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ARTICLE 3.

 PROBATE OF WILLS AND ADMINISTRATION

PART 1.

GENERAL PROVISIONS

**SECTION 62‑3‑101.** Devolution of estate at death; restrictions.

 The power of a person to leave property by will and the rights of creditors, devisees, and heirs to his property are subject to the restrictions and limitations contained in this Code to facilitate the prompt settlement of estates, including the exercise of the powers of the personal representative. Upon the death of a person, his real property devolves to the persons to whom it is devised by his last will or to those indicated as substitutes for them in cases involving lapse, renunciation, or other circumstances affecting the devolution of testate estates, or in the absence of testamentary disposition, to his heirs, or to those indicated as substitutes for them in cases involving renunciation or other circumstances affecting the devolution of intestate estates, subject to the purpose of satisfying claims as to exempt property rights and the rights of creditors, and the purposes of administration, particularly the exercise of the powers of the personal representative under Sections 62‑3‑709, 62‑3‑710, and 62‑3‑711, and his personal property devolves, first, to his personal representative, for the purpose of satisfying claims as to exempt property rights and the rights of creditors, and the purposes of administration, particularly the exercise of the powers of the personal representative under Sections 62‑3‑709, 62‑3‑710, and 62‑3‑711, and, at the expiration of three years after the decedent's death, if not yet distributed by the personal representative, his personal property devolves to those persons to whom it is devised by will or who are his heirs in intestacy, or their substitutes, as the case may be, just as with respect to real property.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 16.

**SECTION 62‑3‑102.** Necessity of order of probate for will.

 Except as provided in Section 62‑3‑1201, to be effective to prove the transfer of any property or to nominate an executor, a will must be declared to be valid by an order of informal probate by the court or an adjudication of probate by the court.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑103.** Necessity of appointment for administration.

 Except as otherwise provided in this article [Sections 62‑3‑101 et seq.] and in Article 4 [Sections 62‑4‑101 et seq.], to acquire the powers and undertake the duties and liabilities of a personal representative of a decedent, a person must be appointed by order of the court, qualify, and be issued letters. Administration of an estate is commenced by the issuance of letters.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑104.** Claims against decedent; necessity of administration.

 No proceeding to enforce a claim against the estate of a decedent or his successors may be revived or commenced before the appointment of a personal representative. After the appointment and until distribution, all proceedings and actions to enforce a claim against the estate are governed by the procedure prescribed by this article [Sections 62‑3‑101 et seq.]. After distribution, a creditor whose claim has not been barred may recover from the distributees as provided in Section 62‑3‑1004 or from a former personal representative individually liable as provided in Section 62‑3‑1005. This section has no application to a proceeding by a secured creditor of the decedent to enforce his right to his security except as to any deficiency judgment which might be sought therein.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑105.** Proceedings affecting devolution and administration; jurisdiction of subject matter.

 Persons interested in decedents' estates may apply to the court for determination in the informal proceedings provided in this article [Sections 62‑3‑101 et seq.], and may petition the court for orders in formal proceedings within the court's jurisdiction including but not limited to those described in this article.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑106.** Proceedings within the jurisdiction of court; service; jurisdiction over persons.

 In proceedings within the jurisdiction of the court where notice is required by this Code or by rule, and in proceedings to construe probated wills or determine heirs which concern estates that have not been and cannot now be opened for administration, interested persons may be bound by the orders of the court in respect to property in or subject to the laws of this State by notice in conformity with Section 62‑1‑401. An order is binding as to all who are given notice of the proceeding though less than all interested persons are notified.

HISTORY: 1986 Act No. 539, Section 1; 1990 Act No. 521, Section 30.

**SECTION 62‑3‑107.** Scope of proceedings; proceedings independent; exception.

 Unless administration under Part 5 [Sections 62‑3‑501 et seq.] is involved, (1) each proceeding before the court is independent of any other proceeding involving the same estate; (2) petitions for formal orders of the court may combine various requests for relief in a single proceeding if the orders sought may be finally granted without delay, but, except as required for proceedings which are particularly described by other sections of this article [Sections 62‑3‑101 et seq.], no petition is defective because it fails to embrace all matters which might then be the subject of a final order; (3) proceedings for probate of wills or adjudications of no will may be combined with proceedings for appointment of personal representatives; and (4) a proceeding for appointment of a personal representative is concluded by an order making or declining the appointment.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑108.** Probate, testacy, and appointment proceedings; ultimate time limit.

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

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 17; 1990 Act No. 521, Section 31.

**SECTION 62‑3‑109.** Statute of limitations on decedent's cause of action.

 The running of any statute of limitations on a cause of action belonging to a decedent which had not been barred as of the date of his death is suspended during the eight months following the decedent's death but resumes thereafter unless otherwise tolled.

HISTORY: 1986 Act No. 539, Section 1; 1990 Act No. 521, Section 32.

PART 2.

VENUE FOR PROBATE AND ADMINISTRATION; PRIORITY TO ADMINISTER; DEMAND FOR NOTICE

**SECTION 62‑3‑201.** Venue for first and subsequent estate proceedings; location of property.

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

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

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

 (b) Venue for all subsequent proceedings within the exclusive jurisdiction of the court is in the place where the initial proceeding occurred, unless the initial proceeding has been transferred as provided in Section 62‑1‑303 or (c) of this section.

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

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

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑202.** Appointment or testacy proceedings; conflicting claim of domicile in another state.

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

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑203.** Priority among persons seeking appointment as personal representative.

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

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

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

 (3) other devisees of the decedent;

 (4) the surviving spouse of the decedent;

 (5) other heirs of the decedent regardless of whether the decedent died intestate and determined as if the decedent died intestate (for the purposes of determining priority under this item, any heirs who could have qualified under items (1), (2), (3), and (4) of subsection (a) are treated as having predeceased the decedent);

 (6) forty‑five days after the death of the decedent, any creditor;

 (7) four months after the death of the decedent, upon application by the South Carolina Department of Revenue, a person suitable to the court.

 (8) Unless a contrary intent is expressed in the decedent's will, a person with priority under subsection (a) may nominate another, who shall have the same priority as the person making the nomination, except that a person nominated by the testator to serve as personal representative or successor personal representative shall have a higher priority than a person nominated pursuant to this item.

 (b) An objection to an appointment can be made only in formal proceedings. In case of objection the priorities stated in (a) apply except that:

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

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

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

 (d) Appointment of one who does not have priority may be made in formal or informal proceedings. Before appointing one without priority, the court must determine that those having priority, although given notice of the proceedings, have failed to request appointment or to nominate another for appointment, and that administration is necessary.

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

 (1) under the age of eighteen;

 (2) a person whom the court finds unsuitable in formal proceedings;

 (3) with respect to the estate of any person domiciled in this State at the time of his death, a corporation created by another state of the United States or by any foreign state, kingdom or government, or a corporation created under the laws of the United States and not having a business in this State, or an officer, employee, or agent of such foreign corporation, whether the officer, employee, or agent is a resident or a nonresident of this State, if such officer, employee, or agent is acting as personal representative on behalf of such corporation;

 (4) a probate judge for an estate of any person within his jurisdiction, except as provided in Section 62‑3‑1202A.

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

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

 (h) If it comes to the knowledge of a probate judge that any person within his jurisdiction has died leaving an estate upon which no application has been made for appointment or no personal representative appointed or no will offered for probate or appointment granted, he must, immediately after the lapse of four months from the death of such person, notify the South Carolina Department of Revenue thereof together with his opinion as to whether or not any part of the estate is likely to be taxable.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 18; 1990 Act No. 521, Sections 33, 34; 1993 Act No. 181, Section 1606; 1995 Act No. 15, Section 3; 1997 Act No. 152, Sections 11, 12; 2010 Act No. 244, Section 7, eff June 7, 2010.

**SECTION 62‑3‑204.** Demand for notice of order or filing concerning decedent's estate.

 Any interested person desiring notice of any order or filing pertaining to a decedent's estate may file a demand for notice with the court at any time after the death of the decedent stating the name of the decedent, the nature of his interest in the estate, and the demandant's address or that of his attorney. The clerk shall mail a copy of the demand to the personal representative if one has been appointed. After filing of a demand, no order or filing to which the demand relates may be made or accepted without notice as prescribed in Section 62‑1‑401 to the demandant or his attorney. The validity of an order which is issued or filing which is accepted without compliance with this requirement is not affected by the error, but the petitioner receiving the order or the person making the filing may be liable for any damage caused by the absence of notice. The requirement of notice arising from a demand under this provision may be waived in writing by the demandant and ceases upon the termination of his interest in the estate.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 19.

PART 3.

INFORMAL PROBATE AND APPOINTMENT PROCEEDINGS

**SECTION 62‑3‑301.** Informal probate or appointment proceedings; application; contents.

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

 (1) Every application for informal probate of a will or for informal appointment of a personal representative, other than a special or successor representative, shall contain the following:

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

 (ii) the name, and date of death of the decedent, his age, and the county and state of his domicile at the time of death, and the names and addresses of the spouse, children, heirs (regardless of whether the decedent died intestate and determined as if the decedent died intestate) and devisees, and the ages of any who are minors so far as known or ascertainable with reasonable diligence by the applicant;

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

 (iv) a statement identifying and indicating the address of any personal representative of the decedent appointed in this State or elsewhere whose appointment has not been terminated;

 (v) a statement indicating whether the applicant has received a demand for notice, or is aware of a demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this State or elsewhere;

 (vi) that the time limit for informal probate or appointment as provided in this article has not expired either because ten years or less has passed since the decedent's death, or, if more than ten years from death have passed, circumstances as described by Section 62‑3‑108 authorizing tardy probate or appointment have occurred;

 (vii) such further information as may be prescribed by the South Carolina Department of Revenue pursuant to Sections 12‑15‑510 and 12‑15‑540 of the 1976 Code.

