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ARTICLE 1.

 GENERAL PROVISIONS, DEFINITIONS, AND PROBATE JURISDICTION OF COURT

PART 1.

SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS

**SECTION 62‑1‑100.** Effective date.

 (a) Except as otherwise provided, this Code takes effect July 1, 1987.

 (b) Except as provided elsewhere in this Code, on the effective date of this Code:

 (1) the Code applies to any estates of decedents dying thereafter;

 (2) the procedural provisions of the Code apply to any proceedings in court then pending or thereafter commenced regardless of the time of the death of decedent except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this Code;

 (3) every personal representative, including a person administering an estate of a minor or incompetent holding an appointment on that date, continues to hold the appointment but has only the powers conferred by this Code and is subject to the duties imposed with respect to any act occurring or done thereafter;

 (4) an act done before the effective date in any proceeding and any accrued right is not impaired by this Code. Unless otherwise provided in the Code, a substantive right in the decedent's estate accrues in accordance with the law in effect on the date of the decedent's death. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before the effective date, the provisions remain in force with respect to that right;

 (5) a rule of construction or presumption provided in this code applies to multiple‑party accounts opened before the effective date unless there is a clear indication of a contrary intent.

 (c) Section 62‑2‑502 is effective for all wills executed after June 27, 1984, whether the testator dies before or after July 1, 1987.

HISTORY: 1986 Act No. 539, Section 5; 1987 Act No. 171, Section 78; 1990 Act No. 522, Part I, Section 1; 1997 Act No. 152, Section 1.

**SECTION 62‑1‑101.** Short title.

 Sections 62‑1‑101 et seq. shall be known and may be cited as the South Carolina Probate Code. in Sections 62‑1‑101 et seq. to the term "Code", unless the context clearly indicates otherwise, shall mean the South Carolina Probate Code.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑1‑102.** Purposes; rules of construction.

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

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

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

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

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

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

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

HISTORY: 1986 Act No. 539, Section 1.

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

HISTORY: 1986 Act No. 539, Section 1.

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

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑1‑105.** Construction against implied repeal.

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

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑1‑106.** Effect of fraud and evasion.

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

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑1‑107.** Evidence as to death or status.

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

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

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

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

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑1‑108.** Acts by holder of general power.

 For the purpose of granting consent or approval with regard to the acts or accounts of a personal representative or trustee, including relief from liability or penalty for failure to post bond, or to perform other duties, and for purposes of consenting to modification or termination of a trust or to deviation from its terms, the sole holder or all co‑holders of a presently exercisable general power of appointment, including one in the form of a power of amendment or revocation, are deemed to act for beneficiaries to the extent their interests (as objects, takers in default, or otherwise) are subject to the power. The term "presently exercisable general power of appointment" includes a testamentary general power of appointment having no conditions precedent to its exercise other than the death of the holder, the validity of the holder's last will and testament, and the inclusion of a provision in the will sufficient to exercise this power.

HISTORY: 1986 Act No. 539, Section 1; 1988 Act No. 659, Section 1.

**SECTION 62‑1‑109.** Duties and obligations of lawyer arising out of relationship between lawyer and person serving as a fiduciary.

 Unless expressly provided otherwise in a written employment agreement, the creation of an attorney‑client relationship between a lawyer and a person serving as a fiduciary shall not impose upon the lawyer any duties or obligations to other persons interested in the estate, trust estate, or other fiduciary property, even though fiduciary funds may be used to compensate the lawyer for legal services rendered to the fiduciary. This section is intended to be declaratory of the common law and governs relationships in existence between lawyers and persons serving as fiduciaries as well as such relationships hereafter created.

HISTORY: 1994 Act No. 449, Section 2.

**SECTION 62‑1‑110.** Fiduciary‑lawyer privilege.

 Whenever an attorney‑client relationship exists between a lawyer and a fiduciary, communications between the lawyer and the fiduciary shall be subject to the attorney‑client privilege unless waived by the fiduciary, even though fiduciary funds may be used to compensate the lawyer for legal services rendered to the fiduciary. The existence of a fiduciary relationship between a fiduciary and a beneficiary does not constitute or give rise to any waiver of the privilege for communications between the lawyer and the fiduciary.

HISTORY: 2008 Act No. 211, Section 1, eff May 13, 2008.

PART 2.

