Legislative Counsel

SPECIAL PAMPHLET

Retain with your Iowa Code Annotated

1963
IOWA PROBATE CODE

Acts 1963 (60 G.A.) S.F. No. 165

Effective January 1, 1964

Including

Comments of Special Committee
on Probate Law

of the

Iowa State Bar Association

ST. PAUL, MINN.
WEST PUBLISHING CO.

1963
IOWA PROBATE CODE

Acts 1963 (60 G. A.) S. F. No. 165

Effective January 1, 1964

ST. PAUL, MINN.
WEST PUBLISHING CO.
1963

Copyright © 1963
by
WEST PUBLISHING CO.

PREFACE

The Iowa Probate Code as enacted in 1963 revises and rearranges the statutory probate law of Iowa.

The text of the Code is set out in this Pamphlet according to the system of section numbering and with the section headings appearing in the Code as enacted by the General Assembly.

A number of supplementary features are provided to facilitate the study and use of the Code. Of particular interest are the Comments prepared by the Special Committee on Probate Law of the Iowa State Bar Association. These Comments cover the source, history, and purpose of the new probate provisions.

A Table of Corresponding Sections, also prepared initially by the Committee, enables the user to trace the specific subject matter of pertinent sections from the Iowa Code of 1962 and Iowa Code Annotated into the new Probate Code of 1963.

A detailed Index, editorially supplied, gives ready access to the text of the law.

The text of the Code, with indispensable ancillary aids, is thus provided in compact and convenient form for ready reference.

The Code, fully annotated, will be published later as a unit of Iowa Code Annotated, under the official section numbering assigned thereto by the Code Editor.

THE PUBLISHER

TABLE OF CONTENTS

Page

Preface ---- III

Comments of Special Committee on Probate Law of the Iowa State Bar Association ---- IX

Disposition Table—Corresponding Sections ---- XV

IOWA PROBATE CODE

Division

I. Introduction and Definitions ---- 17

Part

1. Introduction ---- 17
2. Definitions and Use of Terms ---- 18

II. Probate Court, Clerk of Probate Court and Procedure in Probate ---- 21

Part

1. Probate Court ---- 21
2. Clerk of Probate Court ---- 25
3. Procedure in Probate ---- 28

III. General Provisions Relating to Fiduciaries ---- 35

Part

1. Qualification, Appointment, Substitution and Removal of Fiduciaries ---- 35
2. Powers Applicable to All Fiduciaries ---- 37
3. Special Provisions Relating to Property ---- 42
4. Provisions Relating to Administration by all Fiduciaries ---- 44
5. Powers of Foreign Fiduciaries ---- 55
6. Liability of Fiduciaries ---- 57
7. Oath and Bond of Fiduciaries ---- 59
8. Compensation of Fiduciaries and Attorneys ---- 65

IV. Intestate Succession ---- 67

Part

1. Rules of Inheritance ---- 67
2. Procedure for Opening Administration of Intestate Estates ---- 74

TABLE OF CONTENTS

Division — Page

V. Rights of Surviving Spouse ---- 76
Part
1. Right to Take Against the Will ---- 76
2. Procedure for Setting off Share ---- 80

VI. Wills ---- 83
Part
1. General Provisions Relating to Wills ---- 83
2. Execution and Revocation ---- 88
3. Custody ---- 90
4. Procedure for Probate of Wills ---- 92
5. Actions to Set Aside or Contest of Wills ---- 99

VII. Administration of Estates of Decedents ---- 103
Part
1. General Provisions ---- 103
2. Temporary Administration ---- 105
3. Title and Possession of Decedent's Property ---- 106
4. Inventory ---- 109
5. Allowance for Surviving Spouse and Minor Children 112
6. Sale of Property ---- 113
7. Claims Against Decedent's Estate ---- 121
8. Accounting, Distribution, Final Report and Discharge ---- 135
9. Reopening ---- 140

VIII. Foreign Wills and Ancillary Administration ---- 141
Part
1. Foreign Wills ---- 141
2. Ancillary Administration ---- 143

IX. Estates of Absentees ---- 145

X. Uniform Simultaneous Death Act ---- 148

XI. Felonious Death ---- 149

XII. Proceedings for Escheat ---- 150

XIII. Opening Guardianships and Conservatorships ---- 151
Part
1. Opening Guardianships ---- 151
2. Opening Conservatorships ---- 155
3. Conservatorships for Absentees ---- 158
4. Standby Conservatorships ---- 160
5. Foreign Conservators ---- 161
6. Conservatorships Involving Veterans Administration 163
7. Combining Petition for Guardian and Conservator -- 166

TABLE OF CONTENTS

Division — Page

XIV. Administration of Guardianships and Conservators 166

Part

1. Appointment and Qualification of Guardians and Conservators 166
2. Rights and Title of Ward 167
3. Duties and Powers of Conservator 168
4. Transferring, Encumbering and Leasing Property by Conservator 172
5. Claims 172
6. Gifts 175
7. Guardian's Report 176
8. Conservator's Report 176
9. Costs and Accounts 177
10. Termination of Guardianships and Conservatorships 178

XV. Trusts 180

INDEX

Page 187

*

COMMENTS OF SPECIAL COMMITTEE ON PROBATE LAW

of the

IOWA STATE BAR ASSOCIATION

INTRODUCTION

Iowa's present statutory probate law has been enacted piecemeal in the course of the one and a quarter centuries since she became an organized territory of the United States. Although it constitutes a basically good probate system, it is poorly arranged, has many gaps in its coverage, and in several areas it provides for procedure that is unnecessarily cumbersome, expensive, and time-consuming. Developments in the economic and social conditions of Iowa indicate the need for certain substantive changes.

During its period of existence, Iowa has emerged from a thinly populated, frontier, agricultural region where oxen supplied a substantial part of the motive power, where many of its people lived in log cabins and sod houses, and the telephone, electric light, radio and television had not been invented, into a highly industrialized commonwealth in which manufacturing and commercial trade vie in importance with a totally mechanized agriculture that employs, in part, self-propelled, four-row corn harvesting machines that, all in one operation, pick and husk the corn, shell it, load it into wagons, and grind up the cobs.

While this change has been going on, the people of Iowa and of the other states in the Union have changed a number of their social concepts relating to the probating of wills, certain details relating to what is necessary, desirable, or prudent in the administration of the estates of persons deceased or under guardianship, the taxation of the right to inherit property, the taxation of income and of sales of property, and as to the proper share of a widow in the estate of her husband.

Prior to the appointment of the Special Probate Committee of Iowa State Bar Association in June, 1958, with instructions to review the entire body of Iowa Probate Law and make recommendations for its improvement, none of the twenty-two members of the Committee had had occasion to study that law from just that point of view,—although all of them were experienced students, users, and in some instances, teachers of it. At the first meeting of the Committee, held on September 5, 1958, no one thought that we should enter upon so extensive a revision of the Probate Law as is embodied in the bill containing the PROPOSED IOWA PROBATE CODE that Iowa State Bar Association is now recommending for adoption.

Divided into five subcommittees, the Committee worked for two and one-half years only on the improvement of the law relating to the estates of deceased persons. Then, regrouping into three subcommittees,—one for drafting, and one each for the law of guardianship and of testamentary trusts,—the final hammering out of the finished product has continued another two years. Throughout these years, the whole Committee met many times each year to consider the numerous successive written reports of the subcommittees and to make all decisions as to changes, what was to be left unchanged, matters of policy, and so forth.

Entering first upon an intensive study of details with respect to which the Iowa Probate Law ought to be improved, the Committee members necessarily extended their study and research into what has been done in other states to improve their probate laws. This led soon to a concentrated study of a monumental Model Probate Code that was completed in 1945 by the University of Michigan Law School in cooperation with a group of practicing lawyers, specialists in Probate Law, for the Probate Division of the Section of Real Property, Probate and Trust Law of the American Bar Association.

Very gradually the entire Committee became persuaded that, whereas the basic plan and scheme of our Probate Law and Probate Court (as a division of the District Court) should remain unchanged, there is a great need for so many important changes that a complete overhauling and revision is needed. Therefore, it was decided to prepare a complete revision in the hope that the people of the state, acting through their General Assembly, will adopt it.

Early in 1962, the Committee submitted the third "Tentative Final Draft" of its revision to a Committee of the Iowa District Judges Association. The Judges studied it, corresponded with each other about it, and then spent a day with our Drafting Subcommittee discussing, debating and approving it after agreement upon certain very valuable suggestions made by the Judges.

Then West Publishing Company of St. Paul, Minnesota, printed the Fourth Tentative Final Draft in a 169 page 6¼ x 9¼ inch booklet for distribution to, and study by, all of the Judges and lawyers of Iowa, and for their criticisms. Gathering in Des Moines on the afternoon and evening of Sunday, April 23, 1962, the entire Committee devoted the week to a statewide bus tour in which all-day area meetings of Judges, lawyers and Clerks of Court were held, in succession, at Des Moines, Davenport, Waterloo, Cherokee and Atlantic. In each such meeting all members of the Committee participated in presenting the entire Proposed Iowa Probate Code to those present, and a wealth of good criticism and constructive suggestions as well as of commendation, were received. Those were very fruitful meetings. They resulted in securing for this Proposed Iowa Probate Code the thoughtful study and endorsement of more than one thousand of those citizens of Iowa who are best qualified to understand and evaluate the work and the need for it.

Interestingly enough, in spite of the statewide distribution of the members of the Committee that has prepared the Proposed Iowa Probate Code, we have not heard of a single lawyer or Judge who says no revision of our Probate Law is needed. We have submitted the completed work to two of the leading American students, teachers and writers on Probate Law, Professors Lewis M. Simes and Paul E. Basye, for their study and criticism. Each of those distinguished scholars made some valuable suggestions and praised the work as a whole. Acting through its Board of Governors, The Iowa State Bar Association has approved the Proposed Iowa Probate Code in its entirety and recommended it to the Sixtieth Iowa General Assembly for adoption.

ARRANGEMENT OF CODE

In preparing the Probate Code, the committee was conscious of the fact that the present statutory law governing probate matters was not arranged in a logical manner. In arranging the proposed Code, we included the Definitions and Use of Terms immediately following the short introduction.

The next Division of the Code contains the provisions relating to the Probate Court, the Clerk of Probate Court and followed by the part on Procedure in Probate. This entire Division is general in nature and defines the jurisdiction and general powers of the probate court, the general duties of the clerk of the probate court, and the general powers and duties applicable to all fiduciaries as set out in the part on Procedure in Probate.

There are a great number of matters which are common to all representatives of decedents estate, guardians, conservators, and trus-

tees. Among these matters are qualification, bonds, substitution and removal, releases of liens, settlement and compromise of claims, security transfers, and liability. For the purpose of clarity and to avoid repetitious Code sections under the title of the various fiduciaries, the committee attempted to collect these general powers relating to all fiduciaries in one division of the Probate Code. These provisions appear in sections 64 through 205 under Division III of the Code.

Division IV consists of two parts; the first setting forth the rules of inheritance in intestate estates, and the second part defining the procedure for opening administration of intestate estates.

The rights of the surviving spouse are dealt with in Division V. In the first part, the rights of the spouse to take against the will are set forth, and the second part contains the procedure for setting off the share of the surviving spouse.

All the provisions of the Code relating to wills are included under Division VI; the general provisions relating to wills being contained in the first part; the second part dealing with execution and revocation; and the first part, custody. The entire procedure for probating wills is codified in Part 4 under this heading and the sections relating to contest or setting aside wills is contained in the last part (Part 5).

In Division VII, we have attempted to collect all the Code provisions dealing with administration of decedents' estates. In this Division, we have not included the general matters which would relate to all fiduciaries.

Division VIII contains all the provisions relating to foreign wills and ancillary administration. The sections which are not so frequently used, such as Estates of Absentees, Uniform Simultaneous Death Act, Felonious Death, and Escheat, are dealt with in Divisions IX, X, XI and XII respectively.

The arrangement of the provisions relating to guardianships and conservatorships follow the same pattern as those relating to estates of decedents. The provisions covering the matter of opening of guardianships and conservatorships are contained in Division XIII. Division XIV sets forth the provisions relating to the administration of guardianships and conservatorships, including the rights and title of the ward and the powers and duties of the guardian or conservator.

Division XV covers reports and accounting, and Division XVI contains the provisions for termination of the guardianship or conservatorship.

The provisions relating especially to trusts are contained in Division XVII.

EXPLANATION OF REFERENCES

References to the 1962 Code of Iowa are so indicated, e. g., 633.32 (1962 Code). The Code sections not otherwise indicated refer to sections of the Iowa Probate Code.

References to Model Probate Code are to a MODEL PROBATE CODE prepared for the Probate Law Division of the Section of Real Property Probate and Trust Law of the American Bar Association by its Model Probate Code Committee in cooperation with the Research Staff of the University of Michigan Law School and Monographs by Lewis M. Simes, Professor of Law, The University of Michigan, and Paul E. Basye of the San Francisco Bar, formerly Research Associate, The University of Michigan, and published by Callaghan & Company, 1946.

References to Codes of other states are so stated.

COMMITTEE MEMBERS

SHIRLEY A. WEBSTER, Winterset, *Chairman*
O. E. ANDERSON, Creston
WILLARD L. BOYD, Iowa City
WILLIAM CARR, Charles City
GERALD CHINN, Des Moines
CARLTON M. CORBETT, Sioux City
C. REAM DAUGHRITY, Des Moines
EARL FISHER, Rock Rapids
D. J. GOODE, Des Moines
E. C. HALBACH, Clinton
DONALD HARRIS, Bloomfield
MATTHEW J. HEARTNEY, JR., Des Moines
ROY HENDERSON, Belmond
RUSSELL HESS, Cedar Rapids
DWIGHT McCARTY, Emmetsburg
JACK W. PETERS, Council Bluffs
ROBERT C. REIMER, Denison
ALBERT C. ROBERTS, Des Moines
H. COSGROVE WALSH, Burlington
ARLEY J. WILSON, Marshalltown
EUGENE D. WRIGHT, Dubuque
ARTHUR A. ZIMMERMAN, Waterloo

DISPOSITION TABLE

Corresponding Sections

Showing where and how the sections of the Iowa Code of 1962, constituting the statutory probate law of Iowa, have been incorporated in the Probate Code of 1963.

Code 1962 Section	Changes	1963 Probate Code Section
532.21	Adapted	127, 128
533A.1–533A.5	Same	126–129
604.3	Reenacted	12
604.4	Adapted	12
614.1(3)	Revised	308
614.2	Replaced	412
631.1	Same	15
631.2	Similar	38
631.3	Same	39
631.4	Adapted	40
631.5	Adapted	17
631.6	Same	14
631.7	Adapted	13
631.8	Reworded	48
631.9	Same	19
631.10	Replaced	169–177
631.11	Same	49
631.12	Same	50
631.13	Same	51
632.1	Adapted	22
632.2	Changed	309
632.3	Adapted	23
632.4	Same	24
632.5	Same	25
632.6	Adapted	26
632.7	Replaced	169–177
632.8	Omitted	—
632.9	Omitted	—
632.10	Adapted	27
632.11	Adapted	29
632.12	Substituted	30
632.13	Substituted	31
632.14	Substituted	32
632.15	Adapted	41
633.1	Revised	264
633.2	Adapted	268
633.3	Adapted	266
633.4	Substituted	269
633.5	Repealed	—
633.6	Omitted	—
633.7	Revised	279
633.8	Reworded	282
633.9	Reworded	281
633.10	Added to	284
633.11	Substituted	286
633.12	Substituted	300
633.13	Adapted	267, 436
633.14	Adapted	436
633.15	Adapted	3
633.16	Adapted	273
633.17	Substituted	285
633.18	Substituted	297
633.19	Rewritten	310
633.20	Substituted	293
633.21	Similar	297
633.22	Adapted	298
633.23	Same	301
633.24	Adapted	302
633.25	Same	305
633.26	Same	306
633.27	Adapted	64
633.28	Adapted	64
633.29	Reworded	66
633.30	Substituted	66
633.31	Adapted	69
633.32	Replaced	169–177
633.33	Similar	496
633.34	Same	498
633.35	Omitted	see 383 et seq.
633.36	Omitted	see 383 et seq.

Code 1962 Section	Changes	1963 Probate Code Section
633.37	Omitted	see 383 et seq.
633.38	Omitted	see 383 et seq.
633.39	Adapted	227
633.40	Rewritten	228
633.41	Reworded	342
633.42	Adapted	343
633.43	Replaced	168–177
633.44	Adapted	184
633.45	Rewritten	178
633.46	Substituted	303
633.47	Rewritten	331 and 413
633.48	Omitted	(See R.C.P. #270)
633.49	Adapted	283
633.50	Rewritten	500
633.51	Substituted	502
633.52	Reworded	504
633.53	Adapted	144
633.54	Adapted	98 and 145
633.55	Adapted	146
633.56	Adapted	147
634.1	Revised	510
634.2	Adapted	511
634.3	Revised	512
634.4	Adapted	513
634.5	Adapted	514
634.6	Substituted	515
634.7	Substituted	515
634.8	Substituted	515
634.9	Substituted	515
634.10	Substituted	515
634.11	Adapted	516
634.12	Same	517
635.1	Revised	361
635.2	Adapted	363
635.3	In lieu of	364
635.4	Adapted	362
635.5	Substituted	365
635.6	Substituted	365
635.7	Adapted	211, 238, 332
635.8	Adapted	333
635.9	Adapted	336
635.10	Same	334
635.11	Same	335
635.12	Adapted	374
635.13	Revised	374
635.14	Adapted	112
635.15	Adapted	113
635.16	Similar	368
635.17	Enlarged	114, 115
635.18	Substituted	95
635.19	Adapted	349
635.20	Omitted	—
635.21	Adapted	387
635.22	Adapted	386
635.23	Adapted	386, 388, 389
635.24	Adapted	389
635.25	Adapted	389
635.26	Replaced	396
635.27	Adapted and Replaced	392, 396, 397, 398
635.28	Replaced	396
635.29	Replaced	396
635.30	Replaced	394
635.31	Replaced	394
635.32	Replaced	394
635.33	Substituted	399
635.34	Substituted	399
635.35	Adapted	401
635.36	Adapted	401
635.37	Adapted	402
635.38	Adapted	403
635.39	Adapted	404
635.40	Adapted	413
635.41	Simplified	99
635.42	Included	386
635.43	Adapted	100
635.44	Included	388
635.45	Included	389
635.46	Substituted	399
635.47	Substituted	399
635.48	Substituted	351
635.49	Substituted	351
635.50	Substituted	352
635.51	Adapted	265
635.52	Enlarged	351
635.53	Adapted	418, 419, 655
635.54	Adapted	418, 655
635.55	Substituted	443
635.56	Adapted	420, 656
635.57	Adapted	428, 438
635.58	Substituted	446
635.59	Substituted	447
635.60	Substituted	421–422
635.61	Substituted	424
635.62	Substituted	447
635.63	Replaced	430
635.64	Adapted	431, 661
635.65	Adapted	425, 433, 434
635.66	Adapted	425
635.67	Adapted	425
635.68	Adapted	410, 412, 415
635.69	Adapted	425, 433, 434
635.70	Substituted	421, 422

DISPOSITION TABLE

Code 1962 Section	Changes	1963 Probate Code Section
635.71	Adapted	425, 426, 433, 434
635.72	Adapted	117
635.73	Adapted	352, 355
635.74	Adapted	355
635.75	Adapted	471, 355
635.76	Adapted	471, 472
635.77	Adapted	471, 472
635.78	Adapted	471
635.79	Adapted	186
635.80	Adapted	186
636.1	Adapted	210, 211, 238
636.2	Omitted	—
636.3	Adapted	472
636.4	Adapted	473
636.5	Adapted	211, 238
636.6	Adapted	211, 238
636.7	Reworded	239
636.8	Omitted	—
636.9	Adapted	247
636.10	Adapted	248
636.11	Adapted	249
636.12	Adapted	250
636.13	Same	251
636.14	Adapted	252
636.15	Same	253
636.16	Reworded	254
636.17	Adapted	255
636.18	Adapted	256
636.19	Same	257
636.20	Adapted	258
636.21	Adapted	236, 264
636.22	Adapted	237
636.23	Adapted	245
636.24	Omitted	—
636.25	Rewritten	236, 237
636.26	Adapted	244
636.27	Adapted	240
636.28	Adapted	241
636.29	Similar	244
636.30	Similar	247
636.31	Adapted	219
636.32	Adapted	212, 219
636.33	Adapted	213
636.34	Adapted	214
636.35	Adapted	215
636.36	Adapted	216
636.37	Adapted	217
636.38	Adapted	218
636.39	Adapted	219
636.40	Adapted	219(3)
636.41	Adapted	219
636.42	Adapted	219
636.43	Repealed	219
636.44	Replaced	224, 225, 226
636.45	Adapted	221
636.46	Adapted	222
636.47	Same	535
636.48	Same	536
636.49	Adapted	537
636.50	Included	219
636.51	Adapted	543
636.52	Adapted	544
636.53	Adapted	545
636.54	Same	546
636.55	Omitted	—
637.1	Same	523
637.2	Same	524
637.3	Same	525
637.4	Same	526
637.5	Omitted	—
637.6	Adapted	527
637.7	Adapted	528
637.8	Omitted	—
638.1	Revised	20
638.2	Restated	469
638.3	Restated	469
638.4	Adapted	473
638.5	Adapted	162
638.6	Omitted	—
638.7	Omitted	—
638.8	Adapted	155, 157
638.9	Substituted	52
638.10	Reworded	122
638.11	Revised	488
638.12	Adapted	479
638.13	Adapted	159
638.14	Substituted	77
638.15	Adapted	45
638.16	Adapted	45
638.17	Adapted	160
638.18	Adapted	80
638.19	Adapted	112
638.20	Adapted	476
638.21	Adapted	96, 97
638.22	Reworded	79
638.23	Reworded	197
638.24	Reworded	198
638.25	Addition	199
638.26	Reworded	200
638.27	Reworded	202
638.28	Adapted	203
638.29	Substituted	65
638.30	Substituted	65
638.31	Substituted	65
638.32	Same	70
638.33	Substituted	469

Code 1962 Section	Changes	1963 Probate Code Section
638.34	Adapted	477
638.35	Adapted	35
638.36	Adapted	478, 487
638.37	Adapted	118
638.38	Same	119
638.39	Same	120
638.40	Same	121
638.41	Adapted	108

GUARDIANSHIPS AND CONSERVATORSHIPS

Code 1962 Section	Changes	1963 Probate Code Section
668.1	Adapted	559
668.2	Adapted	559
668.3	Adapted	574
668.4	Adapted	557, 559, 572
668.5	Replaced	168, 175, 634
668.6	Replaced	170, 634
668.7	Replaced	168, 174, 634
668.8	Replaced	642
668.9	Replaced	641
668.10	Adapted	81
668.11	Adapted	640
668.12	Adapted	640
668.13	Replaced	650
668.14–668.23	Replaced	652
668.24	Replaced	670, 671
668.25	Replaced	670, 671
668.26	Adapted	200
668.27	Adapted	65
668.28	Adapted	70
668.29	Replaced	70
668.30	Replaced	186
668.31	Replaced	65, 180
668.32	Adapted	566
668.33	Included	676, 678, 681
669.1	Adapted	603
669.2	Adapted	604
669.3	Adapted	606
669.4	Adapted	605
669.5	Adapted	606
669.6	Adapted	607
669.7	Adapted	608
670.1	Omitted	—
670.2	Replaced	556, 566, 570
670.3	Omitted	—
670.4	Replaced	552
670.5	Adapted	557, 572
670.6	Included	572
670.7	Adapted	566
670.8	Adapted	558, 573
670.9	Adapted	555, 569
670.10	Adapted	638
670.11	Replaced	615, 679
670.12	Omitted	—
670.13	Omitted	—
670.14	Replaced	673
670.15	Adapted	670
670.16	Replaced	652
670.17	Adapted	647
670.18	Replaced	667
670.19	Omitted	—
671.1	Replaced	580
671.2	Replaced	581
671.3	Replaced	582
671.4	Replaced	583
671.5	Adapted	584
671.6	Adapted	584
671.7	Omitted	—
671.8	Adapted	584
671.9	Adapted	634, 641, 646, 647
671.10	Adapted	675
671.11	Adapted	673
671.12	Replaced	65
671.13	Adapted	682
672.1	Omitted	—
672.2	Adapted	614
672.3	Adapted	566
672.4	Adapted	553, 567, 615
672.5	Adapted	558, 573
672.6	Adapted	555, 569
672.7	Adapted	616
672.8	Adapted	570
672.9	Adapted	174, 180, 634
672.10	Adapted	617
672.11	Adapted	670, 671
672.12	Replaced	65
672.13	Adapted	618
672.14	Replaced	123
672.15	Adapted	619
672.16	Adapted	621
672.17–672.19	Omitted	—
672.20	Adapted	620
672.21	Omitted	—

Code 1962 Section	Changes	1963 Probate Code Section
673.1–673.5	Replaced	100, 652
682.1	Replaced	169–177
682.2	Replaced	181
682.3	No change	
682.4	Reenacted	182
682.5	Replaced	182
682.6	Replaced	180
682.7	No change	
682.8	No change	
682.9	No change	
682.10	No change	
682.11	No change	
682.12	No change	
682.13	No change	
682.14	No change	
682.15	No change	
682.16	No change	
682.17	No change	
682.18	No change	
682.19	No change	
682.20	Replaced	186
682.21	Replaced	186
682.22	No change	
682.23	Supplemented	123, 127
682.24	Supplemented	123, 127
682.25	Supplemented	123, 127
682.26	Replaced	95
682.27	No change	
682.28	Adapted	469, 670, 671, 700
682.29	No change	
682.30	No change	
682.31	Amended	
682.32	Amended	
682.33	Amended	
682.34	Amended	
682.35	Adapted	474, 475
682.36	Adapted	475
682.37	No change	
682.38	No change	
682.39	No change	
682.40	No change	
682.41	No change	
682.42	No change	
682.43	No change	
682.44	No change	
682.45	No change	
682.46	No change	
682.47	No change	

IOWA PROBATE CODE

Acts 1963 (60 G.A.) S.F.No.165

IOWA PROBATE CODE

TITLE OF ACT

AN ACT to amend, revise and codify the law relating to probate, including descent and distribution, wills, administration and distribution of estates of decedents, trusts, administration of estates of persons under conservatorship, custody of persons under guardianship and to establish a probate code.

SENATE FILE 165

1963 GENERAL ASSEMBLY, REGULAR SESSION

Analysis.

DIVISION I. INTRODUCTION AND DEFINITIONS

PART 1. INTRODUCTION

Section

1. Short title.
2. How code to take effect.
   1. Effective date.
   2. Rights not affected.
   3. Severability.

PART 2. DEFINITIONS AND USE OF TERMS

3. Definitions and use of terms.
   1. Administrator.
   2. Bequeath.
   3. Bequest.
   4. Charges.
   5. Child.
   6. Clerk.
   7. Conservator.
   8. Costs of administration.
   9. Court.
   10. Debts.
   11. Devise (when used as a noun).
   12. Devise (when used as a verb).
   13. Devisee.
   14. Distributee.
   15. Estate.

Section
3. Definitions and use of terms—Continued
16. Executor.
17. Fiduciary.
18. Full age.
19. Guardian.
20. Guardian of the property.
21. Heir.
22. Incompetent.
23. Issue.
24. Legacy.
25. Legatee.
26. Letters.
27. Minor.
28. Person.
29. Personal representative.
30. Property.
31. Surviving spouse.
32. Temporary administrator.
33. Trustee.
34. Trusts.
35. Will.
4. Gender and number.

DIVISION II. PROBATE COURT, CLERK OF PROBATE COURT AND PROCEDURE IN PROBATE

PART 1. PROBATE COURT

10. Jurisdiction.
1. Estates of decedents and absentees.
2. Construction of wills and trust instruments.
3. Conservatorships and guardianships.
4. Trusts and trustees.
11. Declaratory judgments—determination of heirship—distribution.
12. County of jurisdiction.
13. Extent of jurisdiction.
14. Concurrent jurisdiction.
15. Probate court always open.
16. Control of probate records.
17. Judge disqualified—procedure.
18. Uniform rules in probate.
19. Process revoked.
20. Referee—examination of accounts—fees.
21. Appraisers' fees and referees' fees fixed by rule.

PART 2. CLERK OF PROBATE COURT

22. Probate powers of clerk.
23. Clerk's actions reviewed.

Section
24. Docketing and hearing.
25. Validity of clerk's orders.
26. Clerk not to prepare reports.
27. Probate docket.
28. Docketing trust proceedings.
29. Probate record.
30. Bonds given by fiduciaries.
31. Calendar.
32. Delinquent inventories and reports.

PART 3. PROCEDURE IN PROBATE

33. Nature of proceedings in probate.
34. Applicability of rules of civil procedure.
35. Reports and applications for orders.
36. Orders in probate.
37. Orders without notice.
38. Time and place of hearing.
39. Place of hearing—noncontest or agreement.
40. Notice.
41. Consular representatives—notice.
42. Requests for notice.
43. Notice and appearance.
44. Waiver of service of notice.
45. Notice of order served on fiduciary and attorney.
46. Proof of publication.
47. Proof of service and taxation of costs.
48. Certified copies affecting foreign real estate.
49. Transfer to another county.
50. Certified copy filed.
51. Certified copy recorded.
52. Mistakes corrected.
53. Submission and retention of vouchers and receipts.

DIVISION III. GENERAL PROVISIONS RELATING TO FIDUCIARIES

PART 1. QUALIFICATION, APPOINTMENT, SUBSTITUTION AND REMOVAL OF FIDUCIARIES

64. Qualification of fiduciaries.
65. Removal of fiduciary.
66. Appointment of successor fiduciary.
67. Powers of surviving cofiduciary.
68. Powers of successor fiduciary.
69. Substitution—effect.
70. Property delivered—penalty.

PART 2. POWERS APPLICABLE TO ALL FIDUCIARIES

Section
76. Two or more fiduciaries—exercise of powers.
77. Receipts by one fiduciary.
78. Third parties protected.
79. Fiduciaries considered as one.
80. Fiduciary of a fiduciary.
81. Suit by and against fiduciary.
82. Designation of attorney.
83. Continuation of business.
84. Delegation of authority.
85. Liability of fiduciary employing agents.
86. Reduction of fees when agents are employed.
87. Deposit of money in banks.
88. Law governing administration of estates of nonresidents.

PART 3. SPECIAL PROVISIONS RELATING TO PROPERTY

94. Platting.
95. Release of liens and mortgages.
96. Specific performance voluntary.
97. Specific performance involuntary.
98. Certificate of appointment and authority.
99. Federal stock authority to purchase.
100. Waiver of exemption.
101. Appraisal.
102. Costs and expenses.

PART 4. PROVISIONS RELATING TO ADMINISTRATION BY ALL FIDUCIARIES

General Provisions

108. Small legacies to minors—payment.
109. Inability to distribute estate funds.
110. Receipts taken.
111. Final discharge period.
112. Discovery of property.
113. Commitment.
114. Compromise of claims held by an estate.
115. Compromise of claims against an estate.
116. Abandonment of property.
117. Encumbered assets.
118. Attorney appointed for persons not represented.
119. Order and authority thereunder.
120. Compensation.
121. Substitution—division of fees.
122. Settlement contested.

Section

INVESTMENTS BY FIDUCIARIES

123. Investments by fiduciaries.

APPOINTMENT OF A NOMINEE BY BANKING INSTITUTIONS ACTING IN A FIDUCIARY CAPACITY

124. Investment may be held in name of nominee of bank or trust company.
125. Records of bank or trust company to show ownership.

COMMON TRUST FUNDS

126. Definitions.
127. Establishment of common trust funds.
128. Court accountings.
129. Uniformity of interpretation.

SIMPLIFICATION OF FIDUCIARY SECURITY TRANSFERS

130. Registration in the name of a fiduciary.
131. Assignment by a fiduciary.
132. Evidence of appointment or incumbency.
133. Adverse claims.
134. Nonliability of corporation and transfer agent.
135. Nonliability of third persons.
136. Territorial application.
137. Tax obligations.
138. Uniformity of interpretation.

PART 5. POWERS OF FOREIGN FIDUCIARIES

144. Mortgages and judgments.
145. Certificate of appointment and authority.
146. Filing of certificate.
147. Record.
148. Maintaining actions.
149. Filing of bond.

PART 6. LIABILITY OF FIDUCIARIES

155. Self-dealing by fiduciary prohibited.
156. Deposits by corporate fiduciaries.
157. Liability for property of estate.
158. Liability for property not a part of estate.
159. Judgment—execution.
160. Breach of duty.
161. Examination of fiduciaries.
162. Penalty.

PART 7. OATH AND BOND OF FIDUCIARIES

Section
168. Oath.
169. Bond.
170. Amount of bond.
171. Approval by clerk.
172. Will—waiver of bond.
173. Waiver of bond by distributees.
174. Guardians—bond.
175. Waiver of bond by court.
176. Reduction of bond by deposit.
177. Deposit in lieu of bond.
178. Letters.
179. Review by clerk when inventory is filed.
180. Bond changed.
181. Obligees of bond; joint and several liability.
182. Qualifications for sureties.
183. Authority for fiduciary and surety to enter into agreement for deposit of property or joint control.
184. Release of sureties before estate fully administered.
    1. Release for cause.
    2. Extent of liability of original and new sureties.
185. Insolvency of fiduciary.
186. Suit on bond.
    1. Execution of bond deemed as appearance.
    2. Summary enforcement in proceedings for administration.
    3. Enforcement by separate suit.
    4. Bond not void upon first recovery.
    5. Denial of liability by surety; intervention.
187. Limitation of action on bond.

PART 8. COMPENSATION OF FIDUCIARIES AND ATTORNEYS

197. Compensation.
198. Attorney fee.
199. Expenses and extraordinary services.
200. Compensation of other fiduciaries and their attorneys.
201. Court officers as fiduciaries.
202. Affidavit relative to compensation.
203. Affidavit for corporate fiduciary.
204. Fees of deceased fiduciary.

DIVISION IV. INTESTATE SUCCESSION

PART 1. RULES OF INHERITANCE

210. Rules of descent.
211. Share of surviving spouse if decedent left descendants.

Section
212. Share of surviving spouse where decedent left no descendants.
213. Appraisal.
214. Procedure determined by court.
215. Notice.
216. Objections.
217. Trial.
218. Right of spouse to select property.
219. Shares of others than surviving spouse.
220. Afterborn heirs; time of determining relationship.
221. Illegitimate child—inherit from mother.
222. Illegitimate child—inherit from father.
223. Effect of adoption.
224. Advancements—in general.
225. Valuation of advancements.
226. Death of advancee before intestate.

PART 2. PROCEDURE FOR OPENING ADMINISTRATION OF INTESTATE ESTATE

227. Administration granted.
228. Time allowed.
229. Petition for administration of an intestate estate.
230. Notice in intestate estates.

DIVISION V. RIGHTS OF SURVIVING SPOUSE

PART 1. RIGHT TO TAKE AGAINST THE WILL

236. Right of surviving spouse to elect to take against will.
237. Presumption that surviving spouse elects to take under will.
238. Share of surviving spouse who elects to take against will.
239. Share to embrace homestead.
240. Election to occupy homestead.
241. Time for election to occupy homestead.
242. Rights of election personal to surviving spouse.
243. Filing elections.
244. Incompetent spouse—election by court.
245. Record of election.
246. Election not subject to change.

PART 2. PROCEDURE FOR SETTING OFF SHARE

247. Setting off share of surviving spouse when electing to take against the will—time limit.
248. Referee—notice.
249. Mode of setting off share in real estate.
250. Report—delinquency.
251. Confirmation—new reference.
252. Confirmation conclusive—possession.

Section
253. Right contested.
254. Sale—division of proceeds.
255. Purchase of new homestead.
256. Security to avoid sale.
257. Security by surviving spouse.
258. Sale prohibited.

DIVISION VI. WILLS

PART 1. GENERAL PROVISIONS RELATING TO WILLS

264. Disposal of property by will.
265. Procedure prescribed by will.
266. Limitation on disposal by will.
267. Children born or adopted after execution of will.
268. Presumption attending devise to spouse.
269. After acquired property.
270. Contractual or mutual wills.
271. Effect of divorce.
272. Partial intestacy.
273. Antilapse statute.
274. Exception to antilapse statute.
275. Testamentary additions to trusts.
276. Effect on prior wills.
277. Uniformity of interpretation.
278. Devise of encumbered property.

PART 2. EXECUTION AND REVOCATION

279. Formal execution.
280. Competency of witnesses.
281. Interest of witnesses.
282. Defect cured by codicil.
283. Will executed in foreign state or country.
284. Revocation—cancellation—revival.

PART 3. CUSTODY

285. Custodian—filing—penalty.
286. Deposit of will with clerk.
287. Manner of deposit.
288. Delivery by clerk during lifetime of testator.
289. Delivery by clerk after death of testator.

PART 4. PROCEDURE FOR PROBATE OF WILLS

290. Petition for probate of will.
291. Contents of petition.
292. Petition for appointment of executor.

Section
293. Hearing on petition.
294. Order of preference for appointment of executor.
295. Nonresident executors of resident decedents.
296. Testimony of witnesses.
297. Deposition.
298. Witnesses unavailable.
299. Order admitting or disallowing will.
300. Order appointing executor.
301. Certificate of probate.
302. Record—copy for executor.
303. Notice of appointment.
304. Notice where no administration.
305. Record in foreign county.
306. Costs of transcript.

PART 5. ACTIONS TO SET ASIDE OR CONTEST OF WILLS

307. Setting aside probate of will.
308. Time within which contest must be filed.
309. Objections prior to admission of will to probate.
310. Contest or objection shall be tried as a law action.
311. Joinder of parties.
312. Election of defendants to join with contestants.
313. Taxation of costs.
314. Allowance for defending will.
315. Notice to devisees in other wills.
316. Where will is filed after letters of administration have been granted.
317. Where will is filed after letters testamentary have been granted.
318. Proof of execution.
319. Declaratory judgment to determine last will.

DIVISION VII. ADMINISTRATION OF ESTATES OF DECEDENTS

PART 1. GENERAL PROVISIONS

LIMITATION

330. Character of proceedings.
331. Limitation of administration.

EXEMPT PROPERTY AND INSURANCE

332. Exempt personal property.
333. Proceeds of insurance.
334. Surviving spouse included as "heir".
335. Share of survivor.

WRONGFUL DEATH

336. Damages for wrongful death.

PART 2. TEMPORARY ADMINISTRATION

Section
342. Temporary administration.
343. Inventory—preservation of property.

PART 3. TITLE AND POSSESSION OF DECEDENT'S PROPERTY

349. Security to sustain devise or bequest.
350. Title to decedent's estate; when property passes; possession and control thereof; liability for administration expenses, debts and family allowance.
351. Possession of real and personal property.
352. Collection of rents and payment of taxes and charges.
353. Surrender of possession upon application by personal representative.
354. Surrender of possession by any interested person.
355. Delivery of specific devise after nine months.

PART 4. INVENTORY

361. Inventory and report.
362. Filing mandatory.
363. Reporting failure to court.
364. Supplementary inventory.
365. Appraisement.
366. Debts of executor.
367. Inventory and appraisement as evidence.
368. Property for payment of creditor's claims.

PART 5. ALLOWANCE FOR SURVIVING SPOUSE

374. Allowance to surviving spouse.
375. Review of allowance to surviving spouse.
376. Allowance to minor children who do not reside with surviving spouse.
377. Review of allowance to minor children.

PART 6. SALE OF PROPERTY

383. When power given in will.
384. Equitable conversion and power of sale.
385. Conversion.
    1. When realty treated as personalty.
    2. When personalty treated as realty.
386. Sale, mortgage, pledge, lease or exchange of property; purposes.
387. Sale of personal property.
388. Petition to sell, mortgage, exchange, pledge or lease property.

Section
389. Notice and hearing on sale, mortgage, exchange, pledge or lease of property.
390. Leasing for term of not to exceed one year.
391. Quieting adverse claims.
392. Terms of sale.
393. Purchase by holder of lien.
394. Order to sell, mortgage, pledge, exchange or lease to be refused if bond given.
395. Validity of proceedings.
396. Order for sale, mortgage, pledge, exchange or lease of real property.
397. Sale at public auction.
398. Adjournment of sale at public auction.
399. Report and confirmation.
400. Execution of conveyance or other instrument.
401. Endorsement of confirmation.
402. Effect of conveyance—presumption.
403. Record in foreign county.
404. Transcript of court conveyance—record—effect.

PART 7. CLAIMS AGAINST DECEDENT'S ESTATE

TIME AND MANNER OF FILING CLAIMS

410. Limitation on filing claims against decedent's estate.
411. Pleading statute of limitations.
412. When claim not affected by statutes of limitation.
413. Claims barred when no administration commenced.
414. Liens not affected by failure to file claim.
415. Commencement or continuance of separate action.
416. Compulsory counterclaims—Rules of Civil Procedure.
417. Separate action in lieu of proceedings on claims.
418. Form and verification of claims—general requirements.
419. Requirements when claim founded on written instrument.
420. How claim entitled.
421. Unsecured claims not yet due.
422. Secured claims not yet due.
423. Procedure for secured claims.
424. Contingent claims.

CLASSIFICATION, ALLOWANCE AND PAYMENT OF DEBTS AND CHARGES

425. Classification of debts and charges.
426. Order of payment of debts and charges.
427. Payment of contingent claims by distributee; contribution.
428. Allowance by personal representative.
429. Compelling payment of claims.
430. Execution and levies prohibited.

Section
431. Claims of personal representative.
432. Allowance or disallowance of claim of personal representative.
433. Payment of debts and charges before expiration of six months period.
434. Payment of debts and charges after expiration of six months period.
435. Debts and charges not filed.
436. General order for abatement.
437. Contrary provision as to abatement.

DENIAL AND CONTEST OF CLAIMS

438. General denial of claims.
439. Disallowance by personal representative.
440. Contents of notice of disallowance.
441. Proof of service.
442. Claims barred after twenty days.
443. Request for hearing by claimant.
444. Applicability of rules of civil procedure.
445. Offsets and counterclaims.
446. Burden of proof.
447. Trial and hearing.
448. Allowance and judgment.

PART 8. ACCOUNTING, DISTRIBUTION, FINAL REPORT AND DISCHARGE

469. Interlocutory report.
470. Waiver of accounting.
471. Right of retainer.
472. Proceeds distributed in kind.
473. Final settlement—time limit.
474. Certificate as to payment of personal taxes.
475. Compromise of personal taxes.
476. Action against distributees—costs—tender.
477. Final report.
478. Notice of application for discharge.
479. Discharge.
480. Change of title certificate with administration.
481. Change of title certificate without administration.

PART 9. REOPENING

487. Limitation on rights.
488. Reopening settlement.
489. Reopening administration.

DIVISION VIII. FOREIGN WILLS AND ANCILLARY ADMINISTRATION

PART 1. FOREIGN WILLS

Section
495. Admission of wills of nonresidents.
496. Foreign probated wills.
497. Foreign wills as a muniment of title.
498. Foreign wills—procedure.
499. Appointment where no foreign probate.

PART 2. ANCILLARY ADMINISTRATION

500. Appointment of foreign administrator.
501. Application for appointment of foreign administrator.
502. Appointment of foreign fiduciary.
503. Application for appointment of foreign executor or trustee.
504. Removal of property—payment of claims.

DIVISION IX. ESTATES OF ABSENTEES

510. Administration authorized—petition.
511. Notice.
512. Service.
513. Proof of service—filing.
514. Hearing—continuance—orders.
515. Administration.
516. Rights of absentee barred—sale by spouse.
517. Missing soldiers or sailors—presumption of death.

DIVISION X. UNIFORM SIMULTANEOUS DEATH ACT

523. No sufficient evidence of survivorship.
524. Beneficiaries of another person's disposition of property.
525. Joint tenants.
526. Insurance policies.
527. Limitation of application.
528. Uniformity of interpretation.

DIVISION XI. FELONIOUS DEATH

535. Feloniously causing death.
536. Insurance beneficiary feloniously causing death.
537. Distribution to other heirs or insured.

DIVISION XII. PROCEEDINGS FOR ESCHEAT

543. Proceedings for escheat.
544. Notice to persons interested.
545. Sale—proceeds.
546. Payment to person entitled.

DIVISION XIII. OPENING GUARDIANSHIPS AND CONSERVATORSHIPS

PART 1. OPENING GUARDIANSHIPS

Section
552. Petition for appointment of guardian.
553. No notice required—minor.
554. Notice governed by Rules of Civil Procedure.
555. Pleadings and trial—Rules of Civil Procedure.
556. Appointment of guardian.
557. Appointment of guardian on voluntary petition.
558. Appointment of temporary guardian.
559. Preference as to appointment.
560. Appointment of guardian on a standby basis.

PART 2. OPENING CONSERVATORSHIPS—RESIDENTS

566. Petition for appointment of conservator.
567. No notice—minor.
568. Notice governed by Rules of Civil Procedure.
569. Pleadings and trial—Rules of Civil Procedure.
570. Appointment of conservator.
571. Preference as to appointment of conservator.
572. Appointment of conservator on voluntary petition.
573. Appointment of temporary conservator.
574. Procedure in lieu of conservatorship.

PART 3. CONSERVATORSHIPS FOR ABSENTEES

580. Petition for appointment of conservator for absentee.
581. Original notice governed by Rules of Civil Procedure.
582. Notice on county attorney.
583. Pleadings and trial—Rules of Civil Procedure.
584. Appointment of conservator.
585. Appointment of temporary conservator.

PART 4. STANDBY CONSERVATORSHIPS

591. Voluntary petition for appointment of conservator—standby basis.
592. Petition may nominate conservator.
593. Deposit of petition.
594. Revocation of petition.
595. Filing petition upon occurrence of condition.
596. Time of appointment of conservator.
597. Conservator shall have same powers and duties.

PART 5. FOREIGN CONSERVATORS

603. Appointment of foreign conservators.
604. Application.
605. Personal property.

Section
606. Copy of bond.
607. Order for delivery.
608. Recording of bond—notice to court.

PART 6. CONSERVATORSHIPS INVOLVING VETERANS ADMINISTRATION

614. Application of other provisions to veterans' conservatorships.
615. Administrator of veterans affairs—party in interest.
616. Ward rated incompetent by Veterans Administration.
617. Limitation on conservator acting for more than ten wards.
618. Compensation in conservatorships involving Veterans Administration.
619. Order for support and maintenance of ward.
620. Dual conservatorship proceedings not required.
621. Liberal construction.
622. In administering moneys paid by the Veterans Administration the conservator shall have the following powers and be subject to the following restrictions.

PART 7. COMBINING PETITION FOR GUARDIAN AND CONSERVATOR

627. Combining petitions.
628. Same person as guardian and conservator.

DIVISION XIV. ADMINISTRATION OF GUARDIANSHIPS AND CONSERVATORSHIPS

PART 1. APPOINTMENT AND QUALIFICATION OF GUARDIANS AND CONSERVATORS

634. Provisions applicable to all fiduciaries shall govern.
635. Combination of voluntary and standby petitions with involuntary petition for hearing.

PART 2. RIGHTS AND TITLE OF WARD

636. Effect of appointment of guardian or conservator.
637. Powers of ward.
638. Presumption of fraud.
639. Title to ward's property.
640. Conservator's right to possession.

PART 3. DUTIES AND POWERS OF CONSERVATOR

641. General duties of conservator.
642. Inventory of ward's property.
643. Disposal of will by conservator.
644. Court order to preserve testamentary intent of ward.

Section
645. Court to deliver will to clerk.
646. Powers of the conservator without order of court.
647. Powers of conservator subject to the approval of the court.
648. Appointment of attorney in compromise of personal injury settlements.
649. Powers of conservators—same as all fiduciaries.
650. Breach of contracts.
651. Tort liability of conservator.

PART 4. TRANSFERRING, ENCUMBERING AND LEASING PROPERTY BY CONSERVATOR

652. Procedure applicable to personal representatives shall govern.

PART 5. CLAIMS

653. Claims against the ward, the conservatorship or the conservator in that capacity.
654. Form and verification of claims—general requirements.
655. Requirements when claim founded on written instrument.
656. How claim entitled.
657. Filing of claim required.
658. Compelling payment of claims.
659. Allowance by conservator.
660. Execution and levy prohibited.
661. Claims of conservators.
662. Claims not filed.
663. Waiver of statute of limitations by conservator.
664. Liens not affected by failure to file claim.
665. Separate actions and claims.
666. Denial and contest of claims.
667. Payment of claims in insolvent conservatorships.

PART 6. GIFTS

668. Conservator may make gifts.

PART 7. GUARDIAN'S REPORT

669. Guardian's report.

PART 8. CONSERVATOR'S REPORT

670. Conservator shall report and account.
671. Requirements of report and accounting.

PART 9. COSTS AND ACCOUNTS

672. Payment of court costs in conservatorship.
673. Court costs in guardianship.
674. Settlement of accounts.

PART 10. TERMINATION OF GUARDIANSHIPS AND CONSERVATORSHIPS

Section
675. Cause for termination.
676. Assets exhausted.
677. Accounting to ward—notice of hearing.
678. Delivery of assets.
679. Petition to terminate.
680. Limit on application to terminate.
681. Assets of minor ward exhausted.
682. Discharge of conservator and release of bond.

DIVISION XV. TRUSTS

699. Powers of trustees.
700. Intermediate report of trustees.
701. Final report of trustees.
702. Notice of application for discharge.
703. Discharge.

DIVISION I—INTRODUCTION AND DEFINITIONS

PART 1. INTRODUCTION

§ 1. Short title

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

Bar Committee Comment

The use of the title, "Iowa Probate Code" is suggested as being both proper and convenient, just as the body of statute law pertaining to crimes and their punishment is frequently spoken of as the Iowa Criminal Code.

§ 2. How Code to take effect

1. Effective date. This Code shall take effect and be in force on and after January 1, 1964. The procedure herein prescribed shall govern all proceedings in probate brought after the effective date of this Code. It shall also govern further procedure in proceedings in probate then pending, except to the extent that, in the opinion of the court, its application in particular proceedings or parts thereof would not be feasible or would work injustice, in which event the former procedure shall apply.

2. **Rights not affected.** No act done in any proceeding commenced before this Code takes effect and no accrued or vested right shall be impaired by its provisions. When a right has been acquired, extinguished, or barred upon the expiration of a prescribed period of time governed by the provision of any statute in force before this Code takes effect, such provision shall remain in force and be deemed a part of this Code with respect to such right.

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

Bar Committee Comment

In making the transition from one set of statutory provisions to another covering the same subject, there is always the problem of how such transition affects rights. Of necessity the provisions of the new law must be effective as of a certain date, and the provisions of the old law must terminate as of the same date. There can be no overlapping. Rights cannot be construed or determined under two sets of laws. There is no real problem presented in connection with the rights that have already vested in the strict sense of real property or the strict sense of vested rights. However, there is an area where real injustice may be done if the rights were determined solely on the basis of whether or not they were "vested", in the strict sense. It was with this thought that the word "accrued" was inserted in this section, and the construction of this word must, of necessity, be left to the courts to construe the word liberally so as to prevent injustices in making the transition from the old provisions to the new Code.

PART 2. DEFINITIONS AND USE OF TERMS

§ 3. Definitions and use of terms

When used in this Code, unless otherwise required by the context, the following words and phrases shall be construed as follows:

1. **Administrator**—any person appointed by the court to administer an intestate estate.

2. **Bequeath**—includes the word "devise" when used as a verb.

3. **Bequest**—includes the word "devise" when used as a noun.

4. **Charges**—includes costs of administration, funeral expenses, cost of monument, and federal and state estate taxes.

5. **Child**—includes an adopted child but does not include a grandchild or other more remote descendants, nor, except as provided in

sections two hundred twenty-one (221) and two hundred twenty-two (222), an illegitimate child.

6. **Clerk**—"Clerk of the District Court" in the county in which the matter is pending and includes the term "Clerk of the Probate Court".

7. **Conservator**—a person appointed by the court to have the custody and control of the property of a ward under the provisions of this Code.

8. **Costs of administration**—includes court costs, fiduciary's fees, attorney fees, all appraisers' fees, premiums on corporate surety bonds, statutory allowance for support of surviving spouse and children, cost of continuation of abstracts of title, recording fees, transfer fees, transfer taxes, agents' fees allowed by order of court, and all other fees and expenses allowed by order of court in connection with the administration of the estate.

9. **Court**—the district court sitting in probate, and includes any judge of the judicial district in which the estate administration is pending.

10. **Debts**—includes liabilities of the decedent which survive, whether arising in contract, tort or otherwise.

11. **Devise**—when used as a noun, includes testamentary disposition of property, both real and personal.

12. **Devise**—when used as a verb, to dispose of property, both real and personal, by a will.

13. **Devisee**—includes legatee.

14. **Distributee**—a person entitled to any property of the decedent under his will or under the statutes of intestate succession.

15. **Estate**—the real and personal property of a decedent, a ward, or a trust, as from time to time changed in form by sale, reinvestment or otherwise, and augmented by any accretions or additions thereto and substitutions therefor, or diminished by any decreases and distributions therefrom.

16. **Executor**—means any person appointed by the court to administer the estate of a testate decedent.

17. **Fiduciary**—includes personal representative, executor, administrator, guardian, conservator and trustee to whom letters have been issued.

18. **Full age**—the state of legal majority attained through arriving at the age of twenty-one years or through having married, even though such marriage is terminated by divorce.

19. **Guardian**—the person appointed by the court to have the custody of the person of the ward under the provisions of this Code.