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

 (i) that the original of the decedent's last will is in the possession of the court, or accompanies the application, or that an authenticated copy of a will probated in another jurisdiction accompanies the application;

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

 (iii) that after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the will, and that the applicant believes that the instrument which is the subject of the application is the decedent's last will.

 (3) An application for informal appointment of a personal representative to administer an estate under a will shall describe the will by date of execution and state the time and place of probate or the pending application or petition for probate. The application for appointment shall adopt the statements in the application or petition for probate and state the name, address, and priority for appointment of the person whose appointment is sought.

 (4) An application for informal appointment of an administrator in intestacy must state the name and address of the person whose appointment is sought and must state in addition to the statements required by (1):

 (i) that after the exercise of reasonable diligence, the applicant is unaware of any unrevoked testamentary instrument relating to property having a situs in this State under Section Section 62‑1‑301 or a statement why any such instrument of which he may be aware is not being probated;

 (ii) the priority of the person whose appointment is sought and the names of any other persons having a prior or equal right to the appointment under Section 62‑3‑203.

 (5) An application for appointment of a personal representative to succeed a personal representative appointed under a different testacy status shall refer to the order in the most recent testacy proceeding, state the name and address of the person whose appointment is sought and of the person whose appointment will be terminated if the application is granted, and describe the priority of the applicant.

 (6) An application for appointment of a personal representative to succeed a personal representative who has tendered a resignation as provided in Section 62‑3‑610(c), or whose appointment has been terminated by death or removal, shall adopt the statements in the application or petition which led to the appointment of the person being succeeded except as specifically changed or corrected, state the name and address of the person who seeks appointment as successor, and describe the priority of the applicant.

 (b) By verifying an application for informal probate, or informal appointment, the applicant submits personally to the jurisdiction of the court in any proceeding for relief from fraud relating to the application, or for perjury, that may be instituted against him.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 20; 1990 Act No. 521, Section 35; 1993 Act No. 181, Section 1607.

**SECTION 62‑3‑302.** Informal probate; duty of court; effect of informal probate.

 Upon receipt of an application requesting informal probate of a will, the court, upon making the findings required by Section 62‑3‑303, shall issue a written statement of informal probate. Informal probate is conclusive as to all persons until superseded by an order in a formal testacy proceeding. No defect in the application or procedure relating thereto which leads to informal probate of a will renders the probate void.

HISTORY: 1986 Act No. 539, Section 1; 1990 Act No. 521, Section 36.

**SECTION 62‑3‑303.** Informal probate; proof and findings required.

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

 (1) the application is complete;

 (2) the applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief;

 (3) the applicant appears from the application to be an interested person as defined in Section 62‑1‑201(20);

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

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

 (6) any notice required by Section 62‑3‑204 has been given and that the application is not within Section 62‑3‑304;

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

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

 (c) A will which appears to have the required signatures and which contains an attestation clause showing that requirements of execution under Section 62‑2‑502 or 62‑2‑505 have been met shall be probated without further proof. In other cases, the court may assume execution if the will appears to have been properly executed, or he may accept a sworn statement or affidavit of any person having knowledge of the circumstances of execution, whether or not the person was a witness to the will.

 (d) Informal probate of a will which has been previously probated elsewhere may be granted at any time upon written application by any interested person, together with deposit of an authenticated copy of the will and of the statement probating it from the office or court where it was first probated.

 (e) A will from a place which does not provide for probate of a will after death and which is not eligible for probate under subsection (a) above, may be probated in this State upon receipt by the court of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of the other place.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑304.** Informal probate; unavailable in certain cases.

 Applications for informal probate which relate to one or more of a known series of testamentary instruments (other than a will and its codicils), the latest of which does not expressly revoke the earlier, shall be declined.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑305.** Informal probate; court not satisfied.

 If the court is not satisfied that a will is entitled to be probated in informal proceedings because of failure to meet the requirements of Sections 62‑3‑303 and 62‑3‑304 or any other reason, he may decline the application. A declination of informal probate is not an adjudication and does not preclude formal probate proceedings.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑306.** Informal probate; notice requirements.

 (a) The moving party must give notice as described by Section 62‑1‑401 of his application for informal probate to any person demanding it pursuant to Section 62‑3‑204, and to any personal representative of the decedent whose appointment has not been terminated. No other notice of informal probate is required.

 (b) If an informal probate is granted, within thirty days thereafter the applicant shall give written information of the probate to the heirs (determined as if the decedent died intestate) and devisees. The information must include the name and address of the applicant, the date of execution of the will, and any codicil thereto, the name and location of the court granting the informal probate, and the date of the probate. The information must be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the applicant. No duty to give information is incurred if a personal representative is appointed who is required to give the written information required by Section 62‑3‑705. An applicant's failure to give information as required by this section is a breach of his duty to the heirs and devisees but does not affect the validity of the probate.

HISTORY: 1986 Act No. 539, Section 1; 1990 Act No. 521, Section 37.

**SECTION 62‑3‑307.** Informal appointment proceedings; delay in order; duty of court; effect of appointment.

 (a) Upon receipt of an application for informal appointment of a personal representative other than a special administrator as provided in Section 62‑3‑614, the court, after making the findings required by Section 62‑3‑308, shall appoint the applicant subject to qualification and acceptance; provided, that if the decedent was a nonresident, the court shall delay the order of appointment until thirty days have elapsed since death unless the personal representative appointed at the decedent's domicile is the applicant, or unless the decedent's will directs that his estate be subject to the laws of this State.

 (b) The status of a personal representative and the powers and duties pertaining to the office are fully established by informal appointment. An appointment, and the office of personal representative created thereby, is subject to termination as provided in Sections 62‑3‑608 through 62‑3‑612, but is not subject to retroactive vacation.

HISTORY: 1986 Act No. 539, Section 1; 1990 Act No. 521, Section 38.

**SECTION 62‑3‑308.** Informal appointment proceedings; proof and findings required.

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

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

 (2) the applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief;

 (3) the applicant appears from the application to be an interested person as defined in Section 62‑1‑201(20);

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

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

 (6) any notice required by Section 62‑3‑204 has been given;

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

 (b) Unless Section 62‑3‑612 controls, the application must be denied if it indicates that a personal representative who has not filed a written statement of resignation as provided in Section 62‑3‑610(c) has been appointed in this or another county of this State, that (unless the applicant is the domiciliary personal representative or his nominee) the decedent was not domiciled in this State and that a personal representative whose appointment has not been terminated has been appointed by a court in the state of domicile, or that other requirements of this section have not been met.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑309.** Informal appointment proceedings; court not satisfied.

 If the court is not satisfied that a requested informal appointment of a personal representative should be made because of failure to meet the requirements of Sections 62‑3‑307 and 62‑3‑308 or, for any other reason, he may decline the application. A declination of informal appointment is not an adjudication and does not preclude appointment in formal proceedings.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑310.** Informal appointment proceedings; notice requirements.

 The moving party must give notice as described by Section 62‑1‑401 of his intention to seek an appointment informally: (1) to any person demanding it pursuant to Section 62‑3‑204; and (2) to any person having a prior or equal right to appointment not waived in writing and filed with the court. No other notice of an informal appointment proceeding is required.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑311.** Informal appointment unavailable in certain cases.

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

HISTORY: 1986 Act No. 539, Section 1.

PART 4.

FORMAL TESTACY AND APPOINTMENT PROCEEDINGS

**SECTION 62‑3‑401.** Formal testacy proceedings; nature; when commenced.

 A formal testacy proceeding is litigation to determine whether a decedent left a valid will. A formal testacy proceeding must be commenced by an interested person filing and serving a summons and a petition as described in Section 62‑3‑402(a) in which he requests that the court, after notice and hearing, enter an order probating a will, or a petition to set aside an informal probate of a will or to prevent informal probate of a will which is the subject of a pending application, or a petition in accordance with Section 62‑3‑402(b) for an order that the decedent died intestate.

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

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

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

HISTORY: 1986 Act No. 539, Section 1; 2010 Act No. 244, Section 8, eff June 7, 2010.

**SECTION 62‑3‑402.** Formal testacy or appointment proceedings; petition; contents.

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

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

 (2) contains the statements required for informal applications as stated in the seven subitems under Section 62‑3‑301(a)(1), the statements required by subitems (ii) and (iii) of Section 62‑3‑301(a)(2);

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

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

 (b) A petition for adjudication of intestacy and appointment of an administrator in intestacy must request a judicial finding and order that the decedent left no will and determining the heirs, contain the statements required by (1) and (4) of Section 62‑3‑301(a) and indicate whether administration under Part 5 [Sections 62‑3‑501 et seq.] is sought. A petition may request an order determining intestacy and heirs without requesting the appointment of an administrator, in which case, the statements required by subitem (ii) of Section 62‑3‑301(a)(4) above may be omitted.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑403.** Formal testacy proceeding; notice of hearing on petition.

 (a) Upon commencement of a formal testacy proceeding or at any time after that, the court shall fix a time and place of hearing. Notice must be given in the manner prescribed by Section 62‑1‑401 by the petitioner to the persons herein enumerated and to any additional person who has filed a demand for notice under Section 62‑3‑204. The following persons must be properly served with summons and petition: the surviving spouse, children, and other heirs of the decedent (regardless of whether the decedent died intestate and determined as if the decedent died intestate), the devisees, and personal representatives named in any will that is being, or has been, probated, or offered for informal or formal probate in the county, or that is known by the petitioner to have been probated, or offered for informal or formal probate elsewhere, and any personal representative of the decedent whose appointment has not been terminated.

