

/\* Part 3 of 7 \*/

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

### 3--202. Appointment or Testacy Proceedings; Conflicting Claim of Domicile in Another State

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

### 3--203. Priority Among Persons Seeking Appointment as Personal Representative

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

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

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

(3) other devisees of the decedent;

(4) the surviving spouse of the decedent;

(5) other heirs of the decedent;

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

(b) An objection to an appointment can be made only in

formal proceedings. In case of objection the priorities stated in (a) apply except that:

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

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

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

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

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

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

(1) under the age of [21];

(2) a person whom the Court finds unsuitable in formal

proceedings.

(g) A personal representative appointed by a court of the decedent's domicile has priority over all other persons except where the decedent's will nominates different persons to be personal representative in this state and in the state of domicile. The domiciliary personal representative may nominate another, who shall have the same priority as the domiciliary personal representative.

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

### 3--204. Demand for Notice of Order or Filing Concerning Decedent's Estate

Any person desiring notice of any order or filing pertaining to a decedent's estate in which he has a financial or property interest, may file a demand for notice with the Court at any time after the death of the decedent stating the name of the decedent, the nature of his interest in the estate, and the demandant's address or that of his attorney. The clerk shall mail a copy of the demand to the personal representative if one has been appointed. After filing of a demand, no order or filing to which the demand relates shall be made or accepted without notice as prescribed in Section 1-410 to the demandant or his attorney. The validity of an order which is issued or filing which is accepted without compliance with this requirement shall not be affected by the error, but the petitioner receiving the order or the person making the filing may be liable for any damage caused by the absence of notice. The requirement of notice arising from a demand under this provision may be waived in writing by the demandant and shall cease upon the termination of his interest in the estate.

/\* This request is known at common law as a caveat. \*/

### Informal Probate and Appointment Proceedings

#### 3--301. Informal Probate or Appointment Proceedings; Application; Contests

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

(1) 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:

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

(ii) 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 ascertainable with reasonable diligence by the applicant;

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

(iv) 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;

(v) 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.

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

(i) 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;

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

(iii) 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;

(iv) 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.

(3) 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, address and priority for appointment of the person whose appointment is sought.

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

(i) 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;

(ii) 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.

(5) 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 application is granted, and describe the property of the applicant.

(6) An application for appointment of a personal representative to succeed a personal representative who has tendered a resignation as provided in Section 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.

### 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 issue a written statement of informal probate if at least 120 hours have elapsed since the decedent's death. 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.

### 3--303. Informal Probate; Proof and Findings Required

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

(1) the application is complete;

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

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

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

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

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

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

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

(d) 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.

(e) A will from a place which does not provide for probate of a will after death and which is not eligible for probate under subsection (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.

3--304. Informal Probate; Unavailable in Certain Cases  
Applications for informal probate which relate to one or more of a known series of testamentary instruments (other than wills and codicils), the latest of which does not expressly revoke the earlier, shall be declined.

3--305. Informal Probate; Registrar Not Satisfied

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

3--306. Informal Probate; Notice Requirements

The moving party must give notice as described by Section 1-401 of his application for informal probate (1) to any person demanding it pursuant to Section 3-204; and (2) to any personal representative of the decedent whose appointment has not been terminated. No other notice of informal probate is required.

3--307. Informal Appointment Proceedings; Delay in Order; Duty of Registrar; Effect of Appointment

(a) Upon receipt of an application for informal appointment of a personal representative other than a special administrator as provided in Section 3-614, if at least 120 hours have elapsed since the decedent's death, the Registrar, after making the finding required by Section 3-308, shall appoint the applicant subject to qualification and acceptance; provided, that if the decedent was a non-resident, the Registrar shall delay the order of appointment until 30 days have elapsed since death unless the personal representative appointed at the decedent's domicile is the applicant, or unless the decedent's will directs that his estate be subject to the laws of this state. p73

duties pertaining to the office are fully established by informal appointment. An appointment, and the office of personal representative created thereby, is subject to

termination as provided in Sections 3-608 through 3-612, but is not subject to retroactive vacation.