20. **Guardian of the property**—at the election of the person appointed by the court to have the custody and care of the property of a ward, the term "guardian of the property" may be used, which term shall be synonymous with the term "conservator".

21. **Heir**—any person, except the surviving spouse, who is entitled to property of a decedent under the statutes of intestate succession.

22. **Incompetent**—includes any person who has been adjudicated by a court to be incapable of managing his property, or caring for his own person, or both.

23. **Issue**—for the purposes of intestate succession, includes all lawful lineal descendants of a person, whether natural or adopted, except those who are the lineal descendants of his living descendants.

24. **Legacy**—a testamentary disposition of personal property.

25. **Legatee**—a person entitled to personal property under a will.

26. **Letters**—includes letters testamentary, letters of administration, letters of guardianship, letters of conservatorship, and letters of trusteeship.

27. **Minor**—a person who is not of full age.

28. **Person**—includes natural persons and corporations.

29. **Personal representative**—includes executor and administrator.

30. **Property**—includes both real and personal property.

31. **Surviving spouse**—the surviving wife or husband, as the case may be.

32. **Temporary administrator**—any person appointed by the court to care for an estate pending the probating of a proposed will, or to handle any special matter designated by the court.

33. **Trustee**—the person or persons appointed as trustee by the instrument creating the trust, or the person or persons appointed by the court to administer the trust.

34. **Trusts**—include only: testamentary trusts; express trusts where jurisdiction is specifically conferred on the court by the trust instrument; express trusts where the jurisdiction of the court is invoked by the trustee, beneficiary or any interested party for a limited purpose, or otherwise; and trusts which are established by a judgment or a decree of court which results in administration of the trust by the court, and the court entering the judgment or decree es-

tablishing such trust orders the administration of the trust transferred to the probate court.

35. **Will**—includes codicil; it also includes a testamentary instrument that merely appoints an executor, and a testamentary instrument that merely revokes or revives another will.

Bar Committee Comment

The use of statutory definitions in legislative acts promotes clearness in the meaning of the text of laws dealing with technical matters. The practice of inserting definitions is becoming quite common, and has been employed many times by the General Assembly of Iowa.

§ 4. Gender and number

When used in this Code, unless otherwise required by the context, the masculine gender includes the feminine and the neuter; the singular number includes the plural and the plural number includes the singular.

Bar Committee Comment

This provision promotes brevity and clarity in the drafting of the Probate Code.

§§ 5 to 9, inclusive, reserved for future use

DIVISION II—PROBATE COURT, CLERK OF PROBATE COURT AND PROCEDURE IN PROBATE

PART 1. PROBATE COURT

§ 10. Jurisdiction

The district court sitting in probate shall have jurisdiction of:

1. Estates of decedents and absentees.

The probate and contest of wills; the appointment of personal representatives; the granting of letters testamentary and of administration; the administration, settlement and distribution of estates of decedents and absentees, whether such estates consist of real or personal property or both.

2. Construction of wills and trust instruments.

The construction of wills and trust instruments during the administration of the estate or trust, whether said construction be incident to such administration, or as a separate proceeding.

3. Conservatorships and guardianships.

The appointment of conservators and guardians; the granting of letters of conservatorship and guardianship; the administration, settlement and closing of conservatorships and guardianships.

4. Trusts and trustees.

The appointment of trustees; the granting of letters of trusteeship; the administration of testamentary trusts; the administration of express trusts where jurisdiction is specifically conferred on the court by the trust instrument; the administration of express trusts where the administration of the court is invoked by the trustee, beneficiary or any interested party; the administration of trusts which are established by a decree of court and result in the administration thereof by the court; and the settlement and closing of all such trusts.

Bar Committee Comment

New. This is patterned after section 6 of the Model Probate Code and section 604.3 and 604.4 (1962 Code). The probate court is simply a division of the district court, and this section is designed to clarify the jurisdiction of the district court sitting in probate and to provide without any question that the district court sitting in probate shall have full jurisdiction of all matters pertaining to estates of decedents and absentees, guardianships, conservatorships, and trusts during the period of the administration of an estate, and to clarify the jurisdiction of the district court sitting in probate to interpret express trust agreements.

§ 11. Declaratory judgments—determination of heirship—distribution

During the administration of an estate, the district court sitting in probate shall have full, legal and equitable powers to make declaratory judgments in all matters involved in the administration of the estate, including those pertaining to the title of real estate, the determination of heirship, and the distribution of the estate. It shall have full, legal and equitable powers to enter final orders and decrees in all probate matters to effectuate its jurisdiction and to carry out its orders, judgments and decrees.

Bar Committee Comment

New. Patterned after Rules of Civil Procedure 261, 262 and 264. Since the district court sitting in probate is a "court of record" as provided in RCP 261, this section is simply a restatement of existing law and clearly establishes the power of the probate court to make declaratory judgments in all probate matters.

§ 12. County of jurisdiction

The court of each county shall have original and exclusive jurisdiction to administer the estates of all persons who are residents of the county, or who were residents at the time of their death, and all nonresidents of the state who have property, or who die leaving property in the county subject to administration, or whose property is afterwards brought into the county; to appoint conservators for nonresidents having property in the county; and to appoint conservators and guardians of residents of the county.

Bar Committee Comment

Adapted from 604.3 and 604.4 (1962 Code).

§ 13. Extent of jurisdiction

The court of the county in which a will is probated, or in which administration, conservatorship or guardianship is granted, shall have jurisdiction coextensive with the state in the settlement of the estate, and in the sale and distribution thereof.

Bar Committee Comment

Adapted from 631.7 (1962 Code).

§ 14. Concurrent jurisdiction

When a case is originally within the jurisdiction of the courts of two or more counties, the one which first takes cognizance thereof by the commencement of the proceedings shall retain the same throughout.

Bar Committee Comment

Same as 631.6 (1962 Code).

§ 15. Probate court always open

The court sitting in probate shall always be open for the transaction of probate business.

Bar Committee Comment

Same as 631.1 (1962 Code).

§ 16. Control of probate records

The court shall have jurisdiction and supervision of the probate records of the clerk, and may direct the destruction of records it deems to be old, obsolete or unnecessary, except that the probate record pro-

vided for in section twenty-nine (29) and the will record provided for in section three hundred two (302), or a copy thereof, shall be preserved at all times.

Bar Committee Comment

New. Simply codifies the inherent power of the court to supervise its clerk in the general performance of his record-keeping duties.

§ 17. Judge disqualified—procedure

Where the judge is a party, or is connected by blood or affinity with a person interested nearer than the fourth degree, or is personally interested in any probate matter, the same shall be heard before another judge of the same district, or be transferred to the court of another district, or a judge of another district shall be procured to hold court for the hearing of such matter.

Bar Committee Comment

Adapted from 631.5 (1962 Code).

§ 18. Uniform rules in probate

The supreme court shall have power to adopt rules of procedure in probate not inconsistent with the provisions of this Code. The judges of the district court sitting en banc may adopt rules of procedure in probate matters within their respective districts not inconsistent with the rules adopted by the supreme court and the provisions of this Code.

Bar Committee Comment

New. There are substantial variations in probate practices not only from one district to another, but also differences between counties within the same district. This section is designed to codify the inherent power of the court to adopt its own rules of procedure not inconsistent with the law.

§ 19. Process revoked

Any process or authority emanating from the court in probate matters may for good cause be revoked and a new one issued.

Bar Committee Comment

Same as 631.9 (1962 Code).

§ 20. Referee—examination of accounts—fees

For the auditing of the accounts of fiduciaries and for the performance of such other ministerial duties as the court may direct, the court

may appoint a referee in probate whenever in the opinion of the court it seems fit and proper to do so. The referee may be the clerk. No person shall be appointed as referee in any matter where he is acting as a fiduciary or as the attorney. All fees received by any county officer serving in the capacity of referee in probate shall become a part of the fees of his office and shall be accounted for as such.

Bar Committee Comment

Adapted from 638.1 (1962 Code), except it is made explicit that no one shall be appointed a referee where he is acting as a fiduciary or an attorney

§ 21. Appraisers' fees and referees' fees fixed by rule

The district court sitting en banc shall by rule fix the fees of probate referees. It shall also by rule provide, insofar as practicable, a uniform schedule of compensation for other appraisers, brokers, and agents employed at estate expense.

Bar Committee Comment

New. This is to provide for uniformity of practice and reasonableness of fees.

PART 2. CLERK OF PROBATE COURT

§ 22. Probate powers of clerk

The clerk shall have and may exercise within his county all the powers and jurisdiction of the court and of the judge thereof, in the following matters:

1. The appointment of personal representatives who are residents of the state, guardians and conservators for minors, the fixing and determining of the amount of the bond, or waiving the same when permitted by law or by will, and the approval of any and all bonds given by fiduciaries in the discharge of their duties.

2. The examination and approval of all intermediate and interlocutory accounts and reports of fiduciaries.

3. The admission of wills of decedents to probate, when not contested, and the making of necessary orders in relation thereto, including orders for the issuance of commissions to take depositions. Proof may be made before the clerk in the same manner as is made in open court.

4. The making of all necessary orders in relation to the personal effects of a deceased person, where no objection is filed, and perform all other acts within his jurisdiction, as provided in this Code.

Bar Committee Comment

Adapted from 632.1 (1962 Code).

§ 23. Clerk's actions reviewed

Any person aggrieved by any order made or entered by the clerk under the powers conferred in section twenty-two (22) may have the same reviewed in court upon motion filed within six months or before the hearing on the final report of the fiduciary, whichever is the earlier, and upon such notice as the court may prescribe.

Bar Committee Comment

Adapted from 632.3 (1962 Code), except that review limitation is changed from one year to six months.

§ 24. Docketing and hearing

Upon the filing of such a motion, the clerk shall place the cause or proceeding on the docket without additional docket fee, and the matter shall stand for hearing or trial de novo in open court.

Bar Committee Comment

Same as 632.4 (1962 Code).

§ 25. Validity of clerk's orders

The records, orders, and judgments made and entered by the clerk, as hereinbefore provided, and not reversed, set aside, or modified by the court, shall stand, and shall be of the same force, validity, and effect, and be entitled to the same faith and credit, as if they had been made by the court.

Bar Committee Comment

Adapted from 632.5 (1962 Code), no essential change.

§ 26. Clerk not to prepare reports

No clerk, deputy, or employee of the clerk shall act as attorney for a fiduciary, or make or assist in making, drafting, or filling out any report of any fiduciary or any other report to be filed in his office.

Bar Committee Comment

Adapted from 632.6 (1962 Code), no essential change.

§ 27. Probate docket

The clerk shall keep a book to be known as the Probate Docket, which shall show:

1. The name of every deceased person whose estate is administered or whose will is admitted to probate, and the date of his death.

2. The name of each person as to whom application for conservatorship or guardianship is made.

3. The names of all the heirs in intestate estates and the surviving spouse of such deceased intestate, and their ages and places of residence, so far as they can be ascertained.

4. The title of each trust where letters of trusteeship are issued.

5. A note of every sale of real estate made under the order of the court, with a reference to the volume and page of the record where a complete record thereof may be found.

Bar Committee Comment

Adapted from 632.10 (1962 Code), no essential change.

§ 28. Docketing trust proceedings

When a trust is created by a will, the administration thereof shall be treated as a separate proceeding, with a separate docket number, from the date of the order of appointment or confirmation of the original trustee, unless otherwise ordered by the court.

Bar Committee Comment

New. The purpose of this section is to improve upon the present record-keeping practices and to help distinguish trust proceedings from estate proceedings since trusts are usually of much longer duration.

§ 29. Probate record

The clerk shall also keep a book to be known as the Probate Record that shall contain full and complete journal entries of all orders made in relation to the business of each estate. When real estate is sold or mortgaged by a fiduciary under an order of court therefor, a complete record of the same shall be made in the probate record, including the petition, the notice, the returns of service, and all other papers filed, with the orders made relating thereto.

Bar Committee Comment

Adapted from 632.11 (1962 Code), no essential change.

§ 30. Bonds given by fiduciaries

The clerk shall also keep a book known as Record of Bonds, in which he shall record all bonds given by fiduciaries.

Bar Committee Comment

Adapted from 632.12 (1962 Code).

§ 31. Calendar

The clerk shall keep a court calendar, and enter thereon such matters as the court may prescribe.

Bar Committee Comment

Substitute for 632.13 (1962 Code). Permits the court to control its own calendar.

§ 32. Delinquent inventories and reports

On May 1 and November 1 of each year, the clerk shall notify the fiduciary and his attorney of any delinquent inventories or reports due by law in any pending estate, trust, guardianship, or conservatorship, and that unless such delinquent inventory or report is filed within sixty days thereafter, the matter shall be reported to the presiding judge. If the delinquent inventory is not filed within the time so specified, the fiduciary will be subject to removal under the provisions of section sixty-five (65) of this Code.

On July 1 and January 1 of each year, the clerk shall report to the presiding judge all delinquent inventories or reports in estates, trusts, guardianships or conservatorships on which such notice has been given and no report or inventory has been filed in response to the notice.

Bar Committee Comment

Substitute for 632.14 (1962 Code). This section is designed to expedite the administration and closings of estates by providing a means of reminding the fiduciaries of delinquencies and informing the court of any continuing delinquencies. The court under section 65 may remove dilatory fiduciaries.

PART 3. PROCEDURE IN PROBATE

§ 33. Nature of proceedings in probate

Actions to set aside or contest wills, for the involuntary appointment of guardians and conservators, and for the establishment of contested claims shall be triable in probate as law actions, and all

other matters triable in probate shall be tried by the probate court as a proceeding in equity.

Bar Committee Comment

New. This section specifies the three types of proceedings which are triable as law actions, with the parties being entitled to a jury trial on the issues presented. All other matters arising in probate will be tried by the court as equitable proceedings. This section does not divide the probate court into a court of law and a court of equity, but simply prescribes the procedure applicable to the matters before it.

§ 34. Applicability of Rules of Civil Procedure

All actions triable in probate shall be governed by the Rules of Civil Procedure, except as provided otherwise in this Code.

Bar Committee Comment

New. There is no essential difference between a trial in probate and the trial of any other cause.

§ 35. Reports and applications for orders

All reports and applications for orders in probate must be in writing, verified and self-explanatory, so that the clerk or court from a perusal thereof may understand the relief sought without explanations.

Bar Committee Comment

Adapted from 638.35 (1962 Code).

§ 36. Orders in probate

All orders and decrees of the court sitting in probate are final decrees as to the parties having notice and those who have appeared without notice.

Bar Committee Comment

New. This section provides a method whereby a final determination of a particular matter can be made by giving notice to affected parties and prevents the necessity of waiting until the hearing on the final report. All parties who appear at the hearing are bound by the proceedings whether served with notice or not. Such orders are final orders and are appealable.

§ 37. Orders without notice

All orders entered without notice or appearance are reviewable by the court at any time prior to the entry of the order approving the final report.

Bar Committee Comment

New. This section eliminates any question as to whether or not an order is binding when it is merely ex parte.

§ 38. Time and place of hearing

The hearing of any matter requiring notice shall be had at such time and place as the court may fix.

Bar Committee Comment

Adapted from 631.2 (1962 Code). Eliminates reference to term time.

§ 39. Place of hearing—noncontest or agreement

In cases where no objection, resistance or appearance has been filed, or by agreement, such hearing may be had at any place within the judicial district.

Bar Committee Comment

Adapted from 631.3 (1962 Code).

§ 40. Notice

When the court fixes a time and place of hearing, it may direct what notice shall be given, and no hearing shall be had until proof of the giving or of the waiver of such notice has been made. When the manner of service of notice is not prescribed by the court or by this Code, such notice shall be served in the same manner that is provided by the Rules of Civil Procedure for the commencement of actions. In the case of proceedings against unknown persons, notice may be given by publication in accordance with the Rules of Civil Procedure. In no event shall notice be given by publication, except under order of court, nor shall notice be given at any time by posting.

Bar Committee Comment

Adapted from 631.4 (1962 Code) and Rule 369 of the Rules of Civil Procedure. This section is designed to establish uniformity in the manner of probate notices. In order to avoid any question, it is specifically provided that notice by publication be given to unknown persons as required by the Rules of Civil Procedure. Since the expense of notice should not be incurred unnecessarily, no notice by publication shall be given without specific order of court. Posted

notices are eliminated since in contemporary life posted notices constitute no actual notice whatsoever and are not calculated to inform as required in Mullane v. Central Hanover Bank & Trust Company, 94 Lawyers Ed. 865, 70 Supreme Court Reporter 652 (1950).

§ 41. Consular representatives—notice

Whenever in the course of the administration of any estate, it shall appear that any subject, citizen, or national of a foreign country is interested as an heir, devisee, legatee, or otherwise, and the address of such person is unknown to the personal representative, the personal representative shall give notice by mail to the consular representative of such country for Iowa of the pendency of such proceedings and of the particular interest of such foreign subject. If such consular representative shall not have filed his designation and address with the clerk, then such notice shall be mailed to the chief diplomatic representative of such foreign country at Washington, D. C. Failure to give such notice shall in no event and in no manner affect title to property.

Bar Committee Comment

Adapted from 632.15 (1962 Code). A statement of the exact manner of giving notice is desirable for the protection of the fiduciary who has to give the notice as well as the alien who is entitled to receive notice. See 47 Iowa Law Review, p. 29–103.

§ 42. Requests for notice

At any time after the issuance of letters testamentary or of administration upon a decedent's estate, any person interested in the estate may file with the clerk a written request, in duplicate, for notice of the time and place of all hearings in such estate for which notice is required by law, by rule of court, or by an order in such estate. Such request for notice shall state the name and post-office address of such person and the name and post-office address of the attorney for the party requesting the notice. The clerk shall docket such request, and transmit the duplicate to the personal representative of the estate of the decedent. Thereafter, the personal representative shall, unless otherwise ordered by the court, serve, by ordinary mail, upon such person, or his said attorney, a notice of each such hearing.

Bar Committee Comment

New. This follows the practice in other states and provides an orderly manner for an interested person to be sure he is receiving notice on matters which will affect him. See Rule 290 of the Rules of Civil Procedure pertaining to request for notice in partition actions.

§ 43. Notice and appearance

In any matter pending in the probate court, the attorney general may request notice of all hearings therein as provided by section forty-two (42), and may, with the approval of the court, intervene in behalf of the public interest. The court, on its own motion, in any such matter involving the public interest, may direct the fiduciary to give notice of the hearing to the attorney general.

Bar Committee Comment

New. This section will enable the attorney general to have notice and appear where the interests of the general public should be protected. Originally, it was the recommendation of the committee, with the advice of the attorney general, that 682.48 through 632.59, inclusive, (1962 Code) (special provisions dealing with charitable trusts) be repealed and that the following section be substituted in lieu of said section:

> Charitable Trusts—Copies of Wills to Attorney General. When a will creating a charitable trust has geen admitted to probate, or when any instrument establishing a charitable trust has been filed with the clerk, the clerk shall forthwith mail a copy of such will or instrument to the attorney general. At any time, the attorney general may investigate for the purpose of determining and ascertaining whether or not such estate or trust is being administered in accordance with law and with the terms and purposes thereof, and may, at any time, make application to the court for such orders therein as may appear to be reasonable and proper to carry out the purposes of the trust. The words "charitable trust" as used in this section shall mean any fiduciary relationship with respect to property arising as a result of manifestation of an intention to create it and subjecting the person by whom the property is held to equitable duties to deal with the property for charitable, educational or religious purposes.

However, the legislature chose to retain such sections rather than adopt the proposed section.

§ 44. Waiver of service of notice

Any notice required under this Code, or by order of court, may be waived in writing by the person, or the fiduciary, entitled to receive such notice.

Bar Committee Comment

New. The purpose of this section is to provide for waiver of service of notice. Heretofore the right of a fiduciary to waive notice has been questioned.

§ 45. Notice of order served on fiduciary and attorney

When the court makes an order affecting a fiduciary, it shall be served upon him and his attorney of record in such manner as the court may prescribe.

Bar Committee Comment

New, and is in lieu of 638.15 and 638.16 (1962 Code). It will be necessary to serve notice on both the attorney and the fiduciary. Where it is not possible to serve the notice personally, it will be necessary for the court to prescribe the mode for service.

Cross reference: See section 82.

§ 46. Proof of publication

Proof of the publication of all notices that are by this Code or by order of court required to be published shall be made by an affidavit of the publisher or of any employee having knowledge of the facts.

Bar Committee Comment

Adapted from 622.94 (1962 Code).

§ 47. Proof of service and taxation of costs

Proof of service of any notice, required by this Code or by order of court, including those by publication, shall be filed with the clerk. The costs of serving any notice given by the fiduciary shall be taxed by the clerk as part of the costs of administration in said estate.

Bar Committee Comment

New, and is intended to make explicit the place where the proof of service is to be filed and against whom costs of service shall be taxed.

§ 48. Certified copies affecting foreign real estate

A certified copy of any proceedings, order, judgment, or deed, affecting real estate in any county other than that in which administration or conservatorship is originally granted, shall be furnished to the clerk of the court of the county where such real estate is situated, and shall by him be entered in the Probate Record.

Bar Committee Comment

Adapted from 631.8 (1962 Code).

§ 49. Transfer to another county

In any proceeding in probate, the court may, upon written showing, supported by affidavit, and on such notice to interested parties as the court may prescribe, transfer such proceeding to any other county,

when it is made to appear that such transfer will be in furtherance of justice. Thereupon, the matter shall be pending in such other county.

Bar Committee Comment

Same as 631.11 (1962 Code).

§ 50. Certified copy filed

The clerk of the court which orders such a transfer shall retain the original files and papers, but shall make a certified copy thereof and of all record entries pertaining to the proceedings. He shall at once file the same in the office of the clerk of the court to which the transfer has been made.

Bar Committee Comment

Same as 631.12 (1962 Code).

§ 51. Certified copy recorded

The clerk of the court to which the proceedings are transferred shall record at length, in the probate record of his county, the certified copy of the record entries referred to in section forty-nine (49).

Bar Committee Comment

Same as 631.13 (1962 Code).

§ 52. Mistakes corrected

Mistakes in settlements may be corrected at any time before the final discharge of any fiduciary on such notice, if any, as the court may direct.

Bar Committee Comment

See 638.9 (1962 Code). Simply defines the inherent power of the court to correct mistakes during administration. Notice is not required to correct clerical errors or other minor matters. If a correction is necessary involving a substantive right, the court may set the matter down on hearing and notice.

§ 53. Submission and retention of vouchers and receipts

In all accountings filed by fiduciaries, vouchers or receipts for all disbursements shall be filed or submitted by the fiduciary upon written request of any interested party, or upon order of court. After an order, or decree, has been entered approving such accounting, any vouchers or receipts which have been filed may be withdrawn under order of the court. Vouchers or receipts not filed, or which have been with-

drawn, shall be preserved by the fiduciary until the accounting of such fiduciary becomes final.

Bar Committee Comment

New. The intent of this section is to force the fiduciary to make vouchers or receipts available if the need arises without cluttering up the court files if there is no real necessity.

§§ 54 to 63, inclusive, reserved for future use

DIVISION III—GENERAL PROVISIONS RELATING TO FIDUCIARIES

PART 1. QUALIFICATION, APPOINTMENT, SUBSTITUTION AND REMOVAL OF FIDUCIARIES

§ 64. Qualification of fiduciary

Any person of full age and any corporation authorized to act in a fiduciary capacity is qualified to serve as a fiduciary in this state except the following:

1. One who is a mental retardate, mentally ill, a chronic alcoholic, or a spendthrift.

2. Any other person whom the court determines to be unsuitable.

Bar Committee Comment

This provision is a comprehensive statement of the necessary qualifications of a fiduciary. Adapted from 633.27 and 633.28 (1962 Code).

§ 65. Removal of fiduciary

When any fiduciary is, or becomes, disqualified under section sixty-four (64), has mismanaged the estate, failed to perform any duty imposed by law, or by any lawful order of court, or ceases to be a resident of the state, then the court may remove him. The court may upon its own motion, and shall upon the filing of a verified petition by any person interested in the estate, including a surety on the fiduciary's bond, order the fiduciary to appear and show cause why he should not be removed. Any such petition shall specify the grounds of complaint. The removal of a fiduciary after letters are duly issued to him shall not invalidate his official acts performed prior to removal.

Bar Committee Comment

Adapted from Model Probate Code Section 98. This section provides a concise statement of the basis and procedure for removing fiduciaries and replaces 638.29, 638.30 and 638.31 (1962 Code).

§ 66. Appointment of successor fiduciary

When any fiduciary fails to qualify, dies, is removed by the court, or resigns, and such resignation is accepted by the court, the court may, and if he were the sole or last surviving fiduciary, and the administration has not been completed, the court shall appoint another fiduciary in his place.

Bar Committee Comment

Adapted from Model Probate Code Section 99. To replace 633.12 633.29 and 633.31 (1962 Code).

§ 67. Powers of surviving cofiduciary

When the instrument creating the estate or trust requires two or more fiduciaries, and a vacancy occurs on account of the death, resignation, or removal of one of the fiduciaries, during the period of the vacancy thus created, the remaining fiduciary or fiduciaries shall have all the rights, titles and powers, whether discretionary or otherwise, of all the fiduciaries.

Bar Committee Comment

Adapted from Section 101 of the Model Probate Code.

§ 68. Powers of successor fiduciary

When a successor fiduciary is appointed, he shall have all the rights, powers, titles and duties of his predecessor, except that he shall not exercise powers given in the instrument creating the powers that by its express terms are personal to the fiduciary therein designated.

Bar Committee Comment

Adapted from Section 100 of the Model Probate Code. This section is a codification and amplification of the Iowa case law under which a successor fiduciary had all of the nondiscretionary powers granted by will to the person nominated as fiduciary in the will. Ellyson v. Lord, 124 Iowa 125, 99 N.W. 582 (1904); In re Estate of Jackson, 217 Iowa 1046, 252 N.W. 775 (1934). This section extends the case law principles so that the successor shall have all of the powers granted to the fiduciary named in the instrument creating the estate except those expressly made personal to the nominee by the said instrument.

§ 69. Substitution—effect

The substitution of a fiduciary shall occasion no delay in the administration of an estate. The periods herein specified within which acts are to be performed after the appointment of a fiduciary shall,

unless otherwise ordered by the court, be computed from the issuing of the letters to the first fiduciary.

Bar Committee Comment

Adapted from 633.31 (1962 Code).

§ 70. Property delivered—penalty

Upon the removal of any fiduciary, he shall be required by order of the court to deliver to the person who may be entitled thereto all the property in his hands or under his control belonging to the estate, and if he fails or refuses to comply with any proper order of the court, he may be committed to the jail of the county until he does.

Bar Committee Comment

Adapted from 638.32 (1962 Code).

§§ 71 to 75, inclusive, reserved for future use

PART 2. POWERS APPLICABLE TO ALL FIDUCIARIES

§ 76. Two or more fiduciaries—exercise of powers

Where there are two or more fiduciaries, they shall all concur in the exercise of the powers conferred upon them, unless the instrument creating the estate provides to the contrary. In the event that the fiduciaries cannot concur upon the exercise of any power, any one of the fiduciaries may apply to the court for directions, and the court shall make such orders as it may deem to be the best interests of the estate.

Bar Committee Comment

New. Previously in Iowa in the absence of a court order requiring unanimous consent of cofiduciaries to act, a majority of the corepresentatives could act notwithstanding the objection of the minority cofiduciaries. In re Estate of Doolittle, 169 Iowa 639, 145 N.W. 873 (1915). The committee drafted this section to require unanimous consent by all cofiduciaries unless otherwise provided by the instrument creating the estate. In the event the cofiduciaries fail to agree, any one of them is expressly authorized to apply to the court for instructions.

§ 77. Receipts by one fiduciary

One of the several fiduciaries may receive and receipt for any money, which receipt shall be given by him in his own name only, and he must individually account for all the money thus received and receipted for

by himself, and this shall not charge his cofiduciary, except insofar as it can be shown to have come into his hands.

Bar Committee Comment

Adapted from 638.14 (1962 Code).

§ 78. Third parties protected

A person who in good faith pays or transfers to a fiduciary any money or other property which the fiduciary as such is authorized to receive, is not responsible for the proper application thereof by the fiduciary; and any right or title acquired from the fiduciary in consideration of such payment or transfer is not invalid in consequence of a misapplication by the fiduciary.

Bar Committee Comment

Taken from Section 2 of the Uniform Fiduciaries Act and applies only when the fiduciary is "authorized to receive" the money or other property transferred. In advocating this provision the National Conference of Commissioners on Uniform State Laws has stated: "In the absence of a statute it has been held that one who makes payment to a trustee is bound to see to the application of the money. This rule is subject to various limitations, but it is uncertain how far these limitations go".

§ 79. Fiduciaries considered as one

In an action against several fiduciaries, in their fiduciary capacity, they shall be considered one person, and judgment may be taken against all as such, although not all were served with notice.

Bar Committee Comment

Adapted from 638.22 (1962 Code).

§ 80. Fiduciary of a fiduciary

A fiduciary has no authority to act in a matter wherein his decedent or ward was merely a fiduciary, except that he shall file a report and accounting on behalf of his decedent or ward in said matter.

Bar Committee Comment

Adapted from 638.18 (1962 Code).

§ 81. Suit by and against fiduciary

Any fiduciary may sue, be sued and defend in such capacity.

Bar Committee Comment

New Codification of existing Iowa Practice. Adapted from Rule 2 of the Rules of Civil Procedure.

§ 82. Designation of attorney

The designation of the attorney or attorneys employed by the fiduciary to assist him in the administration of the estate shall be filed in said estate proceedings. Such designation shall state the attorney's name and post-office address.

Bar Committee Comment

New. In other provisions of the Code, notices may be served upon the attorney for the fiduciary in certain circumstances. This section is necessary in order to facilitate the use of such provisions.

§ 83. Continuation of business

Upon a showing of advantage to the estate, the court may authorize the fiduciary to continue any business of the estate for the benefit thereof. The order may be without notice, or after such notice as the court may prescribe. The court may on its own motion, and upon the application of any interested party shall, review such authorization, and upon such review, may revoke or modify the same. The order may provide:

1. For the conduct of the business solely by the fiduciary, or jointly with one or more other persons; for the formation of a partnership for the conduct of such business; or for the formation of, or for the fiduciary to join in the formation of a corporation for the conduct of such business;

2. For the extent of the liability of the estate, or any part thereof, or of the fiduciary, for obligations incurred in the continuation of the business;

3. As to whether liabilities incurred in the conduct of the business are to be chargeable solely to the part of the estate set aside for use in the business, or to the estate as a whole;

4. As to the period of time for which the business may be conducted; and

5. Such other conditions, restrictions, regulations and requirements as the court may order.

Bar Committee Comment

Adapted from Section 131 of the Model Probate Code in lieu of 635.52 (1962 Code) which did not clearly authorize the court to direct the continuation of an estate business for any purpose other than for winding up. Under present Iowa law, a court order authorizing the continuation of a business may be ex parte, although subsequently creditors may attack the order. In re Estate of Harsh, 207 Iowa 84, 218 N.W. 537 (1928). It has also been held that where there was no court order to continue the business, the estate was not liable for ob-

ligations subsequently incurred in the operation of the business. Williams v. Schee, 214 Iowa 1181, 243 N.W. 529 (1923). The best interests of many modern-day estates require that the business be carried on if full value is to be protected as far as the widow, children, other heirs and creditors are concerned. Otherwise, much of the estate may be unduly sacrificed in an unwise immediate liquidation. This section is in accord with the modern trend to give the fiduciary greater power in this respect in those estates where the court finds that continuation of the business is prudent and desirable. Under this section, the court can determine whether the estate alone, or what part thereof, or the estate representative is liable for obligations incurred as a result of carrying on the business. Thus, the court can limit the personal liability of the fiduciary and can also provide for the business creditors having claims against the estate assets other than those used in the business. It is intended that the court shall have fairly broad discretion to find an independent solution to the particular problems of individual estates.

§ 84. Delegation of authority

Under order of court, with or without notice, a fiduciary may engage, at estate expense, outside specialists, and he may delegate to them, or consult with them for advice regarding the performance of aspects of the estate management which require professional skills or facilities which he does not possess, or does not possess in sufficient degree, and he may employ, at estate expense, subordinates and agents to perform ministerial acts and carry on or complete details of estate business under the policies and terms established by him.

Bar Committee Comment

New. Sections 84–86 were drafted to reflect the current state of common law. Initially, the courts took the position that the duties of a fiduciary could not be delegated. Gradually, however, the courts have recognized exceptions to this rule so that delegation has in fact been sustained in numerous cases. See *Delegation of Fiduciary Duties*, 46 Iowa L.Rev. 127 (1960). This section recognizes that the administration of modern estates often requires the services of specialists and assistants and provides statutory authorization for obtaining them.

§ 85. Liability of fiduciary employing agents

The fiduciary shall not be personally liable for the acts or omissions of any such specialist, subordinate or agent, unless it can be shown that said acts or omissons would have been a breach of duty by the fiduciary had he done it himself, and that,

1. The fiduciary directed or permitted the breach; or

2. He did not select or retain the said specialist, subordinate or agent with reasonable care; or

3. The fiduciary did not properly supervise the specialist, subordinate or agent; or

4. The fiduciary approved, acquiesced or co-operated in the neglect, omission, misconduct or default by the specialist, subordinate or agent.

Bar Committee Comment

Establishes standards to determine the fiduciary's liability for acts or omissions of agents employed by the fiduciary.

§ 86. Reduction of fees when agents are employed

The court shall, in fixing the fees of any fiduciary, consider the compensation allowed to any person employed by the fiduciary under the provisions of section eighty-four (84). If the court determines that the services rendered by such person were services that would normally have been performed by the fiduciary, the compensation of the fiduciary may, in the court's discretion, be reduced by all or any part of the compensation allowed to any such person.

Bar Committee Comment

New. Gives the court discretion to reduce the fiduciary's compensation where he has engaged delegates to perform services normally done by fiduciaries themselves.

§ 87. Deposit of money in banks

A fiduciary may deposit moneys and other assets belonging to the estate in any banking institution authorized to do business in the state of Iowa.

Bar Committee Comment

Codifies existing practice in Iowa.

§ 88. Law governing administration of estates of nonresidents

Except as otherwise provided in this Code, all provisions of the law relating to the administration of domestic estates and to the fiduciaries appointed therein, shall apply to the administration of the estate of a nonresident, the appointment of the fiduciary therein, and the granting of letters.

Bar Committee Comment

New. Designed to make all provisions of law which are applicable in the administration of the estates of residents apply to the estates of nonresidents, unless there is specific statutory provision to the contrary.

§§ 89 to 93, inclusive, reserved for future use

PART 3. SPECIAL PROVISIONS RELATING TO PROPERTY

§ 94. Platting

When it is for the best interests of the estate in order to dispose of real property, the court may, upon application by the fiduciary, or any other interested person, after notice and upon good cause shown, authorize the fiduciary, either alone or together with other owners, to plat any land belonging to the estate in accordance with the statutes in regard to platting. The court may authorize the fiduciary to execute any instruments which may be required of the titleholder or proprietor in connection with the platting of such land.

Cross reference: Ch. 409 of the Code of Iowa.

Bar Committee Comment

Adapted from Section 170 Model Probate Code. Last sentence was added to make explicit the authority of the fiduciary to execute all instruments required in connection with platting of real estate property in which an estate has an interest, e. g., security to complete improvements or utilities required by a city council or planning and zoning commission.

Cross reference: See Chapter 409 of the Code of Iowa.

§ 95. Release of liens and mortgages

Any fiduciary qualified under the laws of this state may, without prior order of court, release, assign or discharge, in whole or in part any mortgage, judgment or other lien held by the estate.

Bar Committee Comment

New. Derived in part from 633.53 (1962 Code) relating to powers of foreign fiduciaries. Authorizes the fiduciary to act where the transaction is largely ministerial.

§ 96. Specific performance voluntary

When an estate is under such an obligation to convey property as might be enforced by suit for specific performance, the fiduciary may without prior order of court execute such conveyance.

Bar Committee Comment

Adapted from 638.21 (1962 Code). Permits fiduciary to make such conveyance voluntarily and omits that part of 638.21 (1962 Code) which infers that an action is required by which the court would require such performance on the part of the fiduciary.

§ 97. Specific performance involuntary

When an estate is under obligation to convey property, the court may, upon application of any interested person, with or without notice as the court may direct, require the fiduciary to execute such a conveyance.

Bar Committee Comment

Adapted from 638.21 (1962 Code). Gives any interested party the right to apply to the court for an order requiring the performance of such conveyance, if the fiduciary refuses to act voluntarily as provided in the preceding section.

§ 98. Certificate of appointment and authority

When any instrument executed in accordance with the preceding three sections is to be recorded in a county other than the county in which the estate is pending, there shall also be recorded a certificate executed by the clerk of the court making the appointment, with seal affixed, showing the name of the court making the appointment, the date of the same, and that such fiduciary had not been discharged at the time of the execution of such instrument.

Bar Committee Comment

Adapted from 633.54 (1962 Code). Scope is broadened to apply to domestic as well as foreign fiduciaries and to conveyances contemplated under sections 96 and 97, as well as releases, etc.

§ 99. Federal stock authority to purchase

When the court shall enter an order authorizing the fiduciary to execute a mortgage to encumber any property of the estate to secure a loan obtained from any association or corporation created, or which may be created, by authority of the United States and as an instrumentality of the United States, the court may authorize the fiduciary to purchase stock in an association or corporation, when such a purchase of stock is necessary or required as an incident to, or condition of, obtaining the loan, and to mortgage the estate property for such purpose, as well as to make payment for the stock so purchased from the proceeds of the loan so obtained.

Bar Committee Comment

Adapted from 635.41 (1962 Code).

§ 100. Waiver of exemption

Any deed or mortgage executed by a fiduciary under order of court shall have the effect of waiving any exemption as to homestead or

otherwise of any person owning an interest in said real estate as fully as such owner could do if he were sui juris.

Bar Committee Comment

Adapted from 635.43 (1962 Code).

§ 101. Appraisal

At any time that the court may determine it to be to the best interests of the estate, it may order an appraisal of any or all of the property of an estate.

Bar Committee Comment

New. This section is applicable to all fiduciaries. The court is given broad powers. The method of appraisement and the number of appraisers is purposely left to the discretion of the court in each instance.

§ 102. Costs and expenses

In connection with the sale, mortgage, lease, pledge or exchange of property, the court may authorize the fiduciary to pay, out of the proceeds realized therefrom or out of other funds of the estate, the customary and reasonable auctioneers' and brokers' fees and any necessary expenses for abstracting, survey, revenue stamps, and other necessary costs and expenses in connection therewith.

Bar Committee Comment

Adapted from Section 169 of the Model Probate Code and codifies the practice almost uniformly followed.

§§ 103 to 107, inclusive, reserved for future use

PART 4. PROVISIONS RELATING TO ADMINISTRATION BY ALL FIDUCIARIES

GENERAL PROVISIONS

§ 108. Small legacies to minors—payment

Whenever a minor shall become entitled under the terms of a will to a bequest or legacy, to a share of the estate of an intestate, or to a beneficial interest in a trust fund upon the distribution thereof, and the value of such bequest, legacy, share, or interest shall not exceed the sum of one thousand dollars, and no conservator for such minor has theretofore been appointed, the court having jurisdiction of the

distribution of such funds may, in its discretion, upon the application of the fiduciary, enter an order authorizing such fiduciary to pay such bequest, legacy, share or interest to the parents of such minor, or to the person with whom such minor resides, for the use of such minor, and the receipt of such person or persons therefor, when presented to the court or filed with the report of distribution of any such fiduciary, shall have the same force and effect as though such payment had been made to a duly appointed and qualified conservator for such minor.

Bar Committee Comment

Adapted from 638.41 (1962 Code). Increases the amount of the small legacy from $500 to $1,000 and restricts the application thereof to minors.

§ 109. Inability to distribute estate funds

Any fiduciary having in his possession or under his control any funds, moneys or securities due or to become due to any other person to whom payment or delivery cannot be made as shown by the report of the fiduciary on file, may, upon order of court, deposit such property with the clerk and take the receipt of the clerk for the same. Such receipt shall specifically state from whom said property was derived, the description thereof, and the name of the person entitled to the same. Thereafter, such funds shall be held and disposed of by the clerk in accordance with the provisions of chapter six hundred eighty-two (682) of the Code of Iowa.

Bar Committee Comment

This section and the two following sections are adapted from 682.31–682.34 inclusively (1962 Code), except the requirements as to the notice are eliminated since notice requirements are adequately covered by this Code.

§ 110. Receipts taken

If such fiduciary shall otherwise discharge all the duties imposed upon him by such appointment, he may take the receipts of the clerk for such funds, moneys, or securities so deposited, which receipts shall specifically set forth from whom said funds, moneys, or securities were derived, the amount thereof, and the name of the person to whom due or to become due, if known.

Bar Committee Comment

Adapted from 682.32 (1962 Code). See comment under 109.

§ 111. Final discharge period

Such fiduciary may file such receipts with his final report, and if it shall be made to appear to the satisfaction of the court that he has in all other respects complied with the law governing his appointment and duties, the court may approve such final report and enter his discharge.

Bar Committee Comment

Adapted from 682.33 (1962 Code). See comment under 109.

§ 112. Discovery of property

The court may require any person suspected of having possession of any property, including records and documents, of the decedent, ward, or the estate, or of having had such property under his control, to appear and submit to an examination under oath touching such matters, and if on such examination it appears that he has the wrongful possession of any such property, the court may order the delivery thereof to the fiduciary. Such a person shall be liable to the estate for all damages caused by his acts.

Bar Committee Comment

Adapted from 635.14 and 638.19 (1962 Code). Broadened to cover all property including records.

§ 113. Commitment

If, upon being served with an order of the court requiring him to appear for interrogation, as provided in the preceding sections hereof, any person fails to appear in accordance therewith, or if, having appeared, he refuses to answer any question which the court thinks proper to be put to him in the course of such examination, or if he fails to comply with the order of the court requiring him to deliver the property to the fiduciary, he may be committed to the jail of the county until he does.

Bar Committee Comment

Adapted from 635.15 (1962 Code).

§ 114. Compromise of claims held by an estate

When it appears for the best interest of the estate, the fiduciary may, subject to approval of the court, effect a compromise with any debtor or other obligor, or extend, renew, or in any other manner, modify the terms of any obligation owing to the estate. If the fidu-

ciary holds a mortgage, pledge, or other lien upon property of another person, he may, in lieu of foreclosure, accept a conveyance or transfer of such encumbered assets from the owner thereof in satisfaction of the indebtedness secured by such lien, if it appears for the best interests of the estate, and if the court shall so order.

Bar Committee Comment

Based on Section 126 of the Model Probate Code, and is in lieu of 635.17 (1962 Code). Substantially broadens the power of the fiduciary to compromise claims held by an estate and includes the compromise of any pending suit which the estate is prosecuting, such as a wrongful death action. It is to be noted that court approval is necessary.

§ 115. Compromise of claims against an estate

When a claim against an estate has been filed, or suit thereon is pending, the creditor and the fiduciary may, if it appears for the best interests of the estate, subject to approval of the court, compromise the claim, whether it is due or not due, absolute or contingent, liquidated or unliquidated.

Bar Committee Comment

Adapted from Section 147 of the Model Probate Code. It is to be noted that court approval is necessary.

§ 116. Abandonment of property

When any property is valueless, or is so encumbered, or in such condition, that it is of no benefit to the estate, the court may order the fiduciary to abandon it, or make such other disposition of it as may be suitable in the premises.

Bar Committee Comment

Adapted from Section 128 of the Model Probate Code. Facilitates the administration of estates by allowing the fiduciaries to eliminate doubtful or worthless property from his reports for accounting purposes. This section does not interfere with passage of title to such property under the provisions of this Code. See Minnesota statute (1941) Section 525.401.

§ 117. Encumbered assets

When any assets of the estate are encumbered by mortgage, pledge or other lien, the fiduciary may pay such encumbrance or any part thereof, renew or extend any obligation secured by the encumbrance, or may convey or transfer such assets to the creditor in satisfaction of his lien, in whole or in part, whether or not the holder of the encumbrance has filed a claim, or he may purchase lands claimed or

contracted for by the decedent, if it appears to be for the best interests of the estate and if the court shall so order. The making of such payment shall not increase the share of the distributee entitled to such encumbered assets.

Cross reference: See section 423.

Bar Committee Comment

Based on Section 149 of the Model Probate Code and adapted from 635.72 (1962 Code). See section 278 for devise of encumbered property and section 423 for procedure for payment of secured claims in estates of decedents.

§ 118. Attorney appointed for persons not represented

At or before the hearing in any proceedings under this Code, where all the parties interested in the estate are required to be notified thereof, the court, in its discretion, may appoint some competent attorney to represent any interested person who has been served with notice and who is otherwise unrepresented

Bar Committee Comment

Adapted from 638.37 (1962 Code) but substantially reduced in length by omitting the specific designations of proceedings and parties.

§ 119. Order and authority thereunder

The order making the appointment of such attorney must specify the names of the parties, so far as known, for whom he is appointed, and he will be authorized to represent such parties in all such proceedings subsequent to his appointment.

Bar Committee Comment

Adapted from 638.38 (1962 Code).

§ 120. Compensation

Any attorney so appointed under the authority of section one hundred eighteen (118) shall be paid for his services out of the estate, as a part of the costs of administration, a fee to be fixed by the court, and upon distribution of the estate, the fee may be charged to the party represented by him.

Bar Committee Comment

Adapted from 638.39 (1962 Code).

§ 121. Substitution—division of fee

The court may substitute another attorney for the one first appointed under the authority of section one hundred eighteen (118),

in which case the fees must be divided in proportion to the services rendered.

Bar Committee Comment

Adapted from 638.40 (1962 Code).

§ 122. Settlement contested

The acts of the fiduciary without prior approval of court after notice, may be contested by any interested person at or before the entry of the order discharging the fiduciary.

Bar Committee Comment

Adapted from 638.10 (1962 Code). See also sections 36 and 37 of this Code. (45 Iowa Law Review, 198, *Finality of Intermediate Orders.*)

INVESTMENTS BY FIDUCIARIES

§ 123. Existing investments

Any fiduciary may, by and with the consent of the court having jurisdiction over such fiduciary or under permission of the will or other instrument creating the estate, continue to hold any investment originally received by him, and, also, any increase thereof. The fiduciary may also make investments which he may deem necessary to protect and safeguard investments already made.

Bar Committee Comment

The committee recommended to the legislature the enactment of the Model Prudent Man Investment Act. Thirty-nine jurisdictions recognize the prudent man rule as the proper philosophical concept underlying the making of trust investments. Twenty of these have enacted the model Act with or without minor variations, and six have the rule by judicial decisions. Four more allow full investment discretion to fiduciaries, but in language somewhat different from that of the model Act. The Iowa Supreme Court, In re Wiley's Guardianship, 239 Iowa 1225, 34 N.W. 593 (1948), held that a guardian may, with authority of the court, invest in investments found to be safe and advantageous although not included among those listed in 682.23 (1962 Code). It was originally intended by the committee that these sections would supersede 682.23 (1962 Code) insofar as the estates governed by this Code are concerned. The legislature decided not to enact the Prudent Man Investment Act. It is thereby noted that as a result of such decision the amendment to subsection 15 of section 682.23 (1962 Code) is ineffective at least until such time as the Model Prudent Man Investment rule, or such provisions on investments, are enacted.

Section 123 is adapted from 682.25 (1962 Code).

APPOINTMENT OF A NOMINEE BY BANKING INSTITUTIONS ACTING IN A FIDUCIARY CAPACITY

§ 124. Investment may be held in name of nominee of bank or trust company

If court approval is first obtained, any state or national bank or trust company, when acting with the consent of its cofiduciary, if any, may cause any investment held in any such capacity to be registered and held in the name of a nominee or nominees of such bank or trust company. Such cofiduciary is hereby empowered to give such consent unless it is specifically forbidden in the instrument creating the fiduciary relationship. Such bank or trust company shall be liable for the acts of any such nominee with respect to any investment so registered.

Bar Committee Comment

Adapted from 532.21 (1962 Code). It is to be noted that this section, as did 532.21 (1962 Code) requires court accounting which is not required in the model Act. (The committee recommended that the requirement of court approval in these sections be deleted in order that the sections might conform with the uniform act, but the legislature decided to retain such requirement.)

§ 125. Records of bank or trust company to show ownership

The records of said bank or trust company shall at all times show the ownership of any such investment, which investment shall be in the possession and control of such bank or trust company and be kept separate and apart from the assets of such bank or trust company.

Bar Committee Comment

Comment. See Comment under section 124.

COMMON TRUST FUNDS

Bar Committee Comment

These sections are the Uniform Common Trust Fund Act now a part of the Iowa law, Chapter 533A (1962 Code) and are enacted as part of this Probate Code.

§ 126. Definitions

1. "Common trust fund" means a fund maintained by a bank or trust company exclusively for the collective investment and reinvest-

ment of moneys contributed thereto by the bank or trust company in its capacity as a fiduciary or cofiduciary.

2. "Fiduciary", for the purposes of sections one hundred twenty-six (126) to one hundred twenty-nine (129), inclusive, of this Code, means acting in any of the following capacities, namely: testamentary trustee appointed by any court, trustee under any written agreement, declaration or instrument of trust, executor, administrator, guardian, or conservator.

§ 127. Establishment of common trust funds

Any bank or trust company qualified to act as fiduciary in this state may establish common trust funds for the purpose of furnishing investments to itself as fiduciary, or to itself and others, as cofiduciaries; and may, as such fiduciary or cofiduciary, invest funds which it lawfully holds for investment in interests in such common trust funds, if such investment is not prohibited by the instrument, judgment, decree, or order creating such fiduciary relationship, and if, in the case of cofiduciaries, the bank or trust company procures the consent of its cofiduciaries to such investment. If the instrument creating the fiduciary relationship gives to the bank or trust company the exclusive right to select investments, the consent of the cofiduciary shall not be required.

§ 128. Court accountings

Unless ordered by a court of competent jurisdiction, the bank or trust company operating such common trust funds is not required to render a court accounting with regard to such funds; but it may, by application to the court, secure approval of such an accounting on such conditions as the court may establish.

When an accounting of a common trust fund is presented to a court for approval, the court shall assign a time and place for hearing, and order notice thereof by: (1) publication once each week for three consecutive weeks in a newspaper of general circulation, published in the county in which the bank or trust company operating the common trust fund is located, the first publication to be not less than twenty days prior to the date of hearing, and (2) sending by ordinary mail not less than fourteen days prior to the date of hearing, a copy of the notice prescribed to all beneficiaries of the trust participating in the common trust fund whose names are known to the bank or trust company from the records kept by it in the regular course of business in the administration of said trusts, directed to them at the addresses shown by such records, and (3) such further notice, if any, as the court may order.

§ 129. Uniformity of interpretation

Sections one hundred twenty-six (126), one hundred twenty-seven (127) and one hundred twenty-eight (128) shall be so interpreted and construed as to effectuate their general purpose to make uniform the law of those states which enact the common trust funds.

Simplification of Fiduciary Security Transfers

Bar Committee Comment

These sections are adapted from the Uniform Act for Simplification of Fiduciary Security Transfers. Definitions contained in the Uniform Act are deleted as they are considered unnecessary in view of the general definitions set forth in section 3 of this Code and the established general usage of the terms.

§ 130. Registration in the name of a fiduciary

A corporation or transfer agent registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship, and thereafter the corporation and its transfer agent may assume without inquiry that the newly registered owner continues to be the fiduciary until the corporation or transfer agent receives written notice that the fiduciary is no longer acting as such with respect to the particular security.

§ 131. Assignment by a fiduciary

Except as otherwise provided in this Code, a corporation or transfer agent making a transfer of a security pursuant to an assignment by a fiduciary:

1. May assume without inquiry that the assignment, even though to the fiduciary himself or to his nominee, is within his authority and capacity, and is not in breach of his fiduciary duties;

2. May assume without inquiry that the fiduciary has complied with any controlling instrument and with this Code, including any law requiring the fiduciary to obtain court approval of the transfer; and

3. Is not charged with notice of, and is not bound to obtain or examine, any court record, or any recorded or unrecorded document, relating to the fiduciary relationship or the assignment, even though the record or document is in its possession.

§ 132. Evidence of appointment or incumbency

A corporation or transfer agent making a transfer pursuant to an assignment by a fiduciary who is not the registered owner shall obtain the following evidence of appointment or incumbency:

1. In the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof, and dated within sixty days before the transfer; or

2. In any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the corporation or transfer agent to be responsible, or, in the absence of such a document or certificate, other evidence reasonably deemed by the corporation or transfer agent to be appropriate. Corporations and transfer agents may adopt standards with respect to evidence of appointment or incumbency under this subsection two (2), provided such standards are not manifestly unreasonable. Neither the corporation nor transfer agent is charged with notice of the contents of any document obtained pursuant to this subsection two (2), except to the extent that the contents relate directly to the appointment or incumbency.

§ 133. Adverse claims

1. A person asserting a claim of beneficial interest adverse to the transfer of a security pursuant to an assignment by a fiduciary may give the corporation or transfer agent written notice of the claim. The corporation or transfer agent is not put on notice unless the written notice identifies the claimant, the registered owner and the issue of which the security is a part, provides an address for communications directed to the claimant and is received before the transfer. Nothing in this Act relieves the corporation or transfer agent of any liability for making or refusing to make the transfer after it is put on notice, unless it proceeds in the manner authorized in subsection two (2).