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

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

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

 (3) by engaging the services of an investigator.

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

HISTORY: 1986 Act No. 539, Section 1; 1990 Act No. 521, Section 39; 2010 Act No. 244,Section 9, eff June 7, 2010.

**SECTION 62‑3‑404.** Formal testacy proceedings; written objections to probate.

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

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑405.** Formal testacy proceedings; uncontested cases; hearings and proof.

 If a petition in a testacy proceeding is unopposed, the court may order probate or intestacy on the strength of the pleadings if satisfied that the conditions of Section 62‑3‑409 have been met or conduct a hearing in open court and require proof of the matters necessary to support the order sought. If evidence concerning execution of the will is necessary, the affidavit (including an affidavit of self‑proof executed in compliance with Section 62‑2‑503) or testimony of one of any attesting witnesses to the instrument is sufficient. If the affidavit or testimony of an attesting witness is not available, execution of the will may be proved by other evidence or affidavit.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 21.

**SECTION 62‑3‑406.** Formal testacy proceedings; contested cases; testimony of attesting witnesses.

 (a) If evidence concerning execution of an attested will which is not self‑proved is necessary in contested cases, the testimony of at least one of the attesting witnesses is required. Such testimony is not required if: (1) no attesting witness is within the State; (2) no attesting witness is competent to testify; (3) no attesting witness can be found; or (4) all attesting witnesses are otherwise unable to testify. Due execution of an attested will may be proved by other evidence.

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

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 22; 1988 Act No. 659, Section 16.

**SECTION 62‑3‑407.** Formal testacy proceedings; burdens in contested cases.

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

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 23.

**SECTION 62‑3‑408.** Formal testacy proceedings; effect of final order in another jurisdiction.

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

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑409.** Formal testacy proceedings; order; foreign will.

 Upon proof of service of the summons and petition, and after any hearing and notice that may be necessary, if the court finds that the testator is dead, venue is proper, and that the proceeding was commenced within the limitation prescribed by Section 62‑3‑108, it shall determine the decedent's domicile at death, his heirs (regardless of whether the decedent died intestate and determined as if the decedent died intestate), and his state of testacy. Any will found to be valid and unrevoked must be formally probated. Termination of any previous informal appointment of a personal representative, which may be appropriate in view of the relief requested and findings, is governed by Section 62‑3‑612. The petition must be dismissed or appropriate amendment allowed if the court is not satisfied that the alleged decedent is dead. A will from a place which does not provide for probate of a will after death may be proved for probate in this State by a duly authenticated certificate of its legal custodian that the copy introduced is a true copy and that the will has become effective under the law of the other place.

HISTORY: 1986 Act No. 539, Section 1; 1990 Act No. 521, Section 40; 2010 Act No. 244,Section 10, eff June 7, 2010.

**SECTION 62‑3‑410.** Formal testacy proceedings; probate of more than one instrument.

 If two or more instruments are offered for probate before a final order is entered in a formal testacy proceeding, more than one instrument may be probated if neither expressly revokes the other or contains provisions which work a total revocation by implication. If more than one instrument is probated, the order shall indicate what provisions control in respect to the nomination of an executor, if any. The order may, but need not, indicate how any provisions of a particular instrument are affected by the other instrument. After a final order in a testacy proceeding has been entered, no petition for probate of any other instrument of the decedent may be entertained, except incident to a petition to vacate or modify a previous probate order and subject to the time limits of Section 62‑3‑412.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑411.** Formal testacy proceedings; partial intestacy.

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

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑412.** Formal testacy proceedings; effect of order; vacation.

 Subject to appeal and subject to vacation as provided herein and in Section 62‑3‑413, a formal testacy order under Sections 62‑3‑409 through 62‑3‑411, including an order that the decedent left no valid will and determining heirs, is final as to all persons with respect to all issues concerning the decedent's estate that the court considered or might have considered incident to its rendition relevant to the question of whether the decedent left a valid will, and to the determination of heirs, except that:

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

 (2) If intestacy of all or part of the estate has been ordered, the determination of heirs of the decedent may be reconsidered if it is shown that one or more persons were omitted from the determination and it is also shown that the persons were unaware of their relationship to the decedent, were unaware of his death, or were given no notice of any proceeding concerning his estate, except by publication.

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

 (i) If a personal representative has been appointed for the estate, the time of entry of any order approving final distribution of the estate.

 (ii) Whether or not a personal representative has been appointed for the estate of the decedent, the time prescribed by Section 62‑3‑108 when it is no longer possible to initiate an original proceeding to probate a will of the decedent.

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

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

 (5) The finding of the fact of death is conclusive as to the alleged decedent only if notice of the hearing on the petition in the formal testacy proceeding was sent by registered or certified mail addressed to the alleged decedent at his last known address and the court finds that a search under Section 62‑3‑403(b) was made. If the alleged decedent is not dead, even if notice was sent and search was made, he may recover estate assets in the hands of the personal representative. In addition to any remedies available to the alleged decedent by reason of any fraud or intentional wrongdoing, the alleged decedent may recover any estate or its proceeds from distributees that is in their hands, or the value of distributions received by them, to the extent that any recovery from distributees is equitable in view of all of the circumstances.

HISTORY: 1986 Act No. 539, Section 1; 1990 Act No. 521, Section 41.

**SECTION 62‑3‑413.** Formal testacy proceedings; vacation of order for other cause.

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

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑414.** Formal proceedings concerning appointment of personal representative.

 (a) A formal proceeding for adjudication regarding the priority or qualification of one who is an applicant for appointment as a personal representative, or of one who previously has been appointed a personal representative in informal proceedings, if an issue concerning the testacy of the decedent is or may be involved, is governed by Section 62‑3‑402, as well as by this section. In other cases, the petition shall contain or adopt the statements required by Section 62‑3‑301(a)(1) and describe the question relating to priority or qualification of the personal representative which is to be resolved. If the proceeding precedes any appointment of a personal representative, it shall stay any pending informal appointment proceedings as well as any commenced thereafter. If the proceeding is commenced after appointment, the previously appointed personal representative, after receipt of notice thereof, shall refrain from exercising any power of administration except as necessary to preserve the estate or unless the court orders otherwise.

 (b) After service of the summons and petition to interested persons, including all persons interested in the administration of the estate as successors under the applicable assumption concerning testacy, any previously appointed personal representative and any person having or claiming priority for appointment as a personal representative, the court shall determine who is entitled to appointment under Section 62‑3‑203, make a proper appointment, and, if appropriate, terminate any prior appointment found to have been improper as provided in cases of removal under Section 62‑3‑611.

HISTORY: 1986 Act No. 539, Section 1; 2010 Act No. 244, Section 11, eff June 7, 2010.

PART 5.

ADMINISTRATION UNDER PART 5

**SECTION 62‑3‑501.** Administration under Part 5 [Sections 62‑3‑501 et seq.]; nature of proceeding.

 Administration under Part 5 [Sections 62‑3‑501 et seq.] is a single in rem proceeding to secure complete administration and settlement of a decedent's estate under the continuing authority of the court which extends until entry of an order approving distribution of the estate and discharging the personal representative or other order terminating the proceeding. A personal representative under Part 5 [Sections 62‑3‑501 et seq.] is responsible to the court, as well as to the interested parties, and is subject to directions concerning the estate made by the court on its own motion or on the motion of any interested party. Except as otherwise provided in this part, or as otherwise ordered by the court, a personal representative under Part 5 [Sections 62‑3‑501 et seq.] has the same duties and powers as a personal representative who is not subject to administration under Part 5 [Sections 62‑3‑501 et seq.].

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑502.** Administration under Part 5 [Sections 62‑3‑501 et seq.]; petition; order.

 A petition for administration under Part 5 [Sections 62‑3‑501 et seq.] may be filed by any interested person or by a personal representative at any time, a prayer for administration under Part 5 [Sections 62‑3‑501 et seq.] may be joined with a petition in a testacy or appointment proceeding, or the court may order administration under Part 5 [Sections 62‑3‑501 et seq.] on its own motion. If the testacy of the decedent and the priority and qualification of any personal representative have not been adjudicated previously, the petition for administration under Part 5 [Sections 62‑3‑501 et seq.] shall include the matters required of a petition in a formal testacy proceeding and the notice requirements and procedures applicable to a formal testacy proceeding apply. If not previously adjudicated, the court shall adjudicate the testacy of the decedent and questions relating to the priority and qualifications of the personal representative in any case involving a request for administration under Part 5 [Sections 62‑3‑501 et seq.], even though the request for administration under Part 5 [Sections 62‑3‑501 et seq.] may be denied. After service of the summons and petition and upon notice to interested persons, the court shall order administration under Part 5 [Sections 62‑3‑501 et seq.] of a decedent's estate: (1) if the decedent's will directs administration under Part 5 [Sections 62‑3‑501 et seq.], it shall be ordered unless the court finds that circumstances bearing on the need for administration under Part 5 [Sections 62‑3‑501 et seq.] have changed since the execution of the will and that there is no necessity for administration under Part 5 [Sections 62‑3‑501 et seq.]; (2) if the decedent's will directs no administration under Part 5 [Sections 62‑3‑501 et seq.], then administration shall be ordered only upon a finding that it is necessary for protection of persons interested in the estate; or (3) in other cases if the court finds that administration under Part 5 [Sections 62‑3‑501 et seq.] is necessary under the circumstances.

HISTORY: 1986 Act No. 539, Section 1; 2010 Act No. 244, Section 12, eff June 7, 2010.