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

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

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

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

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

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

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

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

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

3--309. Informal Appointment Proceedings; Registrar Not Satisfied

If the Registrar is not satisfied that a requested informal appointment of a personal representative should be made because

of failure to meet the requirements of Section 3-307 and 3-308, or for any other reason, he may decline the application. A declination of informal appointment is not an adjudication and does not preclude appointment in formal proceedings.

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

3--311. Informal Appointment Unavailable in Certain Cases

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

Part 4

Formal Testacy and Appointment Proceedings

3--401. Formal Testacy Proceedings; Nature; When Commenced

A formal testacy proceeding is litigation to determine whether a decedent left a valid will. A formal testacy proceeding may be commenced by an interested person filing a petition as described in Section 3-402(a) in which he requests that the Court, after notice and hearing, enter an order probating a will, or a petition to set aside an informal probate of a will or to prevent informal probate of a will which is the subject of a pending application, or a petition in accordance with Section 3-402(b) for an order that the decedent died intestate.

A petition may seek formal probate of a will without regard to whether the same or a conflicting will has been informally probated. A formal testacy proceeding may, but need not, involve a request for appointment of a personal representative.

During the pendency of a formal testacy proceeding, the Registrar shall not act upon any application for informal probate of any will of the decedent or any application for informal appointment of a personal representative of the decedent.

Unless a petition in a formal testacy proceeding also

requests confirmation of the previous informal appointment, a previously appointed personal representative, after receipt of notice of the commencement of a formal probate proceeding, must refrain from exercising his power to make any further distribution of the estate during the pendency of the formal proceeding. A petitioner who seeks the appointment of a different personal representative in a formal proceeding also may request an order restraining the acting personal representative from exercising any of the powers of his office and requesting the appointment of a special administrator. In the absence of a request, or if the request is denied, the commencement of a formal proceeding has no effect on the powers and duties of a previously appointed personal representative other than those relating to distribution.

3--402. Formal Testacy or Appointment Proceedings; Petition; Contents

(a) Petitions for formal probate of a will, or for adjudication of intestacy with or without request for appointment of a personal representative, must be directed to the Court, request a judicial order after notice and hearing and contain further statements as indicated in this section. A petition for formal probate of a will:

(1) requests an order as to the testacy of the decedent in relation to a particular instrument which may or may not have been informally probated and determining the heirs,

(2) contains the statements required for informal applications as stated in the five subparagraphs under Section 3- 301(a)(1), the statements required by subparagraphs (ii) and (iii) of Section 3-301(2), and

(3) states whether the original of the last will of the decedent is in the possession of the Court or accompanies the petition.

If the original will is neither in the possession of the Court nor accompanies the petition and no authenticated copy of a will probated in another jurisdiction accompanies the petition, the petition must also state the contents of the will, and indicate that it is lost, destroyed, or otherwise unavailable.

(b) A petition for adjudication of intestacy and appointment of an administrator in intestacy must request a judicial finding and order that the decedent left no will and

determining the heirs, contain the statements required by (1) and (4) of Section 3-301 and indicate whether supervised administration is sought. A petition may request an order determining intestacy and heirs without requesting the appointment of an administrator, in which case, the statements required by subparagraph (ii) of Section 3-301(4) above may be omitted.

### 3--403. Formal Testacy Proceedings; Notice of Hearing on Petition

(a) Upon commencement of a formal testacy proceeding, the Court shall fix a time and place of hearing. Notice shall be given in the manner prescribed by Section 1-401 by the petitioner to the persons herein enumerated and to any additional person who has filed a demand for notice under Section 3-204 of this Code.

Notice shall be given to the following persons: the surviving spouse, children, and other heirs of the decedent, the devisees and executors named in any will that is being, or has been, probated, or offered for informal or formal probate in the [county], or that is known by the petitioner to have been probated, or offered for informal or formal probate elsewhere, and any personal representative of the decedent whose appointment has not been terminated. Notice may be given to other persons. In addition, the petitioner shall give notice by publication to all unknown persons and to all known persons whose addresses are unknown who have any interest in the matters being litigated.