2. As soon as practicable after the presentation of a security for transfer pursuant to an assignment by a fiduciary, a corporation or transfer agent which has received notice of a claim of beneficial interest adverse to the transfer may send notice of the presentation by certified or registered mail to the claimant at the address given by him. If the corporation or transfer agent so mails such a notice, it shall withhold the transfer for thirty days after the mailing, and shall then make the transfer unless restrained by a court order.

§ 134. Nonliability of corporation and transfer agent

A corporation or transfer agent incurs no liability to any person by making a transfer or otherwise acting in a manner authorized by sections one hundred thirty (130) through one hundred thirty-three (133).

§ 135. Nonliability of third persons

1. No person who participates in the acquisition, disposition, assignment or transfer of a security by or to a fiduciary, including a person who guarantees the signature of the fiduciary, is liable for participation in any breach of fiduciary duty by reason of failure to inquire whether the transaction involves such a breach unless it is shown that he acted with actual knowledge that the proceeds of the transaction were being, or were to be, used wrongfully for the individual benefit of the fiduciary, or that the transaction was otherwise in breach of duty.

2. If a corporation or transfer agent makes a transfer pursuant to an assignment by a fiduciary, a person who guaranteed the signature of the fiduciary is not liable on the guarantee to any person to whom the corporation or transfer agent by reason of sections one hundred thirty (130) through one hundred thirty-three (133) incurs no liability.

3. This section does not impose any liability upon the corporation or its transfer agent.

§ 136. Territorial application

1. The rights and duties of a corporation and its transfer agents in registering a security in the name of a fiduciary, or in making a transfer of a security pursuant to an assignment by a fiduciary, are governed by the law of the jurisdiction under whose laws the corporation is organized.

2. Sections one hundred thirty (130) through one hundred thirty-five (135) apply to the rights and duties of a person other than the corporation and its transfer agents with regard to acts and omissions in this state in connection with the acquisition, disposition, assignment or transfer of a security by or to a fiduciary, and of a person who guarantees in this state the signature of a fiduciary in connection with such a transaction.

§ 137. Tax obligations

Sections one hundred thirty (130) through one hundred thirty-six (136) do not affect any obligation of a corporation or transfer agent

with respect to estate, inheritance, succession, or other taxes imposed by the laws of this state.

§ 138. Uniformity of interpretation

Sections one hundred thirty (130) through one hundred thirty-seven (137) shall be so construed as to effectuate their general purpose to make uniform the transfers of securities by fiduciaries.

§§ 139 to 143, inclusive, reserved for future use

PART 5. POWERS OF FOREIGN FIDUCIARIES

§ 144. Mortgages and judgments

Judgments rendered by any court in the state of Iowa and mortgages belonging to an estate, trust, or to a person under conservatorship may, without prior order of court, be released, discharged or assigned, in whole or in part as to any particular property, and deeds may be executed in performance of real estate contracts entered into before the creation of the estate, trust, or conservatorship, by any foreign fiduciary, receiver, referee, assignee or commissioner, or by any other person acting in a fiduciary capacity appointed by a court of record of any foreign state or country, where a statement is filed by said fiduciary that no fiduciary, receiver, referee, assignee, or commissioner has been appointed and qualified in this state. Such release, satisfaction, discharge, assignment or deed may be made without any order of court in any manner or by any instrument which would be valid and effective if made by a like officer qualified under the law of this state.

Bar Committee Comment

Adapted from 633.53 (1962 Code). Enlarged to include performance of real estate contracts.

§ 145. Certificate of appointment and authority

Before any instrument executed by such foreign fiduciary or officer as authorized by section one hundred forty-four (144) shall be effective, a certificate executed by the court or clerk making the appointment, with seal attached, if such officer has a seal, shall be recorded. Such certificates shall state the name of the court making such appointment, the date of the appointment, and that such fiduciary or officer has not been discharged at the time of the execution of said instrument.

Bar Committee Comment

Adapted from 633.54 (1962 Code) to conform with section 148.

§ 146. Filing of certificate

The certificate aforesaid shall be filed for record:

1. In the case of judgments, in the office of the clerk in which the judgment is of record or in which it has been filed, and

2. In the case of mortgages and deeds executed in performance of real estate contracts, in the office of the appropriate county recorder.

Bar Committee Comment

Adapted from 633.55 (1962 Code) to conform with section 148.

§ 147. Record

Such certificate shall be recorded by the proper officer in the judgment records of the court in which the same appears of record, or in the appropriate chattel or real estate records, as the case may be.

Bar Committee Comment

Adapted from 633.56 (1962 Code).

§ 148. Maintaining actions

When there is no administration of an estate nor a petition therefor pending, in this state, a foreign fiduciary may maintain actions and proceedings in this state subject to the requirements and conditions imposed upon nonresident suitors generally.

Bar Committee Comment

New. Adapted from section 257 of the Model Probate Code.

§ 149. Filing of bond

At the time of commencing any action or proceeding in any court of this state, the foreign fiduciary shall file with the court an authenticated copy of his appointment, and of his official bond, if he has given a bond. If the court believes that the security furnished by him in the domiciliary administration is insufficient to cover the proceeds of the action or the proceeding, or for any other reason or cause, it may at any time order the action or proceeding stayed until sufficient security is furnished in the action or proceeding.

Bar Committee Comment

New. Adapted from section 258 of the Model Probate Code.

§§ 150 to 154, inclusive, reserved for future use

PART 6. LIABILITY OF FIDUCIARIES

§ 155. Self-dealing by fiduciary prohibited

No fiduciary shall in any manner deal with himself, except on order of court after notice to all interested persons, and shall derive no profit other than his distributive share in the estate from the sale or liquidation of any property belonging to the estate.

Bar Committee Comment

Codification of present case law governing fiduciaries, except that self-dealing is permitted under order of court after notice to all interested persons.

§ 156. Deposits by corporate fiduciaries

Section one hundred fifty-five (155) shall not be construed to prohibit a corporate fiduciary from making a deposit of estate funds in its own banking department.

Bar Committee Comment

New. Gives statutory approval to a practice normally followed by fiduciaries as a matter of routine.

§ 157. Liability for property of estate

Every fiduciary shall be liable for, and chargeable in his accounts with, all of the estate that comes into his possession at any time, including all the income therefrom; but he shall not be accountable for any debts due to the estate or other assets of the estate that remain uncollected without his fault. He shall not be entitled to profit from the increase in value of any asset of the estate, nor shall he be chargeable with loss resulting, without his fault, from the decrease in value or the destruction of any part of the estate, excepting, only to the extent of his pro rata share in such gain or loss as one of the distributees of the estate.

Bar Committee Comment

New. Adapted from section 172(a) of the Model Probate Code in lieu of 638.6 and 638.7 (1962 Code).

§ 158. Liability for property not a part of estate

Every fiduciary shall be chargeable in his accounts with property not a part of the estate that comes into his hands at any time, and shall be liable to the persons entitled thereto, if:

1. The property was received under a duty imposed upon him by law in the capacity of fiduciary; or

2. He has commingled such property with the assets of the estate.

Bar Committee Comment

New. Adapted from section 172(b) of the Model Probate Code.

§ 159. Judgment—execution

If judgment is rendered against a fiduciary for costs in any action prosecuted or defended by him in that capacity, execution shall be awarded against him as for his own debt, if it appears to the court that such action was prosecuted or defended without reasonable cause.

Bar Committee Comment

Adapted from 638.13 (1962 Code).

§ 160. Breach of duty

Every fiduciary shall be liable and chargeable in his accounts for neglect or unreasonable delay in collecting the credits or other assets of the estate or in selling, mortgaging or leasing the property of the estate; for neglect in paying over money or delivering property of the estate he shall have in his hands; for failure to account for or to close the estate within the time provided by this Code; for any loss to the estate arising from his embezzlement or commingling of the assets of the estate with other property; for loss to the estate through self-dealing; for any loss to the estate arising from wrongful acts or omissions of his cofiduciaries which he could have prevented by the exercise of ordinary care; and for any other negligent or willful act or nonfeasance in his administration of the estate by which loss to the estate arises.

Bar Committee Comment

Adapted from section 173(c) of the Model Probate Code.

§ 161. Examination of fiduciaries

The fiduciary may be examined under oath by the court upon any matter relating to his accounts.

Bar Committee Comment

Adapted from 638.5 (1962 Code).

§ 162. Penalty

In fixing the fees of any fiduciary, the court shall take into consideration any violation of this Code by the fiduciary, and may diminish the fee of such fiduciary to the extent the court may determine to be proper.

Bar Committee Comment

Adapted from 638.17 (1962 Code). See also section 86 "Reduction of Fees when Agents are employed" which points out to the court matters to be considered in fixing fees of a fiduciary.

§§ 163 to 167, inclusive, reserved for future use

PART 7. OATH AND BOND OF FIDUCIARIES

Bar Committee Comment

General Comment: It is not possible to determine fairly in all cases the amount of the bond under rigid fixed rules. Sections 169 through 177 give the court discretion with respect to the amount of the bond. The determination of the amount of the bond should not be capricious, however. For the purpose of promoting a proper, uniform and consistent exercise of this discretion by the court, it is anticipated that the Supreme Court, or the district court in the exercise of its rule-making power, will promulgate rules particularizing the special circumstances to be considered in fixing the amount of each bond. These special circumstances, among others, might concern the character of the assets to be handled, the duration of the fiduciary's control of the assets, the fact that the fiduciary is the principal distributee, the fact that there are no debts, the fact that the assets might soon be exhausted, the fact that the assets might be converted into more liquid property, the fact that additional assets may soon be received or the value of existing assets increased by appreciation, growth or development.

Sections 168–171 replace 631.10, 632.7, 633.32, 633.43, 668.5, 668.6, 668.7 and 672.9 (1962 Code). 64.2 and 64.4 (1962 Code) will, however, continue to fix the particular conditions of the bond. 682.11 through 682.22 (1962 Code) will continue applicable to corporate sureties. 682.4 through 682.9 (1962 Code) will continue applicable to the manner of qualification of the sureties except as modified by Section 182 of this Code.

§ 168. Oath

Every fiduciary, before entering upon the duties of his office and within such time as the court or clerk directs, shall subscribe an oath that he will faithfully discharge the duties imposed upon him by law, according to the best of his ability.

§ 169. Bond

Except as herein otherwise provided, every fiduciary shall execute and file with the clerk a bond with sufficient surety or sureties, as

hereinafter provided. It shall be conditioned upon the faithful discharge of all the duties of his office according to law, including his duty to account. It shall be procured at the expense of the estate, if an approved surety company bond is furnished.

§ 170. Amount of bond

Except as herein otherwise provided, the court or the clerk shall fix the penalty of the bond in an amount equal to the value of the personal property of the estate, plus the estimated gross annual income of the estate during the period of administration.

§ 171. Approval by clerk

The bond shall not be deemed sufficient until it has been examined and approved by the clerk who shall endorse such approval thereon. In the event that the bond is not approved, the fiduciary shall, within such time as the court or the clerk directs, secure and file a bond with satisfactory surety or sureties.

§ 172. Will—waiver of bond

When, by the terms of the will, the testator has directed or expressed the desire that no bond shall be required, such direction or expression shall be construed to be a waiver of the posting of a bond by the fiduciary for all purposes, and no bond shall be required unless the court for good cause finds it proper to require one; if no bond is initially required, the court may nevertheless, for good cause, at any subsequent time require that a bond be given.

Bar Committee Comment

Adapted from 107(a) of the Model Probate Code; also perpetuates similar privilege for exempting executor from necessity for giving bond contained in 635.51 (1962 Code).

§ 173. Waiver of bond by distributees

If the distributees, in writing waive the statutory requirement that a bond shall be filed by the fiduciary with the clerk, and the court finds that the interests of the creditors will not thereby be prejudiced, no bond shall be required.

Bar Committee Comment

New.

§ 174. Guardians—bond

When the guardian appointed for a person is not the conservator of the property of that person, no bond shall be required of the guard-

ian, unless the court for good cause finds it proper to require one. If no bond is initially required, the court may, nevertheless, for good cause, at any subsequent time, require that a bond be given.

Bar Committee Comment

New.

§ 175. Waiver of bond by court

The court may, for good cause shown, exempt any fiduciary from giving bond, provided the court finds that the interests of creditors and distributees will not thereby be prejudiced.

Bar Committee Comment

See comment preceding section 168.

§ 176. Reduction of bond by deposit

Personal property of the estate may be deposited with a bank or trust company located in the state of Iowa upon such terms as may be prescribed by order of the court. The amount of the bond of the fiduciary may be then reduced as the court may determine.

Bar Committee Comment

Adapted from 107(c) of the Model Probate Code to replace 532.3 (1962 Code).

§ 177. Deposit in lieu of bond

The court may permit the fiduciary to deposit cash or other prescribed securities of his own in lieu of bond.

Bar Committee Comment

Adapted from 682.1 (1962 Code).

§ 178. Letters

Upon the filing of an oath of office and a bond, if any is required, the clerk shall issue letters under the seal of the court, giving the fiduciary the powers authorized by law.

Bar Committee Comment

633.45 (1962 Code) rewritten to provide for the issuance of letters upon the filing of the oath or of the oath and bond, if bond is required.

§ 179. Review by clerk when inventory is filed

At the time the inventory of the estate is filed, the clerk shall review the amount of bond, and report to the court as to any apparent insufficiency thereof.

Bar Committee Comment

New.

§ 180. Bond changed

The court may at any time require a new bond, or increase or decrease the amount of the penalty of the bond of any fiduciary, when good cause therefor appears.

Bar Committee Comment

Adapted from 633.44 (1962 Code) and section 115 of the Model Probate Code.

§ 181. Obligees of bond—joint and several liability

The bond of the fiduciary shall run to the use of all persons interested in the estate, and shall be for the security and benefit of such persons. The sureties shall be jointly and severally liable with the fiduciary, and with each other.

Bar Committee Comment

Adapted from section 109 of the Model Probate Code.

§ 182. Qualifications for sureties

Qualifications for sureties on probate bonds shall be the same as those provided by section six hundred eighty-two point four (682.4) or section six hundred eighty-two point fourteen (682.14) of the Code of Iowa, provided, however, that no attorney shall act as surety on any such bond.

Bar Committee Comment

New. Limitation on 682.4 (1962 Code).

§ 183. Authority for fiduciary and surety to enter into agreement for deposit of property or joint control

It shall be lawful for the fiduciary to agree with his surety for the deposit of any or all moneys and other property of the estate with a bank, safe deposit or trust company, authorized by law to do business

as such, or other depository approved by the court, if such deposit is otherwise proper, in such manner as to prevent the withdrawal of such moneys or other property without the written consent of the surety, or on order of the court made on such notice to the surety as the court may direct.

Bar Committee Comment

Adapted from section 108 of the Model Probate Code in lieu of 682.47 (1962 Code).

§ 184. Release of sureties before estate fully administered

1. Release for cause. For good cause, the court may, before the estate is fully administered, order the release of the sureties of the fiduciary and require the fiduciary to furnish a new bond.

2. Extent of liability of original and new sureties. The original sureties shall be liable for all breaches of the obligation of the bond up to the time of filing of the new bond and the approval thereof by the clerk, but not for acts and omissions of the fiduciary thereafter. The new bond shall bind the sureties thereon with respect to acts and omissions of the fiduciary from the time when the sureties on the original bond are no longer liable therefor.

Bar Committee Comment

Adapted from section 116(a) and (c) of the Model Probate Code.

§ 185. Insolvency of fiduciary

If, at any time, a fiduciary becomes insolvent after qualifying as such fiduciary, and after the maturity of a debt owing by such fiduciary to the estate, then the fiduciary and the sureties on his bond shall be liable to the estate for the indebtedness owing by the fiduciary to the estate. If the fiduciary is not solvent at any time after his qualification and after the maturity of the debt, the sureties on his bond shall not be liable to the estate for the indebtedness.

Bar Committee Comment

Codification of present Iowa case law. See McCarty 122 and Ladd & Boyd 59.

§ 186. Suit on bond

1. Execution of bond deemed as appearance. The execution and filing of the bond by a fiduciary, any other provisions of law notwithstanding, shall be deemed an appearance by the surety in the proceeding for the administration of the estate including all hearings with respect to the bond.

2. **Summary enforcement in proceedings for administration.** Subject to the provisions of subsection three (3) hereof, the court may, upon the breach of the obligation of the bond of a fiduciary, after notice to the obligors on the bond and to such other persons as the court directs, summarily determine the damages as a part of the proceeding for the administration of the estate, and by appropriate process enforce the collection thereof from those liable on the bond. Such determination and enforcement may be made by the court upon its own motion or upon application of a successor fiduciary, or of any other interested person. The court may hear the application at the time of settling the accounts of the defaulting fiduciary or at such other time as the court may direct. Damages shall be assessed on behalf of all interested persons and may be paid over to the successor or other nondefaulting fiduciary and distributed as other assets held by the fiduciary in his official capacity.

3. **Enforcement by separate suit.** If the estate is already distributed, or if, for any reason, the procedure to recover on the bond provided in subsection two (2) hereof, is inadequate, any interested person may bring a separate suit in a court of competent jurisdiction on his own behalf for damages suffered by him by reason of the default of the fiduciary.

4. **Bond not void upon first recovery.** The bond of the fiduciary shall not be void upon the first recovery, but may be proceeded upon from time to time until the whole penalty is exhausted.

5. **Denial of liability by surety—intervention.** If the court has already determined the liability of the fiduciary, the sureties shall not be permitted thereafter to deny such liability in any action or hearing to determine their liability; but the surety may intervene in any hearing to determine the liability of the fiduciary.

Bar Committee Comment

Adapted from section 118 of the Model Probate Code in lieu of 635.79 and 635.80 (1962 Code).

§ 187. Limitation of action on bond

No proceedings upon the bond of a fiduciary shall be brought subsequent to two years after the discharge of the fiduciary or six months after the discovery of fraud, whichever is later.

Bar Committee Comment

Adapted from section 119 of the Model Probate Code.

§§ 188 to 196, inclusive, reserved for future use

PART 8. COMPENSATION OF FIDUCIARIES AND ATTORNEYS

§ 197. Compensation

Personal representatives shall be allowed such reasonable fees as may be determined by the court for services rendered, but not in excess of the following commissions upon the gross assets of the estate listed in the probate inventory for Iowa inheritance tax purposes, which shall be received as full compensation for all ordinary services:

For the first one thousand dollars, six percent;

For the overplus between one and five thousand dollars, four percent;

For all sums over five thousand dollars, two percent.

Cross reference: See sections 86 and 162.

Bar Committee Comment

Same as 638.23 (1962 Code) except for substitution of the words "personal representatives". See provisions in sections 86 and 166 qualifying the application of this section.

§ 198. Attorney fee

There shall also be allowed and taxed as part of the costs of administration of estates as an attorney's fee for the personal representative's attorney, such reasonable fee as may be determined by the court, for services rendered, but not in excess of the schedule of fees herein provided for personal representatives.

Bar Committee Comment

Same as 638.24 (1962 Code) except for substitution of the words "personal representative".

§ 199. Expenses and extraordinary services

Such further allowances as are just and reasonable may be made by the court to personal representatives and their attorneys for actual necessary and extraordinary expenses or services. Necessary and extraordinary services shall be construed to also include services in connection with real estate, tax matters, and litigated matters.

Bar Committee Comment

Same as 638.25 (1962 Code) except for addition of the words "litigated matters" which merely codify present law as announced

by Supreme Court decisions In re Robinsons Estate, 233 Iowa 613, 10 N.W.2d 43 (1943) and In re Myers Estate, 238 Iowa 113, 29 N.W.2d 426 (1947).

§ 200. Compensation of other fiduciaries and their attorneys

The court shall allow and fix from time to time the compensation for fiduciaries, other than personal representatives, and their attorneys for such services as they shall render as shown by an itemized claim or report made and filed setting forth what such services consist of during the period of time they continue to act in such capacities.

Bar Committee Comment

Same as 638.26 (1962 Code) except for addition of the words "fiduciaries other than personal representatives" in lieu of "guardians, trustees, and receivers".

§ 201. Court officers as fiduciaries

Judges, clerks and deputy clerks serving as fiduciaries shall not be allowed any compensation for services as such fiduciaries.

Bar Committee Comment

New.

§ 202. Affidavit relative to compensation

In no case shall the compensation of fiduciaries and their attorneys be allowed or paid until there shall have been filed with the clerk of the district court in which administration of the estate is pending an affidavit of the fiduciary, or attorney, as the case may be, stating that there is no contract, agreement, or arrangement, either oral or written, express or implied, contemplating any division of compensation for such services, or participation therein, directly or indirectly, by any other person, firm, or corporation with such fiduciary or attorney, unless it be with a regular and bona fide law partner, or with one jointly serving with them in the same capacity in relation to the estate in which such compensation is allowed, in which event the affidavit shall show such fact.

Bar Committee Comment

Same as 638.27 (1962 Code) except for substitution of the word "fiduciary" for "executors, administrators, guardians, trustees and receivers".

§ 203. Affidavit for corporate fiduciary

In any case where a corporation is acting as a fiduciary under and by virtue of the provisions of chapter five hundred thirty-two (532)

of the Code of Iowa, the affidavit required by section two hundred two (202) shall be executed and made by an officer of such corporation.

Bar Committee Comment

Adapted from 638.28 (1962 Code).

§ 204. Fees of deceased fiduciary

When a fiduciary dies, all fees to which his personal representative and his attorney are entitled shall be a charge against the estate assets until paid.

Bar Committee Comment

New.

§§ 205 to 209, inclusive, reserved for future use

DIVISION IV—INTESTATE SUCCESSION

PART 1. RULES OF INHERITANCE

§ 210. Rules of descent

The estate of a person dying intestate shall descend as provided in sections two hundred eleven (211) through two hundred twenty-six (226).

Bar Committee Comment

New.

§ 211. Share of surviving spouse if decedent left issue

If the decedent dies intestate leaving a surviving spouse and leaving issue, the surviving spouse shall receive the following share:

1. One-third in value of all the legal or equitable estates in real property possessed by the decedent at any time during the marriage, which have not been sold on execution or other judicial sale, and to which the surviving spouse has made no relinquishment of his right.

2. All personal property that, at the time of death, was, in the hands of the decedent as the head of a family, exempt from execution.

3. One-third of all other personal property of the decedent which is not necessary for the payment of debts and charges.

4. If the property received by the surviving spouse under subsections one (1), two (2) and three (3) of this section is not equal in value to the sum of fifteen thousand dollars, then so much additional of the remaining real and personal property of the decedent that is subject to payment of debts and charges against the decedent's estate, after payment of such debts and charges, even to the extent of the whole of the net estate, as may be necessary to make the amount of fifteen thousand dollars.

Bar Committee Comment

Adapted from Sections 636.5, 636.1 and 635.7 (1962 Code). Paragraph 2 codifies existing case law. In re Jones Estate, 239 Iowa 1364, 35 N.W.2d 36 (1948). Paragraph 4 is new and provides that the surviving spouse shall take all of the estate up to the amount of fifteeen thousand dollars even where there is issue. This provision is designed to give additional protection to the surviving spouse in small estates where there is no Will.

§ 212. Share of surviving spouse where decedent left no issue

If the decedent dies intestate leaving a surviving spouse and leaving no issue, the surviving spouse shall receive the following share:

1. One-third in value of all the legal or equitable estates in real property possessed by the decedent at any time during the marriage, which have not been sold on execution or other judicial sale, and to which the surviving spouse has made no relinquishment of his right.

2. All personal property that, at the time of death, was in the hands of the decedent as the head of a family, exempt from execution.

3. One-third of all other personal property of the decedent which is not necessary for the payment of debts and charges.

4. If the property received by the surviving spouse under subsections one (1) and three (3) of this section is not equal in value to the sum of fifteen thousand dollars, then so much additional of the nonexempt real and personal property of the decedent remaining after payment of the debts and charges against the estate, as may be necessary (even to the extent of the entire net estate) to make the amount of fifteen thousand dollars.

5. So much additional of the remaining real and personal property belonging to the decedent as is necessary to make the entire share of the surviving spouse, including the property received under subsections one (1), three (3) and four (4) of this section, equal in value to the aforesaid sum of fifteen thousand dollars plus one-half of the

net value of the estate over and above the said sum of fifteen thousand dollars and the value of the exempt personal property.

Bar Committee Comment

Adapted from Section 636.32 (1962 Code) with no substantial change and also codifies existing case law. In re Jones Estate, 239 Iowa 1364, 35 N.W.2d 36 (1948). For disposition of other one-half under paragraph 5, see Section 219.

§ 213. Appraisal

Prior to the settlement of every intestate estate in which there is a surviving spouse, and in which appraisal has not been waived by the surviving spouse and all the heirs of the decedent, it shall be the duty of the court, upon application of the personal representative, the surviving spouse, or any of the heirs of the decedent, to appoint three competent disinterested appraisers to appraise such estate and to make their report to the court, at such time as the court may direct by order, unless the court, after notice, finds further appraisal unnecessary. In such appraisement, the homestead, if any, shall be appraised separately.

Bar Committee Comment

Adapted from Section 636.33 (1962 Code).

§ 214. Procedure determined by court

At the time it appoints the appraisers provided for by section two hundred thirteen (213), the court shall prescribe the kind of notice and the method of service thereof, whether by publication or otherwise.

Bar Committee Comment

Adapted from Section 636.34 (1962 Code).

§ 215. Notice

Such notice shall designate the names of the appraisers, the time and place of the appraisement, and the date on which the appraisers shall file with the clerk the report of their appraisement, directed to all persons interested in such appraisement.

Bar Committee Comment

Adapted from Section 636.35 (1962 Code).

§ 216. Objections

All persons interested in such report and having objections to it and the appraisement, shall file their objections within ten days after the date fixed in said notice for the filing of the report of such appraisement.

Bar Committee Comment

Adapted from Section 636.36 (1962 Code), except that the time for filing the objections is changed from the second day after the date fixed for filing the report to ten days after said date.

§ 217. Trial

Such objections, if any, shall be tried to the court as in equity, and the court shall enter a final order in the matter.

Bar Committee Comment

Adapted from Section 636.37 (1962 Code).

§ 218. Right of spouse to select property

After such proceedings, and after payment of debts and charges, the surviving spouse shall have the right to select from the property so appraised, at its appraised value thus fixed, property equal in value to the amount to which she is entitled under section two hundred eleven (211) or two hundred twelve (212) which selection shall be in writing filed with the clerk of court.

Bar Committee Comment

Adapted from Section 636.38 (1962 Code).

§ 219. Share of others than surviving spouse

The portion of the estate remaining after the payment of the debts and charges, and not distributed to the surviving spouse, as provided in this Code, or if there is no surviving spouse, then the remaining estate after payment of the debts and charges, shall descend and be distributed as follows:

1. In equal shares to the decedent's children, unless one or more of them is dead, in which case the issue of such deceased child shall inherit his or her share in accordance with the rules herein prescribed, in the same manner as though said child had outlived his parents.

2. If there is no person to take under subsection one (1) of this section, then to the surviving parents in equal shares; and if either

parent is dead, the portion that would have gone to such deceased parent, shall go to the survivor.

3. If there is no person to take under either subsection one (1) or two (2) of this section, the portion uninherited shall go to such persons as would have been entitled to take if the parents of the decedent had outlived the intestate and had died in possession and ownership of the portion thus falling to their share, and so on, through their ascending ancestors and their heirs.

4. If heirs are not thus found under subsection one (1), two (2) or three (3) of this section, the portion uninherited shall go to the spouse of the intestate; and if the spouse is dead, then to the heirs of the spouse, according to like rules. If such intestate has had more than one spouse who either died or survived in lawful wedlock, it shall be equally divided between the one who is living and the heirs of those who are dead, or between the heirs of all such heirs, taking per stirpes and not per capita.

5. If there is no person who qualifies under either subsection one (1), two (2), three (3) or four (4) of this section, the intestate property shall escheat to the state of Iowa.

Bar Committee Comment

Paragraph 1 adapted from Section 636.31 (1962 Code). Paragraph 2 adapted from Sections 636.32, 636.39 and 636.42 (1962 Code). Paragraph 4 adapted from Section 636.41 (1962 Code). It is the present policy of the law to completely divorce an adopted child from its natural parents. In line with this policy, Section 636.43 (1962 Code), should no longer be part of the law.

§ 220. Afterborn heirs—time of determining relationship

Descendants and other heirs of an intestate, begotten before his death but born thereafter, shall inherit as if they had been born in the lifetime of the intestate and had survived him. With this exception, the intestate succession shall be determined by the relationships existing at the time of the death of the intestate.

Bar Committee Comment

Adapted from Section 25 of the Model Probate Code in part. This also codifies Iowa case law. Rowland v. Rowland, 4 G. Greene 183 (1853).

§ 221. Illegitimate child—inherit from mother

Unless he has been adopted, an illegitimate child shall inherit from his natural mother, and she from the child.

Bar Committee Comment

Adapted from Section 636.45 (1962 Code), except that it does not apply to adopted children or the mother of an adopted child in accordance with modern trends with reference to adoption.

§ 222. Illegitimate child—inherit from father

Unless he has been adopted, an illegitimate child shall inherit from his natural father when the paternity is proven during the father's lifetime, or when the child has been recognized by the father as his child; but such recognition must have been general and notorious, or else in writing. Under such circumstances, if the recognition has been mutual, and the child has not been adopted, the father may inherit from his illegitimate child.

Bar Committee Comment

Adapted from Section 636.46 (1962 Code), except it does not apply to adopted children or to the father of adopted children in accordance with modern trends with reference to adoption.

§ 223. Effect of adoption

A lawfully adopted person and his heirs shall inherit from and through the adoptive parents the same as a natural born child. The adoptive parents and their heirs shall inherit from and through the adopted person the same as though he were a natural born child.

Bar Committee Comment

Adapted from Section 600.6 (1962 Code).

§ 224. Advancements—in general

When the owner of property transfers it as an advancement to a person who would be an heir of such transferor were the latter to die at that time, and the transferor dies intestate, then the property thus advanced shall be counted toward the share of the transferee in the estate, (which for this purpose only shall be increased by the value of the advancement at the time the advancement was made). The transferee shall have no liability to the estate for such part, if any, of the advancement as may be in excess of his share in the estate as thus determined. Every gratuitous inter vivos transfer is presumed to be

an absolute gift, and not an advancement. Such presumption is rebuttable.

Bar Committee Comment

Adapted fom Section 29(a) of the Model Probate Code in lieu of Section 636.44 (1962 Code). This section reverses the presumption established by Iowa case law that a voluntary conveyance from parent to child is presumed to be an advancement and the burden is on the person who claims it to be a gift to prove a gift. Finch v. Garrett, 102 Iowa 381, 71 N.W. 429 (1897); Ellis v. Newell, 120 Iowa 71, 94 N.W. 463 (1903).

§ 225. Valuation of advancements

An advancement under section two hundred twenty-four (224) shall be valued as of the time when the advancee came into possession or enjoyment or as of the date of the death of the intestate, whichever first occurs.

Bar Committee Comment

Adapted from Section 29(b) of the Model Probate Code in lieu of Section 636.44 (1962 Code) and changes present Iowa Law under which valuation of advancement is the value at the time of the intestate's death of the property advanced, viewed and judged on the assumption that the said property was, at the time of the intestate's death, in the same condition as when received as an advancement. Calhoun v. Taylor, 178 Iowa 56, 159 N.W. 600 (1916). C. f. Eastwood v. Crane, 125 Iowa 707, 101 N.W. 481 (1904); Finch v. Garrett, 102 Iowa 381, 71 N.W. 429 (1897).

§ 226. Death of advancee before intestate

If an advancee under section two hundred twenty-four (224) dies before the intestate, leaving an heir who takes from the intestate, the advancement shall be taken into account in the same manner as if it had been made directly to such heir. If such heir is entitled to a lesser share in the estate than the advancee would have been entitled to, had he survived the intestate, then the heir shall be charged with only such proportion of the advancement as the amount he would have inherited, had there been no advancement, bears to the amount which the advancee would have inherited, had there been no advancement.

Bar Committee Comment

Adapted from Section 29(c) of the Model Probate Code in lieu of Section 636.44 (1962 Code).

PART 2. PROCEDURE FOR OPENING ADMINISTRATION OF INTESTATE ESTATES

§ 227. Administration granted

Where there is no will, administration shall be granted to any qualified person on the petition of:

1. The surviving spouse;
2. The heirs of the decedent;
3. Creditors of the decedent;
4. Other persons showing good grounds therefor.

Bar Committee Comment

Adapted from 633.39 (1962 Code).

§ 228. Time allowed

To file such petition, there shall be allowed, commencing with the death of the decedent:

1. To the surviving spouse, a period of twenty days;
2. To each other class in succession, a period of ten days.

The period allowed each class shall be advanced to the period allowed the preceding class if there is no member of such preceding class. Any member of any class may file such petition after the expiration of the period allowed to him if letters have not been issued prior thereto.

Bar Committee Comment

Adapted from 633.40 (1962 Code). Provides for shorter period of priority for persons other than surviving spouse and provides explicitly for acceleration if there are no members of the preceding class or classes.

§ 229. Petition for administration of an intestate estate

The petition for administration of an intestate estate shall contain the following:

1. The name, domicile and date of death of the decedent.

2. If the decedent was domiciled outside the state at the time of his death, a statement that he had property within the county in which the petition is filed, or any other basis for jurisdiction in such county.

3. The name and address of the surviving spouse, if any, and the name and address of each heir so far as known to the petitioner.

4. The estimated value of the property belonging to the decedent that might be readily convertible into money.

Bar Committee Comment

New. Data needed to establish jurisdiction, information as to who are the beneficiaries, and a basis for determination of the amount of bond, if any, which should be required.

§ 230. Notice in intestate estates

In intestate matters, the administrator shall, as soon as letters are issued, cause to be published once each week for two consecutive weeks in a daily or weekly newspaper of general circulation published in the county in which the estate is pending, a notice of his appointment which shall be in substantially the following form:

Notice of Appointment of Administrator

In the District Court of Iowa
in and for _____ County.
In the Estate of _____ Probate No. ____
Deceased.

You are hereby notified that all persons indebted to said estate are requested to make immediate payment to the undersigned, and creditors having claims against said estate shall file them with the clerk of the above named district court, as provided by law, duly authenticated, for allowance, and unless so filed within six months from the second publication of this notice (unless otherwise allowed or paid) such claim shall thereafter be forever barred.

Dated this _____ day of _____, 19____.

_____
Administrator of said estate

_____
Address

_____
Attorney for said administrator

_____
Address

Date of second publication
_____ day of _____, 19____.

(Date to be inserted by publisher)

Bar Committee Comment

Adapted in part from 633.46 (1962 Code). Under new procedure, this notice establishes the key time in intestate estates for filing claims and all other matters requiring a starting point to measure the time during which things must be done. See section 303 for notice in testate estate and section 304 for notice where no administration is had in testate estates.

§§ 231 to 235, inclusive, reserved for future use

DIVISION V—RIGHTS OF SURVIVING SPOUSE

PART 1. RIGHT TO TAKE AGAINST THE WILL

§ 236. Right of surviving spouse to elect to take against will

When a married person dies testate as to any part of his estate, the surviving spouse shall have the right to elect to take against the will under the provisions of sections two hundred thirty-seven (237) through two hundred forty-six (246).

Bar Committee Comment

Explicit recognition of the right of the surviving spouse to take against the will.

§ 237. Presumption that surviving spouse elects to take under will

Where a voluntary election to take or refuse to take under a will has not been filed by a surviving spouse within sixty days from the date the will of the decedent has been admitted to probate, and the surviving spouse is not the executor of such will, it shall be the duty of the executor to cause to be served a written notice upon the surviving spouse in the manner required for service of an original notice, advising the surviving spouse that the will of such decedent has been admitted to probate, stating the name of the court where the will was admitted and the date when the will was admitted to probate, and notifying such spouse that unless within four months after the completed service of such notice, he files an election in writing with the clerk of such court refusing to take under the provisions of such will, such surviving spouse shall take under the provisions of the will, provided, however, that if within such period of six months an affidavit is filed setting forth that such surviving spouse is incapable to make

such election, the court shall determine whether there shall be an election to take against the will in accordance with section two hundred thirty-eight (238); provided further, that the court on application may, prior to the expiration of such period of six months, for cause shown, enter an order extending the time for making such election. If such surviving spouse shall be the executor of the will and fails, within six months after the will is admitted to probate, to file with the clerk of the court an election to refuse to take under the provisions of the will of the deceased, it shall be conclusively presumed that such survivor consents to the provisions of the will and elects to take thereunder.

Bar Committee Comment

Adapted from 636.25 (1962 Code). Provides procedure to be followed to compel the surviving spouse to elect to take under the will where the surviving spouse is not the executor. Provision is made to safeguard those rare instances when the spouse is incapable of making the election or other good reason exists for extending the time for making the election. For those occasional instances where the surviving spouse dies before making the election, see section 242 and comment thereunder.

§ 238. Share of surviving spouse who elects to take against will

If the surviving spouse elects to take against the will, the share of such surviving spouse will be:

1. One-third in value of all the legal or equitable estates in real property possessed by the decedent at any time during the marriage, which have not been sold on execution or other judicial sale, and to which the surviving spouse has made no relinquishment of his right.

2. All personal property that, at the time of death, was in the hands of the decedent as the head of a family, exempt from execution.

3. One-third of all other personal property of the decedent that is not necessary for the payment of debts and charges.

Bar Committee Comment

Adapted from 635.7, 636.1 and 636.5 (1962 Code), and defines the share of the surviving spouse who elects to take against the will. The designation "surviving spouse" is used in all instances and recognizes that the wife may be "head of a family".

§ 239. Share to embrace homestead

The share of the surviving spouse in such real estate shall be set off in such manner as to include the ordinary dwelling house given by law to the homestead, or so much thereof as will be equal to the share allotted to him by section two hundred thirty-eight (238) unless he

prefers a different arrangement; but no such different arrangement shall be permitted unless there be sufficient property remaining to pay the claims and charges against the decedent's estate.

Bar Committee Comment

Adapted from 636.7 (1962 Code).

§ 240. Election to occupy homestead

In intestate estates, or where the surviving spouse elects to take against the will, the surviving spouse may, in lieu of his share in the real property possessed by the decedent at any time during their marriage which has not been sold on execution or other judicial sale, and to which the surviving spouse has made no relinquishment of his right, elect to occupy the homestead. Such election shall be made and entered of record as provided in section two hundred forty-five (245). In making such election, the surviving spouse shall have all the rights as to personal property provided in subsections two (2) and three (3) of section two hundred thirty-eight (238). In case of failure to make such election, the right to occupy the homestead shall be waived.

Bar Committee Comment

Adapted from 636.27 and 636.28 (1962 Code).

§ 241. Time for election to occupy homestead

In case the surviving spouse does not make an election to occupy the homestead and file it with the clerk within six months from the date of the second publication of the notice to creditors, it shall be conclusively presumed that such surviving spouse waives the right to make such election. The court on application may, prior to the expiration of such period of six months, for cause shown, enter an order extending the time for making such election.

Bar Committee Comment

New. Notice required by 636.27 (1962 Code) is eliminated since failure to affirmatively elect right of homestead is a waiver of such right.

§ 242. Rights of election personal to surviving spouse

The right of the surviving spouse to elect to take against the will and the right of the surviving spouse to occupy the homestead are personal. They are not transferable, and cannot be exercised for him subsequent to his death. If the surviving spouse dies prior to filing

an election to take against the will, it shall be conclusively presumed that the surviving spouse takes under the provisions of the will.

Bar Committee Comment

New. Adapted from section 37 of the Model Probate Code. Since these rights are for the special protection of the surviving spouse, no need is served if the surviving spouse dies before exercising such rights.

§ 243. Filing elections

The election to take against the will and the election to occupy the homestead shall be filed in the office of the clerk.

Bar Committee Comment

New.

§ 244. Incompetent spouse—election by court

In case an affidavit is filed that the surviving spouse is incapable of making an election to take against the will, or to elect to occupy the homestead, the court shall fix a time and place of hearing on the matter, and cause a notice thereof to be served upon said surviving spouse in such manner and for such time as the court may direct. At the hearing, a guardian ad litem shall be appointed to represent such spouse, and the court shall enter such orders as it may deem to be for the best interests of such person.

Bar Committee Comment

Adapted from 636.29 (1962 Code) to protect incompetent surviving spouse.

§ 245. Record of election

The elections of the surviving spouse under section two hundred thirty-six (236), two hundred forty (240) or two hundred forty-four (244) shall be entered on the proper records of the court.

Bar Committee Comment

Adapted from 636.23 (1962 Code).

§ 246. Election not subject to change

An election by or on behalf of a surviving spouse to take the share provided in either section two hundred thirty-six (236) or two hundred forty (240) or two hundred forty-four (244) hereof once made shall

be binding and shall not be subject to change except for such causes as would justify an equitable decree for the rescission of a deed.

Bar Committee Comment

Adapted from section 38 of the Model Probate Code.

PART 2. PROCEDURE FOR SETTING OFF SHARE

§ 247. Setting off share of surviving spouse when electing to take against the will—time limit

The share of the surviving spouse under section two hundred thirty-six (236) may be set off by the mutual consent of all parties in interest, or by referees appointed by the court. An application to have it set off by referees shall be made in writing within six months after the second publication of notice of the probate of the will, or within one month after the election to take against the will is filed with the clerk, whichever is the longer. The application must describe the land in which the share is claimed, and pray for the appointment of referees to set it off.

Bar Committee Comment

Adapted from 636.9 (1962 Code).

§ 248. Referee—notice

In the absence of mutual consent to the appointment of referees, the court shall fix a time and place for hearing upon such application and of the fact that referees will be appointed if such application is granted, and shall prescribe the time and manner of the service of notice of the hearing.

Bar Committee Comment

Adapted from 636.10 (1962 Code).

§ 249. Mode of setting off share in real estate

The referees may employ a surveyor, and may cause the shares in real estate to be set off by legally sufficient land descriptions. They shall make a report of their proceedings to the court as early as reasonably possible.

Bar Committee Comment

Adapted from 636.11 (1962 Code).

§ 250. Report—delinquency

The court may require a report by such a time as it deems reasonable. If the referees fail to obey this or any other of its orders, the court may discharge them and appoint others in their stead, and impose upon the first referees the payment of all costs previously made, unless they show good cause against it.

Bar Committee Comment

Adapted from 636.12 (1962 Code).

§ 251. Confirmation—new reference

The court may set the report for hearing and prescribe the notice to be given to interested parties. The court may confirm the report, or may set it aside and refer the matter to the same or other referees, at its discretion.

Bar Committee Comment

Adapted from 636.13 (1962 Code).

§ 252. Confirmation conclusive—possession

An order confirming a report of the referees shall be binding and conclusive unless appealed from within thirty days, and the surviving spouse may bring an action to obtain possession of the land set apart to him.

Bar Committee Comment

Adapted from 636.14 (1962 Code).

§ 253. Right contested

Nothing in sections two hundred forty-seven (247) through two hundred fifty-two (252) shall prevent any person interested from controverting the right of the surviving spouse to the share thus set apart before confirmation of the report of the referees.

Bar Committee Comment

Adapted from 636.15 (1962 Code).

§ 254. Sale—division of proceeds

If it appears to the court, upon application of the personal representative, the surviving spouse, or the report of the referee, that the property, or any part of it, cannot be advantageously divided, the

court may order the whole, or any part of such property, sold, and the share of the surviving spouse in the proceeds paid over to him.

Bar Committee Comment

This is an enlargement of section 636.16 (1962 Code) providing for setting off the share of the surviving spouse and in effect authorizes an alternative procedure for setting off the share without the necessity of appointment of referee.

§ 255. Purchase of new homestead

In case the homestead is sold, the surviving spouse may use any or all of her share to procure a homestead which shall be exempt from liability for all debts from which the former homestead would have been exempt.

Bar Committee Comment

Adapted from 636.17 (1962 Code).

§ 256. Security to avoid sale

No sale shall be made under section two hundred fifty-four (254) if anyone interested gives security to the satisfaction of the court, conditioned to pay the surviving spouse the appraised value of the share with seven percent interest on the same, within such reasonable time as the court may fix, not exceeding one year.

Bar Committee Comment

Adapted from 636.18 (1962 Code). Interest changed from "eight percent" to "seven percent".

§ 257. Security by surviving spouse

If no such arrangement is made, the surviving spouse may keep the property by giving like security to pay the claims of all others interested upon like terms.

Bar Committee Comment

Same as 636.19 (1962 Code).

§ 258. Sale prohibited

Such sale under section two hundred fifty-four (254) shall not be ordered so long as those in interest shall express a contrary desire and agree upon some mode of sharing and dividing the rents, profits, or

use thereof, or shall consent that the court shall order the division of such rents, profits or use.

Bar Committee Comment

Adapted from 636.20 (1962 Code).

§§ 259 to 263, inclusive, reserved for future use

DIVISION VI—WILLS

PART 1. GENERAL PROVISIONS RELATING TO WILLS

§ 264. Disposal of property by will

Subject to the rights of the surviving spouse to elect to take against the will as provided by section two hundred thirty-six (236), any person of full age and sound mind may dispose by will of all his property, except sufficient to pay the debts and charges against his estate.

Bar Committee Comment

Revision of 633.1 (1962 Code)

§ 265. Procedure prescribed by will

When the interests of creditors will not thereby be prejudiced, a testator may prescribe the entire manner in which his estate shall be administered, and, also, the manner in which his affairs shall be conducted until his estate is finally settled.

Cross reference: Section 172.

Bar Committee Comment

Adapted from 635.51 (1962 Code).

§ 266. Limitation on disposal by will

If the total of the devises in the decedent's will to corporations organized under the chapter relating to corporations not for profit, to foreign corporations of a similar character, to unincorporated associations of a similar character, or to a trustee for the use and benefit of any such organization is in excess of one-fourth of the testator's estate valued as of the date of death after the payment of debts and

charges, then the surviving spouse, any child, child of a deceased child or parent of the decedent shall have the right to make an election as follows:

1. The amount by which such devises described in this section exceeds such one-fourth of the testator's estate shall be first determined.

2. Each of such persons shall have the right to elect to receive the portion of such excess to which he would have been entitled had such excess been intestate property, provided, that in no event shall he receive in the aggregate under the will and as the result of such election, an amount greater than he would have received had the decedent died intestate.

3. Such election shall be made in writing by said person and filed with the clerk within six months after the second publication of the notice of appointment of the personal representative, unless the time is extended by order of court, or unless an affidavit is filed under the provisions of subsection four (4) hereof.

4. In case an affidavit is filed within six months after the second publication of the notice of appointment of the personal representative that the said surviving spouse, child, child of a deceased child or parent is under legal disability or is otherwise incapable of making the election provided for in this section, the court shall fix a time and place of hearing on the matter and cause a notice thereof to be served upon said person in such manner and for such time as the court may determine. At the hearing, a guardian ad litem shall be appointed to represent such person, and the court shall enter such orders as it may deem to be for the best interests of such person.

5. Any portion of the excess determined under the provisions of this section which is not distributed under an election provided in this section, shall be distributed under the will of the decedent the same as if no election had been made under subsection two (2) by anyone.

6. The right of election as provided for in this section is personal, is not transferable, and cannot be exercised for him subsequent to his death.

7. All elections hereunder shall be entered upon the records of the court, shall be binding, and shall not be subject to change except for such cause as would justify an equitable decree for the rescission of a deed.

8. In the event that there is more than one devise affected by the election provided for in this section, any reduction shall be made ratably in the absence of express testamentary intent to the contrary.

Bar Committee Comment

Revision of 633.3 (1962 Code). Limitation on charitable bequests effective only when imposed by persons adversely affected and only for the benefit of those persons imposing the limitation. Provides for ratable reduction of charitable bequests where limitation is imposed.

§ 267. Children born or adopted after execution of will

When a testator fails to provide in his will for any of his children born to or adopted by him after the making of his last will, such child, whether born before or after the testator's death, shall receive a share in the estate of the testator equal in value to that which he would have received if the testator had died intestate, unless it appears from the will that such omission was intentional.

Bar Committee Comment

Adapted from section 41a Model Probate Code in lieu of 633.13 (1962 Code).

§ 268. Presumption attending devise to spouse

Where the testator's spouse is named as a devisee in a will, it shall be presumed, unless the intent is clear and explicit to the contrary, and except as provided in section two hundred seventy-two (272), that such devise is in lieu of the intestate share and homestead rights of the surviving spouse.

Bar Committee Comment

Adapted from 633.2 (1962 Code).

§ 269. After acquired property

Any property acquired by the testator after the making of his will shall pass thereby, and in like manner as if title thereto were vested in him at the time of making the will, unless the intent is clear and explicit to the contrary.

Bar Committee Comment

Adapted from section 56 of the Model Probate Code, in lieu of 633.4 (1962 Code).

§ 270. Contractual or mutual wills

No will shall be construed to be contractual or mutual, unless in such will the testator shall expressly state his intent that such will shall be so construed.

Bar Committee Comment

New. Codification of recent Iowa case law to avoid inadvertent mutual wills. The mere fact that a husband and wife make wills at the same time with essentially the same provisions does not usually indicate an intention to make a binding contract so that the survivor may not ever change his will. Those who desire mutual wills are required to say so since theirs is the unusual rather than the usual intent.

§ 271. Effect of divorce

If after making a will the testator is divorced, all provisions in the will in favor of the testator's spouse so divorced are thereby revoked.

Bar Committee Comment

New. Adapted from section 53 of the Model Probate Code and expresses usual intent under such circumstances.

§ 272. Partial intestacy

If part but not all of the estate of a decedent is validly disposed of by will, the part not disposed of by will shall be distributed as provided herein for intestate estates. If the testator left a surviving spouse, and the spouse does not elect to take against the will, such spouse shall receive, in addition to the property given to him by the will, one-third of the intestate property, and that one-third shall be subject to the payment of its proportionate share of debts and charges against the estate.

Bar Committee Comment

New. Adapted from section 23 of the Model Probate Code. Codification of Iowa case law.

§ 273. Antilapse statute

If a devisee die before the testator, his heirs shall inherit the property devised to him, unless from the terms of the will, the intent is clear and explicit to the contrary.

Bar Committee Comment

Adapted from 633.16 (1962 Code).

§ 274. Exception to antilapse statute

The devise to a spouse of the testator, where the spouse does not survive the testator, shall lapse notwithstanding the provisions of section

two hundred seventy-three (273), unless from the terms of the will, the intent is clear and explicit to the contrary.

Bar Committee Comment

New. Testators ordinarily do not intend property to pass to heirs of predeceased spouses, unless such heirs are the same as those of the testators. Those who so intend may do so by an express provision in their wills.

§ 275. 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 persons, or by some other person or persons, (including a funded or unfunded life insurance trust, although the trustor has reserved some or all rights of ownership of the insurance contracts) if the trust is identified in the testator's will, and if 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 or bequest shall not be invalid because the trust is amendable or revocable, or both, 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 or bequeathed: (1) shall not be deemed to be held under a testamentary trust of the testator, but shall become a part of the 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 any such amendment was 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 shall cause the devise or bequest to lapse.

Bar Committee Comment

New. Adapted from the "Uniform Testamentary Additions to Trust Act."

§ 276. Effect on prior wills

Section two hundred seventy-five (275) shall not invalidate any devise or bequest made by a will executed prior to the effective date of this Code.

Bar Committee Comment

New. Adapted from the "Uniform Testamentary Additions to Trust Act".

§ 277. Uniformity of interpretation

Section two hundred seventy-five (275) shall be so construed as to effectuate its general purpose to make uniform the law of those states which have adopted a similar provision.

Bar Committee Comment

New. Adapted from the "Uniform Testamentary Additions to Trust Act". Provides for uniformity of construction.

§ 278. Devise of encumbered property

When any property subject to a mortgage or other lien is specifically devised, the devisee shall take such property so devised subject to such mortgage or other lien, unless the will provides expressly or by necessary implication that such mortgage or other lien be otherwise paid. If there is a testamentary direction to discharge such mortgage or other lien, the rules of abatement specified in section four hundred thirty-six (436) of this Code shall be applied. The term "mortgage or other lien" as used in this section shall not include a pledge of personal property.

Bar Committee Comment

New. Adapted from section 189 of the Model Probate Code reverses present Iowa law. If a testator intends that other assets be used to remove mortgages or other liens from property specifically devised, he should be required to say so.

PART 2. EXECUTION AND REVOCATION

§ 279. Formal execution

All wills and codicils, except as provided in section two hundred eighty-three (283), to be valid, must be in writing, signed by the testator, or by some person in his presence and by his express direction writing his name thereto, and declared by the testator to be his will, and witnessed, at his request, by two competent persons who signed as wit-

nesses in the presence of the testator and in the presence of each other; provided, however, that the validity of the execution of any will or instrument which was executed prior to the effective date of this Code shall be determined by the law in effect immediately prior to the effective date of this Code.

Bar Committee Comment

An expansion of the present requirements of 633.7 (1962 Code) by adding the requirement "declared by the testator to be his will" and the requirement of witnesses signing "who signed as witnesses in the presence of the testator and in the presence of each other". The extension of the statute conforms more nearly to the general practice in Iowa and changes the rule as set forth in the case of In re Estate of Bybee, 179 Iowa 1089, 160 N.W. 900, and the case of In re Estate of Hagemeier, 244 Iowa 703, 58 N.W.2d 593.

§ 280. Competency of witnesses

Any person who is sixteen years of age, or older, and who is competent to be a witness generally in this state, may act as an attesting witness to a will.