**SECTION 62‑3‑503.** Administration under Part 5 [Sections 62‑3‑501 et seq.]; effect on other proceedings.

 (a) The pendency of a proceeding for administration under Part 5 [Sections 62‑3‑501 et seq.] of a decedent's estate stays action on any informal application then pending or thereafter filed.

 (b) If a will has been previously probated in informal proceedings, the effect of the filing of a petition for administration under Part 5 [Sections 62‑3‑501 et seq.] is as provided for formal testacy proceedings by Section 62‑3‑401.

 (c) After service of the summons and petition upon the personal representative and notice of the filing of a petition for administration under Part 5 [Sections 62‑3‑501 et seq.], a personal representative who has been appointed previously shall not exercise his power to distribute any estate. The filing of the petition does not affect his other powers and duties unless the court restricts the exercise of any of them pending full hearing on the petition.

HISTORY: 1986 Act No. 539, Section 1; 2010 Act No. 244, Section 13, eff June 7, 2010.

**SECTION 62‑3‑504.** Administration under Part 5 [Sections 62‑3‑501 et seq.]; powers of personal representative.

 Unless restricted by the court, a personal representative under Part 5 [Sections 62‑3‑501 et seq.] has, without interim orders approving exercise of a power, all powers of personal representatives under this Code, but he shall not exercise his power to make any distribution of the estate without prior order of the court. Any other restriction on the power of a personal representative which may be ordered by the court must be endorsed on his letters of appointment and any court certification thereof, and unless so endorsed is ineffective as to persons dealing in good faith with the personal representative.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑505.** Administration under Part 5 [Sections 62‑3‑501 et seq.]; interim orders; distribution and closing orders.

 Unless otherwise ordered by the court, administration under Part 5 [Sections 62‑3‑501 et seq.] is terminated by order in accordance with time restrictions, notices, and contents of orders prescribed for proceedings under Section 62‑3‑1001. Interim orders approving or directing partial distributions or granting other relief may be issued by the court at any time during the pendency of an administration under Part 5 [Sections 62‑3‑501 et seq.] on the application of the personal representative or any interested person.

HISTORY: 1986 Act No. 539, Section 1.

PART 6.

PERSONAL REPRESENTATIVE; APPOINTMENT, CONTROL, AND TERMINATION OF AUTHORITY

**SECTION 62‑3‑601.** Qualification.

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

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑602.** Acceptance of appointment; consent to jurisdiction.

 By accepting appointment, a personal representative submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be delivered to the personal representative, or mailed to him by ordinary first class mail at his address as listed in the application or petition for appointment or as thereafter reported to the court and to his address as then known to the petitioner.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑603.** Bond not required without court order; exceptions; waiver of bond requirement.

 (A) Except as may be required pursuant to Section 62‑3‑605 or upon the appointment of a special administrator, a personal representative is not required to file a bond if:

 (1) all heirs and devisees agree to waive the bond requirement;

 (2) the personal representative is the sole heir or devisee;

 (3) the personal representative is a state agency, bank, or trust company, unless the will expressly requires a bond; or

 (4) the personal representative is named in the will, unless the will expressly requires a bond.

 If, pursuant to Section 62‑3‑203(a), the court appoints as personal representative a nominee of a personal representative named in a will, the court may in its discretion decide not to require bond.

 (B) Where a bond is required of the personal representative or administrator of an estate by law or by the will, it may be waived under the following conditions:

 (1) the personal representative or administrator by affidavit at the time of applying for appointment as such certifies to the court that the gross value of the estate will be less than twenty thousand dollars, that the assets of the probate estate are sufficient to pay all claims against the estate, and that the personal representative or administrator agrees to be personally liable to any beneficiary or other person having an interest in the estate for any negligence or intentional misconduct in the performance of his duties as personal representative or administrator; and

 (2) all known beneficiaries and other persons having an interest in the estate execute a written statement on a form prescribed by the court that they agree to the bond being waived. This form must be filed with the court simultaneously with the affidavit required by item (1) above. A creditor for purposes of this item (2) is not considered a person having an interest in the estate.

 The provisions of this subsection (B) are supplemental and in addition to any other provisions of law permitting the waiving or reducing of a bond. Any bond required by Section 62‑3‑605 may not be waived under the provisions of this section.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 24; 1988 Act No. 659, Section 17; 1989 Act No. 53, Section 1; 1990 Act No. 521, Section 42; 1994 Act No. 470, Section 1; 1997 Act No. 152, Section 13.

**SECTION 62‑3‑604.** Bond amount; security; procedure; reduction.

 If bond is required and the provisions of the will or order do not specify the amount, unless stated in his application or petition, the person qualifying shall file a statement under oath with the court indicating his best estimate of the value of the personal estate of the decedent and of the income expected from the personal estate during the next year, and he shall execute and file a bond with the court, or give other suitable security, in an amount not less than the estimate. The court shall determine that the bond is duly executed by a corporate surety, or one or more individual sureties whose performance is secured by pledge of personal property, mortgage on real property, or other adequate security. The court may permit the amount of the bond to be reduced by the value of assets of the estate deposited with a domestic financial institution (as defined in Section 62‑6‑101) in a manner that prevents their unauthorized disposition. Upon application by the personal representative or another interested person or upon the court's own motion, the court may increase or reduce the amount of the bond, release sureties, dispense with security or securities, or permit the substitution of another bond with the same or different sureties.

HISTORY: 1986 Act No. 539, Section 1; 2010 Act No. 244, Section 14, eff June 7, 2010.

**SECTION 62‑3‑605.** Demand for bond by interested person.

 Any person apparently having an interest in the estate worth in excess of one thousand dollars, or any creditor having a claim in excess of one thousand dollars, may make a written demand that a personal representative give bond. The demand must be filed with the court and a copy mailed to the personal representative, if appointment and qualification have occurred. Thereupon, bond is required in an amount determined by the court as sufficient to protect the interest of the person or creditor demanding bond, but the requirement ceases if the person or creditor demanding bond ceases to have an interest in the estate worth in excess of one thousand dollars or a claim in excess of one thousand dollars. After he has received notice and until the filing of the bond or cessation of the requirement of bond, the personal representative shall refrain from exercising any powers of his office except as necessary to preserve the estate or to pay the person or creditor demanding bond. Failure of the personal representative to meet a requirement of bond by giving suitable bond within thirty days after receipt of notice is cause for his removal and appointment of a successor personal representative.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 25; 1990 Act No. 521, Section 43.

**SECTION 62‑3‑606.** Terms and conditions of bonds.

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

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

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

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

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

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

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

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑607.** Order restraining personal representative.

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

 (b) The matter shall be set for hearing within ten days or at such other times as the parties may agree. Notice as the court directs shall be given to the personal representative and his attorney of record, if any, and to any other parties named defendant in the petition.

HISTORY: 1986 Act No. 539, Section 1; 2010 Act No. 244, Section 15, eff June 7, 2010.

**SECTION 62‑3‑608.** Termination of appointment; general.

 Termination of appointment of a personal representative occurs as indicated in Sections 62‑3‑609 to 62‑3‑612, inclusive. Termination ends the right and power pertaining to the office of personal representative as conferred by this Code or any will, except that a personal representative, at any time prior to distribution or until restrained or enjoined by court order, may perform acts necessary to protect the estate and may deliver the assets to a successor representative. Termination does not discharge a personal representative from liability for transactions or omissions occurring before termination, or relieve him of the duty to preserve assets subject to his control, to account therefor, and to deliver the assets. Termination does not affect the jurisdiction of the court over the personal representative, but terminates his authority to represent the estate in any pending or future proceeding.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑609.** Termination of appointment; death or disability.

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

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑610.** Termination of appointment; voluntary.

 (a) Unless otherwise provided, an order closing an estate as provided in Section 62‑3‑1001 terminates an appointment of a personal representative.

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

HISTORY: 1986 Act No. 539, Section 1; 1990 Act No. 521, Section 44; 1997 Act No. 152,Section 14.

**SECTION 62‑3‑611.** Termination of appointment by removal; cause; procedure.

 (a) A person interested in the estate may petition for removal of a personal representative for cause at any time. Upon filing of the petition, the court shall fix a time and place for hearing. Notice shall be given by the petitioner to the personal representative, and to other persons as the court may order. Except as otherwise ordered as provided in Section 62‑3‑607, after service of the summons and petition upon the personal representative and receipt of notice of removal proceedings, the personal representative shall not act except to account, to correct maladministration, or preserve the estate. If removal is ordered, the court also shall direct by order the disposition of the assets remaining in the name of, or under the control of, the personal representative being removed.

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

HISTORY: 1986 Act No. 539, Section 1; 2010 Act No. 244, Section 16, eff June 7, 2010.

**SECTION 62‑3‑612.** Termination of appointment; change of testacy status.

 Except as otherwise ordered in formal proceedings, the probate of a will subsequent to the appointment of a personal representative in intestacy or under a will which is superseded by formal probate of another will, or the vacation of an informal probate of a will subsequent to the appointment of the personal representative thereunder, does not terminate the appointment of the personal representative although his powers may be reduced as provided in Section 62‑3‑401. Termination occurs upon appointment in informal or formal appointment proceedings of a person entitled to appointment under the later assumption concerning testacy. If no request for new appointment is made within thirty days after expiration of time for appeal from the order in formal testacy proceedings, or from the informal probate, changing the assumption concerning testacy, the previously appointed personal representative upon request may be appointed personal representative under the subsequently probated will, or as in intestacy as the case may be.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑613.** Successor personal representative.