(b) If it appears by the petition or otherwise that the fact of the death of the alleged decedent may be in doubt, or on the written demand of any interested person, a copy of the notice of the hearing on said petition shall be sent by registered mail to the alleged decedent at his last known address. The Court shall direct the petitioner to report the results of, or make and report back concerning, a reasonably diligent search for the alleged decedent in any manner that may seem advisable, including any or all of the following methods:

(1) by inserting in one or more suitable periodicals a notice requesting information from any person having knowledge of the whereabouts of the alleged decedent;

(2) by notifying law enforcement officials and public welfare agencies in appropriate locations of the disappearance of the alleged decedent;

(3) by engaging the services of an investigator.

The costs of any search so directed shall be paid by the petitioner if there is no administration or by the estate of the decedent in case there is administration.

Section 3-404. [Formal Testacy Proceedings; Written objections to Probate.]

Any party to a formal proceeding who opposes the probate of a will for any reason shall state in his pleadings his objections to probate of the will.

Section 3-405. [Formal Testacy Proceedings; Uncontested Cases; Hearings and Proof.]

If a petition in a testacy proceeding is unopposed, the Court may order probate or intestacy on the strength of the pleadings if satisfied that the conditions of Section 3-309 have been met, or conduct a hearing in open court and require proof of the matters necessary to support the order sought. If evidence concerning execution of the will is necessary, the affidavit or testimony of one of any attesting witnesses to the instrument is sufficient. If the affidavit or testimony of an attesting witness is not available, execution of the will may be proved by other evidence or affidavit.

Section 3-406. [Formal Testacy Proceedings; Contested Cases; Testimony of Attesting Witnesses.]

(a) If evidence concerning execution of an attested will which is not self-proved is necessary in contested cases, the testimony of at least one of the attesting witnesses, if within the state, competent and able to testify, is required. Due execution of an attested or unattested will may be proved by other evidence.

(b) If the will is self-proved, compliance with signature requirements for execution is conclusively presumed and other requirements of execution are presumed subject to rebuttal without the testimony of any witness upon filing the will and the acknowledgment and affidavits annexed or attached thereto, unless there is proof of fraud or forgery affecting the acknowledgment or affidavit.

Section 3-407. [Formal Testacy Proceedings; Burdens in Contested Cases.]

In contested cases, petitioners who seek to establish intestacy have the burden of establishing prima facie proof of death, venue, and heirship. Proponents of a will have the burden of establishing prima facie proof of due execution in all cases, and, if they are also petitioners, prima facie proof of death and venue. Contestants of a will have the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake or revocation. Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof. If a will is opposed by the petition for probate of a later will revoking the former, it shall be determined first whether the later will is entitled to probate, and if a will is opposed by a petition for a declaration of intestacy, it shall be determined first whether the will is entitled to probate.

Section 3-408. [Formal Testacy Proceedings; Will Construction; Effect of Final Order in Another Jurisdiction.]

A final order of a court of another state determining testacy, the validity or construction of a will, made in a proceeding involving notice to and an opportunity for contest by all interested persons must be accepted as determinative by the courts of this state if it includes, or is based upon, a finding that the decedent was domiciled at his death in the state where the order was made.

/\* This is a somewhat interesting provision. What happened to the "full faith and credit" clause of the US constitution? \*/

Section 3-409. [Formal Testacy Proceedings; order; Foreign Will.]

After the time required for any notice has expired, upon proof of notice, and after any hearing that may be necessary, if the Court finds that the testator is dead, venue is proper and that the proceeding was commenced within the limitation prescribed by Section 3-108, it shall determine the decedent's domicile at death, his heirs and his state of testacy. Any will found to be valid and unrevoked shall be formally probated. Termination of any previous informal appointment of a personal representative, which may be appropriate in view of the relief requested and findings, is governed by Section 3-612. The petition shall be dismissed or appropriate amendment allowed if the court is not satisfied that the alleged decedent is dead. A will from a place which does not provide for probate of a will after death, may be proved for probate in this state by a duly authenticated certificate of its legal custodian that the copy introduced is a

true copy and that the will has become effective under the law of the other place.

Section 3-410. [Formal Testacy Proceedings; Probate of More Than One Instrument.]