DEFINITIONS

**SECTION 62‑1‑201.** General definitions.

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

 (1) "Application" means a written request to the probate court for an order. An application does not require a summons and is not governed by or subject to the rules of civil procedure adopted for the circuit court.

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

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

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

 (5) "Court" means the court or branch having jurisdiction in matters as provided in this Code.

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

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

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

 (9) "Disability" means cause for a protective order as described by Section 62‑5‑401.

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

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

 (12) "Exempt property" means that property of a decedent's estate which is described in Section 62‑2‑401.

 (12A) "Expense of administration" includes commissions of personal representatives, fees and disbursements of attorneys, fees of appraisers, and such other expenses that are reasonably incurred in the administration of the estate.

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

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

 (15) "Formal proceedings" means actions commenced by the filing of a summons and petition with the probate court and service of the summons and petition upon the interested persons. Formal proceedings are governed by and subject to the rules of civil procedure adopted for the circuit court and other rules of procedure in this title.

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

 (16A) "General power of appointment" means any power that would cause income to be taxed to the fiduciary in his individual capacity under Section 678 of the Internal Revenue Code and any power that would be a general power of appointment, in whole or in part, under Section 2041(a)(2) or 2514(c) of the Internal Revenue Code.

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

 (18) "Incapacitated person" is as defined in Section 62‑5‑101.

 (19) "Informal proceedings" means those commenced by application and conducted without notice to interested persons by the court for probate of a will or appointment of a personal representative. Informal proceedings are not governed by or subject to the rules of civil procedure adopted for the circuit court.

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

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

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

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

 (24) "Minor" means a person who is under eighteen years of age, excluding a person under the age of eighteen who is married or emancipated as decreed by the family court.

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

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

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

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

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

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

 (31) "Petition" means a complaint as defined in the rules of civil procedure adopted for the circuit court. A petition requires a summons and is governed by and subject to the rules of civil procedure adopted for the circuit court and other rules of procedure in this title.

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

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

 (34) "Protected person" is as defined in Section 62‑5‑101.

 (35) "Protective proceeding" is as defined in Section 62‑5‑101.

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

 (36A) "Security interest" means any conveyance, agreement, or arrangement in which personal property is used as security.

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

 (38) "Special administrator" means a personal representative as described by Sections 62‑3‑614 through 62‑3‑618.

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

 (40) "Stepchild" with reference to any person means one who is the child, natural or adopted, of such person's spouse but who is not the child, natural or adopted, of such person.

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

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

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

 (44) "Trust" includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in Article 6 (Sections 62‑6‑101 et seq.), custodial arrangements pursuant to the South Carolina Uniform Gifts to Minors Act, Article 5, Chapter 5, Title 63, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

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

 (46) "Ward" is as defined in Section 62‑5‑101.

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

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Sections 1, 2; 1990 Act No. 521,Sections 2‑7; 1997 Act No. 152, Section 2; 2010 Act No. 244, Section 1, eff June 7, 2010.

PART 3.

SCOPE, JURISDICTION, AND COURTS

**SECTION 62‑1‑301.** Territorial application.

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

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑1‑302.** Subject matter jurisdiction; concurrent jurisdiction with family court.

 (a) To the full extent permitted by the Constitution, and except as otherwise specifically provided, the probate court has exclusive original jurisdiction over all subject matter related to:

 (1) estates of decedents, including the contest of wills, construction of wills, and determination of heirs and successors of decedents and estates of protected persons;

 (2) protection of minors, except that jurisdiction over the care, custody, and control of the persons of minors is governed by Section 62‑5‑201 and incapacitated persons, including the mortgage and sale of personal and real property owned by minors or incapacitated persons as well as gifts made pursuant to the South Carolina Uniform Gifts to Minors Act, Article 5, Chapter 5, Title 63, except that jurisdiction for approval of settlement of claims in favor of or against minors or incapacitated persons is governed by Section 62‑5‑433;

 (3) trusts, inter vivos or testamentary, including the appointment of successor trustees;

 (4) the issuance of marriage licenses, in form as provided by the Bureau of Vital Statistics of the Department of Health and Environmental Control; record, index, and dispose of copies of marriage certificates; and issue certified copies of the licenses and certificates;

 (5) the performance of the duties of the clerk of the circuit and family courts of the county in which the probate court is held when there is a vacancy in the office of clerk of court and in proceedings in eminent domain for the acquisition of rights‑of‑way by railway companies, canal companies, governmental entities, or public utilities when the clerk is disqualified by reason of ownership of or interest in lands over which it is sought to obtain the rights‑of‑way; and

 (6) the involuntary commitment of persons suffering from mental illness, intellectual disability, alcoholism, drug addiction, and active pulmonary tuberculosis.