 Parts 3 and 4 of this article [Sections 62‑3‑301 et seq. and Sections 62‑3‑401 et seq.] govern proceedings for appointment of a personal representative to succeed one whose appointment has been terminated. After appointment and qualification, a successor personal representative may be substituted in all actions and proceedings to which the former personal representative was a party, and no notice, process, or claim which was given or served upon the former personal representative need be given to or served upon the successor in order to preserve any position or right the person giving the notice or filing the claim may thereby have obtained or preserved with reference to the former personal representative. Except as otherwise ordered by the court, the successor personal representative has the powers and duties in respect to the continued administration which the former personal representative would have had if his appointment had not been terminated.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑614.** Special administrator; appointment.

 A special administrator may be appointed:

 (1) informally by the court on the application of an interested person when necessary:

 (a) to protect the estate of a decedent prior to the appointment of a general personal representative or if a prior appointment has been terminated as provided in Section 62‑3‑609; or

 (b) for a creditor of the decedent's estate to institute any proceeding under Section 62‑3‑803(c);

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

HISTORY: 1986 Act No. 539, Section 1; 1997 Act No. 152, Section 15.

**SECTION 62‑3‑615.** Special administrator; who may be appointed.

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

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

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑616.** Special administrator; appointed informally; powers and duties.

 A special administrator appointed by the court in informal proceedings pursuant to Section 62‑3‑614(1) has the duty to collect and manage the assets of the estate, to preserve them, to account therefor, and to deliver them to the general personal representative upon his qualification. The special administrator has the power of a personal representative under this Code necessary to perform his duties.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑617.** Special administrator; formal proceedings; powers and duties.

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

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑618.** Termination of appointment; special administrator.

 The appointment of a special administrator terminates in accordance with the provisions of the order of appointment or on the appointment of a general personal representative. In other cases, the appointment of a special administrator is subject to termination as provided in Sections 62‑3‑608 through 62‑3‑611.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑619.** "Executor de son tort" defined.

 Any person who shall obtain, receive, and have any goods or debts of any decedent or a release or other discharge of any debt or duty that belonged to the decedent upon any fraud or without such valuable consideration as shall amount to the value of the same goods or debts or near thereabouts (except it be in or toward satisfaction of some just and principal debt of the value of the same goods or debts to him owing by the decedent at the time of his decease) shall be charged and chargeable as executor of his own wrong, so far as such goods and debts coming to his hands or whereof he is released or discharged by such administrator will satisfy, deducting, nevertheless, to and for himself allowance of all just, due, and principal debts upon good consideration without fraud owing to him by the decedent at the time of his decease and all other payments made by him which lawful personal representatives may and ought to have and pay by the laws and statutes of this State.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑620.** Executor de son tort shall account for deceased's property; decree for damages.

 The judge of probate of the county in which a deceased person may have died may, either of his own accord or at the instance of any creditor or other person interested in the estate of the deceased, cite before him such person as, neither being appointed personal representative nor having obtained administration of the effects of such deceased person, shall nevertheless possess himself of the goods, chattels, rights, and credits of such person deceased and, upon such person being cited as aforesaid, the judge of probate shall require of him a discovery and account of all and singular the goods, chattels, rights, and credits of the deceased and shall proceed to decree against him for the value of the estate and effects of the deceased which he may have wasted or which may have been lost by his illegal interference, charging him as executors of their own wrong are made liable at common law as far as assets shall have come into his hands.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑621.** Liability.

 Every personal representative of any person who, as executor in his own wrong, shall waste or convert any goods, chattels, estate, or assets of any person deceased to his own use shall be liable and chargeable in the same manner as his testator or intestate would have been if he had been living.

HISTORY: 1986 Act No. 539, Section 1.

PART 7.

DUTIES AND POWERS OF PERSONAL REPRESENTATIVES

**SECTION 62‑3‑701.** Time of accrual of duties and powers.

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

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑702.** Priority among different letters.

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

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑703.** General duties; relation and liability to persons interested in estate; standing to sue.

 (a) A personal representative is a fiduciary who shall observe the standards of care applicable to trustees as described by Section 62‑7‑804. A personal representative has a duty to settle and distribute the estate of the decedent in accordance with the terms of a probated and effective will and this code, and as expeditiously and efficiently as is consistent with the best interests of the estate. He shall use the authority conferred upon him by this code, the terms of the will, and any order in proceedings to which he is party for the best interests of successors to the estate.

 (b) A personal representative shall not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration, an informally probated will is authority to administer and distribute the estate according to its terms. An order of appointment of a personal representative, whether issued in informal or formal proceedings, is authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding questioning his appointment or fitness to continue, or a proceeding for administration under Part 5. Nothing in this section affects the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants, the surviving spouse, any minor and dependent children, and any pretermitted child of the decedent as described elsewhere in this Code.

 (c) Except as to proceedings which do not survive the death of the decedent, a personal representative of a decedent domiciled in this State at his death has the same standing to sue and be sued in the courts of this State and the courts of any other jurisdiction as his decedent had immediately prior to death.

HISTORY: 1986 Act No. 539, Section 1; 2005 Act No. 66, Section 5; 2010 Act No. 244, Section 44, eff June 7, 2010.

**SECTION 62‑3‑704.** Personal representative to proceed with court sanction.

 A personal representative shall proceed expeditiously with the settlement and distribution of a decedent's estate under the supervision of the court, as follows:

 (a) Immediately after his appointment he shall publish the notice to creditors required by Section 62‑3‑801.

 (b) Within ninety days after his appointment he shall file with the court the inventory and appraisement required by Section 62‑3‑706.

 (c) Upon the expiration of the relevant period, as set forth in Section 62‑3‑807, the personal representative shall proceed to pay the claims allowed against the estate, as provided in Section 62‑3‑807.

 (d) Upon the expiration of the relevant period, as set forth in Section 62‑3‑1001, the personal representative shall file the account, proposal for distribution, petition for settlement of the estate, proofs required by Section 62‑3‑1001, and proof of publication of notice to creditors.

 (e) The time periods stated herein for completing the above requirements are not intended to supplant any other time periods stated elsewhere in this Code. The court may on its own motion, or on the motion of the personal representative or of any interested person, extend the time for completing any of the requirements of administration contained in Article 3 [Section 62‑3‑1001, et seq.] including any of the above requirements, and especially including the requirement to account, under Section 62‑3‑1001, in cases of estates which remain significantly unadministered as of the expiration of the relevant time period, either as to the marshalling of assets or as to the allowance of claims.

 (f) If a personal representative or trustee neglects or refuses to comply with any provision of Section 62‑3‑706 he is liable to a penalty of one thousand dollars for each separate failure or neglect and the official bond of the personal representative or trustee is liable therefor. This penalty must be recovered by the South Carolina Department of Revenue for the use of the State and an action for the recovery thereof may be brought by the Department of Revenue in any court of competent jurisdiction and, upon collection, must be paid into the state treasury. But the department, upon good cause shown, may, in its discretion, excuse the penalty or any part thereof. The probate court, after a hearing and any notice the court may require, may remove the personal representative and appoint another personal representative.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 26; 1990 Act No. 521, Section 45; 1993 Act No. 181, Section 1608.

**SECTION 62‑3‑705.** Duty of personal representative; information to heirs and devisees.

 Not later than thirty days after his appointment every personal representative, except any special administrator, shall give information of his appointment to the heirs (regardless of whether the decedent died intestate and determined as if the decedent died intestate) and devisees, including, if there has been no formal testacy proceeding and if the personal representative was appointed on the assumption that the decedent died intestate, the devisees in any will mentioned in the application for appointment of a personal representative. The information must be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the personal representative. The duty does not extend to require information to persons who have been adjudicated in a prior formal testacy proceeding to have no interest in the estate. The information must include the name and address of the personal representative, indicate that it is being sent to persons who have or may have some interest in the estate being administered, indicate whether bond has been filed, and describe the court where papers relating to the estate are on file. The personal representative's failure to give this information is a breach of his duty to the persons concerned but does not affect the validity of his appointment, his powers, or other duties. A personal representative may inform other persons of his appointment by delivery or ordinary first class mail.

HISTORY: 1986 Act No. 539, Section 1; 1990 Act No. 521, Section 46.

**SECTION 62‑3‑706.** Duty of personal representative; inventory and appraisement.

 Within ninety days after his appointment, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall:

 (1) prepare an inventory of property owned by the decedent at the time of his death, together with such other information as may be required by the South Carolina Department of Revenue, listing it with reasonable detail, and indicating as to each listed item, its fair market value as of the date of the decedent's death, and the type and amount of any encumbrance that may exist with reference to any item;

 (2) file the original of the inventory with the court;

 (3) mail a copy to interested persons who request it.

 The court, upon application of the personal representative, may extend the time for filing or making the inventory and appraisement.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 27; 1990 Act No. 521, Section 47; 1993 Act No. 181, Section 1609.

**SECTION 62‑3‑707.** Employment of appraisers.

 The personal representative may obtain a qualified and disinterested appraiser to assist him in ascertaining the fair market value as of the date of the decedent's death of any asset the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser must be indicated on the inventory with the item or items he appraised. Each appraiser shall execute the inventory, stating thereon the item or items he appraised. On motion of any interested person, the court may require that one or more qualified appraisers be appointed to ascertain the fair market value of all or any part of the estate or may approve one or more qualified appraisers.

HISTORY: 1986 Act No. 539, Section 1; 1990 Act No. 521, Section 48.