If two or more instruments are offered for probate before a final order is entered in a formal testacy proceeding, more than one instrument may be probated if neither expressly revokes the other or contains provisions which work a total revocation by implication. If more than one instrument is probated, the order shall indicate what provisions control in respect to the nomination of an executor, if any. The order may, but need not, indicate how any provisions of a particular instrument are affected by the other instrument. After a final order in a testacy proceeding has been entered, no petition for probate of any other instrument of the decedent may be entertained, except incident to a petition to vacate or modify a previous probate order and subject to the time limits of Section 3-412.

Section 3-411. [Formal Testacy Proceedings; Partial Intestacy.]

If it becomes evident in the course of a formal testacy proceeding that, though one or more instruments are entitled to be probated, the decedent's estate is or may be partially intestate, the Court shall enter an order to that effect.

Section 3-412. [Formal Testacy Proceedings; Effect of order; Vacation.]

Subject to appeal and subject to vacation as provided herein and in Section 3413, a formal testacy order under Sections 3409 to 3-411, including an order that the decedent left no valid will and determining heirs, is final as to all persons with respect to all issues concerning the decedent's estate that the court considered or might have considered incident to its rendition relevant to the question of whether the decedent left a valid will, and to the determination of heirs, except that:

(1) The court shall entertain a petition for modification or vacation of its order and probate of another will of the decedent if it is shown that the proponents of the later-offered will were unaware of its existence at the time of the earlier proceeding or were unaware of the earlier proceeding and were given no notice thereof, except by publication.

(2) If intestacy of all or part of the estate has been ordered, the determination of heirs of the decedent may be reconsidered

if it is shown that one or more persons were omitted from the determination and it is also shown that the persons were unaware of their relationship to the decedent, were unaware of his death or were given no notice of any proceeding concerning his estate, except by publication.

(3) A petition for vacation under either (1) or (2) above must be filed prior to the earlier of the following time limits:

(i) If a personal representative has been appointed for the estate, the time of entry of any order approving final distribution of the estate, or, if the estate is closed by statement, 6 months after the filing of the closing statement.

(ii) Whether or not a personal representative has been appointed for the estate of the decedent, the time prescribed by Section 3-108 when it is no longer possible to initiate an original proceeding to probate a will of the decedent.

(iii) 12 months after the entry of the order sought to be vacated.

(4) The order originally rendered in the testacy proceeding may be modified or vacated, if appropriate under the circumstances, by the order of probate of the later-offered will or the order redetermining heirs.

(5) The finding of the fact of death is conclusive as to the alleged decedent only if notice of the hearing on the petition in the formal testacy proceeding was sent by registered or certified mail addressed to the alleged decedent at his last known address and the court finds that a search under Section 3403(b) was made.

If the alleged decedent is not dead, even if notice was sent and search was made, he may recover estate assets in the hands of the personal representative. In addition to any remedies available to the alleged decedent by reason of any fraud or intentional wrongdoing, the alleged decedent may recover any estate or its proceeds from distributees that is in their hands, or the value of distributions received by them, to the extent that any recovery from distributees is equitable in view of all of the circumstances.

Section 3-413. [Formal Testacy Proceedings; Vacation of order For other Cause.]

For good cause shown, an order in a formal testacy proceeding may be modified or vacated within the time allowed for appeal.

Section 3-414. [Formal Proceedings Concerning Appointment of Personal Representative.]

(a) A formal proceeding for adjudication regarding the priority or qualification of one who is an applicant for appointment as personal representative, or of one who previously has been appointed personal representative in informal proceedings, if an issue concerning the testacy of the decedent is or may be involved, is governed by Section 3402, as well as by this section. In other cases, the petition shall contain or adopt the statements required by Section 3-301(1) and describe the question relating to priority or qualification of the personal representative which is to be resolved. If the proceeding precedes any appointment of a personal representative, it shall stay any pending informal appointment proceedings as well as any commenced thereafter. If the proceeding is commenced after appointment, the previously appointed personal representative, after receipt of notice thereof, shall refrain from exercising any power of administration except as necessary to preserve the estate or unless the Court orders otherwise.

(b) After notice to interested persons, including all persons interested in the administration of the estate as successors under the applicable assumption concerning testacy, any previously appointed personal representative and any person having or claiming priority for appointment as personal representative, the Court shall determine who is entitled to appointment under Section 3-203, make a proper appointment and, if appropriate, terminate any prior appointment found to have been improper as provided in cases of removal under Section 3-411.