 (b) The court's jurisdiction over matters involving wrongful death or actions under the survival statute is concurrent with that of the circuit court and extends only to the approval of settlements as provided in Sections 15‑51‑41 and 15‑51‑42 and to the allocation of settlement proceeds among the parties involved in the estate.

 (c) The probate court has jurisdiction to hear and determine issues relating to paternity, common‑law marriage, and interpretation of marital agreements in connection with estate, trust, guardianship, and conservatorship actions pending before it, concurrent with that of the family court, pursuant to Section 63‑3‑530.

 (d) Notwithstanding the exclusive jurisdiction of the probate court over the foregoing matters, any action or proceeding filed in the probate court and relating to the following subject matters, on motion of a party, or by the court on its own motion, made not later than ten days following the date on which all responsive pleadings must be filed, must be removed to the circuit court and in these cases the circuit court shall proceed upon the matter de novo:

 (1) formal proceedings for the probate of wills and for the appointment of general personal representatives;

 (2) construction of wills;

 (3) actions to try title;

 (4) trusts;

 (5) actions in which a party has a right to trial by jury and which involve an amount in controversy of at least five thousand dollars in value; and

 (6) actions concerning gifts made pursuant to the South Carolina Uniform Gifts to Minors Act, Article 5, Chapter 5, Title 63.

 (e) The removal to the circuit court of an action or proceeding within the exclusive jurisdiction of the probate court applies only to the particular action or proceeding removed, and the probate court otherwise retains continuing exclusive jurisdiction.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 3; 1988 Act No. 659, Sections 2, 3; 1990 Act No. 521, Section 8; 1992 Act No. 475, Section 2; 1997 Act No. 152,Section 3; 2005 Act No. 132, Section 4; 2008 Act No. 257, Section 1, eff June 4, 2008.

**SECTION 62‑1‑303.** Venue; multiple proceedings; transfer.

 (a) Subject to the provisions of Section 62‑3‑201, where a proceeding under this Code could be maintained in more than one place in South Carolina, the court in which the proceeding is first commenced has the exclusive right to proceed.

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

 (c) If a court finds that, in the interest of justice, a proceeding or a file should be located in another court of probate in South Carolina, the court making the finding may transfer the proceeding or file to the other court.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑1‑304.** South Carolina Rules of Civil Procedure govern formal proceedings.

 The South Carolina Rules of Civil Procedure (SCRCP) adopted for the circuit court and other rules of procedure in this title govern formal proceedings pursuant to this title. A formal proceeding is a "civil action" as defined in Rule 2, SCRCP, and must be commenced as provided in Rule 3, SCRCP.

HISTORY: 1986 Act No. 539, Section 1; 2010 Act No. 244, Section 2, eff June 7, 2010.

**SECTION 62‑1‑305.** Records and certified copies.

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

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑1‑306.** Jury trials.

 (a) If duly demanded, a party is entitled to trial by jury in any proceeding involving an issue of fact in an action for the recovery of money only or of specific real or personal property, unless waived as provided in the rules of civil procedure for the courts of this State. The right to trial by jury exists in, but is not limited to, formal proceedings in favor of the probate of a will or contesting the probate of a will.

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

 (c) The method of drawing, summoning, and compensating jurors under this section shall be within the province of the county jury commission and shall be governed by Chapter 7 of Title 14 of the 1976 Code relating to juries in circuit courts.

HISTORY: 1986 Act No. 539, Section 1; 1988 Act No. 659, Section 4.

**SECTION 62‑1‑307.** Probate judge; powers.

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

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑1‑308.** Appeals.

 Except as provided in subsection (g), appeals from the probate court must be to the circuit court and are governed by the following rules:

 (a) A person interested in a final order, sentence, or decree of a probate court and considering himself injured by it may appeal to the circuit court in the same county. The notice of intention to appeal to the circuit court must be filed in the office of the circuit court and in the office of the probate court and a copy served on all parties within ten days after receipt of written notice of the appealed from order, sentence, or decree of the probate court. The grounds of appeal must be filed in the office of the probate court and a copy served on all parties within forty‑five days after receipt of written notice of the order, sentence, or decree of the probate court.