Bar Committee Comment

New. Adapted from section 46(a) of the Model Probate Code which provides that any person competent to be a witness generally in this state may be an attesting witness to a will. The additional limitation of sixteen years of age was added to fix a minimal age heretofore lacking.

§ 281. Interest of witnesses

No will is invalidated because attested by an interested witness; but any interested witness shall, unless the will is also attested by two competent and disinterested witnesses, forfeit so much of the provisions therein made for him as in the aggregate exceeds in value, as of the date of the decedent's death, that which he would have received had the testator died intestate. No attesting witness is interested unless he is devised or bequeathed some portion of the testator's estate.

Bar Committee Comment

This is a preservation of the intent of 633.9 (1962 Code). The language used is an adaption of section 46(b) and (c) of the Model Probate Code. This adaption is for the purpose of clarity.

§ 282. Defect cured by codicil

If a codicil to a defectively executed will is duly executed, and such will is clearly identified in said codicil, the will and the codicil shall be

considered as one instrument and the execution of both shall be deemed sufficient.

Bar Committee Comment

Adapted from 633.8 (1962 Code).

§ 283. Will executed in foreign state or country

A will executed outside this state, in the mode prescribed by the law, either of the place where executed or of the testator's domicile, shall be deemed to be legally executed, and shall be of the same force and effect as if executed in the mode prescribed by the laws of this state, provided said will is in writing and subscribed by the testator.

Bar Committee Comment

Adapted from 633.49 (1962 Code).

§ 284. Revocation—cancellation—revival

A will can be revoked in whole or in part only by being canceled or destroyed by the act or direction of the testator, with the intention of revoking it, or by the execution of a subsequent will. When done by cancellation, the revocation must be witnessed in the same manner as the making of a new will. No will, nor any part thereof, which shall be in any manner revoked, or which shall be or become invalid, can be revived otherwise than by a re-execution thereof, or by the execution of another will or codicil in which the revoked or invalid will, or part thereof, is incorporated by reference.

Bar Committee Comment

This is a preservation of the intent of 633.10 (1962 Code) except that the last sentence is taken directly from section 55 of the Model Probate Code to prevent the inadvertent revival of a will which the testator did not actually desire.

PART 3. CUSTODY

§ 285. Custodian—filing—penalty

After being informed of the death of the testator, the person having custody of his will shall deliver it to the court having jurisdiction of his estate. Every person who willfully refuses or fails to deliver a will after being ordered by the court to do so shall be guilty of contempt of court. He shall also be liable to any person aggrieved for the damages which may be sustained by such refusal or failure.

Bar Committee Comment

A substitution for 633.17 (1962 Code) and an adaption from section 63 of the Model Probate Code. The material change being in elimination of the criminal penalties provided in 633.17 (1962 Code). The custodian who refuses to deliver the will may be adjudged to be in contempt, and the court has great latitude in providing for the punishment for contempt.

§ 286. Deposit of will with clerk

The clerk shall maintain a file for the safekeeping of wills. There shall be placed therein wills deposited with the clerk by living testators or by persons on their behalf, and wills of deceased testators not accompanied by petitions for the probate thereof, when deposited with the clerk by persons having custody thereof as provided in section two hundred eighty-five (285) of this Code.

Bar Committee Comment

This section, together with sections 287, 288 and 289 of this Code, replace 633.11 (1962 Code) and expands 633.11 (1962 Code) to provide more particularity in the handling of wills and to achieve greater uniformity in the will files of clerks throughout the state.

Cross reference: Sections 643 through 646 relating to disposal of wills by conservators.

§ 287. Manner of deposit

Every such will shall be enclosed in a sealed wrapper. The clerk shall endorse thereon the name of the testator, the name of the depositor, the date of deposit, and, if provided, the name of the person to be notified of the deposit of such will upon the death of the testator. The clerk shall hold such will until disposed of as provided in section two hundred eighty-eight (288) or two hundred eighty-nine (289).

Bar Committee Comment

Adapted from section 58(b) of the Model Probate Code. See comment on section 286.

§ 288. Delivery by clerk during lifetime of testator

During the lifetime of the testator, such will shall be delivered only to him, or to some person authorized by him by an order in writing duly acknowledged.

Bar Committee Comment

This is an adaption of section 58(c) of the Model Probate Code.

§ 289. Delivery by clerk after death of testator

After being informed of the death of a testator, the clerk shall notify the person, if any, named in the endorsement on the wrapper of said will. If no petition for the probate thereof has been filed within thirty days after the death of the testator, it shall be publicly opened, and the court shall make such orders as it deems appropriate for the disposition of said will. The clerk shall notify the executor named therein and such other persons as the court shall designate of such action. If the proper venue is in another court, the clerk, upon request, shall transmit such will to such court, but before such transmission, he shall make a true copy thereof and retain the same in his files.

Bar Committee Comment

Adapted from section 59(d) of the Model Probate Code.

PART 4. PROCEDURE FOR PROBATE OF WILLS

Bar Committee Comment

General Comment: The committee recommended that wills be admitted to probate without notice. This is the procedure in England and numerous states in this country. Such procedure speeds up administration of estates. At the same time, there is adequate protection for persons desiring to contest the will. However, the legislature did not accept this approach. The procedure adopted in the statute as enacted provides a uniform state-wide system for probate of wills. It definitely requires notice by publication instead of posting.

Sections 290–295 are all new.

§ 290. Petition for probate of will

At the time the will of a decedent is filed with the clerk, or thereafter, any interested person may file a verified petition in the district court of the proper county:

1. To have the will admitted to probate;
2. For the appointment of the executor.

A petition for probate may be combined with a petition for appointment of the executor, and any person interested in either the probate of a will or in the appointment of the executor, may petition for both.

§ 291. Contents of petition

A petition for probate of a will shall state:

1. The name, domicile, and date of death of the decedent.

2. If the decedent was not domiciled in the state at the time of his death, then, that he had property within the county in which the petition is filed, or any other basis for jurisdiction in such county.

§ 292. Petition for appointment of executor

A petition for the appointment of an executor shall state the name and address of the person nominated or proposed as executor, and that such person is qualified to act as executor. If the person proposed in said petition is not the person nominated in the will, the petition shall state the reason why the person nominated is not proposed as executor. Unless bond is waived in the will, the petition shall state the estimated value of the property belonging to the decedent which might be readily convertible into money.

§ 293. Hearing upon petition

Upon the filing of a petition for probate of a will, the date for proving it shall be fixed by the court or the clerk, and the clerk shall give notice addressed TO ALL WHOM IT MAY CONCERN, signed by him, of such time fixed, by one publication in a daily or weekly newspaper published in the county where the will is filed, the publication to be at least seven days prior to the time fixed for such hearing.

§ 294. Order of preference for appointment of executor

Letters testamentary may be granted to one or more persons found to be qualified. Preference for appointment shall be in the following order:

1. The person designated in the will;

2. Any beneficiary named in the will, or a person nominated by the beneficiaries;

3. Any creditor of the deceased, or a person nominated by such creditor;

4. Such other person as the court may find to be qualified.

§ 295. Nonresident executors of resident decedents

A nonresident of this state, named as executor in the will of a resident of this state, may, upon application, be appointed executor after said will has been admitted to probate in this state, provided a resident executor be appointed to serve with the nonresident executor named in said will, except that the court for good cause shown may appoint the

nonresident executor to serve alone without the appointment of a resident executor.

§ 296. Testimony of witnesses

The proof may be made by the oral or written testimony of one or more of the subscribing witnesses to the will. If such testimony is in writing, it shall be substantially in the following form executed and sworn to after the death of the decedent:

In the District Court of Iowa

In and for _____ County

In the Matter of the Estate of _____ Deceased

Probate No. _____

Testimony of Subscribing Witness on Probate of Will.

State of _____ County } ss

I, _____, being first duly sworn, state:

I reside in the County of _____, State of _____; I knew the testator on the ____ day of _____, 19__, the date of the instrument, the original or exact reproduction of which is attached hereto, now shown to me, and purporting to be the last will and testament of the said _____, deceased; I am one of the subscribing witnesses to said instrument; at the said date of said instrument, I knew _____, the other subscribing witness; that said instrument was exhibited to me and to the other subscribing witness by the testator, who declared the same to be his last will and testament, and was signed by the testator at _____, in the County of _____, State of _____, on the date shown in said instrument, in the presence of myself and the other subscribing witness; and the other subscribing witness and I then and there, at the request of the testator, in the presence of said testator and in the presence of each other, subscribed our names thereto as witnesses.

_____

Name of witness

_____

Address

Subscribed and sworn to before me this ____ day of _____, 19__.

_____

Notary Public in and for the

County of _____

State of _____.

(SEAL)

Bar Committee Comment

Permits the use of testimony of witnesses in affidavit form on admission to wills. This form is adapted from that used in California. The right to use depositions is preserved under section 297. Use of this affidavit is prohibited in actions to set aside wills, see section 318.

§ 297. Deposition

If it is desired to prove the execution of the will by deposition, rather than by use of the affidavit form provided in section two hundred ninety-six (296), upon application, the clerk shall issue a commission to some officer authorized by the law of this state to take depositions, with the will annexed, and the officer taking the deposition shall exhibit it to the witness for identification, and, when identified by him, shall mark it as "Exhibit _____" and cause the witness to connect his identification with it as such exhibit. Before sending out the commission, the clerk shall make and retain in his office a true copy of such will.

Bar Committee Comment

Adapted from 633.21 (1962 Code) and preserves the right to use depositions as an alternative means of proof of wills.

§ 298. Witnesses unavailable

If all of such witnesses are deceased or otherwise not available, then it shall be permissible to prove said will by the sworn testimony of two credible disinterested witnesses that the signature to the will is in the handwriting of the person whose will it purports to be, and that the signatures of the witnesses are in the handwriting of such witnesses, or it may be proved by other sufficient evidence of the execution of such will.

Bar Committee Comment

Adapted from 633.22 (1962 Code).

§ 299. Order admitting or disallowing probate of will

The court or the clerk shall enter an order either admitting said will to probate, or disallowing probate because of insufficient proof thereof.

Bar Committee Comment

New.

§ 300. Order appointing executor

If a petition for appointment of an executor has been filed, the order admitting the will to probate shall include appointment of an executor thereof, unless the court or clerk shall determine that no appointment should be made at such time.

Bar Committee Comment

New.

§ 301. Certificate of probate

When a will has been admitted to probate the clerk shall have a certificate of such fact, endorsed thereon or annexed thereto, signed by the clerk and attested by the seal of the court; and, when so certified, it, or the record thereof, or the transcript of such record properly authenticated, may be read in evidence in all courts without further proof.

Bar Committee Comment

Same as 633.23 (1962 Code).

§ 302. Record—copy for executor

When a will has been admitted to probate, it, together with the certificate herein required, shall be recorded in a book kept for that purpose, and the clerk shall cause an authenticated copy thereof to be placed in the hands of the executor to whom letters are issued. The clerk shall retain the will in a separate file provided for that purpose until the time for contest has expired, and promptly thereafter shall place it with the files of said estate.

Bar Committee Comment

Same as 633.24 (1962 Code).

§ 303. Notice of appointment

On admission of a will to probate, the executor shall, as soon as letters are issued, cause to be published once each week for two consecutive weeks in a daily or weekly newspaper of general circulation published in the county in which the estate is pending, a notice of admission of the will to probate and of the appointment of the executor. There shall be included therein a notice to debtors to make payment, and to creditors having claims against said estate to file them with the clerk within six months from the second publication of said notice, or thereafter be forever barred.

Such notice shall be substantially in the following form:

Notice of Probate of Will, of Appointment of Executor, and Notice to Creditors

In the District Court of Iowa
in and for _____ County.
In the Estate of _____ Probate No. _____
Deceased

To all persons interested in the estate of _____ deceased:

You are hereby notified that on the ____ day of _____, 19__, the last will and testament of _____, deceased, bearing date the ____ day of _____, 19__, was admitted to probate in the above named court and that _____ was appointed executor of said estate.

Notice is given that all persons indebted to said estate are requested to make immediate payment to the undersigned, and creditors having claims against said estate shall file them with the clerk of the above named district court, as provided by law, duly authenticated, for allowance; and unless so filed within six months from the second publication of this notice (unless otherwise allowed or paid) such claim shall thereafter be forever barred.

Dated this ____ day of _____, 19__.

_____
Executor of said estate

_____
Address

_____
Attorney for said executor

_____
Address

Date of second publication
____ day of _____, 19__.
(date to be inserted by publisher)

Bar Committee Comment

Substitute for 633.46 (1962 Code). Combines notice to creditors with notice of admission of will and appointment of executor.

§ 304. Notice where no administration

On admission of a will to probate without administration of the estate, the clerk shall cause to be published, in the manner prescribed in the preceding section, a notice of the admission of the will to probate.

Such notice shall be substantially in the following form:

Notice of Proof of Will without Administration

In the District Court of Iowa
in and for _____ County.
In the Estate of _____ Probate No. _____
Deceased

To all persons interested in the estate of _____ deceased:

You are hereby notified that on the ____ day of _____, 19__, the last will of _____, deceased, bearing date the ____ day of _____, 19__, was admitted to probate in the above named court and there will be no present administration of the estate.

Dated this ____ day of _____, 19__.

_____
Clerk of the district court

_____
Attorney for said estate.

Date of second publication
____ day of _____, 19__.
(Above date to be inserted by publisher)

Bar Committee Comment

New.

§ 305. Record in foreign county

Whenever it shall appear that the testator died seized of real estate located in a county of this state other than that in which probate is granted, a complete transcript, properly authenticated, of the record entry of the order of court admitting the will to probate, and, if a copy of such will is not contained therein, a certified copy of such will shall be attached thereto, and the same shall be filed by the clerk in the office of the clerk of the district court in such other county, who shall cause the same to be entered in the probate docket, and said transcript shall be recorded in full in the book kept for the recording of wills in such county. When so recorded, such record may be read in evidence in all courts without further proof.

Cross reference: Sections 403 and 404.

Bar Committee Comment

Same as 633.25 (1962 Code).

§ 306. Costs of transcript

The cost of such transcript and of the recording thereof shall be taxed against the estate of the decedent unless administration thereof is closed, in which event it shall be paid by the owner of the real estate involved.

Bar Committee Comment

Same as 633.26 (1962 Code).

PART 5. ACTIONS TO SET ASIDE OR CONTEST OF WILLS

§ 307. Setting aside probate of will

Any interested person may petition to set aside the probate of a will by filing a written petition in the probate proceedings. The petition for such purpose shall state the grounds therefor.

Bar Committee Comment

New. Adapted from section 72 of the Model Probate Code with additions to emphasize the nature of the proceeding and the manner in which it shall be brought.

§ 308. Time within which petition must be filed

A petition to contest or set aside the probate of a will must be filed in the court in which the will was admitted to probate within one year from the date of second publication of notice of admission of such will to probate and not thereafter.

Bar Committee Comment

New. Adapted from 614.1(3) (1962 Code). This section shortens the period of limitation on setting aside wills and follows one of the most readily discernible modern trends in will contests legislation. Seventy-five years ago, this trend was pointed up by Mr. Justice Bradley of the United States Supreme Court (Broderick's Will, 21 Wall. (88 U.S.) 503 at 519 (1874)), "The world must move on, and those who claim an interest in persons or things must be charged with knowledge of their status and condition, and of the vicissitudes to which they are subject." The shortening of the period of limitations on setting aside wills is to provide for more certainty in the distribution of assets, the making of tax returns, and the payment of inheritance and estate taxes, the titles to real estate, and will expedite the closing of administration of estates. This requires a deletion by way of repeal of a portion of Iowa Code section 614.1(3) (1962 Code) which reads, "and those brought to set aside a will, within two years from the time the same is filed in the clerk's office for probate and notice thereof is given; provided that after a will is probated the executor may cause personal service of an original notice to be made on any person interested, which shall

contain the name of the decedent, the date of his death, the court in which the will is filed, and the date on which the will was probated, together with a copy of said will; said notice shall be served in the same manner as original notices and no action shall be instituted by any person so served after one year from date of service."

§ 309. Objections prior to admission of will to probate

Nothing herein contained shall prevent any interested person from filing objections to probate of a proposed will prior to probate thereof. If such objections are filed prior to the admission of the will to probate, the will shall not be admitted to probate pending trial and determination as to whether or not said instrument is the last will of the decedent.

Bar Committee Comment

New. This section permits an interested party to file objections to a known will prior to its admission to probate and is designed to protect the same rights that a party now has under the present Iowa law to file objections prior to admission of a will to probate.

§ 310. Contest or objection shall be tried as a law action

An action objecting to the probate of a proffered will, or to set aside a will, is triable in the probate court as an action at law, and the Rules of Civil Procedure governing law actions, including demand for jury trial, shall be applicable thereto.

Bar Committee Comment

New. Codification of present Iowa law. See In re Hermence's Estate, 235 Iowa 745, 15 N.W.2d 905.

§ 311. Joinder of parties

In all actions to contest or set aside a will, all known interested parties who have not joined with the contestants as plaintiffs in the action, shall be joined with proponents as defendants. When additional interested parties become known, the court shall order them brought in as party defendants. All such defendants shall be brought in by serving them with notice pursuant to the Rules of Civil Procedure.

Bar Committee Comment

New. At present it is not clear as to whether a judgment in a will contest is res adjudicata as to parties who did not appear or take part in the contest. A will contest is essentially no different than any other cause of action and all known interested parties should be brought into court so that the matter can be finally determined. R.C.P. 34 is applicable to this section.

§ 312. Election of defendants to join with contestants

Any person named as a defendant in an action to contest or set aside a will may, at time of appearance, or by leave of court at any time thereafter, elect to join with the contestants.

Bar Committee Comment

New.

§ 313. Taxation of costs

The court shall tax the costs in an action to contest or set aside a will. No costs shall be taxed against a losing party who has been joined in the action but who does not appear.

Bar Committee Comment

New. This section is designed to protect a losing party who was required to be joined merely because of interest and who did not appear.

§ 314. Allowance for defending will

When any person is designated as executor in a will, or has been appointed as executor, and defends or prosecutes any proceedings in good faith and with just cause, whether successful or not, he shall be allowed out of the estate his necessary expenses and disbursements, including reasonable attorney fees in such proceedings.

Bar Committee Comment

New. Adapted from section 104 of the Model Probate Code. This section is intended to clarify the matter of costs incurred by a designated executor in good faith defense of an action to contest the will.

§ 315. Notice to devisees in other wills

If the ground of objection is that another will of the decedent has been discovered, each devisee named in such other will shall be joined in the action.

Bar Committee Comment

New. Defines parties in interest in such cases and will avoid multiplicity of actions.

§ 316. Where will is filed after letters of administration have been granted

If, after letters of administration have been granted, a will of the decedent is admitted to probate, such letters of administration are there-

by revoked, and the person to whom such letters were issued shall promptly file a final report and make an accounting to the court.

Bar Committee Comment

New. A prescribed method of procedure to eliminate unnecessary litigation.

§ 317. Where will is filed after letters testamentary have been granted

If, after a will has been admitted to probate, another instrument purporting to be the will of the decedent, which has not been previously presented for probate, is filed, the court shall determine whether or not the former grant of letters should be revoked pending determination of which instrument constitutes the will of the decedent.

Bar Committee Comment

New. Adapted from section 75(b) of the Model Probate Code. A clarification of the procedural remedy.

§ 318. Proof of execution

If the lack of the due execution of a will constitutes a ground for objection, proof of such execution shall not be made by affidavit as provided in section two hundred ninety-six (296).

Bar Committee Comment

New.

§ 319. Declaratory judgment to determine last will

The executor or any person named as a beneficiary in a will may bring an action for a declaratory judgment to have such will declared to be the last will of the decedent. In such action, all known interested persons, including heirs of the decedent and persons named as beneficiaries in said instrument and other known instruments purporting to be wills of the decedent, shall be joined as parties.

Bar Committee Comment

New. Specifically authorizes declaratory judgments to determine last will.

§§ 320 to 329, inclusive, reserved for future use

DIVISION VII—ADMINISTRATION OF ESTATES OF DECEDENTS

PART 1. GENERAL PROVISIONS

LIMITATION

§ 330. Character of proceedings

The administration of the estate of a decedent from the filing of the petition for probate and admission or for administration until the order approving the final report and discharge of the last personal representative shall be considered as one proceeding for purposes of jurisdiction. Such entire proceeding is a proceeding in rem.

Bar Committee Comment

This section was adopted to clearly spell out the generally well recognized rule that proceedings to administer the estate of a decedent are strictly in rem. The res is the estate of the decedent within the state. The proceedings determine all of the owners of the property in which the decedent had an interest. It may be that controversies between persons claiming to be the owners of such property take on aspects of personam proceedings but the over-all administration of the estate is a proceedings in rem. In many instances in administration of estates, it is material to know whether the proceedings is in rem or personam. See Model Probate Code pp. 489–526 for monograph by Lewis M. Simes "The Administration of a Decedent's Estate as a Proceeding in Rem".

§ 331. Limitation of administration

Probate of a will, original administration of an intestate estate, or ancillary administration of an estate, shall not be granted after five years from the death of the decedent, whether he die within or without this state, unless a petition therefor is filed prior to the expiration of the five-year period. Provided, however, that the limitation herein provided shall not apply to the probate of a will of a decedent who died prior to January 1, 1964.

Bar Committee Comment

Adapted from 633.47 (1962 Code). The present statute bars original administration of an estate after five years. This section in effect extends this statute to cover foreign wills and to clarify its application to domestic wills. Section 497 provides for the establishment of foreign wills as a muniment of title after the five-year period. This section is designed to provide for more certainty in connection with ownership of property. It is to be noted that it is specifically provided that the limitations of this section do not apply to the probate of a will of a person who dies prior to January 1, 1964.

EXEMPT PROPERTY AND INSURANCE

§ 332. Exempt personal property

When the decedent left a surviving spouse all personal property, which in the hands of the decedent as head of a family would be exempt from execution, after being inventoried and appraised, shall be set aside to the surviving spouse, and be exempt in the hands of such surviving spouse as in the hands of the decedent.

Bar Committee Comment

Adapted from 635.7 (1962 Code). The exemption formerly granted to the widow alone is expanded to include the surviving spouse and simplifies the procedure for setting off the exempt property.

§ 333. Proceeds of insurance

The avails of any life or accident insurance, or other sum of money made payable to the decedent's estate by any mutual aid or benevolent society upon the death or disability of a member thereof, are not subject to the debts of the decedent, except by contract or by express provision in the will, and shall be disposed of like other property left by the decedent.

Bar Committee Comment

Adapted from 635.8 (1962 Code). The section is changed only to allow insurance proceeds to be subject to debts of the decedent when expressly so provided in the will of the decedent, which would be in addition to any contract entered into by the decedent as formerly set forth in 635.8 (1962 Code).

§ 334. Surviving spouse included as "heir"

The words "heirs" and "legal heirs", and other equivalent words used to designate the beneficiaries in any life insurance policy or certificate of membership in any mutual aid or benevolent association, where no contrary intention is expressed in such instrument, shall be construed to include the surviving husband or wife of the insured.

Bar Committee Comment

Same as 635.10 (1962 Code).

§ 335. Share of survivor

The share of such survivor in the proceeds of such policy or certificate made payable as aforesaid shall be the same as that provided by law for the distribution of the personal property of intestates.

charges, then the surviving spouse, any child, child of a deceased child or parent of the decedent shall have the right to make an election as follows:

1. The amount by which such devises described in this section exceeds such one-fourth of the testator's estate shall be first determined.

2. Each of such persons shall have the right to elect to receive the portion of such excess to which he would have been entitled had such excess been intestate property, provided, that in no event shall he receive in the aggregate under the will and as the result of such election, an amount greater than he would have received had the decedent died intestate.

3. Such election shall be made in writing by said person and filed with the clerk within six months after the second publication of the notice of appointment of the personal representative, unless the time is extended by order of court, or unless an affidavit is filed under the provisions of subsection four (4) hereof.

4. In case an affidavit is filed within six months after the second publication of the notice of appointment of the personal representative that the said surviving spouse, child, child of a deceased child or parent is under legal disability or is otherwise incapable of making the election provided for in this section, the court shall fix a time and place of hearing on the matter and cause a notice thereof to be served upon said person in such manner and for such time as the court may determine. At the hearing, a guardian ad litem shall be appointed to represent such person, and the court shall enter such orders as it may deem to be for the best interests of such person.

5. Any portion of the excess determined under the provisions of this section which is not distributed under an election provided in this section, shall be distributed under the will of the decedent the same as if no election had been made under subsection two (2) by anyone.

6. The right of election as provided for in this section is personal, is not transferable, and cannot be exercised for him subsequent to his death.

7. All elections hereunder shall be entered upon the records of the court, shall be binding, and shall not be subject to change except for such cause as would justify an equitable decree for the rescission of a deed.

8. In the event that there is more than one devise affected by the election provided for in this section, any reduction shall be made ratably in the absence of express testamentary intent to the contrary.

§ 300. Order appointing executor

If a petition for appointment of an executor has been filed, the order admitting the will to probate shall include appointment of an executor thereof, unless the court or clerk shall determine that no appointment should be made at such time.

Bar Committee Comment

New.

§ 301. Certificate of probate

When a will has been admitted to probate the clerk shall have a certificate of such fact, endorsed thereon or annexed thereto, signed by the clerk and attested by the seal of the court; and, when so certified, it, or the record thereof, or the transcript of such record properly authenticated, may be read in evidence in all courts without further proof.

Bar Committee Comment

Same as 633.23 (1962 Code).

§ 302. Record—copy for executor

When a will has been admitted to probate, it, together with the certificate herein required, shall be recorded in a book kept for that purpose, and the clerk shall cause an authenticated copy thereof to be placed in the hands of the executor to whom letters are issued. The clerk shall retain the will in a separate file provided for that purpose until the time for contest has expired, and promptly thereafter shall place it with the files of said estate.

Bar Committee Comment

Same as 633.24 (1962 Code).

§ 303. Notice of appointment

On admission of a will to probate, the executor shall, as soon as letters are issued, cause to be published once each week for two consecutive weeks in a daily or weekly newspaper of general circulation published in the county in which the estate is pending, a notice of admission of the will to probate and of the appointment of the executor. There shall be included therein a notice to debtors to make payment, and to creditors having claims against said estate to file them with the clerk within six months from the second publication of said notice, or thereafter be forever barred.

Such notice shall be substantially in the following form:

Notice of Probate of Will, of Appointment of Executor, and Notice to Creditors

In the District Court of Iowa
in and for _____ County.
In the Estate of _____ Probate No. _____
Deceased

To all persons interested in the estate of _____ deceased:

You are hereby notified that on the ____ day of _____, 19__, the last will and testament of _____, deceased, bearing date the ____ day of _____, 19__, was admitted to probate in the above named court and that _____ was appointed executor of said estate.

Notice is given that all persons indebted to said estate are requested to make immediate payment to the undersigned, and creditors having claims against said estate shall file them with the clerk of the above named district court, as provided by law, duly authenticated, for allowance; and unless so filed within six months from the second publication of this notice (unless otherwise allowed or paid) such claim shall thereafter be forever barred.

Dated this ____ day of _____, 19__.

_____
Executor of said estate

_____
Address

_____
Attorney for said executor

_____
Address

Date of second publication
____ day of _____, 19__.
(date to be inserted by publisher)

Bar Committee Comment

Substitute for 633.46 (1962 Code). Combines notice to creditors with notice of admission of will and appointment of executor.

§ 304. Notice where no administration

On admission of a will to probate without administration of the estate, the clerk shall cause to be published, in the manner prescribed in the preceding section, a notice of the admission of the will to probate.

Such notice shall be substantially in the following form:

Notice of Proof of Will without Administration

In the District Court of Iowa
in and for _____ County.
In the Estate of _____ Probate No. _____
Deceased

To all persons interested in the estate of _____ deceased:

You are hereby notified that on the ____ day of _____, 19__, the last will of _____, deceased, bearing date the ____ day of _____, 19__, was admitted to probate in the above named court and there will be no present administration of the estate.

Dated this ____ day of _____, 19__.

_____
Clerk of the district court

_____
Attorney for said estate.

Date of second publication

____ day of _____, 19__.
(Above date to be inserted by publisher)

Bar Committee Comment

New.

§ 305. Record in foreign county

Whenever it shall appear that the testator died seized of real estate located in a county of this state other than that in which probate is granted, a complete transcript, properly authenticated, of the record entry of the order of court admitting the will to probate, and, if a copy of such will is not contained therein, a certified copy of such will shall be attached thereto, and the same shall be filed by the clerk in the office of the clerk of the district court in such other county, who shall cause the same to be entered in the probate docket, and said transcript shall be recorded in full in the book kept for the recording of wills in such county. When so recorded, such record may be read in evidence in all courts without further proof.

Cross reference: Sections 403 and 404.

Bar Committee Comment

Same as 633.25 (1962 Code).

§ 306. Costs of transcript

The cost of such transcript and of the recording thereof shall be taxed against the estate of the decedent unless administration thereof is closed, in which event it shall be paid by the owner of the real estate involved.

Bar Committee Comment

Same as 633.26 (1962 Code).

PART 5. ACTIONS TO SET ASIDE OR CONTEST OF WILLS

§ 307. Setting aside probate of will

Any interested person may petition to set aside the probate of a will by filing a written petition in the probate proceedings. The petition for such purpose shall state the grounds therefor.

Bar Committee Comment

New. Adapted from section 72 of the Model Probate Code with additions to emphasize the nature of the proceeding and the manner in which it shall be brought.

§ 308. Time within which petition must be filed

A petition to contest or set aside the probate of a will must be filed in the court in which the will was admitted to probate within one year from the date of second publication of notice of admission of such will to probate and not thereafter.

Bar Committee Comment

New. Adapted from 614.1(3) (1962 Code). This section shortens the period of limitation on setting aside wills and follows one of the most readily discernible modern trends in will contests legislation. Seventy-five years ago, this trend was pointed up by Mr. Justice Bradley of the United States Supreme Court (Broderick's Will, 21 Wall. (88 U.S.) 503 at 519 (1874)), "The world must move on, and those who claim an interest in persons or things must be charged with knowledge of their status and condition, and of the vicissitudes to which they are subject." The shortening of the period of limitations on setting aside wills is to provide for more certainty in the distribution of assets, the making of tax returns, and the payment of inheritance and estate taxes, the titles to real estate, and will expedite the closing of administration of estates. This requires a deletion by way of repeal of a portion of Iowa Code section 614.1(3) (1962 Code) which reads, "and those brought to set aside a will, within two years from the time the same is filed in the clerk's office for probate and notice thereof is given; provided that after a will is probated the executor may cause personal service of an original notice to be made on any person interested, which shall

contain the name of the decedent, the date of his death, the court in which the will is filed, and the date on which the will was probated, together with a copy of said will; said notice shall be served in the same manner as original notices and no action shall be instituted by any person so served after one year from date of service."

§ 309. Objections prior to admission of will to probate

Nothing herein contained shall prevent any interested person from filing objections to probate of a proposed will prior to probate thereof. If such objections are filed prior to the admission of the will to probate, the will shall not be admitted to probate pending trial and determination as to whether or not said instrument is the last will of the decedent.

Bar Committee Comment

New. This section permits an interested party to file objections to a known will prior to its admission to probate and is designed to protect the same rights that a party now has under the present Iowa law to file objections prior to admission of a will to probate.

§ 310. Contest or objection shall be tried as a law action

An action objecting to the probate of a proffered will, or to set aside a will, is triable in the probate court as an action at law, and the Rules of Civil Procedure governing law actions, including demand for jury trial, shall be applicable thereto.

Bar Committee Comment

New. Codification of present Iowa law. See In re Hermence's Estate, 235 Iowa 745, 15 N.W.2d 905.

§ 311. Joinder of parties

In all actions to contest or set aside a will, all known interested parties who have not joined with the contestants as plaintiffs in the action, shall be joined with proponents as defendants. When additional interested parties become known, the court shall order them brought in as party defendants. All such defendants shall be brought in by serving them with notice pursuant to the Rules of Civil Procedure.

Bar Committee Comment

New. At present it is not clear as to whether a judgment in a will contest is res adjudicata as to parties who did not appear or take part in the contest. A will contest is essentially no different than any other cause of action and all known interested parties should be brought into court so that the matter can be finally determined. R.C.P. 34 is applicable to this section.

§ 312. Election of defendants to join with contestants

Any person named as a defendant in an action to contest or set aside a will may, at time of appearance, or by leave of court at any time thereafter, elect to join with the contestants.

Bar Committee Comment

New.

§ 313. Taxation of costs

The court shall tax the costs in an action to contest or set aside a will. No costs shall be taxed against a losing party who has been joined in the action but who does not appear.

Bar Committee Comment

New. This section is designed to protect a losing party who was required to be joined merely because of interest and who did not appear.

§ 314. Allowance for defending will

When any person is designated as executor in a will, or has been appointed as executor, and defends or prosecutes any proceedings in good faith and with just cause, whether successful or not, he shall be allowed out of the estate his necessary expenses and disbursements, including reasonable attorney fees in such proceedings.

Bar Committee Comment

New. Adapted from section 104 of the Model Probate Code. This section is intended to clarify the matter of costs incurred by a designated executor in good faith defense of an action to contest the will.

§ 315. Notice to devisees in other wills

If the ground of objection is that another will of the decedent has been discovered, each devisee named in such other will shall be joined in the action.

Bar Committee Comment

New. Defines parties in interest in such cases and will avoid multiplicity of actions.

§ 316. Where will is filed after letters of administration have been granted

If, after letters of administration have been granted, a will of the decedent is admitted to probate, such letters of administration are there-

by revoked, and the person to whom such letters were issued shall promptly file a final report and make an accounting to the court.

Bar Committee Comment

New. A prescribed method of procedure to eliminate unnecessary litigation.

§ 317. Where will is filed after letters testamentary have been granted

If, after a will has been admitted to probate, another instrument purporting to be the will of the decedent, which has not been previously presented for probate, is filed, the court shall determine whether or not the former grant of letters should be revoked pending determination of which instrument constitutes the will of the decedent.

Bar Committee Comment

New. Adapted from section 75(b) of the Model Probate Code. A clarification of the procedural remedy.

§ 318. Proof of execution

If the lack of the due execution of a will constitutes a ground for objection, proof of such execution shall not be made by affidavit as provided in section two hundred ninety-six (296).

Bar Committee Comment

New.

§ 319. Declaratory judgment to determine last will

The executor or any person named as a beneficiary in a will may bring an action for a declaratory judgment to have such will declared to be the last will of the decedent. In such action, all known interested persons, including heirs of the decedent and persons named as beneficiaries in said instrument and other known instruments purporting to be wills of the decedent, shall be joined as parties.

Bar Committee Comment

New. Specifically authorizes declaratory judgments to determine last will.

§§ 320 to 329, inclusive, reserved for future use

DIVISION VII—ADMINISTRATION OF ESTATES OF DECEDENTS

PART 1. GENERAL PROVISIONS

LIMITATION

§ 330. Character of proceedings

The administration of the estate of a decedent from the filing of the petition for probate and admission or for administration until the order approving the final report and discharge of the last personal representative shall be considered as one proceeding for purposes of jurisdiction. Such entire proceeding is a proceeding in rem.

Bar Committee Comment

This section was adopted to clearly spell out the generally well recognized rule that proceedings to administer the estate of a decedent are strictly in rem. The res is the estate of the decedent within the state. The proceedings determine all of the owners of the property in which the decedent had an interest. It may be that controversies between persons claiming to be the owners of such property take on aspects of personam proceedings but the over-all administration of the estate is a proceedings in rem. In many instances in administration of estates, it is material to know whether the proceedings is in rem or personam. See Model Probate Code pp. 489–526 for monograph by Lewis M. Simes "The Administration of a Decedent's Estate as a Proceeding in Rem".

§ 331. Limitation of administration

Probate of a will, original administration of an intestate estate, or ancillary administration of an estate, shall not be granted after five years from the death of the decedent, whether he die within or without this state, unless a petition therefor is filed prior to the expiration of the five-year period. Provided, however, that the limitation herein provided shall not apply to the probate of a will of a decedent who died prior to January 1, 1964.

Bar Committee Comment

Adapted from 633.47 (1962 Code). The present statute bars original administration of an estate after five years. This section in effect extends this statute to cover foreign wills and to clarify its application to domestic wills. Section 497 provides for the establishment of foreign wills as a muniment of title after the five-year period. This section is designed to provide for more certainty in connection with ownership of property. It is to be noted that it is specifically provided that the limitations of this section do not apply to the probate of a will of a person who dies prior to January 1, 1964.

EXEMPT PROPERTY AND INSURANCE

§ 332. Exempt personal property

When the decedent left a surviving spouse all personal property, which in the hands of the decedent as head of a family would be exempt from execution, after being inventoried and appraised, shall be set aside to the surviving spouse, and be exempt in the hands of such surviving spouse as in the hands of the decedent.

Bar Committee Comment

Adapted from 635.7 (1962 Code). The exemption formerly granted to the widow alone is expanded to include the surviving spouse and simplifies the procedure for setting off the exempt property.

§ 333. Proceeds of insurance

The avails of any life or accident insurance, or other sum of money made payable to the decedent's estate by any mutual aid or benevolent society upon the death or disability of a member thereof, are not subject to the debts of the decedent, except by contract or by express provision in the will, and shall be disposed of like other property left by the decedent.

Bar Committee Comment

Adapted from 635.8 (1962 Code). The section is changed only to allow insurance proceeds to be subject to debts of the decedent when expressly so provided in the will of the decedent, which would be in addition to any contract entered into by the decedent as formerly set forth in 635.8 (1962 Code).

§ 334. Surviving spouse included as "heir"

The words "heirs" and "legal heirs", and other equivalent words used to designate the beneficiaries in any life insurance policy or certificate of membership in any mutual aid or benevolent association, where no contrary intention is expressed in such instrument, shall be construed to include the surviving husband or wife of the insured.

Bar Committee Comment

Same as 635.10 (1962 Code).

§ 335. Share of survivor

The share of such survivor in the proceeds of such policy or certificate made payable as aforesaid shall be the same as that provided by law for the distribution of the personal property of intestates.

Bar Committee Comment

Same as 635.11 (1962 Code).

WRONGFUL DEATH

§ 336. Damages for wrongful death

When a wrongful act produces death, damages recovered therefor shall be disposed of as personal property belonging to the estate of the deceased, but if the deceased leaves a spouse, child, or parent, it shall not be liable for the payment of debts of the estate.

Bar Committee Comment

Adapted from 635.9 (1962 Code). The committee recommended that the statute be made explicit that such damages were available for the payment of court costs and other costs of administration, funeral expenses and expenses of last illness, but the legislature concluded not to adopt such explicit statement.

§§ 337 to 341, inclusive, reserved for future use

PART 2. TEMPORARY ADMINISTRATION

§ 342. Temporary administration

When, from any cause, probate of a will or administration cannot be immediately granted, a temporary administrator may be appointed to collect, manage, preserve and dispose of the property of the deceased, as the court may prescribe, and no appeal from such appointment shall prevent his proceeding in the discharge of his duties.

Bar Committee Comment

Adapted from 633.41 (1962 Code). This section, subject to order of the court, broadens the powers of the temporary administrator in the management of the estate. The power of the temporary administrator to dispose of property to prevent losses to the estate is desirable when protracted litigation develops.

§ 343. Inventory—preservation of property

Such temporary administrator shall make and file an inventory of the property of the deceased in the same manner as is required of personal representatives, and shall preserve such property from injury, and may do all needful acts under the direction of the court, including the sale of property and the payment of claims as directed by the court. Upon the granting of administration, the powers of the temporary administra-

tor shall cease, and the administration of the estate shall be transferred to the personal representative to whom letters are granted.

Bar Committee Comment

Adapted from 633.42 (1962 Code). Broadens the powers of the temporary administrator to act under the direction of the court.

§§ 344 to 348, inclusive, reserved for future use

PART 3. TITLE AND POSSESSION OF DECEDENT'S PROPERTY

§ 349. Security to sustain devise or bequest

When a person by his will makes such a disposition of his property as to prejudice the rights of creditors, the will may be sustained, by giving security to the satisfaction of the court for the payment of the debts and charges to the extent of the value of the property devised.

Bar Committee Comment

Adapted from section 635.19 (1962 Code).

§ 350. Title to decedent's estate—when property passes—possession and control thereof—liability for administration expenses, debts and family allowance

Except as otherwise provided in this Code, when a person dies, the title to his property, real and personal, passes to the person to whom it is devised by his last will, or, in the absence of such disposition, to the persons who succeed to his estate as provided in this Code, but all of his property shall be subject to the possession of the personal representative as provided in section three hundred fifty-one (351) and to the control of the court for the purposes of administration, sale, or other disposition under the provisions of law, and such property, except homestead and other exempt property, shall be chargeable with the payment of debts and charges against his estate. There shall be no priority as between real and personal property, except as provided in this Code or by the will of the decedent.

Bar Committee Comment

New. Adapted from section 300 of the California Probate Code, this section codifies the Iowa rule with respect to the passage of title upon death in the case of real estate and adopts the same rule with respect to personalty. The Iowa case law has not been clear on whether title to personal property vests instanter in the beneficiaries

or in the personal representative. Iowa Code section 636.1 (1962); In Re Smith's Estate, 240 Iowa 499, 36 N.W.2d 815 (1949). The Probate Code generally equates personalty with realty for purposes of administration and gives the personal representative the right to possession of both realty and personalty during probate. The income from property which is part of the estate for purposes of administration is taxable to the estate even though title thereto may be in an heir or devisee. 8 Tax Court 784 and Revenue Ruling 57–133.

§ 351. Possession of real and personal property

If there is no distributee of the real estate present and competent to take possession, or if there is a lease of such real estate outstanding, or if the distributees present and competent consent thereto, the personal representative shall take possession of such real estate, except the homestead and other property exempt to the surviving spouse. Every personal representative shall take possession of all the personal property of the decedent, except the property exempt to the surviving spouse. The personal representative may maintain an action for the possession of such real and personal property or to determine the title to any property of the decedent.

Bar Committee Comment

New. This section as enacted by the legislature permits the personal representative to take possession of all property of the decedent under circumstances set forth therein. The committee recommended to the legislature that such right or duty in the personal representative apply in all cases and was in line with the comment on pages 133 and 134 of the Model Probate Code: "It seems preferable that the personal representative should have not only the right but also the duty of possession of the entire estate until distributed or delivered over to the heir or devisee upon a showing that it is not needed for the purposes of administration." However, the legislature did not concur in the recommendation of the committee.

§ 352. Collection of rents and payment of taxes and charges

Unless otherwise provided by the will, the personal representative shall collect the income from such property, pay the taxes and fixed charges thereon and apply the balance of such income to general estate obligations. Unless otherwise provided, any unexpended portion of such income shall become a part of the general assets of such estate.

Bar Committee Comment

New. Changes present law. Under the present Iowa law, the personal representative is not ordinarily entitled to the rents accruing during probate, and any rents he collects normally belongs to the heirs or devisees. See Iowa Code section 635.49 (1962). After equating realty with personalty, the income from both real and personal property should be available to pay general estate obliga-

tions in the absence of testamentary direction. This provision will help to provide a larger fund out of which general estate obligations can be paid, without the necessity of resorting to the sale of estate assets.

§ 353. Surrender of possession upon application by personal representative

Upon application by the personal representative, and after such notice, if any, as the court may prescribe, for good cause shown, the court may enter an order authorizing said personal representative to surrender any of such property to the person or persons who, under the will or under the rules of intestate succession, will ultimately be entitled to such property.

Bar Committee Comment

New. Since the personal representative must take possession of all real and personal property, this flexible means is provided to take care of a case where there is a specific thing that should be delivered to an heir or devisee at an early date.

§ 354. Surrender of possession upon application by any interested person

Upon application of any interested person and after such notice to the personal representative and to such other persons, if any, as the court may prescribe, and for good cause shown, the court may enter an order authorizing said personal representative to surrender any of such property to the person or persons who, under the will or under the rules of intestate succession, will ultimately be entitled to such property. The court may require a bond or other security conditioned as it may determine in connection with the delivery of such property.

Bar Committee Comment

New. See comment under section 353.

§ 355. Delivery of specific devise after nine months

Unless the court, for cause shown, determines that the possession of the personal representative shall continue for a longer period, the personal representative shall deliver all specifically devised property to the devisees entitled thereto after the expiration of nine months from the date of appointment of the personal representative. This section shall not preclude the court from directing that such delivery

be made before such period has expired, nor shall the personal representative be prevented from sooner settling the estate and delivering such property.

Bar Committee Comment

New. Provides for a final distribution of the specifically devised property after nine months, unless the estate is sooner settled or use is made of section 353 or 354. Supports one of the important objectives of the Probate Code, i. e.: to speed up the settlement of estates of decedents.

§§ 356 to 360, inclusive, reserved for future use

PART 4. INVENTORY

§ 361. Inventory and report

Within sixty days after his qualification, unless a longer time shall be granted by the court, the personal representative shall file with the clerk, in duplicate, a verified, full and detailed report and inventory of the property of the deceased, so far as the same has come to his knowledge, as follows:

1. Name, age and last residence of decedent.
2. Date of death.
3. Whether decedent died testate or intestate.
4. Name and post-office address of personal representative.
5. Name, age and post-office address of surviving spouse, if any.
6. If testate, name, age, relationship and post-office address of each beneficiary under will.
7. If testate, the name, age and address of each child, if any, born to or adopted by decedent after execution of the will.
8. If intestate, name, age, relationship and post-office address of each heir.
9. Inventory of all the real estate of the decedent in the state of Iowa, giving value and accurate description of each tract.
10. Any real property located outside of the state of Iowa not otherwise reported.
11. Personal property regarded as exempt from execution.
12. All other personal property.
13. All property whether subject to probate or not, not otherwise listed which is subject to the Iowa inheritance tax as provided in chapter four hundred fifty (450) of the Code of Iowa.

14. A statement as to whether or not there is any property not therein inventoried which must be reported for federal estate tax purposes.

Bar Committee Comment

Adapted from section 635.1 (1962 Code).

§ 362. Filing mandatory

Such inventory must be filed in all cases, notwithstanding the provisions of any will or the action of any heirs or devisees waiving the filing thereof, and no administration shall be closed until the same has been filed.

Bar Committee Comment

Adapted from section 635.4 (1962 Code).

§ 363. Reporting failure to court

The failure of the personal representative promptly to make said inventory and report shall be forthwith reported by the clerk to the court for such order as may be necessary to enforce the making and filing of the same.

Bar Committee Comment

Adapted from section 635.2 (1962 Code).

§ 364. Supplementary inventory

Whenever any additional information or property not mentioned in the inventory comes to the knowledge of a personal representative, he shall make a supplementary inventory thereof, such supplementary inventory to be filed within thirty days after such discovery.

Bar Committee Comment

Adapted from section 121 of the Model Probate Code in lieu of section 635.3 (1962 Code).

§ 365. Appraisement

Property belonging to the estate need not be appraised unless required for inheritance tax purposes under the provisions of this Code, or by order of court.

Bar Committee Comment

Substitute for 635.5 and 635.6 (1962 Code) which were repetitious of the provisions for inheritance tax appraisal in Chapter 450 of the Code. Codifies prior practice of generally waiving appraisement under 635.5 and 635.6 (1962 Code).

§ 366. Debts of executor

The naming of any person as executor in a will shall not operate as a discharge or bequest of any right of action owned by the testator against such persons, if it is a right that otherwise survives against such person. Every such right of action shall be included among the assets of the decedent in the inventory.

Bar Committee Comment

New. Codification of Iowa case law. Kaster v. Pierson, 27 Iowa 90; see James v. James, 252 Iowa 326, 105 N.W.2d 498 (1960) and authorities therein cited.

§ 367. Inventory and appraisement as evidence

Inventories and appraisements may be given in evidence in all proceedings, but shall not be conclusive, and other evidence may be introduced to vary the effect thereof.

Bar Committee Comment

New. Section 123 of the Model Probate Code. Several states have a similar provision.

§ 368. Property for payment of creditor's claims

The property liable for the payment of debts and charges against a decedent's estate shall include all property transferred by him with intent to defraud his creditors or any of them, or transferred by any other means which is in law void or voidable as against his creditors or any of them; and the right to recover such property, so far as necessary for the payment of the debts and charges against the estate of the decedent, shall be exclusively in the personal representative, who shall take such steps as may be necessary to recover the same. Such property shall constitute general assets for the payment of all creditors.

Bar Committee Comment

New. Adapted from Section 125 of the Model Probate Code. The only comparable provision prior to the Probate Code was contained in section 635.16 (1962 Code) and it relates to recovery of real estate fraudulently conveyed by decedent where there is insufficient personal property to pay estate debts. Under 635.16 (1962 Code), if it appeared that a deed of realty made by decedent was in fraud of creditors, the probate court could authorize the personal representative to bring an action in equity to set aside the deed. Under prior case law, the personal representative could also follow personalty transferred in fraud of creditors. Cooley v. Brown, 30 Iowa 470 (1870).

§§ 369 to 373, inclusive, reserved for future use

PART 5. ALLOWANCE FOR SURVIVING SPOUSE AND MINOR CHILDREN

§ 374. Allowance to surviving spouse

The court shall, upon application, set off and order paid to the surviving spouse, as part of the costs of administration, sufficient of the decedent's property as it deems reasonable for the proper support of the surviving spouse for the period of twelve months following the death of the decedent. When said application is not made by the personal representative, notice of hearing upon the application shall be given to the personal representative. The court shall take into consideration the station in life of the surviving spouse and the assets and condition of the estate. The allowance shall also include such additional amount as the court deems reasonable for the proper support, during such period, of dependents of the decedent who reside with the surviving spouse. Such allowance to the surviving spouse shall not abate upon the death or remarriage of such spouse.

Bar Committee Comment

Adapted from 635.12 (1962 Code), but changed to qualify the allowance for the "marital deduction" for federal estate tax. See Revenue Ruling 83, 1953–1 CB395, U. S. v. Shaffer (CA–8) 61–2 USTC Par. 12037, and L. L. Molner v. U. S., 175 Fed.Supp. 271.

§ 375. Review of allowance to surviving spouse

The court may, upon the petition of the spouse, or other person interested, and after hearing pursuant to notice to all interested parties, review such allowance and increase the same.

Bar Committee Comment

New. Provides allowance may be increased where circumstances make it necessary. The right to decrease the allowance is eliminated in order to avoid the terminable-interest rule which has been held to disqualify the widow's allowance as part of the marital deduction.

§ 376. Allowance to minor children who do not reside with surviving spouse

The court may also make an allowance to the minor children of the decedent, who do not reside with the surviving spouse, of such an amount as it deems reasonable in the light of the assets and condition of the estate, to provide for their proper support during such period of twelve months.

Bar Committee Comment

New. Section 374 applies to dependents residing with the spouse and this section permits allowance for minor children residing elsewhere.

§ 377. Review of allowance to minor children

The court may, upon the petition of any interested person, review the allowance made to the minor children who do not reside with the surviving spouse and may increase or decrease the same and make such other orders as it may deem proper.

Bar Committee Comment

New. Provides for review of allowance to minor children not living with surviving spouse, and for the increase or decrease of the allowance as circumstances warrant.

§§ 378 to 382, inclusive, reserved for future use

PART 6. SALE OF PROPERTY

§ 383. When power given in will

When power to sell, mortgage, lease, pledge or exchange property of the estate has been given to any personal representative under the terms of any will, the statutory requirements with reference to procedure for such purposes shall not apply.

Bar Committee Comment

New. Adapted from section 151 of the Model Probate Code Accords with present Iowa law. Estate of Wicks, 207 Iowa 264, 222 N.W. 843 (1929); Feaster v. Fagan, 135 Iowa 633, 113 N.W. 479 (1907). See also Iowa Title Standard 9.1 which takes the position that when an executor is given the unrestricted power to sell realty, statutory sale procedure need not be followed.

§ 384. Equitable conversion and power of sale

A testamentary direction to sell real property, and the exercise of a testamentary power of sale of real property, shall constitute an equitable conversion of real estate into personal property, but shall not affect distribution of the estate under the provisions of the will.

Bar Committee Comment

New. Gives the same effect to the exercise of testamentary power to sell as to a testamentary direction to sell. See Beaver v. Ross,

140 Iowa 154, 18 N.W. 287 (1908), which holds that where there is a testamentary direction to sell, equitable conversion occurs at the instant of death of the testator and the interest of the devisee passes as personalty.

§ 385. Conversion

1. When realty treated as personalty. Real property acquired by the personal representative by the completion of foreclosure proceedings, or by the forfeiture of real estate contracts, after the death of the decedent shall be deemed to be personal property for the purpose of administration and distribution of the estate.

2. When personalty treated as realty. In all cases of sale of real property by a personal representative under order of court, the surplus of the proceeds of such sale remaining after the payment of debts and charges shall be deemed to be real property and disposed of in the same proportions as the real property would have been if it had not been sold.

Bar Committee Comment

New. Adapted from section 127 of the Model Probate Code. This section is desirable in cases where a will which distinguishes between real and personal property must be construed in connection with the administration of an estate. Otherwise, it may be of little use, since the Probate Code generally treats real and personal property alike.

§ 386. Sale, mortgage, pledge, lease or exchange of property—purposes

Any real or personal property belonging to the decedent, except exempt personal property and the homestead, if set off, may be sold, mortgaged, pledged, leased or exchanged for any of the following purposes:

1. The payment of debts and charges against the estate;
2. The distribution of the estate or any part thereof;
3. Any other purpose in the best interests of the estate.