PART 5

SUPERVISED ADMINISTRATION

Section 3-501. [Supervised Administration; Nature of Proceeding.]

Supervised administration is a single in rem proceeding to secure complete administration and settlement of a decedent's estate under the continuing authority of the Court which extends until entry of an order approving distribution of the estate and discharging the personal representative or other order terminating the proceeding. A supervised personal representative is responsible to the Court, as well as to the

interested parties, and is subject to directions concerning the estate made by the Court on its own motion or on the motion of any interested party. Except as otherwise provided in this Part, or as otherwise ordered by the Court, a supervised personal representative has the same duties and powers as a personal representative who is not supervised.

Section 3-502. [Supervised Administration; Petition; Order.]

A petition for supervised administration may be filed by any interested person or by a personal representative at any time or the prayer for supervised administration may be joined with a petition in a testacy or appointment proceeding. If the testacy of the decedent and the priority and qualification of any personal representative have not been adjudicated previously, the petition for supervised administration shall include the matters required of a petition in a formal testacy proceeding and the notice requirements and procedures applicable to a formal testacy proceeding apply. If not previously adjudicated, the Court shall adjudicate the testacy of the decedent and questions relating to the priority and qualifications of the personal representative in any case involving a request for supervised administration, even though the request for supervised administration may be denied. After notice to interested persons, the Court shall order supervised administration of a decedent's estate: (1) if the decedent's will directs supervised administration, it shall be ordered unless the Court finds that circumstances bearing on the need for supervised administration have changed since the execution of the will and that there is no necessity for supervised administration; (2) if the decedent's will directs unsupervised administration, supervised administration shall be ordered only upon a finding that it is necessary for protection of persons interested in the estate; or (3) in other cases if the Court finds that supervised administration is necessary under the circumstances.

Section 3-503. [Supervised Administration; Effect on other Proceedings.]

(a) The pendency of a proceeding for supervised administration of a decedent's estate stays action on any informal application then pending or thereafter filed.

(b) If a will has been previously probated in informal proceedings, the effect of the filing of a petition for supervised administration is as provided for formal testacy

proceedings by Section 3401.

(c) After he has received notice of the filing of a petition for supervised administration, a personal representative who has been appointed previously shall not exercise his power to distribute any estate. The filing of the petition does not affect his other powers and duties unless the Court restricts the exercise of any of them pending full hearing on the petition.

Section 3-504. [Supervised Administration; Powers of Personal Representative.]

Unless restricted by the Court, a supervised personal representative has, without interim orders approving exercise of a power, all powers of personal representatives under this Code, but he shall not exercise his power to make any distribution of the estate without prior order of the Court. Any other restriction on the power of a personal representative which may be ordered by the Court must be endorsed on his letters of appointment and, unless so endorsed, is ineffective as to persons dealing in good faith with the personal representative.

Section 3-505. [Supervised Administration; Interim Orders; Distribution and Closing Orders.]

Unless otherwise ordered by the Court, supervised administration is terminated by order in accordance with time restrictions, notices and contents of orders prescribed for proceedings under Section 3-1001. Interim orders approving or directing partial distributions or granting other relief may be issued by the Court at any time during the pendency of a supervised administration on the application of the personal representative or any interested person.

PART 6  
PERSONAL REPRESENTATIVE; APPOINTMENT, CONTROL  
AND TERMINATION OF AUTHORITY

Section 3-601. [Qualification.]

Prior to receiving letters, a personal representative shall qualify by filing with the appointing Court any required bond and a statement of acceptance of the duties of the office.

Section 3-602. [Acceptance of Appointment; Consent to jurisdiction]

By accepting appointment, a personal representative submits personally to the jurisdiction of the Court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be delivered to the personal representative, or mailed to him by ordinary first class mail at his address as listed in the application or petition for appointment or as thereafter reported to the Court and to his address as then known to the petitioner. Section 3-603. [Bond Not Required Without Court Order, exceptions.]