**SECTION 62‑3‑708.** Duty of personal representative; supplementary inventory.

 If any property not included in the original inventory comes to the knowledge of a personal representative or if the personal representative learns that the value or description indicated in the original inventory for any item is erroneous or misleading, he shall make a supplementary inventory or appraisement showing the market value as of the date of the decedent's death of the new item or the revised market value or descriptions, and the appraisers or other data relied upon, if any, and file it with the court, and furnish copies thereof or information thereof to persons who receive the original inventory, and to persons interested in the new information.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑709.** Duty of personal representative; possession of estate.

 Except as otherwise provided by a decedent's will, every personal representative has a right to, and shall take possession or control of, the decedent's property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled thereto unless or until, in the judgment of the personal representative, possession of the property by him will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by an heir or devisee is conclusive evidence, in any action against the heir or devisee for possession thereof, that the possession of the property by the personal representative is necessary for purposes of administration. The personal representative shall pay taxes on, and take all steps reasonably necessary for the management, protection, and preservation of, the estate in his possession. He may maintain an action to recover possession of property or to determine the title thereto.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑710.** Power to avoid transfers.

 The property liable for the payment of unsecured debts of a decedent includes all property transferred by him by any means which is in law void or voidable as against his creditors, and subject to prior liens, the right to recover this property, so far as necessary for the payment of unsecured debts of the decedent, is exclusively in the personal representative.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑711.** Powers of personal representatives; in general.

 (a) Until termination of his appointment or unless otherwise provided in Section 62‑3‑910, a personal representative has the same power over the title to property of the estate that an absolute owner would have, in trust however, for the benefit of the creditors and others interested in the estate. Except as otherwise provided in subsection (b), this power may be exercised without notice, hearing, or order of court.

 (b) Except where the will of the decedent authorizes to the contrary, a personal representative may not sell real property of the estate except as authorized pursuant to the procedure described in Section 62‑3‑1301 et seq. and shall refrain from selling tangible or intangible personal property of the estate (other than securities regularly traded on national or regional exchanges and produce, grain, fiber, tobacco, or other merchandise of the estate for which market values are readily ascertainable) having an aggregate value of five thousand dollars or more without prior order of the court.

 (c) If the will of a decedent devises real property to a personal representative or authorizes a personal representative to sell real property (the title to which was not devised to the personal representative), then subject to Section 62‑3‑713, the personal representative, acting in trust for the benefit of the creditors and others interested in the estate, may execute a deed in favor of a purchaser for value, who takes title to the real property in accordance with the provisions of Section 62‑3‑910(b).

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 28; 2000 Act No. 398,Section 4.

**SECTION 62‑3‑712.** Improper exercise of power; breach of fiduciary duty.

 If the exercise of power concerning the estate is improper, the personal representative is liable to interested persons for damage or loss resulting from breach of his fiduciary duty to the same extent as a trustee of an express trust. The rights of purchasers and others dealing with a personal representative shall be determined as provided in Sections 62‑3‑713 and 62‑3‑714.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑713.** Sale, encumbrance, or transaction involving conflict of interest; voidable; exceptions.

 Any sale or encumbrance to the personal representative, his spouse, agent or attorney, or any corporation or trust in which he has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest on the part of the personal representative, is voidable by any person interested in the estate except one who has consented after fair disclosure unless:

 (1) the will or a contract entered into by the decedent expressly authorized the transaction; or

 (2) the transaction is approved by the court after notice to interested persons.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑714.** Persons dealing with personal representative; protection.

 A person who in good faith either assists a personal representative or deals with him for value is protected as if the personal representative properly exercised his power. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise. Except for restrictions on powers of personal representatives under Part 5 [Sections 62‑3‑501 et seq.] which are endorsed on letters as provided in Section 62‑3‑504, no provision in any will or order of court purporting to limit the power of a personal representative is effective except as to persons with actual knowledge thereof. A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑715.** Transactions authorized for personal representatives; exceptions.

 Except as restricted or otherwise provided by the will or by an order in a formal proceeding and subject to the restrictions imposed in Section 62‑3‑711(b) and to the priorities stated in Section 62‑3‑902, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

 (1) retain assets owned by the decedent pending distribution or liquidation including those in which the representative is personally interested or which are otherwise improper for trust investment;

 (2) receive assets from fiduciaries or other sources;

 (3) perform, compromise, or refuse performance of the decedent's contracts that continue as obligations of the estate, as he may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:

 (i) execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or

 (ii) deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement.

 Execution and delivery of a deed pursuant to this subsection affects title to the subject real property to the same extent as execution and delivery of a deed by the personal representative in other cases authorized by this Code.

 (4) satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;

 (5) if funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including monies received from the sale of other assets, in federally insured interest‑bearing accounts, readily marketable secured loan arrangements or other prudent investments which would be reasonable for use by trustees generally;

 (6) subject to the restrictions imposed in Section 62‑3‑711(b), acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale; and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

 (7) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing, or erect new party walls or buildings;

 (8) satisfy and settle claims and distribute the estate as provided in this Code;

 (9) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, but not for a term extending beyond the period of administration and, with respect to a lease with option to purchase, subject to the restrictions imposed in Section 62‑3‑711(b);

 (10) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

 (11) vote stocks or other securities in person or by general or limited proxy;

 (12) pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;

 (13) hold a security in the name of a nominee or in other form without disclosure of the interest of the estate but the personal representative is liable for any act of the nominee in connection with the security so held;

 (14) insure the assets of the estate against damage, loss, and liability and himself against liability as to third persons;

 (15) effect a fair and reasonable compromise with any debtor or obligor, or extend, renew, or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge, lien, or other security interest upon property of another persons, he may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien;

 (16) pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate;

 (17) sell, or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

 (18) allocate items of income or expense to either estate income or principal, as permitted or provided by law;

 (19) employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of his administrative duties; act without independent investigation upon their recommendations; and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;

 (20) prosecute or defend claims, or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of his duties;

 (21) subject to the restrictions imposed in Section 62‑3‑711(b), sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit, or for part cash and part credit, and with or without security for unpaid balances;

 (22) continue any unincorporated business or venture in which the decedent was engaged at the time of his death (i) in the same business form for a period of not more than four months from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business including good will; (ii) in the same business form for any additional period of time that may be approved by order of the court in a formal proceeding to which the persons interested in the estate are parties; or (iii) throughout the period of administration if the business is incorporated by the personal representative and if none of the probable distributees of the business who are competent adults object to its incorporation and retention in the estate;

 (23) make payment in cash or in kind, or partly in cash and partly in kind, upon any division or distribution of the estate (including the satisfaction of any pecuniary distribution) without regard to the income tax basis of any specific property allocated to any beneficiary and value and appraise any asset and distribute such asset in kind at its appraised value.

 (24) with the approval of the probate court or the circuit court, compromise and settle claims and actions for wrongful death, pain and suffering or both, and all claims and actions based on causes of actions surviving, to personal representatives, arising, asserted, or brought under or by virtue of any statute or act of this State, any state of the United States, the United States, or any foreign country.

 (25) donate a qualified conservation easement or fee simple gift of land for conservation on any real property of the decedent in order to obtain the benefit of the estate tax exclusion allowed under Internal Revenue Code Section 2031(c) as defined in Section 12‑6‑40(A), and the state income tax credit allowed under Section 12‑6‑3515, if the personal representative has the written consent of all of the heirs, beneficiaries, and devisees whose interests are affected by the donation. Upon petition of the personal representative, the probate court may consent on behalf of any unborn, unascertained, or incapacitated heirs, beneficiaries, or devisees whose interests are affected by the donation after determining that the donation of the qualified real property interest shall not adversely affect them or would most likely be agreed to by them if they were before the court and capable of consenting. A guardian ad litem must be appointed to represent the interest of any unborn, unascertained, or incapacitated persons. Similarly, and for the same purposes and under the same conditions, mutatis mutandis, a trustee may make such a donation for the settlor.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Sections 29, 30; 1990 Act No; 521, Section 49; 2000 Act No. 283, Section 1(E).

**SECTION 62‑3‑716.** Powers and duties of successor personal representative.

 A successor personal representative has the same power and duty as the original personal representative to complete the administration and distribution of the estate, as expeditiously as possible, but he shall not exercise any power expressly made personal to the executor named in the will.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑717.** Corepresentatives; when joint action required.

 If two or more persons are appointed corepresentatives and unless the will provides otherwise, the concurrence of all is required on all acts connected with the administration and distribution of the estate. This restriction does not apply when any corepresentative receives and receipts for property due the estate, when the concurrence of all cannot readily be obtained in the time reasonably available for emergency action necessary to preserve the estate, or when a corepresentative has been delegated to act for the others. Persons dealing with a corepresentative if actually unaware that another has been appointed to serve with him or if advised by the personal representative with whom they deal that he has authority to act alone for any of the reasons mentioned herein, are as fully protected as if the persons with whom they dealt had been the sole personal representative.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑718.** Powers of surviving personal representative.

 Unless the terms of the will otherwise provide, every power exercisable by personal corepresentatives may be exercised by the one or more remaining after the appointment of one or more is terminated and, if one of two or more nominated as coexecutors is not appointed, those appointed may exercise all the powers incident to the office.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑719.** Compensation of personal representative.

 (a) Unless otherwise approved by the court for extraordinary services, a personal representative shall receive for his care in the execution of his duties a sum from the probate estate funds not to exceed five percent of the appraised value of the personal property of the probate estate plus the sales proceeds of real property of the probate estate received on sales directed or authorized by will or by proper court order, except upon sales to the personal representative as purchaser. The minimum commission payable is fifty dollars, regardless of the value of the personal property of the estate.