Bar Committee Comment

Permits the personal representative, when it appear to be in the best interest of the estate, to sell any property, including real estate. It is designated to provide flexibility to meet the problems arising in connection with settlement of modern estates. Real property is no longer given preference by provision that it shall be sold last. This accords with the trend of the law and this Code to treat real and personal property alike. The present Iowa law on this subject is found in Iowa Code 635.21 and 635.23 (1962 Code).

§ 387. Sale of personal property

Personal property belonging to the estate may be sold and transferred as follows:

1. Personal property of a perishable nature and personal property for which there is a regularly established market may be sold by the personal representative without order of court.

2. Any personal property belonging to the decedent may be sold mortgaged, exchanged, pledged or leased under order of court by the personal representative with or without notice as the court may determine.

Bar Committee Comment

Adapted from 635.21 (1962 Code). Gives desirable authority to personal representative to sell perishable property and property for which there is a regularly established market.

§ 388. Petition to sell, mortgage, exchange, pledge or lease property

A petition to sell, mortgage, exchange, pledge or lease any real or personal property shall set forth the reasons for the application and describe the property involved. It may apply for different authority as to separate parts of the property; or it may apply in the alternative for authority to sell, mortgage, exchange, pledge or lease. Whenever it is for the best interests of the estate, real and personal property of the estate may be sold, mortgaged, exchanged, pledged or leased as a unit.

Bar Committee Comment

New. Adapted from sections 160 and 161 of the Model Probate Code. No distinction is made between real and personal property.

§ 389. Notice and hearing on sale, mortgage, exchange, pledge or lease of property

Upon the filing of the petition, the court shall fix the time and place for the hearing thereof, provided, however, that as to personal property the court may, in its discretion, hear the petition without notice. In those instances where notice is required, the notice shall state briefly the nature of the application and shall be such notice as the court may prescribe. At the hearing and upon satisfactory proof, the court may order the sale, mortgage, exchange, pledge or lease of the property described, or any part thereof, at such price and upon such terms and conditions as the court may authorize. In any transaction

involving only personal property, no report or confirmation shall be necessary except as required by the court. When a claim secured by a mortgage on real property is, under the provisions of this Code, payable at the time of distribution of the estate or prior thereto, the court may with the consent of the mortgagee, order the sale of the real property subject to the mortgage, but such consent shall release the estate should a deficiency later appear.

Bar Committee Comment

New. Adapted from section 161 of the Model Probate Code. Discretion is given to the court, especially in the case of petitions for the sale of personal property. When notice is required or when finality is desired, counsel for the petitioner should request such notice as will insure finality as to all interested parties. See section 36 of this Code on finality of orders in probate.

§ 390. Leasing for term of not to exceed one year

The personal representative may under order of court lease any property not specifically devised for a period of not to exceed one year.

Bar Committee Comment

New.

§ 391. Quieting adverse claims

Upon any petition to sell or mortgage real property, the court shall have power to investigate and determine all questions of conflicting and controverted title, remove clouds from any title or interest involved, and invest purchasers or mortgagees with a marketable title to the property sold or mortgaged. When the petition to sell or mortgage seeks such relief, notice shall be given as provided by the Rules of Civil Procedure, and subsequent proceedings shall be in the manner of an equitable action, and shall be governed by such rules.

Bar Committee Comment

New. Adapted from section 162 of the Model Probate Code. The present Iowa case law is that ordinarily the probate court cannot determine a question of title to property, unless such question arises collaterally as a necessary incident to determination of other matters within the probate court's jurisdiction. In re Anders' Estate, 238 Iowa 344, 26 N.W.2d 67 (1947). There will be no change in procedure, however, as the probate court will try the question of title in the manner of an equitable action.

§ 392. Terms of sale

In all sales of property, the court may authorize credit to be given by the personal representative on such terms as the court may prescribe. Credit for more than twelve months shall be extended only after hearing pursuant to notice to interested parties.

Bar Committee Comment

Adapted from 635.27 (1962 Code). Removes mandatory twelve month credit limit in order to provide better market for sale of property.

§ 393. Purchase by holder of lien

At any sale of real or personal property upon which there is a mortgage, pledge or other lien, the holder of such lien may become the purchaser, and may apply the amount of his lien on the purchase price in the following manner. If no claim thereon has been filed or allowed, the court, at the hearing on the report of sale and for confirmation of the sale, may examine into the validity and enforceability of the lien or charge and the amount due thereunder and secured thereby, and may authorize the personal representative to accept the receipt of such purchaser for the amount due thereunder and secured thereby as payment pro tanto. If such mortgage, pledge or other lien is a valid claim against the estate and has been allowed, the receipt of the purchaser for the amount due him from the proceeds of the sale is a payment pro tanto. If the amount for which the property is purchased, whether or not a claim for it has been filed or allowed, is insufficient to defray the expenses and discharge his mortgage, pledge or other lien, the purchaser must pay an amount sufficient to pay the balance of such expenses. Nothing permitted under the terms of this section shall be deemed to be an allowance of a claim based upon such mortgage, pledge or other lien.

Bar Committee Comment

New. Adapted from section 156 of the Model Probate Code. It includes liens on property owned by the estate for the payment of which the estate was not liable, as where the decedent purchased property subject to a mortgage but did not assume its payment, or where a mortgagee could have filed a claim but did not do so.

§ 394. Order to sell, mortgage, pledge, exchange or lease to be refused if bond given

An order authorizing a personal representative to sell, mortgage, pledge, exchange or lease real or personal property for the payment of obligations of the estate shall not be granted if any of the persons

interested in the estate shall execute and file in the court a bond in such sum and with such sureties as the court may approve, conditioned to pay all obligations of the estate to the extent that the other property of the estate is insufficient therefor, within such time as the court shall direct. An action may be maintained on such bond by the personal representative on behalf of any person interested in the estate who is prejudiced by breach of any obligation of the bond.

Bar Committee Comment

New. Based on section 153 of the Model Probate Code in lieu of 635.30, 635.31 and 635.32 (1962 Code). Unlike 635.31 (1962 Code), this section limits the remedy to an action on the bond.

§ 395. Validity of proceedings

No proceedings for sale, mortgage, pledge, lease, exchange or conveyance by a personal representative of property belonging to the estate shall be subject to collateral attack on account of any irregularity in the proceedings which is not such as to deprive the court of jurisdiction.

Bar Committee Comment

New. Codification of Iowa case law. Whiteley v. Mills, 239 Iowa 80, 29 N.W.2d 541 (1947).

§ 396. Order for sale, mortgage, pledge, exchange or lease of real property

The order shall describe the property to be sold, mortgaged, pledged, exchanged or leased, and may designate the sequence in which the several parcels shall be sold, mortgaged, pledged, exchanged or leased. An order for sale may direct whether the property shall be sold at private sale or public auction, and, if the latter, the place or places of sale. The order of sale may prescribe the terms, conditions and manner of sale. The court may, in its discretion, provide for appraisal for its guidance as to value of the property, and determine whether or not additional bond shall be deposited by the personal representative. If real property is to be mortgaged, it may fix the maximum amount of principal, the earliest and latest dates of maturity, and the purposes for which the proceeds shall be used. An order for sale, mortgage, pledge, exchange or lease shall remain in force until terminated by the court.

Bar Committee Comment

Adapted from section 163 of the Model Probate Code. Replaces 635.26, 635.27, 635.28, and 635.29 (1962 Code). Provides more flexibility, appraisal not mandatory, advantageous terms, conditions and manner of sale can be prescribed by the court.

§ 397. Sale at public auction

In all sales of property at public auction, the personal representative shall give such notice, in such form and manner, and to such persons or parties, as the court may prescribe. If no provision for notice is made by the court, the notice shall be published once each week for two consecutive weeks in some newspaper of general circulation in the county where sale is to be held, the last publication to be not less than one day nor more than seven days before the day of sale. If the property to be sold is located in more than one county, the sale may be held and notice given in any one or more of said counties. Unless otherwise provided by order of the court, the notice shall state the time and place of the sale and describe the property to be sold. Proof of service of the notice required shall be filed before confirmation of the sale.

Bar Committee Comment

Adapted from 635.27 (1962 Code) and based in part on section 165 of the Model Probate Code. No longer necessary to give same notice as is necessary for sale of like property on execution as provided in 635.27 (1962 Code).

§ 398. Adjournment of sale at public auction

The personal representative may adjourn any sale from time to time when, in his discretion, it is deemed for the best interests of the estate to do so, but no adjournment shall be to a time more than three months from the date first fixed for the sale. Every adjournment shall be announced publicly at the time and place at which adjournment is made.

Bar Committee Comment

Adapted from section 165 of the Model Probate Code.

§ 399. Report and confirmation

Within thirty days after making any sale, mortgage, exchange, or lease of real property, the personal representative shall make a verified report of his proceedings to the court. The court shall examine said report, and if satisfied that the sale, mortgage, exchange, or lease has been at the price and terms advantageous to the estate, and, in all respects, made in conformity with law, and that it ought to be confirmed, shall confirm the same and order the personal representative to execute a deed, mortgage, lease or other proper instruments to the persons entitled thereto; provided, however, that in the event said real property has been sold at private sale without an ap-

praisal made for the purpose of such sale, or if it has been appraised and has been sold at private sale for less than the appraised value thereof, then, upon the filing of such report, the court shall enter an order fixing a time and place for hearing thereon, and shall prescribe a notice of such hearing to be served upon all interested persons, any one of whom, prior to the time fixed for such hearing, may file written objections to the entry of an order approving said sale. If not satisfied that the sale, mortgage, exchange, or lease has been made in conformity with law and that it is to the best interests of the estate, the court may reject the sale, mortgage, exchange, or lease, and require a re-execution of the order upon such terms and conditions as it may direct.

Bar Committee Comment

Adapted from section 166 of the Model Probate Code.

§ 400. Execution of conveyance or other instrument

Upon the confirmation of any sale, mortgage, exchange or lease in accordance with the preceding section hereof, the personal representative shall execute the deed, mortgage, lease or other instrument according to the order of confirmation.

Bar Committee Comment

New. Adapted from sections 166 and 167 of the Model Probate Code. Eliminates second auctions in the courtroom and eliminates the necessity of obtaining a separate order approving the execution of the instrument.

§ 401. Endorsement of confirmation

The clerk shall, without further order of court, endorse such confirmation upon such instrument, and cause such instrument to be recorded in the records of his office.

Bar Committee Comment

Adapted from 635.35 and 635.36 (1962 Code).

§ 402. Effect of conveyance—presumption

When so endorsed, said instrument shall be presumptive evidence of the validity thereof and of the regularity of all the proceedings connected therewith.

Bar Committee Comment

Adapted from 635.37 (1962 Code).

§ 403. Record in foreign county

When real property so conveyed or encumbered is located in a county other than that in which such proceedings are had, a complete transcript of the record of all proceedings relating thereto shall be filed by the personal representative in the office of the clerk in such county.

Bar Committee Comment

Adapted from 635.38 (1962 Code).

§ 404. Transcript of court conveyance—record—effect

Any person interested therein may procure from the clerk a transcript of any such conveyance or other instrument which has been so recorded in the office of the clerk for more than five years, and such transcript, when certified by the clerk under the seal of his office, may be filed in the office of the recorder of the county in which said property is located, and shall have the same effect, when so recorded, as the original conveyance.

Bar Committee Comment

Adapted from 635.39 (1962 Code). Shortens the time from ten years to five years.

§§ 405 to 409, inclusive, reserved for future use

PART 7. CLAIMS AGAINST DECEDENT'S ESTATE

TIME AND MANNER OF FILING CLAIMS

§ 410. Limitation on filing claims against decedent's estate

All claims against a decedent's estate, other than costs of administration, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract or otherwise, shall be forever barred against the estate, the personal representative, and the distributees of the estate, unless filed with the clerk within six months after the date of the second publication of the notice to creditors; provided, however, that the personal representative may waive such limitation on filing; and this provision shall not bar claimants entitled to equitable relief due to peculiar circumstances.

Bar Committee Comment

Adapted from 635.68 (1962 Code). Separate state and federal laws govern the necessity of filing federal and state claims (e. g. support of insane, 230.30 (1962 Code); old age assistance claims, 249.19,

249.21 (1962 Code). Late filing in the event of peculiar circumstances is permitted and retained from 635.68 (1962 Code). For peculiar circumstances, see Mundt's Estate, 247 Iowa 1124, 77 N.W.2d 643 (1956). All contingent claims are barred if not filed. For filing and procedure on contingent claims, see section 424 of this Code.

§ 411. Pleading statute of limitations

It shall be within the discretion of the personal representative to determine whether or not the applicable statute of limitations shall be pleaded to bar a claim which he believes to be just, provided, however, that this section shall not apply where the personal representative was appointed upon the application of a creditor.

Bar Committee Comment

Partial codification of Iowa case law. Our Supreme Court has held that a personal representative is not required to invoke the bar of the statute of limitations as to payment of claims against the estate which are payable from the proceeds of personal property belonging to the estate. See In re Estate of Smith, 240 Iowa 499, 36 N.W.2d 815 (1949).

§ 412. When claim not affected by statute of limitation

No claim shall be barred by the statutes of limitation which was not barred at the time of the decedent's death, if the claim shall have been filed against the decedent's estate within six months from the date of the decedent's death.

Bar Committee Comment

Adapted from 614.2 (1962 Code). See Malone v. Averill, 166 Iowa 78, 147 N.W. 145 (1914).

§ 413. Claims barred when no administration commenced

All claims barrable under the provisions of section four hundred ten (410) shall, in any event, be barred if administration of the estate, whether testate or intestate, original or ancillary is not commenced within five years after the death of the decedent.

Bar Committee Comment

Adapted from 633.47 (1962 Code). Some question existed under 633.47 (1962 Code) as to whether "administration" meant testate as as well as intestate administration. Also, if administration was first commenced in another jurisdiction, the five-year limit did not apply to second proceedings commenced in Iowa, at least where decedent was an Iowa nonresident. This section clearly bars a claim in the testate or intestate estate, either of a resident or nonresident regardless of whether original or ancillary, if probate is not commenced within five years after the death of the decedent.

§ 414. Liens not affected by failure to file claim

Nothing in sections four hundred ten (410), four hundred twelve (412) and four hundred thirteen (413) shall affect or prevent any action or proceeding to enforce any mortgage, pledge or other lien upon property of the estate.

Bar Committee Comment

Statement of the present Iowa law. See also sections 422 and 423 of this Code relating to procedure for secured claims.

§ 415. Commencement or continuance of separate action

Any action pending against the decedent at the time of his death that survives, shall also be considered a claim filed against the estate if notice of substitution is served on the personal representative as defendant, and a duplicate of the proof of service of notice of such proceeding is filed in the probate proceedings within the time provided for filing claims in section four hundred ten (410).

A separate action based on a debt or other liability of the decedent may be commenced against the personal representative of the decedent in lieu of filing a claim in the estate. Such an action shall be commenced by serving an original notice on the personal representative and filing a duplicate of the proof of service of notice of such proceeding in the probate proceedings within the time provided for filing claims in section four hundred ten (410), and such action shall also be considered a claim filed against the estate. Such action may be commenced only in a county wherein the venue would have been proper had the decedent survived and the action been commenced against him.

A judgment or decree in favor of the plaintiff in any such action shall constitute an adjudication against the estate.

In all cases where by the death of the party to be charged, the bringing of the action against his estate shall have been delayed beyond the period provided by the statute of limitations, the action may be brought if the original notice is served on the personal representative as defendant, and proof of service of notice of such proceeding is filed in the probate proceedings within the time provided for filing claims in section four hundred ten (410).

Bar Committee Comment

New. Adapted from 635.68 (1962 Code) with codification of present Iowa law relating to continuing or commencing an action in lieu of filing a claim. Place of venue of such action is specified with the provision for filing duplicate of proof of service of notice in the probate proceedings. This provision as to filing duplicate of proof of service in the probate proceedings is intended to apprise all persons

interested in the estate of the fact that a separate action on a claim is pending. At present, there is no such provision in the Iowa law and an action may be pending against the personal representative, and persons interested in the estate, other than the personal representative, would have no knowledge of such action.

§ 416. Compulsory counterclaims—Rules of Civil Procedure

In an action commenced by or against the fiduciary under the provisions of section four hundred fifteen (415), or in any action pending by or against the decedent that survives under the provisions of section four hundred fifteen (415), the Rules of Civil Procedure as to compulsory counterclaims shall apply in such action.

Bar Committee Comment

New. Makes explicit R.C.P. 29 and 30 relating to compulsory counterclaims.

§ 417. Separate action in lieu of proceeding on claims

The provisions of sections four hundred thirty-eight (438) through four hundred forty-eight (448), inclusive, are not applicable to actions continued or commenced under section four hundred fifteen (415) of this Code.

Bar Committee Comment

New. Sections 438 through 448, inclusive, relate to denial and contest of claims filed against the estate and do not apply to separate actions brought under section 415.

§ 418. Form and verification of claims—general requirements

No claim shall be allowed against an estate on application of the claimant unless it shall be in writing, filed in duplicate with the clerk, stating the claimant's name and address, describing the nature and the amount thereof, if ascertainable, and accompanied by the affidavit of the claimant, or someone for him, that the amount is justly due, or if not yet due, when it will or may become due, that no payments have been made thereon which are not credited, and that there are no offsets to the same, to the knowledge of the affiant, except as therein stated. If the claim is contingent, the nature of the contingency shall also be stated. The duplicate of said claim shall be mailed by the clerk to the personal representative or his attorney of record.

Bar Committee Comment

Adapted from 635.53 and 635.54 (1962 Code).

§ 419. Requirements when claim founded on written instrument

If a claim is founded on a written instrument, the original or a copy thereof with all endorsements must be attached to the claim. The original instrument must be exhibited to the personal representative or court, upon demand, unless it is lost or destroyed, in which case its loss or destruction must be stated in the claim.

Bar Committee Comment

Adapted from 635.53 (1962 Code).

§ 420. How claim entitled

All claims filed against the estate shall be entitled in the name of the claimant against the personal representative as such, naming the estate, and in all further proceedings thereon that title shall be preserved.

Bar Committee Comment

Adapted from 635.56 (1962 Code).

§ 421. Unsecured claims not yet due

Upon proof of an unsecured claim which will become due at some future time, the same may be paid if the claimant will consent to such discount as the court thinks reasonable; otherwise, the court shall direct the investment of an amount which will provide for the payment of the claim when it becomes due.

Bar Committee Comment

Adapted from 635.70 (1962 Code).

§ 422. Secured claims not yet due

When a creditor holds any security for a claim not yet due, he may file his claim as a claim not yet due with the right of withdrawing the claim if the compromise offer is not satisfactory, and, after such withdrawal, rely entirely on his security, or he may elect to rely entirely on his security without the necessity of filing a claim.

Bar Committee Comment

New. This provision provides for compromise on the basis of the present value of the secured claim or requires the claimant to rely entirely on his security.

§ 423. Procedure for secured claims

When a creditor holds any security for his claim, the security shall be described in the claim. If the claim is secured by a mortgage,

pledge or other lien which has been recorded, it shall be sufficient to describe the lien by date, and refer to the volume, page and place of recording. The claim shall be allowed in the amount remaining unpaid at the time of its allowance, and the judgment allowing it shall describe the security. Payment of the claim shall be upon the basis of the full amount thereof if the creditor shall surrender his security; otherwise payment shall be upon the basis of one of the following:

1. If the creditor shall exhaust his security before receiving payment, then upon the full amount of the claim allowed, less the amount realized upon exhausting the security; or

2. If the creditor shall not have exhausted, or shall not have the right to exhaust his security, then upon the full amount of the claim allowed, less the value of the security determined by agreement, or as the court may direct.

Bar Committee Comment

Adapted from section 139 of the Model Probate Code. Codification of the present Iowa law that the holder of the secured claim has the choice of proceeding against the security or the estate. If he proceeds against the security and a deficiency remains, he can file a claim against the estate for the amount of the deficiency. In the event that the probate estate is insolvent, the claimant receives a pro rata distribution on the basis of the amount of the deficiency rather than of the original claim; this represents an adoption of the bankruptcy (modern) rule and a rejection of the old chancery rule. It remains in the discretion of the equity court as to whether or not a secured creditor of an insolvent estate must proceed against the security first. See Kramer v. Chambers, 92 Iowa 681, 61 N.W. 373 (1894); In re Estate of Butterfield, 196 Iowa 633, 195 N.W. 188 (1923).

§ 424. Contingent claims

Contingent claims which cannot be allowed as absolute debts shall, nevertheless, be filed in the court and proved. If allowed as a contingent claim, the order of allowance shall state the nature of the contingency. If such claim shall become absolute before distribution of the estate, it shall be paid in the same manner as absolute claims of the same class. In all other cases, the court may provide for the payment of contingent claims in any one of the following methods:

1. The creditor and personal representative may determine, by agreement, arbitration or compromise, the value thereof, according to its probable present worth, and upon approval thereof by the court, it may be allowed and paid in the same manner as an absolute claim, or

2. The court may order the personal representative to make distribution of the estate but to retain in his hands sufficient funds to pay the claim if and when the same becomes absolute; but, for this

purpose, the estate shall not be kept open longer than two years after distribution of the remainder of the estate; and if such claim has not become absolute within that time, distribution shall be made to the distributees of the funds so retained, after paying any costs and expenses accruing during such period, and such distributees shall be liable to the creditor to the extent of the estate received by them, if such contingent claim thereafter becomes absolute. When distribution is so made to distributees, the court may require such distributees to give bond for the satisfaction of their liability to the contingent creditor, or

3. The court may order distribution of the estate as though such contingent claim did not exist, but the distributees shall be liable to the creditor to the extent of the estate received by them, if the contingent claim thereafter becomes absolute; and the court may require such distributees to give bond for the performance of their liability to the contingent creditor, or

4. Such other method as the court may order.

Bar Committee Comment

New. Adapted from section 140 of the Model Probate Code with subsection 4 added. This section gives the utmost flexibility to the handling of contingent claims. Provision is made for compromise and immediate payment based on the present net worth of the contingent claim in addition to the provision for retention pending the claim becoming absolute or distribution subject to the contingency. In addition, subsection 4 is intended to give the court power to deal with unusual situations by proper order.

CLASSIFICATION, ALLOWANCE AND PAYMENT OF DEBTS AND CHARGES

§ 425. Classification of debts and charges

In any estate in which the assets are, or appear to be, insufficient to pay in full all debts and charges of the estate, the personal representative shall classify such debts and charges as follows:

1. Court costs.

2. Other costs of administration.

3. Reasonable funeral and burial expenses.

4. All debts and taxes having preference under the laws of the United States.

5. Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him at his last illness.

6. All taxes having preferences under the laws of this state.

7. All debts owing to employees for labor performed during the ninety days next preceding the death of the decedent.

8. All other claims allowed.

Bar Committee Comment

Adapted from section 142 of the Model Probate Code. General approach is the same as in 635.65 through 635.69, and 635.71 (1962 Code). The following differences: Under the Supreme Court decisions, the court has allowed only reasonable funeral expenses although statute did not say "reasonable", thus provision reflects the Iowa case law. In re Estate of Ewing, 234 Iowa 950, 14 N.W.2d 633; Foley v. Brocksmit, 119 Iowa 457, 93 N.W. 344, 60 LRA 571, 97 Am.St.Rept. 324. As to medical expenses, they also, according to the provision, must be reasonable and necessary, which reflects common law. Note that medical expenses are now subordinated from former second class position to fifth class. This is due to the federal statute which provides that claims of the United States shall be subordinate only to costs of administration, burial and widow's allowance. 31 U.S.C.A. # 191, R.S. # 3466; See 31 USCA # 192 for liability of fiduciaries and IRC Sec. 6324 for special liens for Estate and Gift Taxes. Preference for labor claims is retained. Section 635.67 (1962 Code). For special limitations on amount which may be allowed for funeral expenses in the case of those to whom a certificate of old age assistance has been issued, see Section 249.18, 249.19 (1962 Code) and In re O'Donnell's Estate, 253 Iowa 607, 113 N.W.2d 246.

§ 426. Order of payment of debts and charges

Payment of debts and charges of the estate shall be made in the order provided in the preceding section, without preference of any claim over another of the same class. If the assets of the estate are insufficient to pay in full all of the claims of a class, then such claims shall be paid on a pro rata basis, without preference between claims then due and those of the same class not due.

Bar Committee Comment

Adapted from 635.69 (1962 Code).

§ 427. Payment of contingent claims by distributees—contribution

If a contingent claim shall have been filed and allowed against an estate and all the assets of the estate shall have been distributed, and the claim shall thereafter become absolute, the creditor shall have the right to recover thereon against those distributees whose distributive shares have been increased by reason of the fact that the amount of said claim as finally determined was not paid prior to final distribution, provided an action therefor shall be commenced within six

months after the claim becomes absolute. Such distributees shall be jointly and severally liable, but no distributee shall be liable for an amount exceeding the amount of the estate or fund so distributed to him. If more than one distributee is liable to the creditor, the creditor shall make parties to the action all such distributees who can be reached by process. By its judgment, the court shall determine the amount of the liability of each of the distributees as between themselves, but if any be insolvent or unable to pay his proportion, or beyond the reach of process, the others, to the extent of their respective liabilities, shall nevertheless be liable to the creditor for the whole amount of his debt. If any person liable for the debt fails to pay his just proportion to the creditors, he shall be liable to indemnify all who, by reason of such failure on his part, have paid more than their just proportion of the debt, the indemnity to be recovered in the same action or in separate actions.

Bar Committee Comment

New. Adapted from section 141 of the Model Probate Code.

§ 428. Allowance by personal representative

Where a claim has been filed and is admitted in writing by the personal representative, it shall stand allowed in the absence of fraud or collusion.

Bar Committee Comment

Adapted from 635.57 (1962 Code).

§ 429. Compelling payment of claims

No claimant shall be entitled to compel payment unless his claim has been duly filed and allowed.

Bar Committee Comment

New.

§ 430. Execution and levies prohibited

No execution shall issue upon, nor shall any levy be made against, any property of the estate under any judgment against a decedent or a personal representative, but the provisions of this section shall not be construed to prevent the enforcement of mortgages.

Bar Committee Comment

New. Adapted from section 145 of the Model Probate Code. Reflects present Iowa case law and replaces 635.63 (1962 Code).

§ 431. Claims of personal representative

If the personal representative is a creditor of the decedent, he shall file his claim as other creditors, and the court shall appoint some competent person as temporary administrator to represent the estate in the matter of allowing or disallowing such claim. The same procedure shall be followed in the case of corepresentatives where all such representatives are creditors of the estate; but if one of the corepresentatives is not a creditor of the estate, such disinterested representative shall represent the estate in the matter of allowing or disallowing such claim against the estate by a corepresentative.

Bar Committee Comment

Adapted from 635.64 (1962 Code).

§ 432. Allowance or disallowance of claim of personal representative

The temporary administrator shall, after investigation, file a report with the court recommending the allowance or disallowance of such claim. Unless the court allows the claim, it shall then be disposed of as a contested claim in accordance with the provisions of sections four hundred thirty-nine (439) through four hundred forty-eight (448).

Bar Committee Comment

New.

§ 433. Payment of debts and charges before expiration of six months period

As soon as the personal representative is possessed of sufficient means over and above the other costs of administration, he shall pay any allowance made by the court for the surviving spouse and children of the decedent, and may pay the expenses of funeral, and burial and last illness. Prior to the expiration of six months after the date of the second publication of notice to creditors, the personal representative shall pay such other debts and charges against the estate as the court shall order, and the court may require bond or other security to be given by the creditor to refund such part of such payment as may be necessary to make payment in accordance with the provisions of this code. All payments made by the personal representative without order of court shall be at his own peril.

Bar Committee Comment

Adapted from 635.65, 635.69 and 635.71 (1962 Code) and section 148 of the Model Probate Code.

§ 434. Payment of debts and charges after expiration of six months period

Upon the expiration of six months after the date of the second publication of notice to creditors, the personal representative shall proceed to pay the debts and charges against the estate in accordance with the provisions of this code. If it appears at any time that the estate is or may be insolvent, that there are insufficient funds on hand, or that there is other good and sufficient cause, the personal representative may report that fact to the court and apply for any order that he deems necessary in connection therewith.

Bar Committee Comment

Adapted from 635.65, 635.69 and 635.71 (1962 Code).

§ 435. Debts and charges not filed

The personal representative may pay any valid debts and charges against the estate even though no claim for such debts and charges has been filed, but all such payments made by the personal representative shall be at his own peril.

Bar Committee Comment

New. Statement of Iowa case law.

§ 436. General order for abatement

Except as provided in section two hundred eleven (211) hereof, shares of the distributees shall abate, for the payment of debts and charges, federal and state estate taxes, legacies, the shares of children born or adopted after the making of a will, or the share of the surviving spouse who elects to take against the will, without any preference or priority as between real and personal property, in the following order:

1. Property not disposed of by the will;

2. Property devised to the residuary devisee, except property devised to a surviving spouse who takes under the will;

3. Property disposed of by the will, but not specifically devised and not devised to the residuary devisee, except property devised to a surviving spouse who takes under the will;

4. Property specifically devised, except property devised to a surviving spouse who takes under the will;

5. Property devised to a surviving spouse who takes under the will.

A general devise charged on any specific property or fund shall, for purposes of abatement, be deemed property specifically devised to the

extent of the value of the property on which it is charged. Upon the failure or insufficiency of the property on which it is charged, it shall be deemed property not specifically devised to the extent of such failure or insufficiency.

Bar Committee Comment

Adapted from section 184 of the Model Probate Code with codification of Iowa law that share of surviving spouse abates last in the absence of contrary testamentary intent. This section adopts the modern rule of abatement and makes explicit the order in which the share shall abate in the absence of contrary testamentary intent. Real estate is not given priority over personalty. For statutory provisions under the 1962 Code see 633.13, 633.14 and 633.15.

§ 437. Contrary provision as to abatement

If the provisions of the will, the testamentary plan, or the express or the implied purpose of the devise would be defeated by the order of abatement stated in section four hundred thirty-six (436) hereof, the shares of distributees shall abate in such other manner as may be found necessary to give effect to the intention of the testator.

Bar Committee Comment

New. A statement of Iowa law.

Denial and Contest of Claims

§ 438. General denial of claims

Where a claim has been filed, but not admitted in writing by the personal representative before a request for hearing has been given as hereinafter provided, the claim shall be considered as denied without any pleading on behalf of the personal representative.

Bar Committee Comment

Adapted from 635.57 (1962 Code).

§ 439. Disallowance by personal representative

At any time after the filing of a claim against an estate, the personal representative shall give the claimant written notice of disallowance of claim. Such a notice shall be given by certified mail addressed to the claimant at the address stated in the claim.

Bar Committee Comment

New.

§ 440. Contents of notice of disallowance

Such a notice of disallowance shall advise the claimant that the claim has been disallowed and will be forever barred unless the claimant shall within twenty days after the date of mailing the notice, file a request for hearing on the claim with the clerk, and mail a copy of such request for hearing to the personal representative by certified mail.

Bar Committee Comment

New.

§ 441. Proof of service

Proof of service of the notice of disallowance shall be made by affidavit, shall show the date and place of mailing, and shall be filed with the clerk.

Bar Committee Comment

New.

§ 442. Claims barred after twenty days

Unless the claimant shall within twenty days after the date of mailing said notice of disallowance, file a request for hearing with the clerk, and mail a copy thereof to the personal representative, the claim shall be deemed disallowed, and shall be forever barred.

Bar Committee Comment

New. The twenty-day period is the same time allowed for appearance under R.C.P. 53 for all civil actions.

§ 443. Request for hearing by claimant

At the time of the filing of a claim against an estate, or at any time thereafter prior to the time that the claim may be barred by the provisions of section four hundred forty-two (442), or the approval of the final report of the personal representative after notice to the claimant, the claimant may file a written request, in duplicate, for hearing on his claim with the clerk who shall mail the duplicate to the personal representative, or to his attorney of record.

Bar Committee Comment

New.

§ 444. Applicability of Rules of Civil Procedure

Within twenty days from the filing of the request for hearing on a claim, the personal representative shall move or plead to said claim

in the same manner as though the claim were a petition filed in an ordinary action, and thereafter, all provisions of law and Rules of Civil Procedure applicable to motions, pleadings and the trial of ordinary actions shall apply as otherwise provided herein.

Bar Committee Comment

New. The trial of contested claims against estate is in essence a law suit and should be governed by the same rules of procedure.

§ 445. Offsets and counterclaims

At the time of the filing of an answer to a claim, the personal representative shall plead all offsets against the claim, and shall plead all counterclaims against the claimant of which he has knowledge. An offset or counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding the amount, or different in kind, from that sought in the claim.

Bar Committee Comment

New. The court may, of course, extend the time for pleading or filing offsets or counterclaims in accordance with the Iowa Rules of Civil Procedure.

§ 446. Burden of proof

The burden of proving that a claim is unpaid shall not be placed upon the party filing a claim against the estate; but the personal representative may on the trial of the cause, subject the claimant to an examination on the question of payment or consideration, and the estate shall not be concluded or bound thereby.

Bar Committee Comment

Adapted from 635.58 (1962 Code).

§ 447. Trial and hearing

The trial of a claim and the offsets or counterclaims, if any, shall be to the court without a jury; provided, however, that the court may, in its discretion, either on its own motion or upon the motion of any party, submit the same to a jury; and provided further, that in the event that the amount of the claim or a counterclaim exceeds the sum of three hundred dollars, either party shall be entitled to a jury trial, if written demand therefor is made as provided in the Rules of Civil Procedure in relation to the trial of ordinary actions.

Bar Committee Comment

New.

§ 448. Allowance and judgment

Upon the trial of a claim, offsets and counterclaims, the amount owing by or to the estate, if any, shall be determined. A claim against the estate shall be allowed for the net amount. Judgment shall be rendered for any amount found to be due the estate. If a judgment is rendered against a claimant for any net amount, execution may issue in the same manner as on judgments in civil cases.

Bar Committee Comment

New.

§ 449. Payment of federal estate taxes

All federal and state estate taxes (as distinguished from state inheritance taxes) ~~owing by the estate~~ of a decedent shall be paid from the property of the estate, and, in testate matters, from the residue of the estate, unless the will of the decedent, or other trust instrument, provides expressly to the contrary.

Bar Committee Comment

New. See Kintzinger v. Millin, 117 N.W.2d 68.

§§ 450 to 468, inclusive, reserved for future use

PART 8. ACCOUNTING, DISTRIBUTION, FINAL REPORT AND DISCHARGE

§ 469. Interlocutory report

The personal representative may at any time file an interlocutory accounting to the court showing the condition of the estate, its debts and property, the amount of money received, and the disposition made of any of the assets of the estate.

The court may on application of any interested party, or on its own motion, order such an accounting at any time. Such an accounting shall embrace all matters directed by the court. The court may order such further accountings from time to time as it may determine to be to the best interests of the estate.

Bar Committee Comment

Adapted from 638.2, 638.3 and 638.22. Mandatory first report is eliminated since it is not usually followed in the practice.

§ 470. Waiver of accounting

The distributee, if under no legal disability, may waive the accounting.

Bar Committee Comment

New. To facilitate settlement of estate and to codify existing practice.

§ 471. Right of retainer

When a distributee of an estate is indebted to the estate, or if a distributee takes as an heir of a deceased devisee indebted to the estate, the amount of such indebtedness, if due, or the present worth of the indebtedness, if not due, shall be treated as an offset and retained by the personal representative out of any testate or intestate property, real or personal, of the estate to which such distributee is entitled. The right of setoff and retainer shall be prior and superior to the rights of judgment creditors, heirs or assigns of such distributee and shall not be barred by the statute of limitations, nor by a discharge in bankruptcy.

Bar Committee Comment

New. Adapted from section 187 of the Model Probate Code. There is no such statutory provision under the present Iowa law. It enlarges the provisions of the Model Probate Code to include distributees. It specifically makes the right of retainer superior to rights of creditors, heirs or assigns of the distributee and does not permit the right to be barred by lapse of time or discharge in bankruptcy. In effect it codifies the Iowa Law. See In re Ferris Estate, 234 Iowa 960, 14 N.W.2d 889 (1944).

§ 472. Proceeds distributed in kind

Property not otherwise disposed of by the personal representative may be distributed in kind.

Bar Committee Comment

Adapted from 636.3 (1962 Code).

§ 473. Final settlement—time limit

Final settlement shall be made within three years, after the second publication of the notice to creditors, unless otherwise ordered by the court after notice to all interested parties.

Bar Committee Comment

Adapted from 638.4 (1962 Code).

§ 474. Certificate as to payment of personal taxes

Prior to or at the time of filing the final report, there shall be filed in the estate proceedings, the certificate of the treasurer of the county in which the administration of the estate is pending, that all personal taxes due and to become due the county in such estate matter have been paid in full. When no assets remain in the hands of the personal representative after the payment of debts and charges having priority under the provisions of section four hundred twenty-five (425), such certificate need not be filed. No charge shall be made by the county treasurer for the issuance of such certificate.

Bar Committee Comment

Adapted from 682.35 and 682.36 (1962 Code). These sections should be in the Probate Code rather than in the taxation sections because the tax is already imposed under the taxation statutes.

§ 475. Compromise of personal taxes

For the purpose of facilitating the speedy settlement and distribution of estates, the county treasurer of such county, by and with the consent of the board of supervisors may compromise and agree upon the amount of personal taxes at any time due or to become due the county from an estate, and payment in accordance with such compromise or agreement shall be for the satisfaction of all taxes in such estate matter. No compensation shall be allowed any person because of such compromise or agreement.

Bar Committee Comment

See comment under 474.

§ 476. Action against distributees—costs—tender

In an action against the distributees, where the judgment is to be against them in proportion to the respective amounts received by them from the estate, costs awarded against them shall be in like proportion, and anyone may tender the amount due from him to the plaintiff, which shall have the same effect, as far as he is concerned, as though he were the sole defendant.

Bar Committee Comment

Adapted from 638.20 (1962 Code).

§ 477. Final report

Each personal representative shall, in his final report, set forth:

1. An accurate description of all the real estate of which the decedent died seized, stating the nature and extent of his interest therein, which has not been sold and conveyed by the personal representative.

2. Whether the deceased died testate or intestate.

3. The name and place of residence of the surviving spouse, or that none survived the deceased.

4. In intestate estates, the name and place of residence of each of the heirs and their relationship to the deceased.

5. In testate estates, the name and place of residence of each of the devisees and their relationship to the deceased, and the name and residence of after-born children, if any, as defined in section two hundred sixty-seven (267).

6. Whether any legacy or devise remains a charge on the real estate, and, if so, the nature and amount thereof.

7. Whether any distributee is under any legal disability.

8. The name of the conservator or trustee for any distributee, and the court from which his letters were issued.

9. An accounting of all the moneys and personal property coming into the hands of the personal representative. The accounting may be omitted if waived by all interested parties.

10. A statement as to whether or not all statutory requirements pertaining to taxes have been complied with.

Bar Committee Comment

Adapted from 638.34. Paragraph 4 has been confined to intestate estates; paragraph 5 is confined to testate estates; paragraphs 7, 9 and 10 are new; and a requirement has been added to include the name and residence of after-born children.

§ 478. Notice of application for discharge

Unless notice be waived in writing, no personal representative shall be discharged from further duty or responsibility upon final settlement until notice of hearing on his final report or of an application for discharge shall have been served upon all persons interested as required for the commencement of a civil action, unless a different service be ordered by the court. Such an order may be made before or after the filing of the final report.

Bar Committee Comment

Adapted from 638.36 (1962 Code).

§ 479. Discharge

Upon final settlement of an estate, an order shall be entered discharging the personal representative from further duties and responsibilities. The order approving the final report shall constitute a waiver of the omission from the final report of any of the recitals required in section four hundred seventy-seven (477).

Bar Committee Comment

Adapted from 638.12 (1962 Code).

§ 480. Change of title certificate with administration

After the entry of the order approving the final report, the clerk shall issue a certificate under the provisions of chapter five hundred fifty-eight (558) of the Code of Iowa relative to each parcel of real estate described in the final report of the personal representative which has not been sold by the personal representative, and deliver such certificate to the county auditor of the county in which such real estate is situated.

Bar Committee Comment

New. Codifies procedure used in most counties in connection with change of title authorized under 558.66 and 606.14 (1962 Code). This section spells out the duty of the clerk and avoids using certificate of change of title when real estate has been sold by the personal representative. The procedure followed in most counties is not too clear and often results in confusion when setting up the auditors' plat books.

§ 481. Change of title certificate without administration

Whenever an order is entered under the provisions of section four hundred fifty point forty (450.40) of the Code of Iowa, without administration of the estate of a decedent, the clerk shall issue and deliver to the county auditor of the county in which such real estate is situated a like certificate pertaining to each parcel of real estate described in the application for such order.

Bar Committee Comment

New. Provides for procedure for change of title of real estate when there is no administration of the estate and there is only clearance of inheritance taxes under Chapter 450 (1962 Code).

§§ 482 to 486, inclusive, reserved for future use

PART 9. REOPENING

§ 487. Limitation on rights

No person, having been served with notice of the hearing upon the final report and accounting of a personal representative or having waived such notice, shall, after the entry of the final order approving the same and discharging the said personal representative, have any right to contest, in any proceeding, other than by appeal, the correctness or the legality of the inventory, the accounting, distribution, or other acts of the personal representative, or the list of heirs set forth in the final report of the personal representative, provided, however, that nothing contained in this section shall prohibit any action against the personal representative and his bondsman under the provisions of section one hundred ninety (190) on account of any fraud committed by the personal representative.

Bar Committee Comment

New. Enlarges upon 638.36 (1962 Code). Explicitly establishes order approving final report as having the effect of a final judgment or decree as to all parties having notice, but preserves right against personal representative for fraud.

§ 488. Reopening settlement

Whenever a final report has been approved and a final accounting has been settled in the absence of any person adversely affected and without notice to him, the hearing on such report and accounting may be reopened at any time within five years from the entry of the order approving the same, upon the application of such person, and, upon a hearing, after such notice as the court may prescribe to be served upon the personal representative and the distributees, the court may require a new accounting, or a redistribution from the distributees. In no event, however, shall any distributee be liable to account for more than the property distributed to him. If any property of the estate shall have passed into the hands of good faith purchasers for value, the rights of such purchasers shall not, in any way, be affected.

Bar Committee Comment

Designed to protect persons adversely affected by a final report or final accounting who did not receive notice, but at the same time protecting rights of good faith purchasers for value.

§ 489. Reopening administration

Upon the petition of any interested person, the court may, with such notice as it may prescribe, order an estate reopened if other property be

discovered, if any necessary act remains unperformed, or for any other proper cause appearing to the court. It may reappoint the personal representative, or appoint another personal representative, to administer any additional property or to perform other such acts as may be deemed necessary. The provisions of law as to original administration shall apply, insofar as applicable, to accomplish the purpose for which the estate is reopened, but a claim which is already barred can, in no event, be asserted in the reopened administration.

Bar Committee Comment

Adapted from section 194 of the Model Probate Code in lieu of 638.9 (1962 Code) to permit reopening for administration of newly discovered property or performance of required but omitted acts of personal representatives.

§§ 490 to 494, inclusive, reserved for future use

DIVISION VIII—FOREIGN WILLS AND ANCILLARY ADMINISTRATION

PART 1. FOREIGN WILLS

§ 495. Admission of wills of nonresidents

A will of a nonresident of this state, not probated in any other state or county, may be admitted to probate in any county of this state where either real or personal property of the deceased nonresident is located.

Bar Committee Comment

Entirely new concept in Iowa probate law. It makes possible an original probate in Iowa regardless of the last residence of the testator.

§ 496. Foreign probated wills

A will probated in any other state or country shall be admitted to probate in this state upon the production of a copy thereof and of the original record of probate, authenticated by the attestation of the clerk of the court in which such probation was made, or, if there be no clerk, then by the attestation of the judge of such court, and by the seal of office of such officer if he or his office has a seal.

Bar Committee Comment

Same as 633.33 (1962 Code), except that it omits the phrase "without the notice required in the case of domestic wills", which phrase is superfluous.

§ 497. Foreign wills as a muniment of title

After the expiration of the five-year period provided in section three hundred thirty-one (331), an exemplified copy of a will which has not been denied probate in Iowa, and of the order admitting it to probate in a foreign state or country, may be recorded in the office of the county recorder of any county where real estate owned by the testator is located. The record of such a will and of the order admitting the will to probate shall operate to dispose of said property as though said will had been admitted to probate in this state. Nothing contained in this section shall operate to defeat the rights, acquired prior to such record, of purchasers for value whose rights are shown of record.

Bar Committee Comment

New. By the introduction of this section, three ways are provided in the law for making title to Iowa real estate owned at his death by a testate nonresident:

1. By original probate under section 495;
2. By probate in Iowa of a foreign probated will under section 496;
3. By use of a foreign will as a muniment of title under this section even after time for probate has passed.

§ 498. Foreign wills—procedure

All provisions of law relating to the carrying of domestic wills into effect after their probate shall apply, so far as applicable, to foreign wills admitted to probate in this state.

Bar Committee Comment

Same as 633.34 (1962 Code). There is no conflict or ambiguity as between this section and section 497 since this section applies to wills admitted to probate under sections 495 and 496.

§ 499. Appointment where no foreign probate

The fiduciary named in the will of a nonresident that has not been probated in any other state, may, upon application, after such will has been admitted to probate in this state, be appointed fiduciary in this state; provided that a resident fiduciary be appointed to serve with the nonresident fiduciary; provided, further, that, for good cause shown, the court may appoint the nonresident fiduciary to act alone without the appointment of a resident fiduciary.

Bar Committee Comment

New. This section provides that in any case where the will of a nonresident is admitted to probate in Iowa without its prior probate in another state, the Iowa Court may appoint a nonresident as execu-

tor or as trustee. It is contemplated that a resident fiduciary will ordinarily be appointed to serve with the nonresident. However, in particular instances, for good cause shown, the court may appoint the nonresident as the sole fiduciary.

PART 2. ANCILLARY ADMINISTRATION

§ 500. Appointment of foreign administrator

If administration of the estate of a deceased intestate nonresident has been granted in accordance with the law of the state where he resided, the duly qualified administrator of the estate of the nonresident may upon application be appointed administrator in this state, unless another has already been appointed and provided that a resident administrator be appointed to serve with the nonresident administrator; provided further, however, that for good cause shown, the court may appoint the nonresident administrator to act alone without the appointment of a resident administrator.

Bar Committee Comment

Adapted from 633.50 (1962 Code). This revision gives the Iowa court control of the administration by providing that generally a resident administrator shall serve jointly with the nonresident; however, in particular instances, for good cause shown, the court may waive the appointment of a resident fiduciary.

§ 501. Application for appointment of foreign administrator

The application for any such appointment under section five hundred (500) shall contain the name and address of the foreign administrator and of the resident administrator, if any, to be appointed, and shall be accompanied by a certificate of the clerk of the court of original jurisdiction certifying that such estate is under administration, and a certification of the original letters or other authority authorizing the nonresident administrator to act in that estate.

Bar Committee Comment

New.

§ 502. Appointment of foreign fiduciary

The duly qualified fiduciary under a will admitted to probate in another state, may upon application be appointed fiduciary in this state, after said will has been admitted to probate in this state, provided that a resident fiduciary be appointed to serve with the nonresident fiduciary; provided further, however, that, for good cause shown, the court

may appoint the nonresident fiduciary to act alone without the appointment of a resident fiduciary.

Bar Committee Comment

New. This section replaces the very limited 633.35 (1962 Code), and, in practical effect, does for the Iowa administration of a foreign testate estate what section 500 does for a foreign intestate estate.

§ 503. Application for appointment of foreign executor or trustee

The application for appointment of a nonresident executor or trustee shall include the name and address of the nonresident executor or trustee, and the name and address of the resident executor or trustee, if any, to be appointed. It shall be accompanied by a certificate of the clerk of the foreign court granting the original letters or other authority conferring the power upon the nonresident executor or trustee to act as such. The application shall also state the cause for the appointment of the nonresident executor or trustee to act as the sole executor or trustee, if such appointment is desired. When the will has not been admitted to probate in any other state, the application shall include the name and address of the executor or trustee, if any, named in the will of the nonresident, and of the resident executor or trustee to be appointed.

Bar Committee Comment

New. This section establishes the procedure to be followed to secure the right which is given under section 502, just as section 501 provides a similar procedure for intestate estates.

§ 504. Removal of property—payment of claims

In all estates of nonresidents, being administered in this state, the court may require payment of all claims filed and allowed belonging to residents of this state, and all legacies or distributive shares payable to residents of this state, before allowing any of the property in the estate to be removed from the state.

Bar Committee Comment

Same as 633.52 (1962 Code).

§§ 505 to 509, inclusive, reserved for future use

DIVISION IX—ESTATES OF ABSENTEES

§ 510. Administration authorized—petition

Administration may be had upon the estate of an absentee. A petition therefor must be filed in the office of the clerk and must allege:

1. Whether the absentee was a resident or a nonresident of this state, and his address at his last known domicile; that he has, without known cause, absented himself from his usual place of residence, and concealed his whereabouts from his family, for a period of five years.

2. That the said absentee has property in this state (describing it with reasonable certainty), all or part of which is situated in the county in which the petition is filed.

3. The names of the persons, so far as known to the petitioner, who would be entitled to share in the estate of the absentee if he were dead.

4. In the case of a nonresident, whether administration upon the estate has been granted in the state of last known domicile.

5. Facts showing that the petitioner is a party who would be entitled to administer the estate of the said absentee in case the absentee were known to be dead.

Bar Committee Comment

Adapted from 634.1 (1962 Code). This section revised to include the estates of nonresident absentees, and the period of absence is reduced in all instances from seven years to five years.

§ 511. Notice

Upon filing of such petition, the court shall, by a proper order, prescribe the notice and the return day therein, which shall be addressed to and served upon such absentee and the alleged distributees of his estate.

Bar Committee Comment

Adapted from 634.2 (1962 Code).

§ 512. Service

Said notice shall in all cases be served:

1. By publication in the county in which the petition is filed, once each week for three consecutive weeks, in a newspaper designated by the court; and

2. Upon all the alleged distributees of the estate of said absentee by ordinary mail addressed to them at their last known address.

Bar Committee Comment

Adapted from 634.3 (1962 Code). Paragraph 1 is the same as paragraph 1 of the old section except that the publication requirement is reduced from eight weeks to three weeks. Paragraph 2 provides for notice to "alleged distributees" rather than "known and alleged beneficiaries", and also spells out the requirement of giving notice by ordinary mail in addition to publication in order to comply with the requirements of the Mullane case. See Mullane v. Central Hanover Bank & Trust Company, 94 Lawyers Ed. 865, 70 Supreme Court Reporter 652 (1950).

§ 513. Proof of service—filing

Proof of the publication and service of such notice shall be filed with the clerk aforesaid on or before the day set for hearing.

Bar Committee Comment

Same as 634.4 (1962 Code).

§ 514. Hearing—continuance—orders

If, on the day set for hearing, the absentee fails to appear, the court shall appoint some disinterested person as guardian ad litem to appear for the absentee and all distributees not appearing, and said cause shall thereupon stand continued for twenty days. The court shall have authority to make further continuance upon proper showing. The guardian ad litem shall investigate the matter and things alleged in the petition. Upon the further hearing, the court shall hear the proofs, and, if satisfied of the truth of the allegations of the petition, shall enter an order establishing the death of the absentee as a matter of law.

Bar Committee Comment

Adapted from 634.5 (1962 Code), with the additional provision that the order establishes the death of the absentee as a matter of law. This addition is desirable to establish the rights of the survivors where property is held in joint tenancy. It would also establish the death of the absentee for purposes of social security benefits and claims under life insurance policies.

§ 515. Administration

Upon the entry of such further order under section five hundred fourteen (514), administration of the estate of such absentee, whether testate or intestate, shall proceed as provided herein for the admin-

istration of the estates of other decedents, notwithstanding the provisions of section three hundred thirty (330).

Bar Committee Comment

Substitute for 634.6, 634.7, 634.8, 634.9 and 639.10 (1962 Code). Provides for the administration of the estate of an absentee in the same manner as any other decedent's estate, making it unnecessary to spell out the various powers and duties set forth in the substituted sections.

§ 516. Rights of absentee barred—sale by spouse

Such an order establishing the death of an absentee shall forever bar the rights of homestead and distributive share of the absentee, and his interest in and to any real estate owned or held by the spouse of such absentee, and in which said spouse may have a legal or equitable interest. Conveyance of any such real estate by such spouse, after six months or more from date of publication of second notice of appointment of a personal representative, shall be free and clear of any claim or right of homestead or distributive share on the part of such absentee.

Bar Committee Comment

Same as 634.11 (1962 Code), except that the period after which a spouse may convey has been changed from one year to six months.

§ 517. Missing soldiers or sailors—presumption of death

1. A written finding of presumed death, made by the secretary of defense, or other officer or employee of the United States authorized to make such finding, pursuant to the federal Missing Persons Act (56 Stat. 143, 1092, and P.L. 408, Ch. 371, 2d Session 78th Congress; 50 U.S.C.App.Supp. 1001–17), as now or hereafter amended, or a duly certified copy of such a finding, shall be received in any court, office or other place in this state, as evidence of the death of the person therein found to be dead, and of the date, circumstances, and place of his disappearance.