No bond is required of a personal representative appointed in informal proceedings, except (1) upon the appointment of a special administrator; (2) when an executor or other personal representative is appointed to administer an estate under a will containing an express requirement of bond or (3) when bond is required under Section 3605. Bond may be required by court order at the time of appointment of a personal representative appointed in any formal proceeding except that bond is not required of a personal representative appointed in formal proceedings if the will relieves the personal representative of bond, unless bond has been requested by an interested party and the Court is satisfied that it is desirable. Bond required by any will may be dispensed with in formal proceedings upon determination by the Court that it is not necessary. No bond is required of any personal representative who, pursuant to statute, has deposited cash or collateral with an agency of this state to secure performance of his duties.

Section 3-604. [Bond Amount; Security; Procedure; Reduction.]

If bond is required and the provisions of the will or order do not specify the amount, unless stated in his application or petition, the person qualifying shall file a statement under oath with the Registrar indicating his best estimate of the value of the personal estate of the decedent and of the income expected from the personal and real estate during the next year, and he shall execute and file a bond with the Registrar, or give other suitable security, in an amount not less than the estimate. The Registrar shall determine that the bond is duly executed by a corporate surety, or one or more individual sureties whose performance is secured by pledge of personal property, mortgage on real property or other adequate security. The Registrar may permit the amount of the bond to be reduced by the value of assets of the estate deposited with a domestic financial institution (as defined in Section 6101) in a manner that prevents their unauthorized disposition. On petition of the personal representative or another interested person the Court

may excuse a requirement of bond, increase or reduce the amount of the bond, release sureties, or permit the substitution of another bond with the same or different sureties.

Section 3-605. [Demand For Bond by Interested Person.]

Any person apparently having an interest in the estate worth in excess of [\$1000], or any creditor having a claim in excess of [\$1000], may make a written demand that a personal representative give bond. The demand must be filed with the Registrar and a copy mailed to the personal representative, if appointment and qualification have occurred. Thereupon, bond is required, but the requirement ceases if the person demanding bond ceases to be interested in the estate, or if bond is excused as provided in Section 3-603 or 3-604. After he has received notice and until the filing of the bond or cessation of the requirement of bond, the personal representative shall refrain from exercising any powers of his office except as necessary to preserve the estate. Failure of the personal representative to meet a requirement of bond by giving suitable bond within 30 days after receipt of notice is cause for his removal and appointment of a successor personal representative.

Section 3-606. [Terms and Conditions of Bonds.]

(a) The following requirements and provisions apply to any bond required by this Part:

(1) Bonds shall name the [state] as obligee for the benefit of the persons interested in the estate and shall be conditioned upon the faithful discharge by the fiduciary of all duties according to law.

(2) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the personal representative and with each other. The address of sureties shall be stated in the bond.

(3) By executing an approved bond of a personal representative, the surety consents to the jurisdiction of the probate court which issued letters to the primary obligor in any proceedings pertaining to the fiduciary duties of the personal representative and naming the surety as a party. Notice of any proceeding shall be delivered to the surety or mailed to him by registered or certified mail at his address as listed with the court where the bond is filed and to his address as then known

to the petitioner.

(4) On petition of a successor personal representative, any other personal representative of the same decedent, or any interested person, a proceeding in the Court may be initiated against a surety for breach of the obligation of the bond of the personal representative.

(5) The bond of the personal representative is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(b) No action or proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

Section 3-607. [Order Restraining Personal Representative.]

(a) On petition of any person who appears to have an interest in the estate, the Court by temporary order may restrain a personal representative from performing specified acts of administration, disbursement, or distribution, or exercise of any powers or discharge of any duties of his office, or make any other order to secure proper performance of his duty, if it appears to the Court that the personal representative otherwise may take some action which would jeopardize unreasonably the interest of the applicant or of some other interested person. Persons with whom the personal representative may transact business may be made parties.

(b) The matter shall be set for hearing within 10 days unless the parties otherwise agree. Notice as the Court directs shall be given to the personal representative and his attorney of record, if any, and to any other parties named defendant in the petition.

Section 3-608. [Termination of Appointment; General.]