 (b) Additionally, a personal representative may receive not more than five percent of the income earned by the probate estate in which he acts as fiduciary. No such additional commission is payable by an estate if the probate judge determines that a personal representative has acted unreasonably in the accomplishment of the assigned duties, or that unreasonable delay has been encountered.

 (c) The provisions of this section do not apply in a case where there is a contract providing for the compensation to be paid for such services, or where the will otherwise directs, or where the personal representative qualified to act before June 28, 1984.

 (d) A personal representative also may renounce his right to all or any part of the compensation. A written renunciation of fee may be filed with the court.

 (e) If more than one personal representative is serving an estate, the court in its discretion shall apportion the compensation among the personal representatives, but the total compensation for all personal representatives of an estate must not exceed the maximum compensation allowable under subsections (a) and (b) for an estate with a sole personal representative.

 (f) For purposes of this section, "probate estate" means the decedent's property passing under the decedent's will plus the decedent's property passing by intestacy. This subsection is intended to be declaratory of the law and governs the compensation of personal representatives currently serving and personal representatives serving at a later time.

HISTORY: 1986 Act No. 539, Section 1; 1990 Act No. 521, Section 50; 1997 Act No. 152,Section 16.

**SECTION 62‑3‑720.** Expenses in estate litigation.

 If any personal representative or person nominated as personal representative defends or prosecutes any proceeding in good faith, whether successful or not, he is entitled to receive from the estate his necessary expenses and disbursements including reasonable attorneys' fees incurred.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑721.** Proceedings for review of employment of agents and compensation of personal representatives and employees of estate.

 (a) After notice to all interested persons, on petition of an interested person or on appropriate motion if administration is under Part 5 [Sections 62‑3‑501 et seq.], the propriety of employment of any person by a personal representative including any attorney, auditor, investment advisor, or other specialized agent or assistant, the reasonableness of the compensation of any person so employed, or the reasonableness of the compensation determined by the personal representative for his own services, may be reviewed by the court. Any person who has received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.

 (b) Upon the settlement of their accounts by personal representatives the court shall allow each appraiser appointed by the court a reasonable daily fee for each day spent on appraising the property of the estate and also mileage at the same rate that members of state boards, commissions, and committees receive for each mile actually traveled in going to and from the place where the property ordered to be appraised is situated. In determining the reasonableness of the fee to each appraiser the court shall consider the value of the estate, the actual time consumed by the appraisers in the performance of their duties, and other such circumstances and conditions surrounding the appraisal as the court deems appropriate.

HISTORY: 1986 Act No. 539, Section 1.

PART 8.

CREDITORS' CLAIMS

**SECTION 62‑3‑801.** Notice to creditors.

 (a) Unless notice has already been given under this section, a personal representative upon his appointment shall publish a notice to creditors once a week for three successive weeks in a newspaper of general circulation in the county announcing his appointment and address and notifying creditors of the estate to present their claims within eight months after the date of the first publication of the notice or be forever barred.

 (b) A personal representative may give written notice by mail or other delivery to any creditor, notifying the creditor to present his claim within eight months from the published notice as provided in (a) above, or within sixty days from the mailing or other delivery of such notice, whichever is later, or be forever barred. Written notice is the notice described in (a) above or a similar notice.

 (c) The personal representative is not liable to any creditor or to any successor of the decedent for giving or failing to give notice under this section.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 31; 1990 Act No. 521, Section 51.

**SECTION 62‑3‑802.** Statutes of limitations.

 (a) Unless an estate is insolvent, the personal representative, with the consent of all successors whose interests would be affected, may waive any defense of limitations available to the estate. If the defense is not waived, no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid.

 (b) The running of any statute of limitations measured from some other event than death or the giving of notice to creditors is suspended during the eight months following the decedent's death but resumes thereafter as to claims not barred pursuant to the sections which follow.

 (c) For purposes of any statute of limitations, the proper presentation of a claim under Section 62‑3‑804 is equivalent to commencement of a proceeding on the claim.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 32; 1990 Act No. 521, Section 52.

**SECTION 62‑3‑803.** Limitations on presentation of claims.

 (a) All claims against a decedent's estate which arose before the death of the decedent, including claims of the State and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented within the earlier of the following dates:

 (1) one year after the decedent's death; or

 (2) within the time provided by Section 62‑3‑801(b) for creditors who are given actual notice, and within the time provided in Section 62‑3‑801(a) for all creditors barred by publication; provided, claims barred by the nonclaim statute at the decedent's domicile before the giving of notice to creditors barred in this State are also barred in this State.

 (b) All claims against a decedent's estate which arise at or after the death of the decedent, including claims of the State and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

 (1) a claim based on a contract with the personal representative within eight months after performance by the personal representative is due;

 (2) any other claim, within the later of eight months after it arises, or the time specified in subsection (a)(1).

 (c) Nothing in this section affects or prevents:

 (1) any proceeding to enforce any mortgage, pledge, lien, or other security interest upon property of the estate; or

 (2) to the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by liability insurance; or

 (3) collection of compensation for services rendered and reimbursement for expenses advanced by the personal representative or by the attorney or accountant for the personal representative of the estate.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 33; 1990 Act No. 521, Section 53.

**SECTION 62‑3‑804.** Manner of presentation of claims.

 Claims against a decedent's estate may be presented as follows:

 (1) The claimant may deliver or mail to the personal representative a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed, and must file a written statement of the claim, in the form prescribed by rule, with the clerk of the probate court. The claim is deemed presented on the first to occur of receipt of the written statement of claim by the personal representative or the filing of the claim with the court. If a claim is not yet due, the date when it will become due must be stated. If the claim is contingent or unliquidated, the nature of the uncertainty must be stated. If the claim is secured, the security must be described. Failure to describe correctly the security, the nature of any uncertainty, and the due date of a claim not yet due does not invalidate the presentation made.

 (2) The claimant may commence a proceeding against the personal representative in any court where the personal representative may be subjected to jurisdiction, to obtain payment of his claim against the estate, but the commencement of the proceeding must occur within the time limited for presenting the claim, and the claimant must file a written statement of the claim as in (1) above, with the clerk of the probate court. No presentation of claim is required in regard to matters claimed in proceedings against the decedent which were pending at the time of his death.

 (3) If a claim is presented under subsection (1), no proceeding thereon may be commenced more than thirty days after the personal representative has mailed a notice of disallowance with warning of the impending bar; but, in the case of a claim which is not presently due or which is contingent or unliquidated, the personal representative may consent to an extension of the thirty‑day period, or to avoid injustice the court, on petition presented to the court prior to the expiration of such thirty‑day period, may order an extension of the thirty‑day period, but in no event may the extension run beyond the applicable statute of limitations.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Sections 34, 35.

**SECTION 62‑3‑805.** Classification of claims.

 (a) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

 (1) costs and expenses of administration, including attorney's fees, and reasonable funeral expenses;

 (2)(i) reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending the decedent;

 (ii) medical assistance paid under Title XIX State Plan for Medical Assistance as provided for in Section 43‑7‑460;

 (3) debts and taxes with preference under federal law;

 (4) debts and taxes with preference under other laws of this State, in the order of their priority;

 (5) all other claims.

 (b) Except as is provided under subsection (a)(4) above, no preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due.

HISTORY: 1986 Act No. 539, Section 1; 1994 Act No. 481, Section 8.

**SECTION 62‑3‑806.** Allowance of claims.

 (a) As to claims presented in the manner described in Section 62‑3‑804 within the time limit prescribed in Section 62‑3‑803, the personal representative may mail a notice to any claimant stating that the claim has been disallowed. If, after allowing or disallowing a claim, the personal representative changes his decision concerning the claim, he shall notify the claimant. The personal representative may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run and the claim has been barred. Every claim which is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than thirty days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar. It is the responsibility of the personal representative to notify the claimant if a claim is disallowed.

 (b) Upon service of the summons and petition of the personal representative or of a claimant in a proceeding for the purpose, the court may allow in whole or in part any claim or claims presented to the personal representative or filed with the court in due time and not barred by subsection (a) of this section. Notice of hearing in this proceeding shall be given to the claimant, the personal representative, and those other persons interested in the estate as the court may direct by order entered at the time the proceeding is commenced.

 (c) A judgment in a proceeding in another court against a personal representative to enforce a claim against a decedent's estate is an allowance of the claim.

 (d) Unless otherwise provided in any judgment in another court entered against the personal representative, allowed claims bear interest at the legal rate (as determined according to Section 34‑31‑20(A)) for the period commencing thirty days after the time for original presentation of the claim has expired unless based on a contract making a provision for interest, in which case they bear interest in accordance with that provision.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Sections 36, 37; 1988 Act No. 659, Section 19; 2010 Act No. 244, Section 17, eff June 7, 2010.

**SECTION 62‑3‑807.** Payment of claims.

 (a) Upon the expiration of the applicable time limitation provided in Section 62‑3‑803 for the presentation of claims, the personal representative shall proceed to pay the claims allowed against the estate in the order of priority prescribed, after making provision for homestead, for exempt property under Section 62‑2‑401, for claims already presented which have not yet been allowed or whose allowance has been appealed, and for unbarred claims which may yet be presented, including costs and expenses of administration. By petition to the court in a proceeding for the purpose, or by appropriate motion if the administration is under Part 5, a claimant whose claim has been allowed but not paid as provided herein may secure an order directing the personal representative to pay the claim to the extent that funds of the estate are available for the payment.

 (b) The personal representative at any time may pay any just claim which has not been barred, with or without formal presentation, but he is personally liable to any other claimant whose claim is allowed and who is injured by such payment if:

 (1) the payment was made before the expiration of the time limit stated in subsection (a) and the personal representative failed to require the payee to give adequate security for the refund of any of the payment necessary to pay other claimants; or

 (2) the payment was made, due to the negligence or wilful fault of the personal representative, in such manner as to deprive the injured claimant of his priority.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 38; 1990 Act No. 521, Section 54.