2. An official written report or record, or a duly certified copy thereof, that a person is missing, missing in action, interned in a neutral country, or beleaguered, besieged, or captured by an enemy, or is dead, or is alive, made by any officer or employee of the United States authorized by the act referred to in subsection one (1) of this section, or by any other law of the United States, to make such a report or record, shall be received in any court, office or other place in this state as evidence that such person is missing, missing in action, in-

terned in a neutral country, or beleaguered, besieged, or captured by an enemy, or is dead, or is alive, as the case may be.

3. For the purposes of subsections one (1) and two (2) of this section, any finding, report, or record, or duly certified copy thereof, purporting to have been signed by such an officer or employee of the United States as is described in said subsections, shall prima facie be deemed to have been signed and issued by such an officer or employee pursuant to law, and the person signing the same shall prima facie be deemed to have acted within the scope of his authority. If a copy purports to have been certified by a person authorized by law to certify the same, such certified copy shall be prima facie evidence of his authority so to certify.

Bar Committee Comment

Same as 634.12 (1962 Code).

§§ 518 to 522, inclusive, reserved for future use

DIVISION X—UNIFORM SIMULTANEOUS DEATH ACT

Bar Committee Comment

These sections are re-enacted into the Probate Code from sections 637.1 through 637.7 (1962 Code), with the deletion of "tenants by entirety" in 637.3 (1962 Code) which has not been recognized in Iowa.

§ 523. No sufficient evidence of survivorship

Where the title to property or the devolution thereof depends upon priority of death, and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise in sections five hundred twenty-four (524) to five hundred twenty-seven (527) inclusive.

§ 524. Beneficiaries of another person's disposition of property

Where two or more beneficiaries are designated to take successively, by reason of survivorship, under another person's disposition of property, and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries, and these portions shall be distributed respectively to

those who would have taken in the event that each designated beneficiary had survived.

§ 525. Joint tenants

Where there is no sufficient evidence that two joint tenants have died otherwise than simultaneously, the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than two joint tenants and all of them have so died, the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

§ 526. Insurance policies

Where the insured and the beneficiary in a policy of life or accident insurance have died, and there is no sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

§ 527. Limitation of application

Sections five hundred twenty-three (523) and five hundred twenty-four (524) shall not apply in the case of wills, living trusts, deeds, or contracts of insurance wherein provision has been made for distribution of property different from the provisions of said sections.

§ 528. Uniformity of interpretation

Sections five hundred twenty-three (523) through five hundred twenty-seven (527) shall be so construed and interpreted as to effectuate their general purpose to make uniform the law relating to simultaneous death.

§§ 529 to 534, inclusive, reserved for future use

DIVISION XI—FELONIOUS DEATH

Bar Committee Comment

These sections are in substance a re-enactment of sections 636.47, 636.48 and 636.49 (1962 Code).

§ 535. Feloniously causing death

No person who feloniously takes or causes or procures another to take the life of another shall inherit from such person, or receive any

interest in the estate of the decedent as surviving spouse, or take by devise or legacy from him, any portion of his estate.

§ 536. Insurance beneficiary feloniously causing death

No beneficiary of any policy of insurance or certificate of membership issued by any benevolent association or organization, payable upon the death or disability of any person, who feloniously takes or causes or procures to be taken the life upon which such policy or certificate is issued, or who feloniously causes or procures a disability of such person, shall take the proceeds of such policy or certificate.

§ 537. Distribution to other heirs or insured

In every instance mentioned in sections five hundred thirty-five (535) and five hundred thirty-six (536), all benefits that would accrue to any such person upon the death or disability of the person whose life is thus taken or who is thus disabled shall be distributed to the other persons who would take under the will of the decedent or according to the rules of intestate succession, as the case may be.

§§ 538 to 542, inclusive, reserved for future use

DIVISION XII—PROCEEDINGS FOR ESCHEAT

Bar Committee Comment

Re-enactment of 636.51 through 636.54 (1962 Code). Section 543 changes the provision for notice to the attorney general to the comptroller.

§ 543. Proceedings for escheat

When the court has reason to believe that any property of the estate of a decedent within the county should by law escheat, he must forthwith inform the attorney general of the state of Iowa thereof, and appoint some suitable person as personal representative to take charge of such property, unless a personal representative has already been appointed.

§ 544. Notice to persons interested

The personal representative must give such notice of the death of the deceased, and of the amount and kind of property left by him within the state, as, in the opinion of the court appointing him shall be best calculated to notify those interested, or supposed to be interested, in the property.

§ 545. Sale—proceeds

If within six months from the giving of such notice, no claimant thereof appears, such property may be sold and the proceeds paid over by the personal representative to the state comptroller for the benefit of the school fund.

§ 546. Payment to person entitled

The money or any portion of it shall be paid at any time within ten years after the sale of the property or the appropriation of the money, but not afterwards, to anyone showing himself entitled thereto.

§§ 547 to 551, inclusive, reserved for future use

DIVISION XIII—OPENING GUARDIANSHIPS AND CONSERVATORSHIPS

PART 1. OPENING GUARDIANSHIPS

Bar Committee Comment

GENERAL COMMENT:

A number of the problems dealing with guardianships are discussed in the Symposium on Guardianships which appears in the IOWA LAW REVIEW Vol. 45, pp 209 – 440 (Winter 1960). There are five chapters in the 1962 Code dealing with guardianships (Chapters 558 Minors, 668 Foreign, 670 Alcoholics, etc., 671 Absentees, and 672 Veterans). The provisions for appointment differ and the provisions for administration are often confusing.

In 1961, the state of Oregon enacted a complete revision of its law relating to guardianships and conservatorships which were recommended by the Legislative Counsel Committee. The Legislative Counsel Committee relied to a great extent upon the IOWA LAW REVIEW article above mentioned, as well as the sections in the MODEL PROBATE CODE pertaining to guardianships and conservatorships.

The term "conservatorship" is a new term in Iowa. There appears to be considerable resistance on the part of aged and uninformed people to have any person appointed to assist them in the management of their property and affairs. The word "guardian" in the minds of many people has a bad connotation and is associated with lunatics and insane persons. This is probably due to the wording of the 1963 Code provisions. The term "conservator" simply is a substitute term for what we have always known as "guardian of the property" and is designed to remove the prejudice of many aged persons to voluntarily consenting to the court appointment of a person to manage their property.

The provisions for a standby guardianship are entirely new. These provisions make it possible for a person who is presently compe-

tent but who realizes the possibility of incompetency with the declining years, to nominate a person to be later appointed by the court to manage his affairs. His right is very similar to the right of the person to name an executor in his will. These provisions should prove to be very beneficial in many instances.

In addition to the provisions in the Probate Code dealing with the special matters relating to guardianships and conservatorships, the sections relating to all fiduciaries (sections 64 through 205) are also applicable to guardians and conservators.

§ 552. Petition for appointment of guardian

Any person may file with the clerk a verified petition for the appointment of a guardian. The petition shall state the following information so far as known to the petitioner.

1. The name, age and post-office address of the proposed ward.

2. That the proposed ward is: a minor, a mental retardate, mentally ill, senile, a chronic alcoholic, or a spendthrift.

3. The name and post-office address of the proposed guardian, and that such person is qualified to serve in that capacity.

4. That the proposed ward is a resident of the state of Iowa or is present in the state, and that his best interests require the appointment of a guardian in this state.

5. The name and address of the person or institution, if any, having the care, custody or control of the proposed ward.

Bar Committee Comment

New. Adapted from the new Oregon Act on Guardianships. The intention is to specify the contents of the petition for appointment of a guardian to enable uniformity of procedure.

§ 553. No notice required—minor

No notice of the filing of such petition need be given when the proposed ward is a minor and such petition is filed by the person having custody of the proposed ward.

Bar Committee Comment

New. This section codifies present case law but limits its application to the situation in which the applicant already has custody of the minor for whom a guardianship is requested.

§ 554. Notice governed by Rules of Civil Procedure

In all other cases, notice of the filing of such petition shall be served upon the proposed ward in the manner of an original notice

and the Rules of Civil Procedure governing original notices shall also govern such notice as to content.

Bar Committee Comment

New. The requirements of proper notice to the proposed ward are clarified by exact reference to the body of rules which govern ordinary civil actions.

§ 555. Pleadings and trial—Rules of Civil Procedure

All other pleadings and the trial of the cause shall be governed by the Rules of Civil Procedure. The cause shall be tried as a law action, and either party shall be entitled to a jury trial if demand is made therefor as provided by the Rules of Civil Procedure.

Bar Committee Comment

New. The right to trial by jury as provided by former section 670.9 (1962 Code) has been retained. Former section 670.7 (1962 Code) has been clarified and expanded.

§ 556. Appointment of guardian

If the allegations of the petition as to the status of the proposed ward and the necessity for the appointment of a guardian are proved, the court may appoint a guardian.

Bar Committee Comment

Adapted from part of former section 670.2 (1962 Code).

§ 557. Appointment of guardian on voluntary petition

A guardian may also be appointed by the court upon the verified petition of the proposed ward, if he is other than a mental retardate, a mentally ill person, or a minor under the age of fourteen years, provided that the court determine that such an appointment inures to the best interest of the applicant.

Cross reference: See sections 572 and 635.

Bar Committee Comment

Adapted from former sections 668.4 and 670.5 (1962 Code).

§ 558. Appointment of temporary guardian

A temporary guardian may be appointed, but only after a hearing on such notice, and subject to such conditions, as the court shall prescribe.

Bar Committee Comment

Adapted from former section 670.8 (1962 Code). This section is intended to give the court authority to carefully restrict both the use and powers of a temporary guardian.

§ 559. Preference as to appointment

The parents of a minor, or either of them, if qualified and suitable, shall be preferred over all others for appointment as guardian. Preference shall then be given to any person, if qualified and suitable, nominated as guardian for a minor child by a will executed by the parent having custody of a minor child, and any qualified and suitable person requested by a minor fourteen years of age or older. Subject to these preferences, the court shall appoint as guardian a qualified and suitable person who is willing to serve in that capacity.

Bar Committee Comment

Adapted from 668.1, 668.2 and 668.4 (1962 Code). The preference for a parental guardian is retained, but the needless and imprecise language concerning "natural guardians" is discarded. The second category in the preferential scale creates a testamentary guardianship, which existed in Iowa until 1873, but which has been nonexistent since that date. In re Guardianship of Johnson, 87 Iowa 130, 54 N.W. 69 (1893). See Jenkins vs. Clark, 71 Iowa 552, 32 N.W. 504 (1887); In re Estate of Meyer, 240 Iowa 1226, 1227, 37 N.W.2d 265, 266 (1949); Turner vs. Ryan, 223 Iowa 191, 196, 272 N.W. 60, 62 (1937); In re Guardianship of Waite, 190 Iowa 182, 186, 180 N.W. 159, 161 (1920). For the early provision for a testamentary guardianship see Iowa Code section 1492 (1851); Iowa Code section 2544 (Revision 1860). The third category of preference, which is intended to be equal to the second, retains the power of a minor over the age of fourteen years to select his own guardian, subject to the approval of the court.

§ 560. Appointment of guardian on a standby basis

A petition for the appointment of a guardian on a standby basis may be filed by any person under the same procedure and requirements as provided in sections five hundred ninety-one (591) through five hundred ninety-seven (597), both inclusive, for appointment of standby conservator, insofar as applicable.

Bar Committee Comment

New. Reference is made to the comments under section 591 through 597, inclusive. It is intended that the standby guardian upon appointment and qualification have the same powers and duties as any other guardian.

§§ 561 to 565, inclusive, reserved for future use

PART 2. OPENING CONSERVATORSHIPS

§ 566. Petition for appointment of conservator

Any person may file with the clerk a verified petition for the appointment of a conservator. The petition shall state the following information, so far as known to the petitioner:

1. The name, age and post-office address of the proposed ward.

2. That the proposed ward is: a minor, a mental retardate, mentally ill, senile, a chronic alcoholic, or a spendthrift.

3. The name and post-office address of the proposed conservator, and that such person is qualified to serve in that capacity.

4. A general description of the property of the proposed ward within this state and of the right to receive property, together with the probable present value of such property and rights. If any money is payable, or to become payable, to the proposed ward by the United States through the Veterans Administration, the petition shall so state.

5. The name and address of the person or institution, if any, having the care, custody or control of the proposed ward.

6. That the proposed ward resides in the state of Iowa, is a nonresident, or that his residence is unknown, and that his best interests require the appointment of a conservator in the state of Iowa.

Bar Committee Comment

Adapted from the new Oregon Act on Guardianships. The intention is to specify the contents of the petition for appointment of a conservator to enable uniformity of procedure. This section provides what no section in former Chapter 668 (1962 Code) covered and replaces former section 670.2 (1962 Code).

§ 567. No notice required—minor

No notice of the filing of such petition need be given when the proposed ward is a minor and such petition is filed by the person having custody of the proposed ward.

Bar Committee Comment

New. This section retains the "in rem" approach to conservatorships of minors only where the application is filed by the person having custody of the proposed ward.

§ 568. Notice governed by Rules of Civil Procedure

In all other cases, notice of the filing of such petition shall be served upon the proposed ward in the manner of an original notice and the Rules of Civil Procedure governing original notice shall also govern such notice as to content.

Bar Committee Comment

New. The requirements of proper notice are clarified by exact reference to the body of rules which govern ordinary civil actions.

§ 569. Pleadings and trial—Rules of Civil Procedure

All other pleadings and the trial of the cause shall be governed by the Rules of Civil Procedure. The cause shall be tried as a law action, and either party shall be entitled to a jury trial if demand is made therefor as provided by the Rules of Civil Procedure.

Bar Committee Comment

New. The right to trial by jury as provided by 670.9 (1962 Code) has been retained. Former section 670.7 (1962 Code) has been clarified and expanded.

§ 570. Appointment of conservator

If the allegations of the petition as to the status of the proposed ward and the necessity for the appointment of a conservator are proved, the court may appoint a conservator.

Bar Committee Comment

Adapted from part of 670.2 (1962 Code).

§ 571. Preference as to appointment of conservator

The parents of a minor, or either of them, if qualified and suitable, shall be preferred over all others for appointment as conservator. Preference shall then be given to any person, if qualified and suitable, nominated as conservator for a minor child by a will executed by the parent having custody of a minor child, and any qualified and suitable person requested by a minor fourteen years of age or older. Subject to these preferences, the court shall appoint as conservator a qualified and suitable person who is willing to serve in that capacity.

Bar Committee Comment

New. See the comment under section 589.

§ 572. Appointment of conservator on voluntary petition

A conservator may also be appointed by the court upon the verified petition of the proposed ward, if he is other than a mental retardate, or a mentally ill person, or a minor under the age of fourteen years, provided that the court determines that such an appointment inures to the best interest of the applicant. Such petition shall state whether a notice of involuntary petition for the appointment of a conservator has been served on the proposed ward.

Cross reference: See sections 557 and 635.

Bar Committee Comment

Adapted from 668.4 and 670.5 (1962 Code). The court may combine proceedings seeking voluntary and involuntary appointment of a conservator. See section 635.

§ 573. Appointment of temporary conservator

A temporary conservator may be appointed but only after a hearing on such notice, and subject to such conditions, as the court shall prescribe.

Bar Committee Comment

Adapted from 670.8 (1962 Code). This section is intended to give the court authority to carefully restrict both the use and powers of a temporary conservator.

§ 574. Procedure in lieu of conservatorship

If no conservator has been appointed, money due a minor or other property to which a minor is entitled, not exceeding in the aggregate the sum of one thousand dollars in value, may be paid or delivered to a parent of the minor who is entitled to the custody of such minor, upon written statement verified by the oath of such parent, that all money or property of such minor does not exceed in the aggregate the sum of one thousand dollars; and the written receipt of such parent shall constitute an acquittance of the person making such payment of money or delivery of such property.

Cross reference: See chapter 565A of the 1962 Code of Iowa.

Bar Committee Comment

Adapted from 668.3 (1962 Code). The amount of property which can be handled in this fashion has been increased from $500.00 to $1000.00.

Cross reference: See Chapter 565A (1962 Code).

§§ 575 to 579, inclusive, reserved for future use

PART 3. CONSERVATORSHIPS FOR ABSENTEES

§ 580. Petition for appointment of conservator for absentee

When a person owns property located in the state of Iowa, his whereabouts are unknown, and no provision for the care, control and supervision of such property has been made, with the result that such property is likely to be lost or damaged, or that the dependents of such owner are likely to be deprived of means of support because of such absence, it shall be proper for any person to file with the clerk a petition for the appointment of a conservator of such property of the absentee. The petition shall state the following information, so far as known to the petitioner:

1. The name, age and last known post-office address of the proposed ward.

2. The facts concerning the disappearance of the absentee.

3. The name and post-office address of the proposed conservator, and that he is qualified to serve in that capacity.

4. A general description of the property of the absentee within this state and of his right to receive property; also, the probable present value of such property and right. If any money is payable, or to become payable to the absentee by the United States through the Veterans Administration, the petition shall so state.

5. That the property of the absentee is likely to be lost or damaged, or that his dependents are likely to be deprived of means of support, because of his absence, and that no proper provision has been made for the care, control and supervision over such property.

Bar Committee Comment

New. This section replaces 671.1 (1962 Code) and modifies both substance and procedure. The former three-month waiting period is eliminated in order to permit immediate arrangements for the support of dependents of the absentee.

§ 581. Original notice governed by Rules of Civil Procedure

Notice of the filing of such a petition and of the hearing thereon shall be served upon the absentee by publication in the manner of an original notice and the Rules of Civil Procedure governing original notices by publication shall also govern such a notice as to content.

Bar Committee Comment

New. Replaces 671.2 (1962 Code). The notice provision is conformed to the practice under the Rules of Civil Procedure.

§ 582. Notice on county attorney

Such notice shall also be served on the county attorney of the county in which the petition is filed and on the spouse and children of the absentee as provided by the Rules of Civil Procedure. If there are no spouse or children, such notice shall be served on such persons and in such manner as the court may prescribe.

Bar Committee Comment

New. Replaces 671.3 (1962 Code). The intention is to provide for notice directed to those most likely to have an interest in the whereabouts of the absentees.

§ 583. Pleadings and trial—Rules of Civil Procedure

All other pleadings and the trial of the cause shall be governed by the Rules of Civil Procedure.

Bar Committee Comment

New.

§ 584. Appointment of conservator

In the event that the absentee does not appear at said hearing, the court shall hear the petition and the proof offered. All evidence shall be made a part of a transcript to be filed in such proceedings. If the allegations of the petition are proved, the court may appoint a conservator.

Bar Committee Comment

Adapted from 671.5, 671.6 and 671.8 (1962 Code) without substantial change except that the requirement that the county attorney be present at the hearing has been eliminated.

§ 585. Appointment of temporary conservator

A temporary conservator may be appointed, but only after a hearing on such notice, and subject to such conditions as the court shall prescribe.

Bar Committee Comment

New. The court can appoint a temporary conservator for limited purposes and with only such authority as the court shall prescribe.

§§ 586 to 590, inclusive, reserved for future use

PART 4. STANDBY CONSERVATORSHIPS

Bar Committee Comment

Sections 591–597 are all new. There appears to be no provision in the statutes of any other state for standby guardianships or conservatorships. These sections permit a person of sound mind to plan for the infirmities of advanced age without giving up present control of his property, even to a trustee. In section 597, the court, under the provisions of section 635, may combine the hearing on this petition with those made under sections 557 and 572. Section 597 was included to clearly provide that the standby provisions refer only to the procedure for appointment and qualification of a conservator and do not vary the powers and duties of that conservator.

§ 591. Voluntary petition for appointment of conservator—standby basis

Any person of full age and sound mind may execute a verified petition for the voluntary appointment of a conservator of his property upon the express condition that such petition shall be acted upon by the court only upon the occurrence of an event specified or the existence of a described condition of the mental or physical health of the petitioner, the occurrence of which event, or the existence of which condition, shall be established in the manner directed in said petition.

Cross reference: See section 635.

§ 592. Petition may nominate conservator

Such petition may nominate a person for appointment to serve as such conservator, and may request that the appointment be made without bond, or with bond of a certain stated sum. The court in appointing the conservator shall give due regard to such nomination and other requests and recommendations contained in the petition.

§ 593. Deposit of petition

Such petition may be deposited with the clerk of the county in which the party resides, or with any person, firm, bank or trust company selected by the petitioner.

§ 594. Revocation of petition

Such petition may be revoked by the petitioner at any time before appointment of a conservator by the court, provided that the petitioner is of sound mind. Revocation shall be accomplished by the destruction of the petition by the petitioner, or by the execution of an acknowledged instrument of revocation. If the petition has been

deposited with the clerk, the revocation may likewise be deposited there.

§ 595. Filing petition upon occurrence of condition

At any time after the deposit of the petition with the clerk, and before its revocation, it may be brought on for hearing by the filing of a verified statement to the effect that the occurrence of the event or the condition provided for in the petition has come to pass. If the petition has not been deposited with the clerk under the provisions of section five hundred ninety-three (593), then it may be brought on for hearing at any time by the filing of it and such a verified statement with the clerk of the county in which the person who executed the petition then resides.

§ 596. Time of appointment of conservator

At the time such petition is filed, the court, without any notice, may appoint the conservator nominated in such petition or may set the petition for hearing on such notice as the court may prescribe.

§ 597. Conservator shall have same powers and duties

The powers and duties of such a conservator shall be the same as those of a conservator appointed in response to any of the other petitions authorized in this Code.

§§ 598 to 602, inclusive, reserved for future use

PART 5. FOREIGN CONSERVATORS

§ 603. Appointment of foreign conservators

When there is no conservatorship, nor any application therefor pending, in this state, the duly qualified foreign conservator or guardian of a nonresident ward may, upon application, be appointed conservator of the property of such person in this state; provided that a resident conservator is appointed to serve with the foreign conservator; and provided further, that, for good cause shown, the court may appoint the foreign conservator to act alone without the appointment of a resident conservator.

Bar Committee Comment

New. Replaces former 669.1 (1962 Code). A foreign conservator or guardian may be appointed as conservator in this state. Unless good cause is shown why such should not be done, a resident co-conservator must be appointed for the protection of creditors and others dealing with the conservatorship.

§ 604. Application

The application for appointment of a foreign conservator or guardian as conservator in this state shall include the name and address of the nonresident ward, and of the nonresident conservator or guardian, and the name and address of the resident conservator to be appointed. It shall be accompanied by an exemplified copy of the original letters or other authority conferring the power upon the foreign conservator or guardian to act as such. The application shall also state the cause for the appointment of the foreign conservator to act as sole conservator, if such be the case.

Bar Committee Comment

New. Replaces 669.2 and 669.3 (1962 Code). The foreign conservator no longer receives different treatment from the resident conservator with respect to the requirements respecting his bond. However, it is not intended that greater burdens be created. The bond provisions for all fiduciaries provide amply for the protection of the conservatorship and its exemption from costly bond premiums under proper circumstances.

§ 605. Personal property

A foreign conservator or guardian of a nonresident may be authorized by the court of the county wherein such ward has personal property to receive the same upon compliance with the provisions of sections six hundred six (606), six hundred seven (607) and six hundred eight (608).

Bar Committee Comment

Adapted from 669.4 (1962 Code).

§ 606. Copy of bond

Such foreign conservator or guardian shall file in the office of the clerk in the county where the property is situated, a certified copy of his official bond, duly authenticated by the court granting his letters, and shall also execute a receipt for the property received by him.

Bar Committee Comment

Adapted from 669.5 (1962 Code).

§ 607. Order for delivery

Upon the filing of the bond as above provided, and the court being satisfied with the amount thereof, it shall order the personal property of the ward delivered to such conservator or guardian.

Bar Committee Comment

Adapted from 669.6 (1962 Code).

§ 608. Recording of bond—notice to court

The clerk shall record the bonds and the receipt, and notify by mail the court which granted the letters of conservatorship or guardianship of the amount of property delivered to the fiduciary and the date of delivery thereof.

Bar Committee Comment

Adapted from 669.7 (1962 Code).

§§ 609 to 613, inclusive, reserved for future use

PART 6. CONSERVATORSHIPS INVOLVING VETERANS ADMINISTRATION

Bar Committee Comment

Sections 614–621 are in substance a re-enactment and re-arrangement of Chapter 672 (1962 Code). Repetitious cross-references and incorporations by reference are eliminated. Sections 672.17, 672.18 and 672.19 (1962 Code) are eliminated as unnecessary, and section 672.21 (1962 Code) is covered by sections 676 through 683 of this Code.

§ 614. Application of other provisions to veterans' conservatorships

Whenever moneys are paid or are payable pursuant to any law of the United States through the Veterans Administration to a conservator or a guardian, the provisions of sections six hundred fifteen (615) through six hundred twenty-one (621) shall apply to the administration of said moneys. However, such provisions shall be construed to be supplementary to the other provisions for conservators, and shall not be exclusive of such provisions.

§ 615. Administrator of veterans affairs—party in interest

The administrator of veterans affairs of the United States, his successor, or the designee of either, shall be a party in interest in any proceeding for the appointment or removal of a conservator, or for the termination of the conservatorship, and in any suit or other proceeding, including reports and accountings, affecting in any manner the administration of those assets that were derived in whole or in part from benefits paid by the Veterans Administration. Not less than fifteen days prior to the time set for a hearing in any such matters, notice, in writing, of the time and place thereof shall be given by

mail to the office of the Veterans Administration having jurisdiction over the area in which such matter is pending.

§ 616. Ward rated incompetent by Veterans Administration

Upon the trial of an issue arising upon a prayer for the appointment of either a temporary or a permanent conservator, a certificate of the administrator of Veterans Administration, or his representative, setting forth the fact that the defendant ward has been rated incompetent by the Veterans Administration upon examination in accordance with the laws and regulations governing the Veterans Administration; and that the appointment of a conservator is a condition precedent to the payment of any moneys due such person by the Veterans Administration, shall be prima facie evidence of the necessity for such appointment, and the court may appoint a conservator for the property of such person.

§ 617. Limitation on conservator acting for more than ten wards

Except as hereinafter provided, it shall be unlawful for any person to accept appointment as conservator for any ward if such proposed conservator shall at that time be acting as conservator for as many as ten wards. In any case, upon presentation of a petition by an attorney of the Veterans Administration under this section alleging that a conservator is acting in a fiduciary capacity for more than ten wards, and requesting his discharge for that reason, the court, upon proof substantiating the petition, shall require a final accounting forthwith from such conservator, and shall discharge such conservator in the particular case. The limitations of this section shall not apply where the conservator is a bank or a trust company. A person may be conservator of more than ten wards if they are all members of the same family.

§ 618. Compensation in conservatorships involving Veterans Administration

In conservatorships involving the Veterans Administration, compensation payable to conservators for ordinary services shall not exceed five percent of the income of the ward during any accounting year, provided, however, that the court may grant compensation to such conservator in a sum not to exceed twenty-five dollars where five percent of the income of the ward during the accounting year will not adequately compensate the conservator for services performed. In the event of extraordinary services, however, the court may, upon petition and after hearing thereon, allow the conservator

additional compensation. Such petition shall set out the extraordinary services rendered by the conservator. Compensation as conservator and a fee as attorney shall not be allowed to the same person. No compensation shall be allowed on the corpus of an estate received from a predecessor conservator.

§ 619. Order for support and maintenance of ward

A conservator shall not apply any portion of the estate of his ward for the support and maintenance of any person other than his ward, except upon order of the court after a hearing.

§ 620. Dual conservatorship proceedings not required

Sections six hundred fourteen (614) through six hundred nineteen (619) shall not be construed as requiring dual conservatorship proceedings of the property of the same person, but when a conservator is such, both as to moneys paid by the United States through the Veterans Administration and to other property of the ward, the accounts of the money received through the Veterans Administration shall be kept separate and apart from the accounts of other property.

§ 621. Liberal construction

Sections six hundred fourteen (614) through six hundred twenty (620) shall be construed liberally to secure the beneficial intent and purpose thereof, and shall apply only to beneficiaries of the Veterans Administration.

§ 622. In administering moneys paid by the Veterans Administration the conservator shall have the following powers and be subject to the following restrictions

1. A bond executed by a recognized surety company equal to said assets and the annual income therefrom, plus the expected annual Veterans Administration benefit payments, shall be required to protect said funds.

2. Excess funds paid to the conservator may be invested in interest-bearing federally insured accounts, or in United States savings bonds, without approval of the court.

3. Moneys paid may be applied to the care, maintenance and support of the veteran and his legal dependents without prior approval of the court.

4. Moneys paid shall not be applied to the payment of obligations outlawed by the statute of limitations of any jurisdiction.

5. No money paid as a gratuity to a ward may be made the subject of a gift to third parties, except that the court may, on petition, authorize the application of said moneys to the assistance of a close relative after a finding that the veteran, if competent, would assist the relative to the extent of the order.

Bar Committee Comment

New. Included at the request of the Veterans Administration.

§§ 623 to 626, inclusive, reserved for future use

PART 7. COMBINING PETITION FOR GUARDIAN AND CONSERVATOR

§ 627. Combining petitions

The petitions for the appointment of a guardian and a conservator may be combined and the cause tried in the same manner as a petition for the appointment of a conservator.

Bar Committee Comment

New. Only one petition need be used to request appointment of a guardian and conservator, if such is desired.

§ 628. Same person as guardian and conservator

The same person may be appointed to serve as both guardian and conservator.

Bar Committee Comment

New. Codifies present Iowa law.

§§ 629 to 633, inclusive, reserved for future use

DIVISION XIV—ADMINISTRATION OF GUARDIANSHIPS AND CONSERVATORSHIPS

PART 1. APPOINTMENT AND QUALIFICATION OF GUARDIANS AND CONSERVATORS

§ 634. Provisions applicable to all fiduciaries shall govern

The provisions of this Code applicable to all fiduciaries shall govern the appointment, qualification, oath and bond of guardians and conservators, except that a guardian shall not be required to give

bond unless the court, for good cause, finds that the best interests of the ward require a bond. The court shall then fix the terms and conditions of such bond.

Bar Committee Comment

New. See sections 1 through 204 of this Code for provisions applicable to all fiduciaries. Since guardians will not ordinarily have property, there is usually no need for bond.

§ 635. Combination of voluntary and standby petitions with involuntary petition for hearing

If prior to the time of hearing on a petition for the appointment of a guardian or a conservator, a petition is filed under the provisions of sections five hundred fifty-seven (557), five hundred seventy-two (572) or five hundred ninety-one (591), the court may combine the hearing on such petitions and determine who shall be appointed guardian or conservator.

Bar Committee Comment

New. Eliminates any priorities with respect to voluntary and involuntary petitions, and also eliminates any priorities with respect to the order of filing the same, as it was felt neither a voluntary nor involuntary petition should have preference over the other, irrespective of the order of filing. See Neidermyer v. Neidermyer, 237 Iowa 685, 22 N.W.2d 346.

PART 2. RIGHTS AND TITLE OF WARD

§ 636. Effect of appointment of guardian or conservator

The appointment of a guardian or conservator shall not constitute an adjudication that the ward is of unsound mind.

Bar Committee Comment

New. Codifies case law that the appointment of a guradian or conservator, alone, does not prevent ward from making a will thereafter, if ward possesses qualifications enumerated in Sec. 264.

§ 637. Powers of ward

A ward for whom a conservator has been appointed shall not have the power to convey, encumber or dispose of property in any manner, other than by will if he possesses the requisite testamentary capacity.

Bar Committee Comment

New. Imposes absolute disqualification on ward to deal with his property with only exception that he can make a will if he possesses qualifications enumerated in Sec. 264.

§ 638. Presumption of fraud

If a conservator be appointed, all contracts, transfers and gifts made by the ward after the filing of the petition shall be presumed to be a fraud against the rights and interest of the ward.

Bar Committee Comment

Adapted from 670.10 (1962 Code). Not applicable to appointment of guardian.

§ 639. Title to ward's property

The title to all property of the ward is in the ward and not the conservator subject, however, to the possession of the conservator and to the control of the court for the purposes of administration, sale or other disposition, under the provisions of the law.

Bar Committee Comment

New. It is advisable that title to the ward's property should remain in the ward, and present case law to this effect is codified.

§ 640. Conservator's right to possession

Every conservator shall have a right to, and shall take, possession of all of the real and personal property of the ward. He shall pay the taxes and collect the income therefrom until the conservatorship is terminated. He may maintain an action for the possession of the property, and to determine the title to the same.

Bar Committee Comment

Enlargement of the provisions of 668.9 (1962 Code). Also, see section 79 of this Code.

PART 3. DUTIES AND POWERS OF CONSERVATOR

§ 641. General duties of conservator

It is the duty of the conservator of the estate to protect and preserve it, to invest it prudently, to account for it as herein provided, and to perform all other duties required of him by law, and at the termination of the conservatorship, to deliver the assets of the ward to the person entitled thereto.

Bar Committee Comment

New. Adapted from section 219(b) of the Model Probate Code in lieu of 668.9 and 671.9 (1962 Code).

§ 642. Inventory of ward's property

Within sixty days after the date of his appointment, or, within such further time as the court may allow, a conservator shall file in the conservatorship a verified inventory of all of the property of the ward that has come into his possession or of which he has knowledge. Whenever any property of the ward not mentioned in the inventory comes into the possession, or to the knowledge, of the conservator, he shall file in the conservatorship a verified supplemental inventory within thirty days after the property comes into his possession, or becomes known to him; or he may include the property in his next accounting.

Bar Committee Comment

Adapted from 668.8 (1962 Code). Extends time for filing inventory and provides for reporting of property coming to attention of conservator which was omitted from original inventory. Eliminates requirement of appraisal.

§ 643. Disposal of will by conservator

When an instrument purporting to be the will of the ward comes into the hands of a conservator, the conservator shall immediately deliver it to the court.

Bar Committee Comment

Sections 643–645 provide a procedure whereby the administration of a conservatorship can be guided by orders of the court to preserve the testamentary intent of the ward as expressed in a will coming into the hands of the conservator.

§ 644. Court order to preserve testamentary intent of ward

Upon receiving an instrument purporting to be the will of a living ward under the provisions of section six hundred forty-three (643), the court may open said will and read it. The court with or without notice, as it may determine, may enter such orders in the conservatorship as it deems advisable for the proper administration of the conservatorship in light of the expressed testamentary intent of the ward.

§ 645. Court to deliver will to clerk

An instrument purporting to be the will of a ward coming into the hands of the court under the provisions of either section six hundred forty-three (643), shall thereafter be resealed by the court and be deposited with the clerk to be held by said clerk as provided in sections two hundred eighty-six (286) through two hundred eighty-nine (289).

§ 646. Powers of the conservator without order of court

The conservator shall have the full power, without prior order of court, with relation to the estate of his ward to:

1. Collect, receive, receipt for any principal or income, and to enforce, defend against, prosecute, compromise or settle any claim by or against the ward or the conservator; to adjust, arbitrate, compromise, sue on and defend claims in favor of, or against, the ward or the conservator.

2. Sell and transfer personal property of a perishable nature and personal property for which there is a regularly established market.

3. To vote at corporate meeings in person or by proxy.

4. To receive additional property from any source.

Bar Committee Comment

New. They distinguish between those powers of a conservator which he may exercise without court approval and those which require court approval. Paragraph 5 of section 442 is intended to vest the court with broad powers to make orders in the conservatorship.

§ 647. Powers of conservator subject to the approval of the court

Conservators shall have the following powers subject to the approval of the court after hearing on such notice, if any, as the court may prescribe:

1. To invest the funds belonging to the ward.

2. To execute leases.

3. To make payments to, or for the benefit of, his ward in any of the following ways:

a. Directly to the ward;

b. Directly for the maintenance, welfare and education of the ward;

c. To the legal guardian of the person of the ward; or

d. To anyone who at the time shall have the custody and care of the person of the ward.

4. To apply any portion of the income or of the estate of the ward for the support of any person for whose support the ward is legally liable.

5. To do any other thing that the court determines to be to the best interests of the ward and his estate.

§ 648. Appointment of attorney in compromise of personal injury settlements

Notwithstanding the provisions of section six hundred forty-six (646) of this Code, prior to authorizing a compromise of a claim for damages on account of personal injuries to the ward, the court may order an independent investigation by an attorney other than by the attorney for the conservator. The cost of such investigation, including a reasonable attorney fee, shall be taxed as part of the cost of the conservatorship.

Bar Committee Comment

New. Gives the court discretionary power to order independent investigation of personal injury damage claims of ward prior to settlement thereof, to eliminate possible conflicts of interest where conservatorship is initiated on behalf of the person paying the settlement award.

§ 649. Powers of conservators—same as all fiduciaries

Except as expressly modified herein, conservators shall have the powers relating to all fiduciaries as set out in sections sixty-four (64) through one hundred sixty-two (162).

Bar Committee Comment

New.

§ 650. Breach of contracts

Under order of court, for good cause shown, after such notice as the court may prescribe, a conservator shall have the power to breach contracts of the ward entered into by the ward prior to the appointment of the conservator, thereby incurring such liability of the ward's estate for such breach as the ward would have incurred for such breach if he had been competent.

Cross reference: See section 638.

Bar Committee Comment

Specifically provides that conservator has power to breach valid contracts of ward entered into prior to conservatorship if court, for good cause, so orders.

§ 651. Tort liability of conservator

The fact that a person is a conservator or a guardian shall not in itself make him personally liable for damages for the acts of his ward.

Bar Committee Comment

New.

PART 4. TRANSFERRING, ENCUMBERING AND LEASING PROPERTY BY CONSERVATOR

§ 652. Procedure applicable to personal representatives shall govern

Conservators shall have the power to sell, mortgage, exchange, pledge and lease real and personal property belonging to the ward, including the homestead and exempt personal property, when it appears to be to the best interests of the ward, in the same manner and by the same procedure that is provided in this Code for sale, mortgage, exchange, pledge and lease by personal representatives in administration of estates of decedents.

Bar Committee Comment

Amplification of section 648 to expressly provide the conservator with the same powers pertaining to property as provided for the personal representative in estates of decedents. See sections 383 through 404 of this Code.

PART 5. CLAIMS

Bar Committee Comment

Sections 653–667 impose the duty upon the conservator to pay valid claims against the estate of the ward and establish a procedure for determining and clarifying such claims. Right of levy of execution is prohibited, and provision is made for handling claims when the conservatorship becomes insolvent.

§ 653. Claims against the ward, the conservatorship or the conservator in that capacity

Claims accruing before or after the appointment of the conservator, and whether arising in contract or tort or otherwise, after being allowed or established as provided in sections six hundred fifty-four (654) through six hundred fifty-six (656), shall be paid by the conservator from the assets of the conservatorship.

§ 654. Form and verification of claims—general requirements

No claim shall be allowed against the estate of a ward upon application of the claimant unless it shall be in writing, filed in duplicate with the clerk, stating the claimant's name and address, and describing the nature and the amount thereof, if ascertainable. It shall be accompanied by the affidavit of the claimant, or of someone for him, that

the amount is justly due, or if not due, when it will or may become due, that no payments have been made thereon which are not credited, and that there are no offsets to the same, to the knowledge of the affiant, except as therein stated. The duplicate of said claim shall be mailed by the clerk to the conservator or his attorney of record; however, valid contract claims arising in the ordinary course of the conduct of the business or affairs of the ward by the conservator may be paid by the conservator without requiring affidavit or filing.

§ 655. Requirements when claim founded on written instrument

If a claim is founded upon a written instrument, the original of such instrument, or a copy thereof, with all endorsements, must be attached to the claim. The original instrument must be exhibited to the conservator or to the court, upon demand, unless it has been lost or destroyed, in which case, its loss or destruction must be stated in the claim.

§ 656. How claim entitled

All claims filed against the estate of the ward shall be entitled in the name of the claimant against the conservator as such, naming the conservator, and in all further proceedings thereon, this title shall be preserved.

§ 657. Filing of claim required

The filing of a claim in the conservatorship tolls the statute of limitations applicable to such claim.

§ 658. Compelling payment of claims

No claimant shall be entitled to compel payment until his claim has been duly filed and allowed.

§ 659. Allowance by conservator

When a claim has been filed and has been admitted in writing by the conservator, it shall stand allowed, in the absence of fraud or collusion.

§ 660. Execution and levy prohibited

No execution shall issue upon, nor shall any levy be made against, any property of the estate of a ward under any judgment against the ward or a conservator, but the provisions of this section shall not be

so construed as to prevent the enforcement of a mortgage, pledge or other lien upon property in an appropriate proceeding.

§ 661. Claims of conservators

If the conservator is a creditor of the ward, he shall file his claim as other creditors, and the court shall appoint some competent person as temporary conservator to represent the ward at the hearing on the conservator's claim. The same procedure shall be followed in the case of coconservators where all such conservators are creditors of the ward; but if one of the coconservators is not a creditor of the ward, such disinterested conservator shall represent the ward at the hearing on any claim against the ward by a coconservator.

§ 662. Claims not filed

The conservator may pay any valid claim against the estate of the ward even though such claim has not been filed, but all such payments made by the conservator shall be at his own peril.

§ 663. Waiver of statute of limitations by conservator

It shall be within the discretion of the conservator to determine whether or not the applicable statute of limitation shall be invoked to bar a claim which he believes to be just, and his decision as to the invoking of such statute shall be final.

§ 664. Liens not affected by failure to file claim

Nothing in sections six hundred fifty-four (654) and six hundred fifty-eight (658) shall affect or prevent an action or proceeding to enforce any mortgage, pledge or other lien upon the property of the ward.

§ 665. Separate actions and claims

Any action pending against the ward at the time the conservator is appointed shall also be considered a claim filed in the conservatorship if notice of substitution is served on the conservator as defendant, and a duplicate of the proof of service of notice of such proceeding is filed in the conservatorship proceeding.

A separate action based on a debt or other liability of the ward may be commenced against the conservator as such in lieu of filing a claim in the conservatorship. Such an action shall be commenced by serving an original notice on the conservator and filing a duplicate of the proof

of service of notice of such proceeding in the conservatorship proceeding. Such an action shall also be considered a claim filed in the conservatorship. Such an action may be commenced only in a county where the venue would have been proper if there were no conservatorship and the action had been commenced against the ward.

§ 666. Denial and contest of claims

The provisions of sections four hundred thirty-eight (438) through four hundred forty-eight (448) shall be applicable to the denial and contest of claims against conservatorships, but shall not be applicable to actions continued or commenced under section six hundred sixty-five (665) of this Code.

§ 667. Payment of claims in insolvent conservatorships

When it appears that the assets in a conservatorship are insufficient to pay in full all the claims against such conservatorship, the conservator shall report such matter to the court, and the court shall, upon hearing, with notice to all persons who have filed claims in the conservatorship, make an order for the pro rata payment of claims giving claimants the same priority, if any, as they would have if the ward were not under conservatorship.

PART 6. GIFTS

§ 668. Conservator may make gifts

For good cause shown and under order of court, a conservator may make gifts on behalf of the ward out of the assets under a conservatorship to persons or religious, educational, scientific, charitable, or other nonprofit organizations to whom or to which such gifts were regularly made prior to the commencement of the conservatorship. The making of gifts out of such assets must not foreseeably impair the ability to provide adequately for the best interests of the ward.

Bar Committee Comment

New. Specifically provides conservator with limited power to continue gift policies of ward prior to conservatorship if court for good cause so orders. This section is a limitation on section 442.5 in that good cause must be shown; the recipients of the gifts must be of the class enumerated; and there must be a finding that (1) the ward was regularly making gifts to said recipient prior to the commencement of the conservatorship, and (2) the making of the gift will not forseeably leave the ward destitute. See In Re Guardianship of Brice, 233 Iowa 183, 8 N.W.2d 576 (1943).

PART 7. GUARDIAN'S REPORT

§ 669. Guardian's report

Immediately after the appointment of the guardian, he shall make a report to the court advising the court as to the physical condition and whereabouts of the ward. At such times thereafter as the court may order, a guardian shall present to the court and file in the guardianship proceedings a written report of the condition of the ward and of the guardian's exercise of authority and performance of his duties.

Bar Committee Comment

New. Adapted from 672.11 (1962 Code). Leaves frequency of guardian's reports to discretion of the court.

PART 8. CONSERVATOR'S REPORT

Bar Committee Comment

Sections 670 and 671 are new and are in lieu of 668.24 and 672.11 (1962 Code).

§ 670. Conservator shall report and account

A conservator shall present to the court and file in the conservatorship proceedings a written verified report and accounting of his administration:

1. Annually within sixty days following the anniversary date of his appointment, unless the court otherwise orders on good cause shown.

2. Upon filing his resignation and before his resignation is accepted by the court.

3. Within thirty days following the date of his removal.

4. Within sixty days following the date of the termination of the conservatorship under the provisions of section six hundred seventy-five (675), unless that time is extended by the court.

5. At such other times as the court may order.

§ 671. Requirements of report and accounting

The report and accounting required by section six hundred seventy (670) shall account for all of the period since the close of the account-

ing contained in the next previous report, and shall include the following information as far as applicable:

1. The balance of funds on hand at the close of the last previous accounting, and all amounts received from whatever source during the period covered by the accounting.

2. All disbursements made during the period covered by the accounting.

3. Any changes in the inventory of property of the ward in the conservatorship.

4. The amount of the bond and the name of the surety on it.

5. The residence or physical location of the ward.

6. The general physical and mental condition of the ward.

7. Such other information as shall be necessary to show the condition of the affairs of the conservatorship.

PART 9. COSTS AND ACCOUNTS

Bar Committee Comment

Sections 672–674 are new.

§ 672. Payment of court costs in conservatorships

No order shall be entered approving an annual report of a conservator until the court costs which have been docketed have been paid or provided for.

§ 673. Court costs in guardianships

The ward or his estate shall be charged with the court costs of a ward's guardianship, including the guardian's fees and the fees of the attorney for the guardian.

§ 674. Settlement of accounts

The court shall settle each account filed by a conservator by allowing or disallowing it, either in whole or in part, or by surcharging the account against the conservator.

PART 10. TERMINATION OF GUARDIANSHIPS AND CONSERVATORSHIPS

§ 675. Cause for termination

A guardianship shall cease, and a conservatorship shall terminate, upon the occurrence of any of the following circumstances:

1. If the ward is a minor, when he reaches full age.

2. The death of the ward.

3. A determination by the court that the ward is competent and capable of managing his property and affairs, and that the continuance of the guardianship or conservatorship would not be in his best interests.

4. Upon determination by the court that the conservatorship or guardianship is no longer necessary for any other reason.

Bar Committee Comment

New. Adapted from 671.10 (1962 Code). Specifically enumerates certain grounds which cause a guardianship or conservatorship to be ended. Subsection 4 gives broad discretion to court to order termination for other reasons. See also sections 668 and 677.

§ 676. Assets exhausted

At any time that the assets of the ward's estate do not exceed the amount of the charges and claims against it, the court may direct the conservator to proceed to terminate the conservatorship.

Bar Committee Comment

Adapted from 668.33 and 670.18 (1962 Code). Specifically calls attention of court to its authority to terminate conservatorship if insolvency is approaching.

§ 677. Accounting to ward—notice of hearing

Upon the termination of a conservatorship, the conservator shall pay the costs of administration, and render a full and complete accounting to the ward or his personal representative and the court. Notice of hearing on the final report of a conservator shall be served on the ward or his personal representative in accordance with the Rules of Civil Procedure, unless such notice is waived. The court may direct notice of hearing on the final report to be given to such other persons, at such time and in such manner as the court may prescribe.

Bar Committee Comment

New. Provides for payment of costs of administration by conservator whether the conservatorship is terminated by death or otherwise. Requires notice of hearing on final report unless notice is waived.

§ 678. Delivery of assets

Upon the termination of a conservatorship, all assets of the conservatorship shall be delivered, under direction of the court, to the person or persons entitled to them.

Bar Committee Comment

New.

§ 679. Petition to terminate

At any time, not less than six months after the appointment of a guardian or conservator, the person under guardianship or conservatorship may apply to the court by petition, alleging that he is no longer a proper subject thereof, and asking that the guardianship or conservatorship be terminated.

Bar Committee Comment

Adapted from 670.11 (1962 Code).

§ 680. Limit on application to terminate

If any petition for terminating such guardianship or conservatorship shall be denied, no other petition shall be filed therefor until at least six months shall have elapsed since the denial of the former one.

Bar Committee Comment

Adapted from 670.15 (1962 Code).

§ 681. Assets of minor ward exhausted

Whenever the assets of a minor ward's conservatorship are exhausted or consist of personal property only of an aggregate value not in excess of one thousand dollars, the court, upon application or upon its own motion, may terminate the conservatorship and direct the conservator to deliver such property to the parent or other person having the custody of the minor ward, for the use of such ward, after payment of allowed claims and expenses of administration. Such deliv-

ery shall have the same force and effect as if delivery had been made to the ward after he attains his majority.

Bar Committee Comment

Adapted from 668.33 (1962 Code). See 108 of this Code.

§ 682. Discharge of conservator and release of bond

Upon settlement of the final accounting of a conservator, and upon determining that the property of the ward has been delivered to the person or persons lawfully entitled thereto, the court shall discharge the conservator and exonerate the surety on his bond.

Bar Committee Comment

New. See 479 of this Code.

§§ 683 to 698, inclusive, reserved for future use

DIVISION XV—TRUSTS

§ 699. Powers of trustees

Unless it is otherwise provided by the will creating a testamentary trust, the instrument creating an express trust, or by an order or decree duly entered by a court of competent jurisdiction, a trustee shall have all the general powers of a fiduciary, including, but not limited to, the following powers:

1. To collect, receive and receipt for any principal or income, belonging to the trust estate, and to enforce, sue upon, defend against, prosecute, abandon, adjust, compromise, arbitrate or settle, any claim by or against the trust.

2. To acquire, manage, invest, reinvest, exchange and retain any or all property, real or personal, at any time, forming a part of the trust estate, as the court may direct; to grant options on, contract to sell, to sell, convey and transfer or lease any or all property, real or personal, at any time forming a part of the trust estate in the same manner and by the same procedure that is provided in this Code for sale, mortgage, exchange, pledge, and lease by personal representatives in administration of estates of decedents.

3. To vote in person, or to execute proxies to vote, corporate shares belonging to the trust at all regular and special meetings of shareholders.

4. To borrow money for the benefit of the trust estate, and to secure loans by pledge or mortgage of trust property, upon good cause shown and subject to the approval and direction of the court.

5. To execute leases for a customary period for the type of real estate involved, not to extend beyond the termination date of the trust without the specific approval and direction of the court, provided that in any event, leases may be made for as long as one year.

6. To make payments to, or for the benefit of, any beneficiary in any of the following ways:

a. Directly to the beneficiary;

b. Directly for the maintenance, welfare, and education of the beneficiary;

c. To the guardian or conservator of the beneficiary; or

d. To anyone who at the time shall have the custody and care of the person of the beneficiary.

A trustee shall not be obliged to see to the application of the funds so paid, but the receipt of the person to whom the funds were paid shall constitute a full acquittance of the trustee.

7. To make any required division or distribution in whole or in part in money, securities, or other property, and in undivided interests therein, and to continue to hold any remaining undivided interest in trust.

8. To receive additional property from any source.

Bar Committee Comment

New. Codification of usual powers of trustee included in most trust instruments. The enumerated powers may be enlarged or diminished in the trust instrument. However, paragraph 2 requires court approval. If the testator desires that such powers shall be exercised without court approval, it will be necessary to include such authorization specifically in the trust instrument.

§ 700. Intermediate report of trustees

Unless specifically relieved from so doing, by the instrument creating the trust, or by order of the court, the trustee shall make a written report, under oath, to the court, once each year, and oftener, if required by the court. Such report shall state:

1. The period covered by the report.

2. All changes in beneficiaries since the last previous report.

3. All changes in investments since the last previous report, and a list of all assets on hand.

4. A detailed accounting for all cash receipts and disbursements, and for all property of the trust, unless such accounting shall be waived in writing by all beneficiaries.

Bar Committee Comment

Enlargement of 682.28 (1962 Code), specifying more in detail the matters to be covered by the reports of trustees.

§ 701. Final report of trustees

Upon the partial or total termination of a trust, or upon the transfer of the trusteeship due to resignation, removal, dissolution, or other disqualification of the trustee of any trust pending in court, the trustee shall make a final report, under oath, to the court, showing for the period since the filing of the last report the facts required for an intermediate report, and, in addition thereto, the following:

1. The name and last known address of each beneficiary.

2. A statement as to those beneficiaries who are known to be minors or under any other legal disability.

3. The amount distributed or to be distributed to each beneficiary.

Bar Committee Comment

New. Sets out certain basic matters to be covered in the final reports of trustees.

§ 702. Notice of application for discharge

Unless notice is waived in writing, no final report of a trustee of a trust pending in court shall be approved, and no such trustee shall be discharged from further duty or responsibility upon final settlement, until notice of his application for discharge shall have been served upon all persons interested as required for the commencement of a civil action, unless a different service be ordered by the court by an order made either before or after the filing of the final report of the trustee.

Bar Committee Comment

New.

§ 703. Discharge

Upon final settlement of a trust, an order shall be entered discharging the trustee from further duties and responsibilities. The order approving the final report shall constitute a waiver of the omission

from the final report of any of the recitals required in section seven hundred one (701).

Bar Committee Comment

New. This is essentially section 479 adapted to final reports of trustees.

§ 704.

The following chapters of the 1962 Code of Iowa are hereby repealed:

Chapter five hundred thirty-three A (533A);
Chapter six hundred thirty-one (631);
Chapter six hundred thirty-two (632);
Chapter six hundred thirty-three (633);
Chapter six hundred thirty-four (634);
Chapter six hundred thirty-five (635);
Chapter six hundred thirty-six (636);
Chapter six hundred thirty-seven (637);
Chapter six hundred thirty-eight (638);
Chapter six hundred sixty-eight (668);
Chapter six hundred sixty-nine (669);
Chapter six hundred seventy (670);
Chapter six hundred seventy-one (671);
Chapter six hundred seventy-two (672); and
Chapter six hundred seventy-three (673).