Termination of appointment of a personal representative occurs as indicated in Sections 3609 to 3612, inclusive. Termination ends the right and power pertaining to the office of personal representative as conferred by this Code or any will, except that a personal representative, at any time prior to distribution or until restrained or enjoined by court order, may perform acts necessary to protect the estate and may deliver the assets to a successor representative. Termination does not discharge a personal representative from liability for transactions or omissions occurring before termination, or

relieve him of the duty to preserve assets subject to his control, to account therefor and to deliver the assets. Termination does not affect the jurisdiction of the Court over the personal representative, but terminates his authority to represent the estate in any pending or future proceeding.

Section 3-609. [Termination of Appointment; Death or Disability.]

The death of a personal representative or the appointment of a conservator for the estate of a personal representative, terminates his appointment. Until appointment and qualification of a successor or special representative to replace the deceased or protected representative, the representative of the estate of the deceased or protected personal representative, if any, has the duty to protect the estate possessed and being administered by his decedent or ward at the time his appointment terminates, has the power to perform acts necessary for protection and shall account for and deliver the estate assets to a successor or special personal representative upon his appointment and qualification.

Section 3-610. [Termination of Appointment; Voluntary.]

(a) An appointment of a personal representative terminates as provided in Section 31003, one year after the filing of a closing statement.

(b) An order closing an estate as provided in Section 3-1001 or 3-1002 terminates an appointment of a personal representative.

(c) A personal representative may resign his position by filing a written statement of resignation with the Registrar after he has given at least 15 days written notice to the persons known to be interested in the estate. If no one applies or petitions for appointment of a successor representative within the time indicated in the notice, the filed statement of resignation is ineffective as a termination of appointment and in any event is effective only upon the appointment and qualification of a successor representative and delivery of the assets to him.

Section 3-611. [Termination of Appointment by Removal; Cause; Procedure.]

(a) A person interested in the estate may petition for

removal of a personal representative for cause at any time. Upon filing of the petition, the Court shall fix a time and place for hearing. Notice shall be given by the petitioner to the personal representative, and to other persons as the Court may order. Except as otherwise ordered as provided in Section 3607, after receipt of notice of removal proceedings, the personal representative shall not act except to account, to correct maladministration or preserve the estate. If removal is ordered, the Court also shall direct by order the disposition of the assets remaining in the name of, or under the control of, the personal representative being removed.

/\* A provision which gives an objecting party the same affect as stay without bond, and which could certainly be a subject for abuse. \*/

(b) Cause for removal exists when removal would be in the best interests of the estate, or if it is shown that a personal representative or the person seeking his appointment intentionally misrepresented material facts in the proceedings leading to his appointment, or that the personal representative has disregarded an order of the Court, has become incapable of discharging the duties of his office, or has mismanaged the estate or failed to perform any duty pertaining to the office. Unless the decedent's will directs otherwise, a personal representative appointed at the decedent's domicile, incident to securing appointment of himself or his nominee as ancillary personal representative, may obtain removal of another who was appointed personal representative in this state to administer local assets.

Section 3-612. [Termination of Appointment; Change of Testacy Status.]

Except as otherwise ordered in formal proceedings, the probate of a will subsequent to the appointment of a personal representative in intestacy or under a will which is superseded by formal probate of another will, or the vacation of an informal probate of a will subsequent to the appointment of the personal representative thereunder, does not terminate the appointment of the personal representative although his powers may be reduced as provided in Section 3401. Termination occurs upon appointment in informal or formal appointment proceedings of a person entitled to appointment under the later assumption concerning testacy. If no request for new appointment is made within 30 days after expiration of time for appeal from the order in formal testacy proceedings, or from the informal probate, changing the

assumption concerning testacy, the previously appointed personal representative upon request may be appointed personal representative under the subsequently probated will, or as in intestacy as the case may be.

Section 3-613. [Successor Personal Representative.]

Parts 3 and 4 of this Article govern proceedings for appointment of a personal representative to succeed one whose appointment has been terminated. After appointment and qualification, a successor personal representative may be substituted in all actions and proceedings to which the former personal representative was a party. and no notice, process or claim which was given or served upon the former personal representative need be given to or served upon the successor in order to preserve any position or right the person giving the notice or filing the claim may thereby have obtained or preserved with reference to the former personal representative. Except as otherwise ordered by the Court, the successor personal representative has the powers and duties in respect to the continued administration which the former personal representative would have had if his appointment had not been terminated.