 (b) Within thirty days after the grounds of appeal has been filed in the office of the probate court, as provided in subsection (a), the probate court shall make a return to the appellate court of the testimony, proceedings, and judgment and file it in the appellate court. Upon final disposition of the appeal, all papers included in the return must be forwarded to the probate court.

 (c) When an appeal according to law is taken from any sentence or decree of the probate court, all proceedings in pursuance of the order, sentence, or decree appealed from shall cease until the judgment of the circuit court, court of appeals, or Supreme Court is had. If the appellant, in writing, waives his appeal before the entry of the judgment, proceedings may be had in the probate court as if no appeal had been taken.

 (d) When the return has been filed in the circuit court as provided in subsection (b), the court shall hear and determine the appeal according to the rules of law. The hearing must be strictly on appeal and no new evidence may be presented.

 (e) The final decision and judgment in cases appealed, as provided in this code, shall be certified to the probate court by the circuit court, court of appeals, or Supreme Court, as the case may be, and the same proceedings shall be had in the probate court as though the decision had been made in the probate court.

 (f) A judge of a probate court must not be admitted to have any voice in judging or determining an appeal from his decision or be permitted to act as attorney or counsel.

 (g) If the parties not in default consent either in writing or on the record at a hearing in the probate court, a party to a final order, sentence, or decree of a probate court who considers himself injured by it may appeal directly to the Supreme Court, and the procedure for the appeal must be governed by the South Carolina Appellate Court Rules.

HISTORY: 1986 Act No. 539, Section 1; 1990 Act No. 521, Section 9; 1997 Act No. 152,Section 4; 1999 Act No. 55, Section 56.

**SECTION 62‑1‑309.** Election and term of judges.

 The judges of the probate court shall be elected by the qualified electors of the respective counties for the term of four years in the manner specified by Section 14‑23‑1020.

HISTORY: 1986 Act No. 539, Section 1.

PART 4.

NOTICE, PARTIES, AND REPRESENTATION IN ESTATE LITIGATION AND OTHER MATTERS

**SECTION 62‑1‑401.** Notice; method and time of giving.

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

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

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

 (3) if the address or identity of any person is not known and cannot be ascertained with reasonable diligence by publishing a copy thereof in the same manner as required by law in the case of the publication of a summons for an absent defendant in the court of common pleas.

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

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

 (d) Notwithstanding a provision to the contrary, the notice provisions in this section do not, and are not intended to, constitute a summons that is required for a petition.

HISTORY: 1986 Act No. 539, Section 1; 2010 Act No. 244, Section 3, eff June 7, 2010.

**SECTION 62‑1‑402.** Notice; waiver.

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

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑1‑403.** Pleadings; when parties bound by others; notice.

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

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

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

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

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

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

 (3) Service of summons, petition, and notice is required as follows:

 (i) Service of summons, petition, and notice must be given to every interested person or to one who can bind an interested person as described in (2)(i) or (2)(ii) above. Service of summons and petition upon, as well as notice, may be given both to a person and to another who may bind him.

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

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

HISTORY: 1986 Act No. 539, Section 1; 1997 Act No. 152, Section 5; 2010 Act No. 244, Section 4, eff June 7, 2010.

PART 5.

UNIFORM SIMULTANEOUS DEATH ACT

**SECTION 62‑1‑501.** Short title.

 This part may be cited as the "Uniform Simultaneous Death Act".

HISTORY: 1986 Act No. 539, Section 1.

 When 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 this part [Sections 62‑1‑501 et seq.].

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑1‑503.** Successive beneficiaries of disposition of property.

 When 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.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑1‑504.** Joint tenants or tenants by the entirety.

 When there is no sufficient evidence that two joint tenants or tenants by the entirety 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 shall be so distributed in the proportion that one bears to the whole number of joint tenants.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑1‑505.** Insured and beneficiary.

 When 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.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑1‑506.** Part is not retroactive.

 This part shall not apply to the distribution of the property of a person who died prior to April 3, 1948.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑1‑507.** Part is not applicable if instrument provides otherwise.

 This part [Sections 62‑1‑501 et seq.] 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 distribution that would otherwise be made under the provisions of this part [Sections 62‑1‑501 et seq.].

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑1‑508.** Construction.

 This part [Sections 62‑1‑501 et seq.] shall be so construed and interpreted as to effectuate its general purpose to make uniform the law in those states which enact substantially identical laws.

HISTORY: 1986 Act No. 539, Section 1.