§ 705.

The following sections of the 1962 Code of Iowa are hereby repealed:

Section five hundred thirty-two point twenty-one (532.21);
Section six hundred four point four (604.4);
Section six hundred eighty-two point thirty-five (682.35);
Section six hundred eighty-two point thirty-six (682.36).

§ 706.

Section six hundred four point three (604.3), Code 1962, is hereby repealed and the following enacted in lieu thereof:

"The district court of each county shall have general, original and exclusive jurisdiction of all probate matters as provided in the probate code."

§ 707.

Section six hundred fourteen point one (614.1), Code 1962, is hereby amended by striking from subsection three (3) all following the words "two years" in line four (4).

§ 708.

Section six hundred eighty-two point four (682.4), Code 1962, is hereby repealed and the following enacted in lieu thereof:

"Qualifications of sureties. Each personal surety shall execute and file with the clerk an affidavit that he owns real estate subject to execution, other than real estate held in joint tenancy, equal to double the amount of the bond, and shall include in such affidavit the total amount of his obligations as surety on other official or statutory bonds. Where there are two or more sureties in the same bond, they must in the aggregate have the qualification prescribed in this section."

§ 709.

Section six hundred eighty-two point twenty-three (682.23), Code 1962, is amended by inserting in line two (2) of subsection fifteen (15) after the word "shall" the words "be construed as modifying the probate code nor".

Bar Committee Comment

This section is ineffective in view of the deletion by the legislature of the provisions of the Prudent Man Investment Act. See Comment following section 123.

§ 710.

Section six hundred eighty-two point twenty-five (682.25), Code 1962, is amended by inserting in line two (2) after the word "fiduciary" the words "not governed by the probate code".

Said section is further amended by striking from line four (4) the words "the will or other".

§ 711.

Section six hundred eighty-two point thirty-one (682.31), Code 1962, is amended by striking from lines one (1) and two (2) the words "Whenever any administrator, guardian, trustee, or referee" and inserting in lieu thereof the words "Whenever any fiduciary not governed by the probate code".

Said section is further amended by striking from line eight (8) the words "administrator, guardian, trustee, or referee" and inserting in lieu thereof the word "fiduciary".

§ 712.

Section six hundred eighty-two point thirty-two (682.32), Code 1962, is amended by striking from lines one (1) and two (2) the words "administrator, guardian, trustee, or referee" and inserting in lieu thereof the word "fiduciary".

§ 713.

Section six hundred eighty-two point thirty-three (682.33), Code 1962, is amended by striking from lines one (1) and two (2) the words "administrator, guardian, trustee, or referee" and inserting in lieu thereof the word "fiduciary".

§ 714.

Section six hundred eighty-two point thirty-four (682.34), Code 1962, is amended by striking from line five (5) the word "administrators" and inserting in lieu thereof the words "personal representatives under the probate code".

§ 715.

Chapter six hundred eighty-two (682), Code 1962, is amended by adding thereto a new section as follows:

"Powers and duties of trustees not subject to court administration. Trustees of express trusts not being administered in the probate court, shall have all the powers and shall be subject to all the duties and liabilities as provided in the probate code, except the duty of reporting to or obtaining approval of the court."

§ 716.

Section two hundred forty-one A point eleven (241A.11), Code 1962, is amended by striking from subsection two (2) all after the word "dollars" in line three (3).

§ 717.

Section two hundred forty-nine point eighteen (249.18), Code 1962, is amended by striking from subsection two (2) all after the word "dollars" in line five (5).

Approved May 16, 1963.

INDEX TO

IOWA PROBATE CODE

ABANDONMENT
Estate property, § 116.
Trustees, claims, § 699.

ABATEMENT
Allowance to surviving spouse, § 374.
Shares of distributees, §§ 436, 437.

ABATEMENT AND REVIVAL
Claims against estate, §§ 415, 436.
    Counterclaims, § 416.

ABSENCE AND ABSENTEES
Administration of estates, § 510 et seq.
    Application of law, § 515.
    Armed forces members, presumption of death, § 517.
    Hearing on petition, § 514.
    Petition, §§ 510, 512, 514.
        Notice, § 511.
    Rights barred, § 516.
    Service of notice, § 512.
        Proof of service, § 513.
Conservators, §§ 580 to 585.
Death, order establishing, § 514.
    Rights barred, § 516.
Jurisdiction, district court sitting in probate, § 10 et seq.
Notice,
    Petition for administration, § 511.
        Proof of service, § 513.
    Petition for conservatorship, § 582.

ABSTRACTS
Fiduciaries, expenses, § 102.

ACCIDENT INSURANCE
Exemption, decedent's estate, § 333.

ACCOUNTS AND ACCOUNTING
Appeals, estates of decedents, § 487.
Common trust funds, § 128.
Conservators, this index.
Examination, probate accounts, § 20.
Executors and administrators, §§ 20, 21, 469 et seq.
Fiduciaries, this index.
Interlocutory accounting, § 469.
    Clerks of court, § 22.
Reopening, estates of decedents, § 488.
Trust company, common trust funds, § 128.
Trustees, § 700.
Veterans' conservators, § 620.
Waiver, estates of decedents, § 470.

ACKNOWLEDGMENTS
Conservator, standby basis, revocation of petition, § 594.

ACTIONS AND OTHER PROCEEDINGS
Generally, § 33.
Abatement and revival, claims and counterclaims against estates, §§ 415, 416, 436.
Assets of estate, § 366.
Bond of fiduciary, action on, §§ 186, 187.
Bond stopping sale of real or personal property, decedents' estates, § 394.
Claims Against Estate, generally, this index.
Conservators, §§ 33, 646.
Pending actions, § 665.
Possession of property, § 640.
Contesting wills, §§ 10, 33, 307 to 319.
Contingent claims against estate, payment by distributees, § 427.
Continuance, § 415.
Costs, distributees, § 476.
Escheat proceedings, §§ 219, 543 to 546.
Executors and administrators, § 199.
Fraud, §§ 368, 487.
Possession of property, § 351.
Fiduciaries, this index.
In rem proceedings, decedents' estates, § 330.
Limitation of Actions, generally, this index.
Personal representatives, expenses for services, § 199.
Revival of actions, claims and counterclaims against estates, §§ 415, 416, 436.
Title to property, § 351.
Transfer, judge disqualified, § 17.
Trial, generally, this index.
Trustees, claims, § 699.
Wills, this index.

ADMINISTRATOR OF VETERANS AFFAIRS
Conservatorship affairs, party in interest, § 615.

ADMINISTRATORS
Defined, § 3.
Executors and Administrators, generally, this index.

ADOPTION OF CHILDREN
Intestate succession, § 223.
Illegitimate children, §§ 221, 222.
Wills, adoption after execution of will, share of estate, §§ 267, 436.

ADVANCEMENTS
Generally, § 224.
Death of advancee, § 226.
Valuation, § 225.

ADVERSE CLAIMS
Claims, generally, this index.

ADVERSE OR PECUNIARY INTEREST
Fiduciaries, § 155.
Probate judge, transfer of cause, § 17.

AFFIDAVITS
Conservators, claim against estate, § 654.
Corporate fiduciary, compensation, § 203.
Estates of decedent, claims against, § 418.
Fiduciaries, compensation, § 202.
Corporate fiduciary, § 203.

AFFIDAVITS—Continued
Probate matters, notices, proof of publication, § 46.
Transfer of proceedings to another county, § 49 et seq.
Ward's estate, claims against, § 654.
Wills,
Election of spouse, child or parent, excessive gift to nonprofit corporation, § 266.
Proving execution, § 296.

AFFIRMATIONS
Oaths and Affirmations, generally, this index.

AFTER ACQUIRED PROPERTY
Devise by will, § 269.

AFTER BORN CHILDREN
Intestate succession, § 220.
Share in decedent's estate, § 267.

AGE
Fiduciaries, § 64.
Full age, defined, § 3.
Wills,
Disposal of property by person of full age, § 264.
Witnesses, § 280.

AGENTS
Fees, decedents' estates, § 21.
Fiduciaries, liability, § 85.
Probate proceedings, compensation, § 21.

ALCOHOLICS
Guardianship, § 552 et seq.

ALIENS
Probate matters, consular representatives, notice, § 41.

ALLOWANCES
Estates of decedents, § 374 et seq.
Payment, § 433.

AMBASSADORS AND DIPLOMATS
Probate matters involving aliens, notice, § 41.

ANCILLARY ADMINISTRATION
Generally, §§ 331, 500 to 504.
Claims against estate, limitation of actions, § 413.

ANTILAPSE STATUTE
Wills, § 273.
Exception, § 274.

APPEAL AND REVIEW
Accounting, decedents' estates, § 487.
Children, allowance from estate, § 377.
Clerk's actions, probate proceedings, § 23.
Final reports, decedents' estates, § 487.
Heirs, § 487.
Surviving spouse, allowance from estate, § 375.
Temporary administration, § 342.

APPEARANCE
Attorney general, probate matters, § 43.
Fiduciary, execution of bond as appearance, § 186.

APPRAISALS AND APPRAISERS
Generally, §§ 101, 213.
Appointment of appraisers, § 213.
Evidence, § 367.
Fees, § 21.
Final order, § 217.
Homestead, § 213.
Inventory, § 365.
Notice, §§ 214, 215.
Objections, § 216.
Trial, § 217.
Personal property, exemption, § 332.
Report of appraisers, objection, § 216.
Sale of property, § 396.
Selection of property, § 218.
Service of notice, § 214.

ARBITRATION
Conservators, claims, § 646.
Contingent claims, § 424.
Trustees, claims, § 699.

ARMED FORCES
Missing members, presumption of death, § 517.
Veterans, conservatorships, §§ 614 to 622.

ASSETS
Conservators, this index.
Decedents' estates,
Actions, § 366.
Delinquent inventories and reports, § 32.
Distributees, set-off and retainer, priorities, § 471.

ASSIGNMENTS
Debts of distributees, retainer and set-off, priorities, § 471.
Fiduciaries, § 95.
Security transfers, §§ 130 to 138.
Foreign fiduciaries, powers, § 144.

ASSOCIATIONS AND SOCIETIES
Gifts, conservators, § 668.

ATTESTATION
Foreign probated wills, admission to probate, § 496.

ATTORNEY GENERAL
Escheat, notice, § 543.
Probate matters, notice and appearance, § 43.

ATTORNEYS
Appointment for persons not represented at hearings, §§ 118, 119.
Compensation, §§ 120, 121.
Bond, acting as surety on, § 182.
Conservators,
Investigation of personal injury settlement, § 648.
Veterans' conservatorships, compensation in addition to fee as an attorney, § 618.
Fees,
Appointment for persons not represented at hearing, §§ 120, 121.
Fiduciary, fees after death, § 204.
Guardianships, costs, § 673.

ATTORNEYS—Continued
Fees—Continued
Personal representatives, § 198.
Probate proceedings, allowance for defending will, § 314.
Fiduciaries, this index.
Substitution, attorney appointed for persons not represented at hearing, § 121.

AUCTIONS AND AUCTIONEERS
Estates of decedents, §§ 396, 397.
Adjournment of sale, § 398.
Order, § 396.
Fiduciaries, fees, sale of property, etc., § 102.

AUDITS AND AUDITORS
Fiduciaries' accounts, § 20.
Probate accounts, § 20.
Referees' accounts, §§ 20, 21.

BANKRUPTCY
See, also, Insolvency, generally, this index.
Set-off and retainer, priorities, § 471.

BANKS AND BANKING
Common trust funds, §§ 126 to 129.
Conservator, standby basis, deposit of petition, § 593.
Fiduciary capacity,
Deposits, §§ 87, 156, 183.
Investments, §§ 124, 125.
Trust Companies, generally, this index.

BASTARDS
Intestate succession, §§ 221, 222.

BENEVOLENT ASSOCIATIONS OR ORGANIZATIONS
Feloniously causing death or disability of insured person, beneficiary taking proceeds, §§ 536, 537.

BEQUEATH
Defined, § 3.

BEQUEST
Defined, § 3.

BONA FIDE PURCHASERS
Reopening settlement of estate, § 488.

BONDS
Conservators, this index.
Estates of decedents,
Contingent claims, § 424.
Credits, payment of claims, § 433.
Sale of property to pay obligations, § 394.
Surrender of property, § 354.
Executors and administrators, § 22.
Record by clerk, § 30.
Fiduciaries, this index.
Foreign conservators,
Filing copy, § 606.
Recording, § 608.
Guardians, this index.
Probate bonds, qualifications for sureties, § 182.
Veterans' conservators, § 622.

BROKERS
Fiduciaries, fees, sale of property, etc., § 102.
Probate proceedings, compensation, § 21.

BURDEN OF PROOF
Claims against estates, § 446.

BURIALS
Payment of expenses, § 433.
Priority, § 425.

BUSINESS
Fiduciaries, continuing business of estate, § 83.

CANCELLATION
Wills, § 284.

CERTIFICATES
Fiduciary security transfers, § 132.
Foreign fiduciaries, appointment and authority, §§ 145, 147.
Personal taxes, estates of decedents, § 474.
Probate of wills, § 301.
Title to property, change, § 481.
Unsold land, estates of decedents, § 480.

CERTIFIED COPIES
Foreign real estate, § 48.
Probate matters transferred to another county, §§ 50, 51.
Wills, record in foreign county, § 305.

CHARGES
Defined, § 3.

CHARITABLE INSTITUTIONS AND SOCIETIES
Gifts, conservators, § 668.

CHATTEL MORTGAGES
Bond presenting execution of mortgage, § 394.
Collateral attack, § 395.
Confirmation, endorsement, § 401.
Devise of property subject to, § 278.
Execution of instrument, § 400.
Order, § 396.
Personal representative, perishable property, § 387.
Petition, § 388.
Powers, estate of decedent, § 383.
Purchase of property by holder, § 393.
Purpose, estates of decedents, § 386.
Transcript of record, § 404.
Wills, devise of property subject to, § 278.

CHILDREN AND MINORS
Adoption of Children, generally, this index.
Allowance, estate of decedent, §§ 376, 377.
Payment, § 433.
Conservator of absentee, notice to minor children, filing of petition, § 582.
Conservators, §§ 566 to 574.
Appointment, § 570.
Notice, petition for appointment, §§ 567, 568.
Petition for appointment, § 566.
Pleadings and trial, appointment, § 569.
Preference as to appointment, § 571.

CHILDREN AND MINORS—Continued
Conservators—Continued
Procedure in lieu of conservatorship, § 574.
Temporary conservator, appointment, § 573.
Voluntary petition for appointment, § 572.
Defined, § 3.
Fiduciaries, payment of small legacies, § 108.
Guardians, this index.
Increase, allowance from estate, § 377.
Money or property due a minor, payment to parent, § 574.
Shares of children born after making will, abatement of shares, § 436.
Small shares, estate of decedent, payment, § 108.
Wills, small legacies, payment, § 108.
Wrongful death damages, exemption, estates of decedent, § 336.

CLAIMS
Conservators, this index.
Escheated property, persons entitled to, § 546.
Fiduciary security transfers, § 133.
Trustees, enforcement, § 699.

CLAIMS AGAINST ESTATE
Generally, § 410 et seq.
Abatement and revival, §§ 415, 436.
Affidavits, § 418.
Allowance, §§ 428, 432, 448.
Surviving spouse, review, § 375.
Compelling payment, § 429.
Contingent claims, §§ 418, 424.
Payment by distributees, § 427.
Counterclaims, §§ 416, 445.
Disallowance, § 438 et seq.
Limitation of actions, § 442.
Notice, § 440.
Proof of service, § 441.
Personal representative, § 439.
Request for hearing, § 443.
Rules of civil procedure, applicability, § 444.
Execution, § 430.
Form and verification, § 418.
Judgment, § 448.
Limitation of actions, § 410 et seq.
Mortgages, sale of real estate, § 389.
Offset, § 445.
Trial, § 447.
Payment, § 426.
Burden of proof, § 446.
Compelling payment, § 429.
Temporary administrator, § 343.
Preferences, § 426.
Priorities, § 425.
Quieting title, § 391.
Reopening administration, § 489.
Secured claims, procedure, § 423.
Secured claims not due, § 422.
Separate actions, §§ 415, 417.
Survival of actions, § 415.
Temporary administrator,
Allowance, § 432.
Payment, § 343.

CLAIMS AGAINST ESTATE—Continued
Title, § 420.
Trial, § 447.
Unsecured claims not yet due, § 421.
Venue, § 415.
Wage claims, priorities, § 425.
Written instruments, § 419.

CLERK
Defined, § 3.

CLERK OF THE DISTRICT COURT
Accounts of fiduciaries, probate powers, § 22.
Admission, will to probate, § 22 et seq.
Appeals, actions in probate proceedings, § 23.
Bonds,
  Fiduciaries, probate powers, § 22.
  Recording, § 30.
Calendars, probate matters, § 31.
Commission to take depositions, probate proceedings, § 22.
Conservators, probate powers of clerk, § 22 et seq.
Decedents' names, probate docket, § 27.
Delinquent reports and inventories, fiduciaries, § 32.
Depositions, issuing commission, proof of will, § 22.
Deputies, fiduciaries, compensation, § 201.
Dockets,
  Probate docket, §§ 24, 27, 28.
  Trust proceedings, § 28.
Fiduciaries,
  Bonds given by, recording, § 30.
  Compensation, § 201.
  Probate powers of clerk, § 22.
Foreign probated wills, admission to probate, authentication, § 496.
Guardians, probate powers of clerk, § 22 et seq.
Hearings, probate proceedings, § 24.
Intestate estates, docketing names, addresses, etc., § 27.
Inventories, fiduciaries, reporting delinquencies, § 32.
Judgment entered, probate proceedings, § 25.
Mortgages on real estate, probate record, § 29.
Motion, review of clerk's actions, probate matters, § 23.
Names of decedents, docketing, probate docket, § 27.
Orders, probate proceedings, § 22 et seq.
Probate,
  Clerk defined, probate code, § 3.
  Docket, §§ 27, 28.
  Powers and duties, § 22 et seq.
  Proceedings transferred to another county, records, §§ 50, 51.
  Records, duty to keep, § 29.
Real estate, probate proceedings, docketing sales records, § 27.
Records,
  Bonds, fiduciaries, § 30.
  Probate proceedings, §§ 25, 29.
Reports,
  Delinquent estates, § 32.
  Fiduciaries,
    Probate powers, § 22.
    Reporting delinquencies, § 32.
  Probate matters, clerk assisting, § 26.
Sale, realty, probate proceedings, docketing, § 27.

CLERK OF THE DISTRICT COURT—Continued
Titles, trusts, docketing, § 27.
Trust proceedings, docketing, § 28.
Wills,
Admission to probate, § 22 et seq.
Delivery after death of testator, § 289.
Delivery to testator, § 288.
Deposited for safekeeping, § 286.
Manner of deposit, § 287.

CLOUD ON TITLE
Sale of decedent's real estate, removal, § 391.

CODICILS
Wills, this index.

COFIDUCIARIES
Powers, § 76.
Surviving cofiduciary, § 67.

COLLATERAL ATTACK
Sale or exchange, decedents property, § 395.

COMMINGLING PROPERTY
Fiduciaries, liability, §§ 158, 160.

COMMITMENT
Discovery procedure, property belonging to estate, § 113.
Fiduciaries, removal, failure to deliver property, § 70.

COMMON TRUST FUNDS
Generally, §§ 126 to 129.
Accounting, § 128.
Definitions, § 126.
Establishment, § 127.
Fiduciary, defined, § 126.
Uniformity of interpretation of law, § 129.

COMPENSATION AND SALARIES
Agents, probate proceedings, § 21.
Appraisers, probate proceedings, § 21.
Attorneys, this index.
Brokers, probate proceeding, § 21.
Claims for wages, priorities, § 425.
Conservators, veterans, § 618.
Fiduciaries, this index.

COMPETENCY
Witnesses, wills, § 280.

COMPROMISE AND SETTLEMENT
Claims held by estate, § 114.
Conservators, §§ 10, 646.
Investigation by attorney, § 648.
Contingent claims, § 424.
Correction before final discharge of fiduciary, § 52.
Fiduciaries, this index.
Guardianships, § 10.
Jurisdiction, § 10 et seq.
Reopening settlement of estate, § 488.
Time for settlement of estate, § 355.
Taxes, § 475.
Trustees, claims, § 699.

CONFLICT OF INTEREST
Fiduciaries, § 155.
Probate judge, transfer of cause, § 17.

CONFLICT OF LAWS
Fiduciary security transfers, § 136.

CONSERVATORS
See, also, Fiduciaries, generally, this index.
Generally, §§ 552 to 628.
Absentees, §§ 580 to 585.
Appointment, § 584.
County attorney, notice of petition, § 582.
Notice, filing of petition, §§ 581, 582.
Petition for appointment, § 580.
Pleadings, § 583.
Temporary conservators, appointment, § 585.
Trial, § 583.
Accounting, §§ 641, 670, 671.
Settlement, § 674.
Final account, § 682.
Termination of conservatorship, § 677.
Veterans, § 620.
Actions,
Claims, § 646.
Involuntary appointment, law action, § 33.
Pending actions, § 665.
Possession of property, § 640.
Additional property, receiving, § 646.
Adjudication, ward of unsound mind, § 636.
Adjustment of claims, § 646.
Administration, control with property, § 639.
Affidavit to accompany claim, § 654.
Allowance,
Accounts, § 674.
Claim, § 659.
Appointment, § 570.
Adjudication of unsound mind, § 636.
County of jurisdiction, § 12.
Effect of appointment, § 636.
Governing law, § 634.
Hearing on petition, § 635.
Petition, post.
Temporary conservator, § 661.
Voluntary petition, § 572.
Arbitration, claims, § 646.
Assets,
Delivery upon termination, § 678.
Duties, § 641.
Exhausted, termination, § 676.
Minor ward, § 681.
Attorney appointed, investigation of personal injury claim, § 648.
Balance of funds, accounting, § 671.
Bonds,
Foreign conservators, filing copy, § 606.
Recording, § 608.
Governing law, § 634.
Recording, § 30.
Release, termination, § 682.

CONSERVATORS—Continued
Bonds—Continued
Report, § 671.
Standby basis, § 592.
Veterans, § 622.
Breach of contracts, § 650.
Charitable organizations, gifts, § 668.
Children and Minors, this index.
Claims, § 653 et seq.
Affidavits, § 654.
Allowance, § 659.
Compelling payment, § 658.
Conservator as creditor, § 661.
Contest, § 666.
Denial, § 666.
Execution against estate, § 660.
Filing,
Conservator as creditor, § 661.
Tolling statute of limitations, § 657.
Form, § 654.
Insolvency, payment, § 667.
Limitation of actions, § 663.
Payment, post.
Pending actions, § 665.
Powers without court order, § 646.
Title, § 656.
Verification, § 654.
Written instruments, § 655.
Clerk of probate court, powers and duties, § 22 et seq.
Collections, §§ 640, 646.
Commencement of separate action, § 665.
Compelling payment of claims, § 658.
Competency of ward, termination, § 675.
Compromise and settlement, § 646.
Investigation by attorney, § 648.
Condition of ward, report, § 671.
Contest of claims, § 666.
Contracts,
Appointment, contract of ward, § 638.
Breach, order of court, § 650.
Claims, payment, § 654.
Ward, presumption of fraud, § 638.
Conveyances, powers of ward, § 637.
Copy of written instrument, claims, § 655.
Costs of administration, payment, § 677.
Court costs, payment, § 672.
Court orders,
Breach of contract, § 650.
Testamentary intent of ward, § 644.
Death of ward, termination, § 675.
Defined, § 3.
Delinquent inventories and reports, § 32.
Delivery of assets, termination, § 678.
Termination of conservatorship, § 641.
Denial of claims, § 666.
Deposit of will with court clerk, § 645.
Disallowance of accounts, § 674.
Disbursements, accounting, § 671.
Discharge, § 682.

CONSERVATORS—Continued
Disposal of property by ward, § 637.
Duties and powers, § 641 et seq.
Education of ward, § 647.
Educational organizations, gifts, § 668.
Encumbrances, powers of ward, § 637.
Exchange of property, § 652.
Execution against estate, § 660.
Exempt personal property, disposal, § 652.
Fiduciary, defined, probate code, § 3.
Filing claims,
Conservator as creditor, § 661.
Tolling statute of limitations, § 657.
Filing inventory, § 642.
Foreign conservators, §§ 603 to 608.
Application for appointment, § 604.
Appointment, § 603.
Bond,
Filing copy, § 606.
Recording, § 608.
Notice to court, property received, § 608.
Order for delivery of property to, § 607.
Personal property, § 605.
Powers, § 144.
Forms,
Absentees, appointment, § 580.
Claims, § 654.
Foreign conservators, application for appointment, § 604.
Petition for appointment, § 566.
Fraud presumed, actions of ward, § 638.
Gifts, § 668.
Presumption of fraud, § 638.
Guardian,
Combining petitions, § 627.
Same person serving as guardian and conservator, § 628.
Hearings,
Appointment, §§ 584, 585.
Petition, § 635.
Approval of court, § 647.
Final report, notice, § 677.
Petition for appointment, § 635.
Standby basis, filing petition, § 595.
Homestead, disposition, § 652.
Insolvency, payment of claims, § 667.
Intoxication, this index.
Inventory,
Filing, § 642.
Report of changes, § 671.
Investments, § 647.
Powers and duties, § 641.
Veterans' conservators, § 622.
Judgments, § 144.
Execution, § 660.
Jurisdiction, district court sitting in probate, § 10.
Leases, §§ 647, 652.
Letters, defined, probate code, § 3.
Liens, enforcement, §§ 660, 664.
Claims, § 663.
Filing claim, § 657.

CONSERVATORS—Continued
Mailing, duplicate of claim, § 654.
Maintenance of ward, payments, § 647.
Majority of minor, termination, § 675.
Mentally deficient and mentally ill persons, standby conservatorships, §§ 591 to 597.
Modification of powers, § 649.
Mortgages, §§ 144, 652.
Enforcement, §§ 660, 664.
Nonprofit organizations, gifts, § 668.
Nonresidents' property, appointment, county of jurisdiction. § 12.
Notice,
Absentees, filing of petition, § 582.
Foreign conservators, court, property received, § 608.
Hearing,
Approval of court, § 647.
Final report, § 677.
Petition,
Absentees, § 581.
Appointment, §§ 567, 568.
Standby basis, appointment, § 596.
Veterans' administration, matters involving veterans' conservatorships, § 615.
Oaths governing law, § 634.
Opening and reading will by court, § 644.
Orders of court,
Breach of contract, § 650.
Delivery of property to foreign conservator, § 607.
Foreign conservators, delivery of property to, § 607.
Gifts, § 668.
Pro rata payment of claims, § 667.
Veterans' conservators, support and maintenance of ward, § 619.
Payments, § 647.
Claims, § 653.
Compelling payment, § 658.
Contract claims, § 654.
Insolvency, § 667.
Unfiled claims, § 662.
Court costs, § 672.
Pending actions, § 665.
Personal injury settlements, investigation by attorney, § 648.
Personal liability,
Acts of ward, § 651.
Payment of unfiled claims, § 662.
Personal property,
Foreign conservators, § 605.
Income, collection by conservators, § 640.
Possession by conservator, § 640.
Sale or transfer, § 646.
Petition,
Appointment, § 566.
Absentees, § 580.
Combining petition for guardian and conservator, § 627.
Foreign conservators, § 604.
Hearing, § 635.
Voluntary petition, § 572.
Standby basis, §§ 592 to 595.
Voluntary petitions for appointment, § 591.
Termination, § 679.
Denial, § 680.

CONSERVATORS—Continued
Pleadings, appointment, § 569.
Pledges, § 652.
Enforcement, §§ 660, 664.
Possession of property, §§ 639, 640.
Powers and duties, § 641 et seq.
Fiduciaries, § 649.
Ward, § 637.
Without order of court, § 646.
Preference as to appointment, § 571.
Presumption of fraud, actions of ward, § 638.
Pro rata payment of claims, § 667.
Procedure in lieu of conservatorship, § 574.
Proof of service, pending actions, § 665.
Protection of estate, § 641.
Proxy voting, § 646.
Qualifications, governing law, § 634.
Receipts, principal or income, § 646.
Receiving principal or income, § 646.
Religious organizations, gifts, § 668.
Removal, report and accounting, § 670.
Reports, §§ 670, 671.
Approval subject to payment of court costs, § 672.
Final report, notice of hearing, § 677.
Residence of ward, report, § 671.
Resignation, report and accounting, § 670.
Sale of personal property, § 646.
Sales, § 652.
Scientific organizations, gifts, § 668.
Separate action on debt, § 665.
Settlement of accounts, § 674.
Standby conservatorships, §§ 591 to 597.
Bond of conservator, § 592.
Deposit of petition, § 593.
Filing petition upon occurrence of condition, § 595.
Nomination of conservator in petition, § 592.
Powers and duties of conservator, § 597.
Revocation of petition, § 594.
Time of appointment of conservator, § 596.
Voluntary petition for appointment, § 591.
Substitution, pending action for claim, § 665.
Supplemental inventory, § 642.
Surcharging account, § 674.
Taxes, payment, § 640.
Temporary conservator, § 661.
Appointment, § 573.
Termination of conservatorship, § 675 et seq.
Accounting, § 677.
Assets exhausted, § 676.
Assets of minor ward exhausted, § 681.
Costs of administration, § 677.
Delivery of assets, § 678.
Discharge, § 682.
Petition, § 679.
Denial, § 680.
Release of bond, § 682.
Report and accounting, § 670.
Testamentary intent of ward, duties of court, § 644.

CONSERVATORS—Continued
Title of claim, § 656.
Title to property, § 639.
Tort liability, acts of ward, § 651.
Transfers,
Personal property, § 646.
Ward, presumption of fraud, § 638.
Trial, appointment, § 569.
Unfiled claims, payment, § 662.
Venue, separate action on debt, § 665.
Verification of claims, § 654.
Verified inventory, § 642.
Verified report and accounting, § 670.
Veterans, §§ 614 to 622.
Accounts, § 620.
Acting as conservator for more than one veteran, § 617.
Administrator of veterans affairs, party in interest, § 615.
Application of law, § 614.
Appointment of conservator, § 616.
Compensation, § 618.
Dual conservatorship proceedings not required, § 620.
Liberal construction of law, § 621.
Order for support and maintenance, § 619.
Payments, § 622.
Powers and duties, § 622.
Voluntary petition for appointment, § 572.
Vote at corporate meetings, § 646.
Waiver, notice of hearing on final report, § 677.
Welfare of ward, payments, § 647.
Wills,
Delivery to court, § 643.
Deposit with court clerk, § 645.
Disposal of property by ward, §§ 637, 643.
Duties of court, § 644.
Preference as to appointment, § 571.
Written instruments, claims, § 655.

CONSTRUCTION OF INSTRUMENTS
Wills and trust instruments, district court sitting in probate, § 10.

CONSTRUCTION OF LAW
Common trust funds, § 129.
Fiduciary security transfers, § 138.
Veterans' conservatorships, § 621.

CONSULAR REPRESENTATIVES
Probate matters involving aliens, notice, § 41.

CONTEMPT
Wills, willful failure to deliver to court, § 285.

CONTEST OF WILLS
Wills, this index.

CONTINGENT CLAIMS
Claims against estate, §§ 418, 424.
Filing, § 418.
Payment by distributees, § 427.

CONTINUANCE
Absentee's estate, hearing on petition for administration, § 514.
Claims against estate, § 415.

CONTRACTS
Breach, conservators, § 650.
Conservators, this index.
Real estate,
Forfeiture, conversion into personalty, § 385.
Trustees, powers, § 699.
Ward, appointment of conservator, § 638.

CONTRACTUAL OR MUTUAL WILLS
Construction as, § 270.

CONTRIBUTIONS
Gifts, generally, this index.

CONVERSION
Sale of decedents' real property, equitable conversion, § 384.

CONVEYANCES
Deeds and Conveyances, generally, this index.

COPIES
Certified Copies, generally, this index.
Claims against estate of ward, § 655.
Foreign probated wills, admission to probate, § 496.

CORPORATIONS
Affidavit for compensation, fiduciary, § 203.
Conservators, voting at meetings, § 646.
Fiduciary,
Affidavit for compensation, § 203.
Continuation of business of estate, § 83.
Fiduciary capacity, acting in, § 64.
Fiduciary security transfers, §§ 130 to 138.
Foreign nonprofit corporations, wills, limitation on devises to, § 266.
Proxy voting, trustees, § 699.
Stock and stockholders, meetings, conservators, voting, § 646.

COSTS
Claims, estates of decedents, § 425.
Conservators, payment, § 672.
Contesting or setting aside will, § 313.
Distributees, § 476.
Fiduciaries, § 159.
Notices, serving, § 47.
Guardianship, § 673.
Priority, estates of decedents, § 425.
Transcript of probate record, § 306.
Wills, probate, transcript of record in foreign county, § 306.

COSTS OF ADMINISTRATION
Attorney fees, § 198.
Defined, § 3.

COUNTERCLAIMS
Set-off and Counterclaims, generally, this index.

COUNTY ATTORNEY
Conservator for absentee, filing of petition, notice, § 582.

COUNTY CLERK
Conservator, standby basis, deposit of petition, § 593.

COUNTY OF JURISDICTION
District court sitting in probate, § 12.

COUNTY RECORDER
Foreign wills, muniment of title, recording, § 497.

COURTS
Defined, § 3.
District Court, generally, this index.
Foreign courts, notice, delivery of property to conservator, § 608.
Probate Court, generally, this index.

CREDIT
Sale of decedent's property, § 392.

CREDITORS
Bond, payment of claims, § 433.
Executors, preference for appointment, § 294.
Fraudulent transfers, decedent's estate, recovery of property, § 368.
Secured claims, §§ 422, 423.
Set-off and retainer, priorities, estates of decedents, § 471.
Wills,
Preference for appointment of executor, § 294.
Prejudicing rights of, § 265.
Security, § 349.

CUSTODY
Wills, §§ 285 to 289.

DAMAGES
Fiduciary, breach of obligation, bond, § 186.
Possession of property belonging to estate, § 112.
Wills, failure to produce, § 285.
Wrongful death, exemption, § 336.

DATE
Time, generally, this index.

DEATH
Absentee, order establishing death of, § 514.
Rights barred, § 516.
Advancee for intestate, § 226.
Armed forces members, presumption of death, § 517.
Conservatorship, termination, § 675.
Felonious death, inheriting from, §§ 535 to 537.
Fiduciary,
Appointment of successor, § 66.
Fees of personal representative and attorney, § 204.
Powers of surviving cofiduciary, § 67.
Guardianship, termination, § 675.
Intestate succession, death of advancee, § 226.
Simultaneous death, Uniform Act, §§ 523 to 528.
Uniform Simultaneous Death Act, §§ 523 to 528.
Wrongful death, damages, exemption, § 336.

DEBTORS AND CREDITORS
Notice to pay or make claim, § 303.

DEBTS
Abatement of shares, § 436.
Charges, payment of unfiled charges, § 435.
Classification of debts and charges, § 425.

DEBTS—Continued
Defined, § 3.
Disposal of property by will subject to, § 264.
Distributees, retainer, § 471.
Exemption, wrongful death damages, § 336.
Fiduciaries, compromise of claims against estate, § 115.
Fraudulent transfers, recovery, § 368.
Interlocutory accounting, § 469.
Payment, §§ 350, 433 to 435.
  Debts not filed, § 435.
  Debts of estate, § 434.
  Order, § 426.
Priorities, § 425.
Sale of property, § 386.
Wills, disposal of property subject to, § 264.
Wrongful death damages, exemption, § 336.

DECLARATORY JUDGMENTS
District court sitting in probate, § 11.
Heirs, determination of heirship, § 11.
Wills, determine last will, § 319.

DECREES
Judgments and Decrees, generally, this index.

DEEDS AND CONVEYANCES
Absentee, rights barred, sale by spouse, § 516.
Certificate of appointment and authority, recording, § 98.
Collateral attack, § 395.
Conservator appointed for ward, § 637.
Endorsement, evidence, § 402.
Execution of instrument, § 400.
Fiduciaries,
  Certificate of appointment and authority, recording, § 98.
  Foreign fiduciaries, § 144.
  Specific performance,
    Involuntary, § 97.
    Voluntary, § 96.
  Waiver, homestead or other exemption, § 100.
Foreign fiduciaries, § 144.
Transcript of record, § 404.
Ward, appointment of conservator, § 637.

DEFECTS
Wills, cured by codicil, § 282.

DEFENSE, SECRETARY OF
Armed forces member, finding of death, evidence, § 517.

DEFICIENCY JUDGMENT
Mortgages, sale of property subject to mortgage, § 389.

DEFINITIONS
See Words and Phrases, generally, this index.

DELEGATION OF AUTHORITY
Fiduciaries, § 84.

DELIVERY
Property, § 354.
Wills, this index.

DEPENDENTS
Allowance, § 374.

DEPOSITIONS
Generally, § 22.
Wills, proof by deposition, § 297.

DEPOSITS
Conservator, standby basis, petition, § 593.
Fiduciaries, this index.
Will, depositing with clerk of court, §§ 286, 287.

DESCENT AND DISTRIBUTION
Generally, § 469 et seq.
Accounting, waiver, § 470.
Actions, costs, § 476.
Appeals, § 487.
Contingent claims, bond, § 424.
Declaratory judgments, district court sitting in probate, § 11.
Distributee, defined, § 3.
District court sitting in probate, jurisdiction, § 10.
Excessive devise to nonprofit corporation, § 266.
Inability to distribute estate funds, § 109.
Indebtedness, retainer, § 471.
Intestate succession, § 219.
Issue, defined, § 3.
Jurisdiction, district court sitting in probate, § 10.
Minors, small payments, § 108.
Redistribution, § 488.
Sale of property, § 386.
Will, devise to spouse in lieu of intestate share, § 268.

DESTRUCTION
Conservatorship petition, standby basis, revocation, § 594.
Records, § 16.
Wills, intention of revoking, § 284.
Written instrument, claim against estate of ward, § 655.

DEVISE
Defined, § 3.

DEVISEE
Defined, § 3.

DISABILITY
Insurance beneficiary feloniously causing disability, insurance proceeds, §§ 536, 537.

DISBURSEMENTS
Fiduciaries, vouchers or receipts, § 53.

DISCHARGE
Conservators, termination, § 682.
Executors and administrators, § 469 et seq.
Fiduciaries, § 111.
Trustees, § 703.

DISCOVERY
Property belonging to estate, § 112.

DISSOLUTION
Trust, final report, § 701.

DISTRIBUTEE
Defined, § 3.

DISTRIBUTION
Descent and Distribution, generally, this index.

DISTRICT COURT
Clerk of the District Court, generally, this index.
Defined, § 3.
Probate court, acting as, § 10 et seq.
Records, probate control, § 16.

DIVORCE
Wills, effect of divorce, § 271.

DOCKETS
Generally, §§ 24, 27, 28.

DOCUMENTS
Discovery, property belonging to estate, § 112.

DOMICILE AND RESIDENCE
Decedent, county of jurisdiction, § 12.
Nonresidents, § 12.
Ward, report of conservator, § 671.

DRUGS AND DRUGGISTS
Claims against estate, § 425.

DRUNKARDS AND DRUNKENNESS
Intoxication, generally, this index.

EDUCATION
Beneficiary, payment by trustee, § 699.
Conservators, payments, § 647.

EDUCATIONAL INSTITUTIONS
Gifts, conservators, § 668.

ELECTION OF RIGHTS
Homesteads, this index.
Wills, this index.

EMBEZZLEMENT
Fiduciaries, § 160.

EMPLOYMENT
Labor and Employment, generally, this index.

ENCUMBRANCES
See Liens and Encumbrances, generally, this index.

ENDORSEMENT
Confirmation of sale of property, § 401.
Sale of property, instruments, § 402.
Wills, clerk of court, § 287.

EQUITABLE CONVERSION
Sale of real property, § 384.

EQUITABLE INTEREST
Absentee, rights barred, order establishing death, § 516.

EQUITY
Generally, § 33.
Jurisdiction, district court sitting in probate, § 11.

ESCHEAT
Generally, §§ 543 to 546.
Intestate succession, § 219.
Notice to persons interested, § 544.
Payment to person entitled to property, § 546.
Proceedings for escheat, § 543.
Sale of property, § 545.
State comptroller, payment of sale proceeds, § 545.

ESTATE
Defined, § 3.

ESTATE TAX
Abatement of shares, § 436.
State, payment, § 449.
United States, payment, § 449.

EVIDENCE
Armed forces members, death, § 517.
Fiduciaries, appointment or incumbency, security transfers, § 132.
Inventory and appraisement, § 367.
Presumptions, generally, this index.
Sale of property, § 402.
Simultaneous death, §§ 523 to 528.
Veterans' conservatorship proceedings, certificate of incompetency, § 616.

EXAMINATION
Accounts, § 20.
Fiduciaries,
Accounts, § 20.
Court, § 161.
Property belonging to estate, § 112.

EXCEPTIONS
Objections and Exceptions, generally, this index.

EXCHANGE OF PROPERTY
Generally, §§ 386, 387.
Bond presenting exchange, § 394.
Collateral attack, § 395.
Confirmation, § 399.
Conservators, § 652.
Execution of instrument, § 400.
Fiduciaries, expenses, § 102.
Hearings, § 389.
Order, § 396.
Personal property, § 387.
Petition, § 388.
Powers, § 383.

EXECUTION OF INSTRUMENTS
Wills, this index.

EXECUTIONS
Claims, § 430.
Conservators, estate of ward, § 660.
Exemption, § 332.

EXECUTORS AND ADMINISTRATORS

See, also, Fiduciaries, generally, this index.
Accounts and accounting, § 469 et seq.
Audit and examination of accounts, referee, §§ 20, 21.
Interlocutory accounting, § 469.
Waiver, § 470.
Actions, expenses for services, §§ 199, 351, 368, 487.
Allowance for defending will, § 314.
Ancillary administration, §§ 500 to 504.
Appointments,
Clerk's powers, § 22.
Foreign administrator, §§ 499 to 502.
Jurisdiction of district court sitting in probate, § 10.
Nonresident executors, § 295.
Notice, § 303.
Petition, § 290.
Contents, § 292.
Powers of clerk of probate, § 22.
Publication of notice, § 230.
Attorneys,
Expenses, § 199.
Fees, § 198.
Bonds, sale of property, § 396.
Claims against Estate, generally, this index.
Copy of will for executor, § 302.
Creditors, fraudulent transfers, recovery, § 368.
Declaratory judgment to determine last will, § 319.
Defined, § 3.
Delinquent inventories and reports, § 32.
Discharge, § 469 et seq.
Escheat proceedings, §§ 543 to 545.
Expenses, § 199.
Fees, § 197.
After death, § 204.
Attorneys, § 198.
Final reports. Reports, post.
Foreign executor or administrators,
Application for appointment, §§ 501, 503.
Appointment, §§ 499, 500, 502.
Foreign wills, not probated, appointment, § 499.
Form, notice of appointment, § 230.
Fraud, actions, § 487.
Fraudulent conveyances, recovery, § 368.
Income, collection, § 352.
Indebtedness, assets of estate, § 366.
Interlocutory accounting, § 469.
Inventory, § 361.
Jurisdiction, district court sitting in probate, § 10.
Leases, term, § 390.
Letters, defined, § 3.
Letters testamentary and of administration, jurisdiction, district court sitting in probate, § 10.
Nonresidents, § 295.
Appointment, § 499.
Notice,
Allowance to surviving spouse, § 374.

EXECUTORS AND ADMINISTRATORS—Continued
Notice—Continued
Appointment, § 303.
Publication, § 230.
Discharge, § 479.
Official bond, § 22.
Order appointing executor, § 300.
Order of preference, appointment of executor, § 294.
Petition, appointment, § 290.
Contents, § 292.
Possession of property, § 351.
Surrender, § 353, 354.
Power of sale, application of law, § 383.
Publication, notice of appointment, § 230.
Real estate, expenses for services, § 199.
Removal, delinquent inventories and reports, § 32.
Reopening administration, § 489.
Reports, § 361.
Delinquent reports, § 32.
Final reports, §§ 473, 477.
Appeals, § 487.
Certificate for unsold land, § 480.
Notice, § 479.
Reopening, § 488.
Mandatory filing, § 362.
Sale of property, execution of instrument, § 400.
Settlement of estate, time, § 355.
Specific devises, delivery, § 355.
Taxation,
Expenses for services, § 199.
Payment, § 352.
Temporary Administrator, generally, this index.
Waiver, official bond, probate powers of clerk, § 22.

EXEMPTIONS
Generally, § 332 et seq.
Conservators, disposal of property, § 652.
Executions, § 332.
Fiduciaries, deeds or mortgages, waiver, § 100.
Homestead, § 350.
Insurance, this index.
Possession of property, § 351.
Wrongful death, damages, § 336.

EXPENSES
Fiduciaries,
Bond, § 169.
Sale of property, etc., § 102.
Funeral expenses, §§ 425, 433.

FEDERAL ASSOCIATIONS OR CORPORATIONS
Fiduciaries, purchasing stock in, mortgages, § 99.

FEDERAL GOVERNMENT
United States, generally, this index.

FEES
Attorneys, this index.
Executors and Administrators, this index.

FEES—Continued
Fiduciaries,
Determination, breach of duty, § 162.
Reduction, employment of agents, § 86.
Guardians, costs, § 673.
Personal representatives, § 197.
Referees, probate matters, §§ 20, 21.

FELONIOUS DEATH
Generally, §§ 535 to 537.

FIDUCIARIES
See also,
Conservators.
Executors and Administrators.
Guardians.
Trusts and Trustees.
Abandonment of property, § 116.
Accounts and accounting,
Acting as fiduciary of a fiduciary, § 80.
Defaulting fiduciary, § 186.
Probate powers, district court clerk, § 22.
Property of estate, § 157.
Receipts, § 53.
One of several fiduciaries, § 77.
Vouchers or receipts, § 53.
Acting as fiduciary of a fiduciary, § 80.
Actions,
Bond, § 186.
Limitation of action, § 187.
By and against, § 81.
Foreign fiduciaries, § 148.
Filing bond, § 149.
Several fiduciaries, § 79.
Acts of fiduciary without court approval, contesting, § 122.
Affidavit,
Compensation, § 202.
Agents, liability of fiduciary, § 85.
Appearance, execution of bond as appearance by surety, § 186.
Assignments, § 95.
Securities, § 131.
Attorneys,
Compensation, § 200.
Affidavit, § 202.
Designation, § 82.
Fees, death of fiduciary, § 204.
Service, notice of order, § 45.
Audit of accounts, § 20.
Bank deposits,
Corporate fiduciaries, § 156.
Funds of estate, § 87.
Banking institutions, investments in name of nominee, § 124.
Bonds, § 169.
Agreement with surety for deposit of property, § 183.
Amount, § 170.
Approval by clerk, § 171.
Deposit in lieu of bond, § 177.
District court clerk, probate powers, § 22.
Execution of bond as appearance by surety, § 186.

FIDUCIARIES—Continued
Bonds—Continued
Increase or decrease in amount, § 180.
Insolvency of fiduciary, liability of sureties, § 185.
Limitation of action, § 187.
New bond, §§ 180, 184.
Obligees, liability, § 181.
Record, clerk keeping, § 30.
Reduction by deposit of estate personal property, § 176.
Release of sureties before estate fully administered, § 184.
Review when inventory filed, § 179.
Suit on bond, § 186.
Limitation, § 187.
Waiver,
Court, § 175.
Distributees, § 173.
Terms of will, § 172.
Breach of duty,
Liability, § 160.
Removal from office, § 65.
Certificate of appointment and authority, recording conveyances of property, § 98.
Clerks of court, compensation, § 201.
Cofiduciaries,
Powers, § 76.
Surviving, powers, § 67.
Commingling property, liability, §§ 158, 160.
Common trust funds, §§ 126 to 129.
Compensation, § 197 et seq.
Affidavit, § 202.
Corporate fiduciary, § 203.
Corporate fiduciary, affidavit, § 203.
Determination, breach of duty, § 162.
Itemized claim or report, § 200.
Judges, clerks and deputy clerks, § 201.
Reduction, employment of agents, § 86.
Compromise and settlement,
Claims against estate, § 115.
Claims held by estate, § 114.
Contesting settlement without court approval, § 122.
Conflict of laws, security transfers, § 136.
Continuation of business of estate, § 83.
Conveyances. Deeds and conveyances, generally, post.
Corporate fiduciary, affidavit, § 203.
Costs, § 159.
Court officers, compensation, § 201.
Damages, defaulting, § 186.
Death,
Appointment of successor, § 66.
Fees of personal representative and attorney, § 204.
Powers of surviving cofiduciary, § 67.
Deeds and conveyances,
Certificate of appointment and authority, recording, § 98.
Foreign fiduciaries, § 144.
Specific performance,
Involuntary, § 97.
Voluntary, § 96.
Waiver, homestead or other exemption, § 100.

FIDUCIARIES—Continued
Defined, § 3.
Common trust funds, § 126.
Delegation of authority, § 84.
Delinquent inventories or reports, § 32.
Delivery of property, removal, § 70.
Deposits,
Agreement with surety for deposit of property, § 183.
Bank deposits, § 156.
Money in banks, § 87.
Cash or other deposit in lieu of bond, § 177.
Corporate fiduciaries, § 156.
Court, deposits in court, inability to distribute estate funds, § 109.
Deputy clerks of courts, compensation, § 201.
Discharge, § 111.
Distribution of estate, inability to distribute, § 109.
Division of compensation, affidavit, § 202.
Employment of individuals to manage estate, § 84.
Liability of fiduciary, § 85.
Encumbered assets, payments, etc., § 117.
Evidence of appointment or incumbency, security transfers, § 132.
Examination,
Accounts, § 20.
Court, § 161.
Exchange of property, expenses, § 102.
Expenses,
Bond, § 169.
Sale of property, etc., § 102.
Federally sponsored associations or corporations, purchasing stock, mortgages, § 99.
Fees,
Determination, breach of duty, § 162.
Reduction, employment of agents, § 86.
Final report and discharge, § 111.
Fines and penalties,
Breach of duty, § 162.
Removal, failure to deliver property, § 70.
Foreign Fiduciaries, generally, this index.
Governing law, § 634.
Inability to distribute estate funds, § 109.
Income, accounting for, § 157.
Insolvency of fiduciary, liability of bond sureties, § 185.
Interlocutory accounts and reports, probate powers, district court clerk, § 22.
Inventories,
Delinquent inventories, § 32.
Filing, review of bond, § 179.
Investments, § 123.
Common trust funds, §§ 126 to 129.
Name of nominee, § 124.
Records, § 125.
Security transfers, simplification, §§ 130 to 138.
Simplification of fiduciary security transfers, §§ 130 to 138.
Judges, compensation, § 201.
Judgments and Decrees, this index.
Leases, expenses, § 102.
Letters, issuance, § 178.
Liability,
Property not a part of estate, § 158.

FIDUCIARIES—Continued
Liability—Continued
Property of estate, § 157.
Self-dealing, § 155.
Liens,
Payment, § 117.
Release, assignment, etc., § 95.
Transfer of assets to estate, § 114.
Minors, payment of small legacies, § 108.
Mismanagement of estate, liability, § 160.
Mistakes and settlements, correction, § 52.
Money,
Depositing in banks, § 87.
One of several fiduciaries receiving, § 77.
Third parties protected, payments, § 78.
Mortgages,
Expenses, § 102.
Foreign fiduciaries, § 144.
Payment, § 117.
Purchasing stock in lending association or corporation, § 99.
Release, assignment, etc., § 95.
Transfer of encumbered assets to estate, § 114.
Waiver, homestead or other exemption, § 100.
Negligence, employees or agents, liability, § 85.
Nonresident's estate, application of law, § 88.
Notice,
Acts of, approval of court, contesting settlement, § 122.
Breach of bond obligation, sureties, § 186.
Continuation of business of estate, § 83.
Self-dealing, § 155.
Service, § 45.
Notice of order, § 45.
Security transfers, authority of fiduciary, §§ 130 to 138.
Waiver of service, § 44.
Oath, § 168.
Orders of court, continuation of business of estate, § 83.
Payments, encumbered assets, § 117.
Payments or transfers to, protection of third parties, § 78.
Personal representative, fees, § 204.
Petitions,
Cofiduciaries, exercise of powers, § 76.
Plotting land, § 94.
Pledges,
Expenses, § 102.
Payment, § 117.
Transfer of encumbered assets to estate, § 114.
Powers, § 76 et seq.
Successor fiduciary, § 68.
Surviving cofiduciary, § 67.
Profits from self-dealing, § 155.
Qualification, § 64.
Real property,
Certificate of appointment and authority, recording, conveyances, § 98.
Platting, § 94.
Sales, exchanges, etc.,
Expenses, § 102.
Probate record, § 29.

