance of evidence whether the killing was felonious and intentional for purposes of this section.

/* The statute allows for a civil determination to be made to a preponderance standard so as to not hold up the administration of the estate. */

(f) This section does not affect the rights of any person who, before rights under this section have been adjudicated, purchases from the killer for value and without notice property which the killer would have acquired except for this section. Any insurance company, bank, or other obligor making payment according to the terms of its policy or obligation is not liable by reason of this section unless prior to payment it has received at its home office or principal address wren notice of a claim under this section.]

Part 9
Custody and Deposit of Wills

2--901. Deposit of Will With Court in Testator's Lifetime

A will may be deposited by the testator or his agent with any Court for safekeeping, under rules of the Court. The will shall be kept confidential. During the testator's lifetime a deposited will shall be delivered only to him or to a person authorized in writing signed by him to receive the will. A conservator may be allowed to examine a deposited will of a protected testator under procedures designed to maintain the confidential character of the document to the extent possible, and to assure that it will be resealed and left on deposit after the examination. Upon being informed of the testator's death, the Court shall notify any person designated to receive the will and deliver it to him on request; or the Court may deliver the will to the appropriate Court.

2--902. Duty of Custodian of Will; Liability

After the death of a testator and on request of an interested person, any person having custody of a will of the testator shall deliver it with reasonable promptness to a person able to secure its probate and if none is known, to an appropriate Court. Any person who willfully fails to deliver a will is liable to any person aggrieved for the damages which may be sustained by the failure. Any person who willfully refuses or fails to deliver a will after being ordered by the Court in a proceeding brought for the purpose of compelling delivery is subject to penalty for contempt of Court.

ARTICLE III
Probate of Wills and Administration

Part 1
General Provisions

3--101. Devolution of Estate at Death; Restrictions

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

ALTERNATIVE SECTION FOR COMMUNITY PROPERTY STATES [3--101A. Devolution of Estate at Death; Restrictions

The power of a person to leave property by will, and the rights of creditors, devisees, and heirs to his property are subject to the restrictions and limitations contained in this Code to facilitate the prompt settlement of estates. Upon the death of a person, his real and personal property devises to the persons to whom it is devised by his last will or to those indicated as substitutes for them in cases involving lapse, renunciation, or other circumstances affecting the devolution of testate estate, or in the absence of testamentary disposition, to his heirs, or to those indicated as substitutes for them in cases involving renunciation or other circumstances affecting devolution of intestate estates, and upon the death of a husband or wife, the decedent's share of their community property devolves to the persons to whom it is devised by his last will, or in the absence of testamentary disposition, to his heirs, but all of their community property which is under the management and control of the decedent but which is necessary to carry out the provisions of his will is subject to administration; but the devolution of all the above described property is subject to rights to homestead allowance, exempt property and family allowances, to renunciation to rights of creditors [elective share of the surviving spouse] and to administration.]

3--102. Necessity of Order of Probate for Will

Except as provided in Section 3-1201, to be effective to prove the transfer of any property or to nominate an executor, a will must be declared to be valid by an order of informal probate by the Registrar, or an adjudication of probate by the Court, except that a duly executed and unrevoked will which has not been probated may be admitted as evidence of a devise if (1) no Court proceeding concerning the succession or administration of the estate has occurred, and (2) either the devisee or his successors and assigns possessed the property devised in accordance with the provisions of the will, or the property devised was not possessed or claimed by anyone by virtue of the decedent's title during the time period for testacy proceedings.

3--103. Necessity of Appointment for Administration

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

3--104. Claims Against Decedent; Necessity of Administration

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

/* The bankruptcy laws for example, provide for administration to be made under the probate laws solely for the deceased. */

3--105. Proceedings Affecting Devolution and Administration; Jurisdiction of Subject Matter

Persons interested in decedents' estates may apply to the Registrar for determination in the informal proceedings provided in this Article, and may petition the Court for orders in formal proceedings within the Court's jurisdiction including but not limited to those described in this Article. The Court has exclusive jurisdiction of formal proceedings to determine how decedents' estates subject to the laws of this state are to be administered, expended and distributed. The Court has concurrent jurisdiction of any other action or proceeding concerning a succession or to which an estate, through a personal representative, may be a party, including actions to determine title to property alleged to belong to the estate, and of any action or proceeding in which property distributed by a personal representative or its value is sought to be subjected to rights of creditors or successors of the decedent.

3--106. Proceedings Within the Exclusive Jurisdiction of Court; Service; Jurisdiction Over Persons

In proceedings within the exclusive jurisdiction of the Court where notice is required by this Code or by rule, interested persons may be bound by the orders of the Court in respect to the property in or subject to the laws of this state by notice in conformity with Section 1-401. An order is binding as to all who are given notice of the proceeding though less than all interested persons are notified.

3--107. Scope of Proceedings; Proceedings Independent; Exception

Unless supervised administration as described in Part 5 is involved, (1) each proceeding before the Court or Registrar is independent of any other proceeding involving the same estate; (2) petitions for formal orders of the Court may combine

various requests for relief in a single proceeding if the orders sought may be finally granted without delay. Except as required for proceedings which are particularly described by other sections of this Article, no petition is defective because it fails to embrace all matters which might then be the subject of a final order; (3) proceedings for probate of wills or adjudication of no will may be combined with proceedings for appointment of personal representatives; and (4) a proceeding for appointment of a personal representative is concluded by an order making or declining the appointment.

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

No informal probate or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than 3 years after the decedent's death, except (1) if a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding; (2) appropriate probate, appointment or testacy proceedings may be maintained in relation to the estate of an absent, disappeared or missing person for whose estate a conservator has been appointed, at any time within three years after the conservator becomes able to establish the death of the protected person; and (3) a proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful, may be commenced within the later of twelve months from the informal probate or three years from the decedent's death. These limitations do not apply to proceedings to construe probated wills or determine heirs of an intestate. In cases under (1) or (2) above, the date on which a testacy or appointment proceeding is properly commenced shall be deemed to be the date of the decedent's death for purposes of other limitations provisions of this Code which relate to the date of death.

3--109. Statutes of Limitation on Decedent's Cause of Action
No statue of limitation running on a cause of action belonging
to a decedent which had not been barred as of the date of his death, shall apply to bar a cause of action surviving the decedent's death sooner than four months after death. A cause of action which, but for this section, would have been barred less than four months after death, is barred after four months unless rolled.

Part 2
Venue for Probate and Administration: Priority to Administer;
Demand for Notice

3--201. Venue for First and Subsequent Estate Proceedings; Location of Property

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

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

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

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

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