Section 3-614. [Special Administrator; Appointment.]

A special administrator may be appointed:

(1) informally by the Registrar on the application of any interested person when necessary to protect the estate of a decedent prior to the appointment of a general personal representative or if a prior appointment has been terminated as provided in Section 3-609;

(2) in a formal proceeding by order of the Court on the petition of any interested person and finding, after notice and hearing, that appointment is necessary to preserve the estate or to secure its proper administration including its administration in circumstances where a general personal representative cannot or should not act. If it appears to the Court that an emergency exists, appointment may be ordered without notice.

Section 3-615. [Special Administrator; Who May Be Appointed.]

(a) If a special administrator is to be appointed pending the probate of a will which is the subject of a pending application or petition for probate, the person named executor in the will shall be appointed if available, and qualified.

(b) In other cases, any proper person may be appointed special administrator.

Section 3-616. [Special Administrator; Appointed Informally; Powers and Duties.]

A special administrator appointed by the Registrar in informal proceedings pursuant to Section 3-614(1) has the duty to collect and manage the assets of the estate, to preserve them, to account therefor and to deliver them to the general personal representative upon his qualification. The special administrator has the power of a personal representative under the Code necessary to perform his duties.

Section 3-617. [Special Administrator; Formal Proceedings; Power and Duties.]

A special administrator appointed by order of the Court in any formal proceeding has the power of a general personal representative except as limited in the appointment and duties as prescribed in the order. The appointment may be for a specified time, to perform particular acts or on other terms as the Court may direct.

Section 3-618. [Termination of Appointment; Special Administrator.]

The appointment of a special administrator terminates in accordance with the provisions of the order of appointment or on the appointment of a general personal representative. In other cases, the appointment of a special administrator is subject to termination as provided in Sections 3-608 through 3611.

PART 7

DUTIES AND POWERS OF PERSONAL Representatives

Section 3-701. [Time of Accrual of Duties and Powers.]

The duties and powers of a personal representative commence upon his appointment. The powers of a personal representative relate back in time to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter. Prior to appointment, a person named executor in a will may carry out written instructions of the decedent relating to his body, funeral and burial arrangements. A personal representative may ratify and accept acts on behalf of the estate done by others where the

acts would have been proper for a personal representative.

Section 3-702. [Priority Among Different Letters.]

A person to whom general letters are issued first has exclusive authority under the letters until his appointment is terminated or modified. If, through error, general letters are afterwards issued to another, the first appointed representative may recover any property of the estate in the hands of the representative subsequently appointed, but the acts of the latter done in good faith before notice of the first letters are not void for want of validity of appointment.

Section 3-703. [General Duties; Relation and Liability to Persons Interested in Estate; Standing to Sue.]

(a) A personal representative is a fiduciary who shall observe the standards of care applicable to trustees as described by Section 7-302. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this Code, and as expeditiously and efficiently as is consistent with the best interests of the estate. He shall use the authority conferred upon him by this Code, the terms of the will, if any, and any order in proceedings to which he is party for the best interests of successors to the estate.

(b) A personal representative shall not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration, an informally probated will is authority to administer and distribute the estate according to its terms. An order of appointment of a personal representative, whether issued in informal or formal proceedings, is authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding questioning his appointment or fitness to continue, or a supervised administration proceeding. Nothing in this section affects the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants, the surviving spouse, any minor and dependent children and any pretermitted child of the decedent as described elsewhere in this Code.

(c) Except as to proceedings which do not survive the death of the decedent, a personal representative of a decedent domiciled

in this state at his death has the same standing to sue and be sued in the courts of this state and the courts of any other jurisdiction as his decedent had immediately prior to death.

Section 3-704. [Personal Representative to Proceed Without Court order; Exception.]

A personal representative shall proceed expeditiously with the settlement and distribution of a decedent's estate and, except as otherwise specified or ordered in regard to a supervised personal representative, do so without adjudication, order, or direction of the Court, but he may invoke the jurisdiction of the Court, in proceedings authorized by this Code, to resolve questions concerning the estate or its administration.