FIDUCIARIES—Continued
Real property—Continued
Specific performance,
Involuntary, § 97.
Voluntary, § 96.
Waiver of exemptions, deeds or mortgages, § 100.
Receipts,
Accounting, § 53.
Inability to distribute estate funds, depositing with clerk of court, §§ 109, 110.
One of several fiduciaries, § 77.
Records, investments, § 125.
Registration of securities in fiduciary's name, § 130.
Release of liens and mortgages, § 95.
Removal from office, §§ 65, 66.
Delinquent inventories or reports, § 32.
Delivery of property, § 70.
Powers of cofiduciary, § 67.
Reports,
Acting as fiduciary of a fiduciary, § 80.
Delinquent reports, § 32.
District court clerk, § 22.
Final reports, § 111.
Probate clerk assisting, § 26.
Resignation,
Appointment of successor, § 66.
Powers of surviving cofiduciary, § 67.
Security transfers, simplification, §§ 130 to 138.
Settlement. Compromise and settlement, generally, ante.
Simplification of fiduciary security transfers, §§ 130 to 138.
Specific performance, real property, § 97.
Involuntary, § 97.
Voluntary, § 96.
Splitting fees, affidavit, § 202.
Stock and stockholders,
Purchasing stock in lending association or corporation, mortgages, § 99.
Substitution, § 69.
Successor fiduciary,
Appointment, § 66.
Powers, § 68.
Third parties protected, payments or transfers to a fiduciary, § 78.
Vacancy in office,
Powers of surviving cofiduciary, § 67.
Waiver,
Bonds, ante.
Exemptions, deeds or mortgages, § 100.

FILING
Conservatorship petition, standby basis, § 595.
Wills,
Election of spouses, child or parent, excessive gift to nonprofit corporation, § 266.
Petition for probate, § 290.

FINES AND PENALTIES
Fiduciaries,
Breach of duty, § 162.
Removal, failure to deliver property, § 70.

FORECLOSURE
Real estate, conversion into personalty, § 385.

FOREIGN CONSERVATORS
Conservators and Conservatorships, this index.

FOREIGN COUNTRIES
Will executed in, § 283.

FOREIGN COUNTY
Probate of wills, record, § 305.

FOREIGN EXECUTORS AND ADMINISTRATORS
Appointment, §§ 499, 500.
Application for, §§ 501, 503.

FOREIGN FIDUCIARIES
Actions, § 148.
Filing bond, § 149.
Appointment, § 502.
Bond, filing, commencing action or proceeding, § 149.
Certificate of appointment and authority, § 145.
Filing, § 146.
Deeds and conveyances, § 144.
Judgments, § 144.
Mortgages, § 144.
Records, certificate of appointment and authority, § 147.

FOREIGN REAL ESTATE
Certified copies, § 48.

FOREIGN STATES
Wills executed in, § 283.

FOREIGN TRUSTEE
Application for appointment, § 503.

FOREIGN WILLS
Generally, §§ 495 to 499.
Admission to probate, §§ 495, 496.
Applicability of laws, § 498.
Applicability of law, § 498.
Execution requirements, § 283.
Muniment of title, § 497.
Probated in foreign state or country, admission to probate within state, § 496.

FORFEITURES
Real property, conversion to personalty, § 385.
Wills, interested witnesses, bequest to, § 281.

FORMAL EXECUTION
Wills and codicils, § 279.

FORMS
Absentee's estate, petition for administration, § 510.
Administrators, notice of appointment, § 230.
Attorney, appointment for persons not represented, order, § 119.
Conservators, this index.
Guardians, petition for appointment, § 552.
Wills, this index.

FRAUD
Contracts,
Ward, appointment of conservator, § 638.
Creditors, decedent's estate, recovery of property, § 368.
Executors and administrators, actions, § 487.

FRAUD—Continued
Fiduciary, action on bond, limitation, § 187.
Transfers and fraud of creditors, recovery of property, § 368.
Ward, conservator appointed, § 638.

FRAUDULENT CONVEYANCES
Generally, § 368.

FULL AGE
Defined, § 3.

FUNDS
Common Trust Funds, generally, this index.

FUNERAL EXPENSES
Claims, § 425.
Payment, § 433.
Priorities, § 425.

GENDER
Construction, § 4.

GIFTS
Conservators, § 668.
Appointed for ward, § 638.
Contingent claims, payment by distributees, § 427.
Intestate succession, inter vivos transfer, § 224.
Veterans, payment from conservator for conservatorship funds, § 622.
Ward, appointment of conservator, § 638.

GOOD FAITH
Fiduciaries, payments or transfers to, third parties protected, § 78.

GOVERNING LAW
Fiduciary security transfers, § 136.

GUARDIAN AD LITEM
Absentee's estate, hearing on petition for administration, § 514.
Wills, appointment, excessive gift to nonprofit corporation, § 266.

GUARDIAN OF THE PROPERTY
Defined, § 3.

GUARDIANS
See, also, Fiduciaries, generally, this index.
Action for involuntary appointment, law action, § 33.
Adjudication, ward of unsound mind, § 636.
Appointment,
Adjudication of unsound mind, § 636.
Combining conservator's petition, § 627.
Effect of appointment, § 636.
Governing law, § 634.
Hearing on petition, § 635.
Temporary guardian, § 558.
Petition, § 552.
Attorney fees, costs, § 673.
Bond, § 174.
Governing law, § 634.
Recording, § 30.
Clerk of probate court, powers and duties, § 22 et seq.
Competency of ward, termination, § 675.
Condition of ward, report, § 669.

GUARDIANS—Continued
Conservators,
Combining petitions, § 627.
Person serving as guardian and conservator, § 628.
Costs, § 673.
Death of ward, termination, § 675.
Defined, § 3.
Delinquent inventories and reports, § 32.
Denial of petition for termination, § 680.
District court sitting in probate, jurisdiction, § 10.
Fees,
Costs, § 673.
Fiduciary, defined, § 3.
Forms, petition for appointment, § 552.
Hearing, petition for appointment, § 635.
Incompetent, defined, § 3.
Intoxication, alcoholics, § 552 et seq.
Jurisdiction, district court sitting in probate, § 10.
Appointment of guardians, § 12.
Letters, defined, § 3.
Letters of guardianship, granting, district court sitting in probate, § 10.
Minors, §§ 552 to 560.
Appointment, §§ 22, 556.
Clerk of probate court, powers and duties, § 22 et seq.
Defined, § 3.
Majority, termination of guardianship, § 675.
Notice,
Filing petition for appointment, service, § 554.
Petition for appointment, § 553.
Petition for appointment, § 552.
Pleadings and trial, appointment, § 555.
Standby basis, § 560.
Temporary guardian, appointment, § 558.
Notice, petition for appointment, §§ 553, 554.
Oaths,
Governing law, § 634.
Personal liability, acts of ward, § 651.
Petition,
Appointment of guardian, § 552.
Combining petition for guardian and conservator, § 627.
Hearing, § 635.
Termination, § 679.
Denial, § 680.
Qualifications,
Governing law, § 634.
Report,
Condition and whereabouts of ward, § 669.
Temporary guardian, appointment, § 558.
Termination of guardianship, § 675 et seq.
Petition, § 679.
Denial, § 680.
Tort liability, acts of ward, § 651.
Whereabouts of ward, report, § 669.

HANDICAPPED PERSONS
Insurance beneficiary feloniously causing disability, policy proceeds, §§ 536, 537.

HANDWRITING
Wills, testator and witnesses, proving, witness unavailable, § 298.

HEALTH
Conservatorship, standby basis, §§ 591 to 597.

HEALTH INSURANCE
Exemption, § 333.

HOMESTEADS
Absentee, rights barred, sale by spouse, § 516.
Appraisal, intestate succession, § 213.
Conservators, disposal, § 652.
Devise in lieu of homestead presumed, § 268.
Election to take against will,
Change of election, § 246.
Filing, § 243.
Occupying homestead, § 240.
Incompetent spouse, § 244.
Time, § 241.
Personal right, § 242.
Record of election, § 245.
Share, § 239.
Exemption, § 350.
Fiduciaries, deeds or mortgages, waiver, § 100.
Possession, § 351.
Wills,
Devise in lieu of homestead rights, presumption, § 268.
Election to take against will, generally, ante.

HOMICIDE
Inheritance from deceased's estate by murderer, §§ 535 to 537.

HOSPITALS
Claims against estate, § 425.

HUSBAND AND WIFE
Absentees,
Petition for conservatorship, notice, § 582.
Rights barred, order establishing death, § 516.
Devise to spouse, presumption, § 268.
Feloniously causing death of spouse, inheritance, § 535.
Partial intestacy, § 272.
Spouse dying before testator, lapse of devise, § 274.
Surviving Spouse, generally, this index.
Wills, presumption attending devise to spouse, § 268.

ILLEGITIMATE CHILDREN
Intestate succession, §§ 221, 222.

IN REM PROCEEDINGS
Generally, § 330.

INCOME
Collection, § 352.
Conservators, § 640.
Fiduciaries, accounting, § 157.

INCOMPETENTS
Defined, § 3.

INDEBTEDNESS
Debts, generally, this index.

INDEMNITY
Contingent claims, payment by distributees, § 427.

INFANTS
Children and Minors, generally, this index.

INSANE PERSONS
Mentally Deficient and Mentally Ill Persons, generally, this index.

INSOLVENCY
Conservatorship, payment of claims, § 667.
Contingent claims, payment by distributees, § 427.
Debts, payment, § 434.
Fiduciary, liability of bond sureties, § 185.
Set-off and retainer, priorities, § 471.

INSURANCE
Exemption, § 333.
Accident insurance, § 333.
Health insurance, § 333.
Life insurance, § 333.
Mutual aid insurance, § 333.
Feloniously causing insured's death, beneficiary, § 536.
Life Insurance, generally, this index.
Share of survivor, § 335.
Simultaneous death of insured and beneficiary, § 526.

INTEREST
Probate judge, transfer of cause, § 17.

INTERLOCUTORY ACCOUNTING
Generally, § 469.
Clerks of court, § 22.

INTERVENTION
Attorney general, § 43.
Fiduciary's bond, sureties, § 186.

INTESTATE SUCCESSION
Generally, § 210 et seq.

INTOXICATION
Conservators, appointment, §§ 566 to 574.
Petition, § 566.
Notice, §§ 567, 568.
Pleadings and trial, § 569.
Preference, § 571.
Temporary conservator, § 573.
Voluntary petition, § 572.
Fiduciary, § 64.
Guardians, appointment, §§ 552 to 560.
Petition, § 552.
Notice, filing petition, service, § 554.
Pleadings and trial, § 555.
Standby basis, § 560.
Temporary guardian, § 558.
Voluntary petition, § 557.

INVENTORY
Generally, §§ 32, 361 et seq.
Actions,
Assets of estate, § 366.
Chose in action, § 366.
Appeals, § 487.
Appraisal, § 365.

INVENTORY—Continued
Conservators,
Filing, § 642.
Report and accounting, § 671.
Delinquent inventory reported, § 32.
Evidence, § 367.
Fiduciaries, filing, review of bond, § 179.
Filing, § 363.
Mandatory filing, § 362.
Personal property, exemption, § 332.
Settlement of estates, delinquent inventory, § 32.
Supplementary inventory, § 364.
Temporary administrator, § 343.

INVESTIGATIONS
Absentee's estate, guardian ad litem, § 514.
Conservator's settlement of personal injury claim, § 648.
Title to property, § 391.

INVESTMENTS
Conservators, § 647.
Powers and duties, § 691.
Fiduciaries, this index.
Trusts and trustees, §§ 126 to 129, 699.
Reports, § 700.

ISSUE
Defined, § 3.

JOINDER OF PARTIES
Action to contest or set aside will, § 311.
Devisees and other wills, § 315.
Declaratory judgment to determine last will, § 319.
Election of defendants to join with contestants, § 312.

JOINT AND SEVERAL LIABILITY
Fiduciary's bond, obligees, § 181.

JOINT LIABILITY
Contingent claims, payment by distributees, § 427.

JOINT TENANCY
Simultaneous death, § 525.

JUDGES
Probate Court, this index.

JUDGMENTS AND DECREES
Generally, §§ 11, 36.
Claims, § 448.
Conservators, § 144.
Declaratory judgments, §§ 11, 319.
Distributees, costs, § 476.
Fiduciaries,
Foreign fiduciaries, § 144.
Release, assignment, § 95.
Several fiduciaries, § 79.

JURISDICTION
Generally, §§ 10 et seq., 330.
Declaratory judgments, § 11.

JURY
Claims against estate, § 447.
Conservators, appointment, § 569.
Guardianship, appointment, § 555.
Wills, contests, § 310.

LABOR AND EMPLOYMENT
Agents, §§ 21, 85.
Fiduciaries, employing individuals to manage estate, § 84.
Liability of fiduciary, § 85.
Wage claims, priorities, § 425.

LANDLORD AND TENANT
Leases, generally, this index.

LEASES
Generally, § 386.
Bond preventing lease of property, § 394.
Collateral attack, § 395.
Confirmation, § 399.
Endorsement, § 401.
Conservators, §§ 647, 652.
Execution of instruments, § 400.
Fiduciaries, expenses, § 102.
Hearings, § 389.
Order, § 396.
Personal property, § 387.
Petition, § 388.
Powers, § 383.
Term, § 390.
Transcript of record, § 404.
Trustees, § 699.
Wills, specific devises, § 390.

LEGACY
Defined, § 3.

LEGATEE
Defined, § 3.

LETTERS OF ADMINISTRATION
Generally, § 294.
Defined, § 3.
Fiduciaries, issuance, § 178.
Jurisdiction, § 10.
Will filed after granting, § 316.

LIENS AND ENCUMBRANCES
Claims, § 423.
Conservators,
Appointment, § 637.
Enforcement, §§ 660, 664.
Devise of encumbered property, § 278.
Fiduciaries, this index.
Limitation of actions, § 414.
Purchase of property by holder, § 393.

LIFE INSURANCE
Exemption, § 333.
Feloniously causing insured's death, beneficiary, § 536.
Simultaneous death of insured and beneficiary, § 526.

LIMITATION OF ACTIONS
Generally, § 331.
Accounting, reopening, § 488.
Claims against estate, § 410 et seq., 663.
Disallowance, § 442.
Filing claim, § 657.
Escheated property, payments, § 546.
Fiduciary's bond, § 187.
Liens, § 414.
Retainer and set-off, § 471.
Separate actions, § 415.
Wills, § 331.
Foreign wills, muniment of title, § 497.

LIQUIDATED CLAIM
Compromise, § 115.

LODGES AND UNINCORPORATED ORGANIZATIONS
Wills, limitation on devises, § 266.

LOST INSTRUMENTS
Claim against estate, § 655.

MAIL AND MAILING
Absentee's estate, petition for administration, notice, § 512.
Conservators, duplicate of claim, § 654.

MAINTENANCE
Support and Maintenance, generally, this index.

MAPS AND PLATS
Fiduciaries, platting land, § 94.

MARRIAGE
Surviving spouse, allowance, § 374.

MEDICAL AND SURGICAL TREATMENT
Claims against estate, § 425.

MENTALLY DEFICIENT AND MENTALLY ILL PERSONS
Conservators, §§ 566 to 574.
Standby conservatorships, §§ 591 to 597.
Fiduciary, § 64.
Guardians, §§ 552 to 560.
Wills, mental capacity, § 264.

MILITARY SERVICE
Missing soldiers or sailors, presumption of death, § 517.
Veterans, conservatorships, §§ 614 to 622.

MINORS
Children and Minors, generally, this index.

MISSING PERSONS
Armed forces members, presumption of death, § 517.

MONEY
Fiduciaries, this index.
Minors, payment to parents, § 574.

MORTGAGES
Chattel Mortgages, generally, this index.
Claims, § 423.

MORTGAGES—Continued
Collateral attack, § 395.
Confirmation, § 399.
Conservators, §§ 144, 652.
Enforcement, §§ 660, 664.
Deficiency judgment, sale of property subject to mortgage, § 389.
Defined, devise of encumbered property, § 278.
Devise of property, § 278.
Execution of instrument, § 400.
Fiduciaries, this index.
Limitation of actions, § 414.
Order, § 396.
Petition, § 388.
Hearing, § 389.
Powers, § 383.
Purchase of property by holder, § 393.
Purposes, § 386.
Quieting title, § 391.
Recording, § 401.
Clerk keeping, § 29.
Sale of property subject to mortgage, § 389.
Transcript of record, § 404.
Trustees, § 699.
Wills, devise of property subject to mortgage, § 278.

MOTIONS
Fiduciaries, removal from office, § 65.

MUNIMENT OF TITLE
Foreign wills, § 497.

MURDER
Inheritance from deceased's estate by murderer, §§ 535 to 537.

MUTUAL AID INSURANCE
Exemptions, § 333.

MUTUAL OR CONTRACTUAL WILLS
Construction, § 270.

NATIONAL BANKS
Fiduciary capacity, investments, nominee's name, § 124.

NEGLIGENCE
Conservators, liability, § 651.
Fiduciaries, liability, § 160.
Agents or employees, § 85.

NOMINATION
Banking institutions acting in fiduciary capacity, investments in name of, § 124.
Conservator, standby basis, petition, § 592.

NONPROFIT CORPORATIONS
Gifts, conservators, § 668.

NONRESIDENTS
Absentees, administration of estates, petition, § 510.
Ancillary administration, §§ 500 to 504.
Application of law, § 88.
County of jurisdiction, § 12.
Executors and administrators, § 295,
Appointment, § 499.

NONRESIDENTS—Continued
Fiduciary,
Application of law, § 88.
Removal from office, § 65.
Removal of property and payment of claims, § 504.
Wills, admission to probate, § 495.
Foreign probated wills, § 496.

NOTICE
Absentees,
Petition for administration, §§ 511, 512.
Petition for conservatorship, § 582.
Accounting,
Common trust funds, § 128.
Reopening, § 488.
Administration, reopening, § 489.
Allowance to surviving spouse, § 374.
Review, § 375.
Appraisal, intestate succession, §§ 214, 215.
Attorney general, § 43.
Auction sale, § 396.
Service, § 397.
Claims against estate, disallowance, § 440.
Proof of service, § 441.
Conservators, this index.
Consular representatives, probate matters involving aliens, § 41.
Escheat proceedings, § 544.
Executors and Administrators, this index.
Fiduciaries, this index.
Final settlement, § 473.
Guardians, filing petition for appointment, § 553.
Hearings, § 40.
Requests for notice, § 42.
Intestate succession, appraisal, §§ 214, 215.
Orders, §§ 36, 37.
Possession, surrender, §§ 353, 354.
Publication, this index.
Quieting title, § 391.
Sales of Property, this index.
Service, § 40.
Appraisal, intestate succession, § 214.
Auction sale, § 397.
Guardians, petition for appointment, § 554.
Proof of service, § 47.
Trustees, application for discharge, § 702.
Waiver, § 44.
Transfer to another county, § 49 et seq.
Trustees, application for discharge, § 702.
Wills, this index.

NUMBERS
Singular and plural, construction, § 4.

OATHS AND AFFIRMATIONS
Conservators, governing law, § 634.
Fiduciaries, § 168.
Guardians, governing law, § 634.
Trustees, reports, § 700.
Final report, § 701.

OBJECTIONS AND EXCEPTIONS
Appraisal, intestate succession, § 216.
Trial, § 217.
Probate of will, prior to admission of will, § 309.

OFFICERS AND EMPLOYEES
Labor and Employment, generally, this index.

OFFSETS
Set-Off and Counterclaims, generally, this index.

OMITTED PROPERTY
Reopening administration, § 489.

OPTIONS
Trustees, powers, § 699.

ORDERS OF COURT
Generally, §§ 22 et seq., 36.
Applications, § 35.
Conservators, this index.
Fiduciaries,
Cofiduciaries, exercise of powers, § 76.
Continuation of business of estate, § 83.
Intestate succession, appraisal, § 217.
Notice, orders without notice, probate, § 37.
Trustees, discharge, § 703.
Wills, this index.

PARTIAL INTESTACY
Generally, § 272.

PARTIES
Joinder of Parties, generally, this index.

PARTNERSHIPS
Fiduciaries, continuation of business of estate, § 83.

PARTY IN INTEREST
Veterans' conservatorships, administrator of veterans affairs, § 615.

PAYMENT
Claims against Estate, this index.
Conservators, this index.
Debts, this index.
Escheat, payments to persons entitled to property, § 546.
Estate taxes, United States, § 449.
Fiduciaries, third parties protected, § 78.
Funeral expenses, § 433.
Minors, small legacies or interests, § 108.

PECUNIARY INTEREST
Judge, transfer of cause, § 17.

PENDING ACTIONS
Conservator, claim against estate. § 665.
Ward, claim against estate, § 665.

PERISHABLE PROPERTY
Sales, § 387.

PERSON
Defined, § 3.

PERSONAL INJURIES
Conservator's settlement, investigation by attorney, § 648.

PERSONAL LIABILITY
Conservator or guardian,
Acts of ward, § 651.
Payment of unfiled claims, § 662.

PERSONAL PROPERTY
Abandonment, § 116.
Appraisal, § 101.
Conservators, this index.
Defined, § 3.
Executors and administrators, possession, § 351.
Exemption, § 332.
Fiduciary's bond, reduction, deposit, § 176.
Intestate succession, §§ 211, 212.
Jurisdiction, § 10.
Liens, purchase by holder, § 393.
Nonresidents, wills, probate, § 495.
Sale of Property, generally, this index.
Title, § 350.
Treatment as realty, § 385.
Trustees, powers, § 699.

PERSONAL REPRESENTATIVES
Defined, § 3.
Executors and Administrators, generally, this index.
Fiduciaries, generally, this index.

PETITION
Absentee's estate, administration, § 510.
Conservators, this index.
Fiduciaries,
Cofiduciaries, exercise of powers, § 76.
Removal from office, § 65.
Guardians, this index.
Intestate succession, administration, §§ 227, 229.
Time, § 228.
Wills, this index.

PHYSICIANS AND SURGEONS
Claims against estates, § 425.

PLACE
Hearings, §§ 38, 39.

PLEADING
Claims against estate,
Limitation of actions, § 411.
Offsets and counterclaims, § 445.
Conservators,
Absentees, appointment, § 583.
Appointment, § 569.
Counterclaims, § 445.
Compulsory counterclaims, § 416.
Guardian, appointment, § 555.
Wills, this index.

PLEDGES
Generally, §§ 386, 387.

PLEDGES—Continued
Bond presenting pledge, § 394.
Claims, § 423.
Collateral attack, § 395.
Confirmation, endorsement, § 401.
Conservators, §§ 652, 660, 664.
Fiduciaries, this index.
Hearings, § 389.
Limitation of actions, § 414.
Order, § 396.
Petition, § 388.
Powers, § 383.
Purposes, § 386.
Transcript of record, § 404.
Trustees, § 699.

POPULAR NAME LAWS
Antilapse statute, §§ 273, 274.
Simplification of fiduciary security transfers, § 130 et seq.
Simultaneous death, § 523 et seq.

POSSESSION
Generally, § 349 et seq.
Conservator, § 640.
Executors and administrators, surrender, §§ 353, 354.
Ward, conservator appointed, § 639.

POSTHUMOUS CHILDREN
Intestate succession, § 220.
Share in estate, § 267.

POSTING
Notice, § 40.

POWER OF SALE
Fiduciaries, this index.
Wills, § 383.
Real estate, equitable conversion, § 384.

PREFERENCES
Priorities and Preferences, generally, this index.

PREJUDICE
Wills, creditors, security, § 349.

PRESUMPTIONS
Armed forces members, death, § 517.
Fraud of ward after appointment of conservator, § 638.
Gratuitous inter vivos transfer as gift, § 224.
Sale of property, § 402.
Wills,
Devise to spouse, § 268.
Election to take under will, § 237.

PRIMA FACIE EVIDENCE
Armed forces members, death, § 517.
Veterans administration, certificate of incompetency, conservatorship proceedings, § 616.

PRIORITIES AND PREFERENCES
Generally, § 426.
Abatement of shares, § 436.

PRIORITIES AND PREFERENCES—Continued
Claims, § 425.
Executors, appointment, § 294.
Guardians, appointment, § 559.
Real and personal property, § 350.
Set-off and retainer, § 471.

PRO RATA
Claims against estate, payment, § 426.

PROBATE COURT
Generally, § 10 et seq.
Always open, § 15.
Audit of accounts, §§ 20, 21.
Calendar, § 31.
Declaratory judgments, jurisdiction, § 11.
Definitions, § 3.
Docket, §§ 27, 28.
Trust proceedings, § 28.
Equitable proceedings, § 33.
Fiduciaries' accounts, audit, § 20.
Hours of business, § 15.
Judges,
Disqualification, procedure, § 17.
Fiduciaries, compensation, § 201.
Uniform rules, adoption, § 18.
Judgments and decrees, § 11.
Jurisdiction, § 10.
Concurrent jurisdiction, § 14.
County of jurisdiction, § 12.
Declaratory judgments, § 11.
Extent of jurisdiction, § 13.
Law actions, § 33.
Orders, jurisdiction, § 11.
Procedure, § 33 et seq.
Process, revocation for cause, § 19.
Records, §§ 16, 29.
Election, excessive gift to nonprofit corporation, § 266.
Referees,
Appointment, duties and compensation, §§ 20, 21.
Clerk as referee, § 20.
Revocation of process, § 19.
Rules, uniform rules, § 18.
Transfer of causes, disqualification of judge, § 17.
Uniform rules, § 18.

PROCESS
Notice, generally, this index.
Probate court, revocation for cause, § 19.

PROFESSIONAL SKILL
Fiduciaries, employing individuals to manage estate, § 84.

PROFITS
Fiduciaries, self-dealing, § 155.

PROPERTY
Defined, § 3.
Discovery, property belonging to estate, § 112.
Exchange of Property, generally, this index.
Minors, payment to parents, § 574.

PROPERTY—Continued
Personal Property, generally, this index.
Real Property, generally, this index.
Title to Property, generally, this index.

PROXIES
Conservators, corporate meetings, § 646.

PUBLICATION
Absentee's estate, petition for administration,
Notice, § 512.
Proof of publication, § 513.
Administrators, notice of appointment, § 230.
Common trust funds, notice of hearing, accounting, § 128.
Conservators, absentees, notice of petition, § 581.
Notices, §§ 40, 46.
Absentee's estate, petition for administration, § 512.
Proof of publication, § 513.
Appointment of administrators, § 230.
Common trust fund, hearing, § 128.
Conservators, petition, § 581.
Proof, §§ 46, 47.
Wills, hearing on petition, § 293.
Wills, notice of hearing on petition for probate, § 293.

QUIETING TITLE
Sale of real estate, § 391.

REAL PROPERTY
Abandonment, § 116.
Absentee, rights barred, § 516.
Actions, conservators, § 640.
Appraisal, estate property, § 101.
Certificate, change of title, § 481
Collection of income, conservators, § 640.
Conservator, possession, § 640.
Contracts,
Foreign fiduciaries, powers, § 144.
Forfeiture, conversion to personalty, § 385.
Declaratory judgments, district court sitting in probate, § 11.
Deeds and Conveyances, generally, this index.
Defined, § 3.
Executors and administrators, possession, § 351.
Fiduciaries, this index.
Income, collection by conservators, § 640.
Intestate succession, §§ 211, 212.
Jurisdiction, district court sitting in probate, § 10.
Liens, purchase by holder, § 393.
Nonresidents, wills, probate, § 495.
Personal representatives, expenses for services, § 199.
Possession, conservator, § 640.
Recovery, conservators, § 640.
Sale of Property, generally, this index.
Title, § 350.
Treatment as personalty, § 385.
Trustees, powers, § 699.
Unsold property, certificate, § 480.

RECEIPTS
Fiduciaries, this index.

RECEIPTS—Continued
Foreign conservators, § 606.
Delivery of property to, § 608.
Minors, small legacies or interests, payments, § 108.

RECORDS
Generally, § 302.
Armed forces members, death, § 517.
Clerk keeping, § 29.
Destruction, § 16.
Discovery, property belonging to estate, § 112.
Election to take against will or occupy homestead, § 245.
Fiduciaries,
Bank or trust company, ownership of investments, § 125.
Certificate of appointment and authority, conveyances of property, § 98.
Foreign conservators,
Application for appointment, § 604.
Bonds, § 608.
Foreign fiduciaries, certificate of appointment and authority, §§ 145 to 147.
Foreign probated wills, admission to probate within state, § 496.
Foreign real estate, certified copies, § 48.
Foreign wills, muniment of title, § 497.
Jurisdiction and supervision, § 16.
Mortgages, leases and conveyances, § 401.
Proceedings, § 25.
Transferred to another county, § 50.
Sale of real estate, foreign county, § 403.
Wills, this index.

REFEREES
Appointment, duties and compensation, §§ 20, 21.
Election to take against will, setting off share, § 247 et seq.

RELEASES
Fiduciaries, powers, § 95.
Foreign fiduciaries, powers, § 144.
Mortgage of real estate, sale of property subject to mortgage, § 389.

RELIGION
Conservators, gifts, § 668.

REMOVAL FROM OFFICE
Conservators, reports and accounting, § 670.
Fiduciaries, this index.
Trustee, final report, § 701.

REOPENING ESTATES
Procedure, § 489.

REPORTS
Generally, § 35.
Appeals, final reports, § 487.
Appraisers, intestate succession, § 213.
Armed forces members, death, § 517.
Clerk of the District Court, this index.
Conservators, this index.
Estates of decedents, § 361.
Enforcement, § 363.
Final reports, § 469 et seq.
Inventory, mandatory filing, § 362.
Sale of personal property, § 389.

REPORTS—Continued
Executors and Administrators, this index.
Fiduciaries, this index.
Final report, § 469 et seq.
Intestate succession, objection to appraisal, § 216.
Proceedings, clerk assisting, § 26.
Sale of property, § 399.
Personal property, § 389.
Trusts and Trustees, this index.

RESIDENCE
Domicile and Residence, generally, this index.

RESIGNATIONS
Fiduciaries,
Appointment of successor, § 66.
Powers of cofiduciary, § 67.
Trustees, final report, § 701.

RETAINER
Indebtedness of distributees, priorities, § 471.

REVENUE STAMPS
Fiduciaries, expenses, § 102.

REVIEW
Appeal and Review, generally, this index.

REVIVAL
Wills, § 284.

REVIVAL OF ACTIONS
Claims and counterclaims against estates, §§ 415, 416, 436.

REVOCATION
Conservator, standby basis, petition, § 594.
Letters of administration, will filed after letters granted, § 316.
Process, § 19.
Wills, this index.

RULES OF CIVIL PROCEDURE
Applicability, § 34.
Contest of will, § 310.
Joinder of parties, § 311.

RULES OF COURT
Probate procedure, uniform rules, § 18.

RULES OF DESCENT
Generally, § 210.

SAFE DEPOSIT COMPANIES
Fiduciaries, agreement with sureties, deposit of property, § 183.

SALARIES
Compensation and Salaries, generally, this index.

SALE OF PROPERTY
Generally, § 383 et seq.
Auction sale, § 397.
Adjournment, § 398.
Bond, preventing sale, § 394.
Collateral attack, § 395.

SALE OF PROPERTY—Continued
Confirmation, § 399.
Endorsement, § 401.
Conservators, § 652.
Equitable conversion, § 384.
Escheated property, disposition of proceeds, § 545.
Evidence, § 402.
Execution of instrument, § 400.
Fiduciaries, expenses, § 102.
Foreign counties, records, § 403.
Lienholder, § 393.
Mortgage, bond, § 394.
Notice, § 387.
Less than appraised value, § 399.
Petition, § 388.
Order, § 396.
Perishable property, §§ 387, 646.
Petition, § 388.
Hearing, § 389.
Power of sale, application of law, § 383.
Purposes, § 386.
Quieting title, § 391.
Surplus, conversion as realty, § 385.
Temporary administrator, § 343.
Terms, § 392.
Wills, power of sale, application of law, § 383.

SCIENTIFIC SOCIETIES
Gifts, conservators, § 668.

SECRETARY OF DEFENSE
Armed forces member, finding of presumed death, evidence, § 517.

SECURED CLAIMS
Generally, §§ 422, 423.

SECURITIES
Fiduciaries,
Deposit in lieu of bond, § 177.
Transfers, simplification, §§ 130 to 138.
Possession of property, surrender, § 354.

SELF-DEALING
Fiduciaries, liability, § 155.

SERVICE
Notice, this index.

SET-OFF AND COUNTERCLAIMS
Allowance to surviving spouse, § 374.
Claims against estate, § 445.
Trial, § 447.
Compulsory counterclaim, § 416.
Heirs, priorities, § 471.
Indebtedness of distributees, § 471.
Judgment, § 448.
Trial, § 447.

SETTING ASIDE
Wills, this index.

SETTLEMENT
Compromise and Settlement, generally, this index.

SEVERAL LIABILITY
Contingent claims, payment by distributees, § 427.

SHOW CAUSE ORDER
Fiduciary, removal from office, § 65.

SIGNATURES
Wills, testator and witnesses, § 279.

SIMPLIFICATION OF FIDUCIARY SECURITY TRANSFERS
Generally, §§ 130 to 138.

SIMULTANEOUS DEATH
Uniform act, §§ 523 to 528.

SMALL LEGACIES
Minors, payment, § 108.

SOCIETIES
Gifts, conservators, § 668.

SOLDIERS AND SAILORS
Missing, presumption of death, § 517.
Veterans, conservatorships, §§ 614 to 622.

SPECIALISTS
Fiduciaries, employment, management of estate, § 84.

SPECIFIC DEVISES
Wills, this index.

SPECIFIC PERFORMANCE
Fiduciaries,
Involuntary performance, real property, § 97.
Voluntary performance, real property, § 96.

SPENDTHRIFTS
Conservators, § 566 et seq.
Appointment, § 570.
Notice, petition for appointment, §§ 567, 568.
Petition for appointment, § 566.
Pleadings and trial, appointment, § 569.
Preference as to appointment, § 571.
Temporary conservators, appointment, § 573.
Voluntary petition for appointment, § 572.
Fiduciary, acting as, § 64.
Guardians, §§ 552 to 560.
Appointment, § 556.
Notice, petition for appointment, service, § 554.
Petition for appointment, § 552.
Pleadings and trial, appointment, § 555.
Standby basis, appointment, § 560.
Temporary guardians, appointment, § 558.
Voluntary petition for appointment, § 557.

STANDBY CONSERVATORSHIPS
Conservators, this index.

STATE
Escheat, §§ 543 to 546.
Estate taxes, payment, § 449.

STATE COMPTROLLER
Escheated property, payment of proceeds to, § 545.

STATUTE OF LIMITATIONS
Limitation of Actions, generally, this index.

STOCK AND STOCKHOLDERS
Fiduciaries,
Purchasing stock in lending association or corporation, mortgages, § 99.
Security transfers, §§ 130 to 138.

SUBSEQUENT WILL
Revocation of prior will, § 284.

SUBSTITUTION
Attorneys, appointment for persons not represented at hearing, § 121.
Fiduciaries, § 69.

SUCCESSORS
Fiduciaries, appointment and powers, §§ 66, 68.

SUITS
Actions and other Proceedings, generally, this index.

SUMMARY PROCEEDINGS
Fiduciary, breach of bond obligation, § 186.

SUPPORT AND MAINTENANCE
Children of decedent, allowance, §§ 376, 377.
Conservators,
Payments, § 647.
Veterans, orders, § 619.
Surviving spouse, allowance, §§ 374, 375.
Trustee, beneficiary, payment, § 699.

SUPREME COURT
Rules of procedure, adoption, § 18.

SURETY COMPANY
Fiduciary's bond, furnishing, § 169.

SURVEYS AND SURVEYORS
Election to take against will, setting off share, § 249.
Fiduciaries, expenses, § 102.
Wills, setting off share, § 249.

SURVIVAL OF ACTIONS
Claims and counterclaims against estates, §§ 415, 416, 436.

SURVIVING SPOUSE
Abatement of estate shares, § 436.
Allowance, §§ 374, 375.
Appeals, § 375.
Payment, § 433.
Defined, §§ 3, 334.
Election to take against will, § 236 et seq.
Abatement of shares, § 436.
Feloniously causing death, surviving spouse inheriting, § 535.
Insurance, § 335.
Intestate succession, § 211.
Selection of property, § 218.
Personal property, exemption, § 332.
Wrongful death damages, exemption, § 336.

SURVIVORSHIP
Uniform Simultaneous Death Act, §§ 523 to 528.

TAXATION
Certificate of payment, § 474.
Claims against estate, § 425.
Compromise and settlement, § 475.
Conservators, payment, § 640.
Costs, fiduciaries, notices, § 47.
Estate tax, §§ 436, 449.
Fiduciary security transfers, application of law, § 137.
Inheritance tax, payment, § 352.
Personal representatives, expenses for services, § 199.
Priorities, § 425.

TEMPORARY ADMINISTRATOR
Appointment, §§ 342, 343.
Claims, allowance, § 432.
Defined, § 3.

TEMPORARY CONSERVATOR
Appointment, § 573.

TEMPORARY GUARDIAN
Appointment, § 558.

TESTAMENTARY TRUST
Administration, district court sitting in probate, § 10.

THIRD PARTIES
Fiduciaries, protection, payments or transfers, § 78.

TIME
Code becomes effective, § 2.
Conservator, standby basis, appointment, § 596.
Court open for business, § 15.
Hearing on probate matters, § 38.
Intestate succession, petition for administration, § 228.

TITLE TO PROPERTY
Generally, § 349 et seq.
Abstracts, fiduciaries, expenses, § 102.
Change, certificate, § 481.
Conservators, actions, § 640.
Declaratory judgments, § 11.
Quieting title, § 391.

TORTS
Conservators, liability, § 651.
Fiduciaries, liability, §§ 85, 160.

TRANSCRIPTS
Conservators, absentees, appointment, § 584.
Probate proceedings records transcribed to foreign counties, §§ 305, 306.

TRANSFER AGENTS
Fiduciary security transfers, §§ 130 to 138.

TRANSFER OF CAUSE
Another county, § 49 et seq.
Judge disqualified, § 17.

TRANSFERS
Fiduciaries,
Security transfers, simplification, §§ 130 to 138.
Transfers to, third parties protected, § 78.
Ward, appointment of conservator, § 638.

TRIAL
Appraisal of intestate succession, objections, § 217.
Conservators, appointment, § 569.
Absentees, § 583.
Claims against estate, § 447.
Guardian, appointment, § 555.
Intestate succession, objection to appraisal, § 217.
Will contest, § 310.

TRUST COMPANIES
Common trust funds, §§ 126 to 129.
Conservator, standby basis, deposit of petition, § 593.
Deposits, fiduciary capacity, § 156.
Fiduciaries, agreement with surety, deposit of property, § 183.
Fiduciary capacity,
Common trust funds, §§ 126 to 129.
Investments,
Nominee's name, § 124.
Records, § 125.
Investments,
Fiduciary capacity, records of ownership, § 125.
Nominee's name, fiduciary capacity, § 124.
Records, investments, fiduciary capacity, § 125.

TRUSTS AND TRUSTEES
See, also, Fiduciaries, generally, this index.
Generally, § 699 et seq.
Abandonment of claims, § 699.
Accounting, § 700.
Actions, claims, § 699.
Additional property, receiving, § 699.
Adjustment of claims, § 699.
Application for discharge, notice, § 702.
Appointment of trustees, jurisdiction, district court sitting in probate, § 10.
Arbitration, claims, § 699.
Borrowing, § 699.
Changes in beneficiaries, reports, § 700.
Claims, enforcement, § 699.
Collections, powers, § 699.
Common Trust Funds, generally, this index.
Compromise and settlement, claims, § 699.
Construction, trust instruments, district court sitting in probate, § 10.
Contract to sell property, § 699.
Conveyances of real estate, § 699.
Corporate shares, voting, § 699.
Defined, § 3.
Delinquent inventories and reports, § 32.
Discharge, § 703.
Notice of application, § 702.
Dissolution of trust, final report, § 701.
Distributions, reports, § 701.
District court sitting in probate, jurisdiction, § 10.
Dockets, trust proceedings, § 28.

TRUSTS AND TRUSTEES—Continued
Education of beneficiary, payment, § 699.
Foreign fiduciaries, § 144.
Foreign trustee, application for appointment, § 503.
Investments, § 699.
Reports, § 700.
Judgments, foreign fiduciaries, § 144.
Jurisdiction, district court sitting in probate, § 10.
Leases, § 699.
Letters,
Defined, § 3.
Granting, district court jurisdiction, § 10.
Maintenance of beneficiary, payment, § 699.
Minors, small beneficial interest, payments, § 108.
Mortgages, §§ 144, 699.
Notice, application for discharge, § 702.
Oath, report, § 700.
Final report, § 701.
Options, § 699.
Order of discharge, § 703.
Payment for beneficiary, § 699.
Personal property, disposal, § 699.
Pledges, § 699.
Powers, § 699.
Proxies, voting corporate shares, § 699.
Real property, disposal, § 699.
Receipt of principal or income, § 699.
Removal, final report, § 701.
Reports, § 700.
Final report, § 701.
Resignation, § 701.
Service, notice of application for discharge, § 702.
Simultaneous death, uniform act, §§ 523 to 528.
Stock, voting, § 699.
Termination of trust, final report, § 701.
Testamentary additions, § 275.
Prior wills, effect on, § 276.
Uniformity of interpretation, § 277.
Transfer of property, § 699.
Undivided interest, holding, § 699.
Uniform Simultaneous Death Act, §§ 523 to 528.
Waiver, notice of application for discharge, § 702.

UNIFORM SIMULTANEOUS DEATH ACT
Generally, §§ 523 to 528.

UNITED STATES
Estate taxes,
Abatement of shares, § 436.
Payment, § 449.
Fiduciaries, purchasing stock in federally sponsored association or corporation, mortgages, § 99.
Priorities, § 425.

UNITED STATES SAVINGS BONDS
Veterans' conservators, investments, § 622.

UNKNOWN PERSONS
Notice of probate matters, § 40.

UNLIQUIDATED CLAIM
Fiduciaries, compromise, § 115.

VALUE
Advancements, intestate succession, § 225.

VENUE
Claims against estate, § 415.
Conservators, separate action on debt, § 665.
Wills, transmittal to court with proper venue, § 289.

VERIFICATION
Claims against estate, § 418.
Ward's, § 654.
Conservator, standby basis, petition for appointment, § 591.
Guardian, petition for appointment, § 552.
Inventory, conservators, § 642.

VETERANS
Conservatorships, §§ 614 to 622.

VETERANS ADMINISTRATION
Certificate of incompetency, evidence, conservatorship proceedings, § 616.
Conservatorships involving veterans, §§ 614 to 622.

VETERANS AFFAIRS, ADMINISTRATOR OF
Veterans' conservatorships, party in interest, § 615.

VOTING
Trustees, corporate stock, § 699.

VOUCHERS
Fiduciaries, accounting, § 53.

WAGES
Compensation and Salaries, generally, this index.

WAIVER
Accounting, § 470.
Claims against estate, limitation of actions, § 410.
Conservators, notice of hearing, § 677.
Executors and administrators,
Discharge, notice, § 479.
Final report, notice, § 487.
Fiduciaries, this index.
Personal representative's final reports, notice, § 487.
Service of notice, § 44.
Trustees, notice of application for discharge, § 702.

WIDOWS AND WIDOWERS
Surviving Spouse, generally, this index.

WIFE
Husband and Wife, generally, this index.

WILLS
Generally, §§ 290 to 319.
Abatement of shares, change of plan, § 437.
Accounts, examination and audit, § 20.
Actions to set aside or contest, §§ 307 to 319.
Allowance for defending will, § 314.
Attorney fees, executor defending will, § 314.
Declaratory judgment, § 319.

WILLS—Continued
Actions to set aside or contest—Continued
Election of defendants to join with contestants, § 312.
Joinder of parties, §§ 311, 315, 319.
Jurisdiction, § 10.
Law action, § 33.
Letters of administration, will filed after granting, § 316.
Letters testamentary, will filed after letters granted, § 317.
Notice, § 315.
Options prior to admission of will, § 309.
Petition, § 307.
Proof of execution, § 318.
Taxation of costs, § 313.
Time, filing petition, § 308.
Trial as law action, § 310.
Administration of estate,
Costs of administration, defined, § 3.
Prescribing by will, § 265.
Admission to probate, § 22.
After letters of administration granted, § 316.
Adopted children,
Abatement of shares, § 436.
Adoption after execution, share, § 267.
Affidavit,
Election of spouse, child or parent, excessive gift to nonprofit corporation, § 266.
Proving execution of will, § 296.
After acquired property, § 269.
After born children, shares, § 267.
Age, disposal of property by person of full age, § 264.
Allowance for defending will, § 314.
Ancillary administration, claims against estate, limitation of actions, § 413.
Antilapse statute, § 273.
Exception, § 274.
Attorney fees, allowance to executor defending will, § 314.
Beneficiaries, preference for appointment of executor, § 294.
Bequeath, defined, § 3.
Bequest, defined, § 3.
Bond of fiduciary, waiver, § 172.
Calendars, probate, § 31.
Cancellation, § 284.
Certificate of probate, § 301.
Certified copy, record of probate in foreign county, § 305.
Charitable corporation, limitation on gifts, § 266.
Claims against estate, limitation of actions, § 413.
Clerk of the District Court, this index.
Codicils,
Defect cured by, § 282.
Formal execution, § 279.
Revival of revoked or invalid will, § 284.
Competency of witnesses, § 280.
Conservators, this index.
Construction, § 10.
Statute, testamentary additions to trusts, § 277.
Contempt of court, willful failure to deliver will to court, § 285.
Contesting. Action to set aside or contest, generally, ante.
Contractual or mutual wills, § 270.
Conversion, equitable conversion, sale of real estate, § 384.
Copy for executor, § 302.

WILLS—Continued
Corporations, limitation on devises, § 266.
Costs, transcript, record in foreign county, § 306.
Creditors,
Preference, appointment of executor, § 294.
Prejudice, §§ 265, 349.
Custody of wills, §§ 285 to 288.
Damages, willful failure to deliver will to court, § 285.
Death of devisee before testator, §§ 273, 274.
Debts, disposal of property subject to, § 264.
Declaratory judgment, last will, § 319.
Defectively executed, curing by codicil, § 282.
Definitions, § 3.
Delivery,
After death of testator, § 289.
Court, § 285.
Specific devises, § 355.
To testator, § 288.
Deposit with clerk of court, §§ 286, 287.
Depositions, § 22.
Proving execution of will, § 297.
Destruction of probate records, § 16.
Destruction with intention of revoking, § 284.
Devise, defined, § 3
Devisee, defined, § 3.
Disposal of property by will, § 264.
Disqualification of judge, transfer of cause, § 17.
Distributee, defined, § 3.
District court sitting in probate, sole jurisdiction, § 10 et seq.
Divorce, effect, § 271.
Dockets, § 24 et seq.
Election,
Defendants to join with contestants, § 312.
Excessive devise to nonprofit corporation, § 266.
Setting off share, § 247 et seq.
Taking against will, § 236 et seq.
Homesteads, this index.
Encumbered property, § 278.
Endorsement, clerk of court, deposit with, § 287.
Equitable conversion, sale of real estate, § 384.
Estate, defined, § 3.
Estate taxes, payment, § 449.
Examination of accounts, § 20.
Exception, antilapse statute, § 274.
Execution, §§ 279 to 283.
Competency of witnesses, § 280.
Foreign state or country, § 283.
Formal execution, § 279.
Interest of witnesses, § 281.
Proof, action to set aside or contest, § 318.
Subsequent will revoking prior will, § 284.
Feloniously causing testator's death, inheriting from, § 535.
Filing,
After letters of administration granted, § 316.
Election of spouse, child or parent, excessive gift to nonprofit corporation, § 266.
Petition for probate, § 290.
Petition to set aside probate, time, § 308.

WILLS—Continued
Foreign corporation, bequest limit, § 266.
Foreign state or country, execution in, § 283.
Foreign Wills, generally, this index.
Forfeiture, interested witness, § 281.
Formal execution, § 279.
Forms,
Notice,
Probate of will, appointment of executor and notice to creditors, § 303.
Proof of will without administration, § 304.
Testimony of witnesses, § 396.
Guardian ad litem, appointment, excessive gift to nonprofit corporation, § 266.
Guardians, preference as to appointment, § 559.
Handwriting of testator and witnesses, proving, witness unavailable, § 298.
Hearing, petition for probate, § 293.
Homesteads, this index.
Intention of testator, abatement of shares, § 437.
Interest of witnesses, § 281.
Joinder of parties,
Action to set aside or contest probate, §§ 311, 312, 315.
Declaratory judgment to determine last will, § 319.
Jurisdiction, district court sitting in probate, § 10 et seq.
Jury trial, contest of probate, § 310.
Leases, specific devises, § 390.
Legacy, defined, § 3.
Legatee, defined, § 3.
Letters testamentary, § 294.
Will filed after letters granted, § 317.
Liens, property subject to, § 278.
Limitation,
Charitable corporation gifts, § 266.
Disposal by will, § 266.
Limitation of actions,
Claims against estate, § 413.
Probate of wills, § 331.
Mental capacity, requirement, § 264.
Minors, small legacies, payment, § 108.
Mortgage,
Defined, § 278.
Devise of property subject to, § 278.
Mutual or contractual wills, § 270.
Nonprofit corporations and associations, limitation on gifts, § 266.
Nonresidents, § 495.
Executors of resident decedents, § 295.
Notice,
Action to set aside or contest will, § 315.
Admission to probate and appointment of executor, § 303.
Debtors and creditors, pay or make claim, § 303.
Delivery after death of testator, § 289.
Hearing on petition for probate, § 293.
Proof of will without administration, § 304.
Objections prior to admission of will to probate, § 309.
Orders,
Admitting or disallowing probate, § 299.
Appointing executor, § 300.
Preference, appointment of executor, § 294.
Probate powers, district court clerk, § 22.
Ward, duties, § 644.
Partial intestacy, § 272.

WILLS—Continued
Payment of estate taxes, § 449.
Petition,
Appointment of executor, contents, § 292.
Hearing on probate, § 293.
Probate of wills, §§ 290, 291, 293.
Set aside probate, §§ 307, 308.
Pleading. Petition, generally, ante.
Power of sale,
Application of law, § 383.
Real estate, equitable conversion, § 384.
Preference for appointment of executor, § 294.
Presumption,
Devise to spouse, § 268.
Election to take under will, § 237.
Procedure prescribed by will, § 265.
Process, revocation for cause, § 19.
Property not disposed of by will, abatement of shares, § 436.
Publication of notice, probate, § 303.
Hearing on petition, § 293.
Real estate, sales, equitable conversion, § 384.
Records, § 302.
Clerk keeping, § 29.
Foreign county, admission of will to probate, § 305.
Probate, jurisdiction and supervision, § 16.
Re-execution of will, revival of revoked or invalid will, § 284.
Referees, appointment, duties and compensation, §§ 20, 21.
Residuary estate,
Abatement of shares, § 436.
Estate taxes, payment, § 449.
Review, actions by clerk, § 23.
Revival, § 284.
Revocation, § 284.
Divorce, § 271.
Letters of administration, will filed after letters granted, § 316.
Letters testamentary, will filed after letters granted, § 317.
Rules of civil procedure, action to set aside or contest, § 310.
Notice, joinder of parties, § 311.
Sale of real estate, equitable conversion, § 384.
Security, disposition of property, rights of creditors, § 349.
Setting aside. Action to set aside or contest, generally, ante.
Signature, testator and witnesses, § 279.
Simultaneous death, uniform act, §§ 523 to 528.
Small legacies to minors, payment, § 108.
Specific devises,
Abatement of shares, § 436.
Delivery, § 355.
Leases, § 390.
State, estate taxes, payment, § 449.
Subsequent will revoking prior will, § 284.
Surviving spouse,
Death of spouse before testator, lapse, § 274.
Election to take against will, § 264.
Partial intestacy, § 272.
Taxation of costs, § 313.
Temporary administration, §§ 342, 343.
Testimony of witnesses, § 296.
Time, petition to set aside probate, filing, § 309.
Title to property, § 350.

WILLS—Continued
Transcript, record in foreign county, §§ 305, 306.
Transfer of causes, judge disqualified, § 17.
Transmittal to court with proper venue, § 289.
Trial, contests or objections to probate, § 310.
Trusts,
Testamentary additions, §§ 275 to 277.
Testamentary trusts, jurisdiction, § 10.
Uniform rules in probate, § 18.
Uniform Simultaneous Death Act, §§ 523 to 528.
Unincorporated associations, limitation on devises, § 266.
United States, estate taxes, payment, § 449.
Venue, transmittal to court with proper venue, § 289.
Witnesses, § 281.
Cancellation of will, § 284.
Competency, § 280.
Interest of witnesses, § 281.
Signature, § 279.
Testimony, § 296.
Unavailable witnesses, § 298.

WITNESSES
Wills, this index.

WORDS AND PHRASES
Administrator, § 3.
Bequeath, § 3.
Bequest, § 3.
Charges, § 3.
Child, § 3.
Clerk, § 3.
Common trust fund, § 126.
Conservator, § 3.
Costs of administration, § 3.
Court, § 3.
Debts, § 3.
Devise, § 3.
Devisee, § 3.
Distributee, § 3.
Estate, § 3.
Executor, § 3.
Fiduciary, § 3.
Common trust funds, § 126.
Full age, § 3.
Guardian, § 3.
Guardian of the property, § 3.
Heir, § 3.
Surviving spouse, § 334.
Incompetent, § 3.
Issue, § 3.
Legacy, § 3.
Legatee, § 3.
Letters, § 3.
Minor, § 3.
Mortgage or other lien, devise of encumbered property, § 278.
Person, § 3.
Personal representative, § 3.
Property, § 3.

WORDS AND PHRASES—Continued
Surviving spouse, §§ 3, 334.
Temporary administrator, § 3.
Trustee, § 3.
Trusts, § 3.
Will, § 3.

WRONGFUL DEATH
Damages, exemption, § 336.