**SECTION 62‑3‑808.** Individual liability of personal representative.

 (a) Unless otherwise provided in the contract, a personal representative is not individually liable on a contract properly entered into in his fiduciary capacity in the course of administration of the estate unless he fails to reveal his representative capacity or identify the estate in the contract.

 (b) A personal representative is individually liable for obligations arising from ownership or control of the estate or for torts committed in the course of administration of the estate only if he is personally at fault.

 (c) Claims based on contracts entered into by a personal representative in his fiduciary capacity, on obligations arising from ownership or control of the estate or on torts committed in the course of estate administration may be asserted against the estate by proceeding against the personal representative in his fiduciary capacity, whether or not the personal representative is individually liable therefor.

 (d) Issues of liability as between the estate and the personal representative individually may be determined in a proceeding for accounting, surcharge, or indemnification or other appropriate proceeding.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑809.** Secured claims.

 Payment of a secured claim is upon the basis of the amount allowed if the creditor surrenders his security; otherwise, payment is upon the basis of one of the following:

 (1) if the creditor exhausts his security before receiving payment, upon the amount of the claim allowed less the fair market value of the security as agreed by the parties, or as determined by the court; or

 (2) if the creditor does not have the right to exhaust his security or has not done so, upon the amount of the claim allowed less the value of the security determined by converting it into money according to the terms of the agreement pursuant to which the security was delivered to the creditor, or by the creditor and personal representative by agreement, arbitration, compromise, or litigation.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑810.** Claims not due and contingent or unliquidated claims.

 (a) If a claim which will become due at a future time or a contingent or unliquidated claim becomes due or certain before the distribution of the estate, and if the claim has been allowed or established by a proceeding, it is paid in the same manner as presently due and absolute claims of the same class.

 (b) In other cases the personal representative or, on petition of the personal representative or the claimant in a special proceeding for the purpose, the court may provide for payment as follows:

 (1) if the claimant consents, he may be paid the present or agreed value of the claim, taking any uncertainty into account;

 (2) arrangement for future payment, or possible payment, on the happening of the contingency or on liquidation may be made by creating a trust, giving a mortgage or other security interest, obtaining a bond or security from a distributee, or otherwise.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑811.** Counterclaims.

 In allowing a claim, the personal representative may deduct any counterclaim which the estate has against the claimant. In determining a claim against an estate, a court shall reduce the amount allowed by the amount of any counterclaims allowed and, if such counterclaims exceed the claim, render a judgment against the claimant in the amount of the excess. A counterclaim, liquidated or unliquidated, may arise from a transaction other than that upon which the claim is based. A counterclaim may give rise to relief exceeding in amount or different in kind from that sought in the claim.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑812.** Execution and levies prohibited.

 No execution may issue upon nor may any levy be made against any property of the estate under any judgment against a decedent or a personal representative, but this section shall not be construed to prevent the enforcement of mortgages, pledges, liens, or other security interests upon real or personal property in an appropriate proceeding.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑813.** Compromise of claims.

 When a claim against the estate has been presented in any manner, the personal representative may, if it appears for the best interest of the estate, compromise the claim, whether due or not due, absolute or contingent, liquidated or unliquidated.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑814.** Encumbered assets.

 If any assets of the estate are encumbered by mortgage, pledge, lien, or other security interest, the personal representative may pay the encumbrance or any part thereof, renew, or extend any obligation secured by the encumbrance or convey or transfer the assets to the creditor in satisfaction of his lien, in whole or in part, whether or not the holder of the encumbrance has presented a claim, if it appears to be for the best interest of the estate. Payment of an encumbrance does not increase the share of the distributee entitled to the encumbered assets unless the distributee is entitled to exoneration.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑815.** Administration in more than one state; duty of personal representative.

 (a) All assets of estates being administered in this State are subject to all claims, allowances, and charges existing or established against the personal representative wherever appointed.

 (b) If the estate either in this State or as a whole is insufficient to cover all family exemptions and allowances determined by the law of the decedent's domicile, prior charges and claims, after satisfaction of the exemptions, allowances, and charges, each claimant whose claim has been allowed either in this State or elsewhere in administrations of which the personal representative is aware, is entitled to receive payment of an equal proportion of his claim. If a preference or security in regard to a claim is allowed in another jurisdiction but not in this State, the creditor so benefited is to receive dividends from local assets only upon the balance of his claim after deducting the amount of the benefit.

 (c) In case the family exemptions and allowances, prior charges, and claims of the entire estate exceed the total value of the portions of the estate being administered separately and this State is not the state of the decedent's last domicile, the claims allowed in this State shall be paid their proportion if local assets are adequate for the purpose, and the balance of local assets shall be transferred to the domiciliary personal representative. If local assets are not sufficient to pay all claims allowed in this State the amount to which they are entitled, local assets shall be marshaled so that each claim allowed in this State is paid its proportion as far as possible, after taking into account all dividends on claims allowed in this State from assets in other jurisdictions.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑816.** Final distribution to domiciliary representative.

 The estate of a nonresident decedent being administered by a personal representative appointed in this State shall, if there is a personal representative of the decedent's domicile willing to receive it, be distributed to the domiciliary personal representative for the benefit of the successors of the decedent unless (1) by virtue of the decedent's will, if any, and applicable choice of law rules, the successors are identified pursuant to the local law of this State without reference to the local law of the decedent's domicile; (2) the personal representative of this State, after reasonable inquiry is unaware of the existence or identity of a domiciliary personal representative; or (3) the court orders otherwise in a proceeding for a closing order under Section 62‑3‑1001 or incident to the closing of an administration under Part 5 [Sections 62‑3‑501 et seq.]. In other cases, distribution of the estate of a decedent shall be made in accordance with the other parts of this article [Sections 62‑3‑101 et seq.].

HISTORY: 1986 Act No. 539, Section 1.

PART 9.

SPECIAL PROVISIONS RELATING TO DISTRIBUTION

**SECTION 62‑3‑901.** Successors' rights if no administration.

 In the absence of administration, the devisees are entitled to the estate in accordance with the terms of a probated will and the heirs in accordance with the laws of intestate succession. Devisees may establish title by the probated will to devised property. Persons entitled to property by exemption or intestacy may establish title thereto by proof of the decedent's ownership, his death, and their relationship to the decedent. Successors take subject to all charges incident to administration, including the claims of creditors and subject to the rights of others resulting from abatement, retainer, advancement, and ademption.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 39.

**SECTION 62‑3‑902.** Distribution; order in which assets appropriated; abatement.

 (a) Except as provided in subsection (b), shares of distributees abate, without any preference or priority as between real and personal property, in the following order: (1) property not disposed of by the will; (2) residuary devises; (3) general devises; (4) specific devises. For purposes of abatement, a general devise charged on any specific property or fund is a specific devise to the extent of the value of the property on which it is charged, and upon the failure or insufficiency of the property on which it is charged, a general devise to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.

 (b) If the will expresses an order of abatement, or if the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in subsection (a), as, for instance, in case the will was executed before the effective date of this Code, the shares of the distributees abate as may be found necessary to give effect to the intention of the testator.

 (c) If the subject of a preferred devise is sold or used incident to administration, abatement shall be achieved by appropriate adjustments in, or contribution from, other interests in the remaining assets.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑903.** Right of retainer.

 The amount of a liquidated indebtedness of a successor to the estate if due, or its present value if not due, shall be offset against the successor's interest; but the successor has the benefit of any defense which would be available to him in a direct proceeding for recovery of the debt.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑905.** Penalty clause for contest.

 A provision in a will purporting to penalize any interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑906.** Distribution in kind; valuation; method.

 (a) Unless a contrary intention is indicated by the will, such as the grant to the personal representative of a power of sale, the distributable assets of a decedent's estate must be distributed in kind to the extent possible through application of the following provisions:

 (1) A specific devisee is entitled to distribution of the thing devised to him, and a spouse or child who has selected particular assets of an estate as provided in Section 62‑2‑401 shall receive the items selected.

 (2) Any devise payable in money may be satisfied by value in kind provided:

 (i) the person entitled to the payment has not demanded payment in cash;

 (ii) the property distributed in kind is valued at fair market value as of the date of its distribution;

 (iii) no residuary devisee has requested that the asset in question remain a part of the residue of the estate.

 (3) For the purpose of valuation under paragraph (2), securities regularly traded on recognized exchanges, if distributed in kind, are valued at the price for the last sale of like securities traded on the business day prior to distribution, or if there was no sale on that day, at the median between amounts bid and offered at the close of that day. Assets consisting of sums owed the decedent or the estate by solvent debtors as to which there is no known dispute or defense are valued at the sum due with accrued interest or discounted to the date of distribution. For assets which do not have readily ascertainable values, a valuation as of a date not more than thirty days prior to the date of distribution, if otherwise reasonable, controls. For purposes of facilitating distribution, the personal representative may ascertain the value of the assets as of the time of the proposed distribution in any reasonable way, including the employment of qualified appraisers, even if the assets may have been previously appraised.

 (4) The personal property of the residuary estate must be distributed in kind if there is no objection to the proposed distribution and it is practicable to distribute undivided interests. Subject to the provisions of Section 62‑3‑711(b), in other cases, personal property of the residuary estate may be converted into cash for distribution.

 (b) After the probable charges against the estate are known, the personal representative may mail or deliver a proposal for distribution to all persons who have a right to object to the proposed distribution. The right of any distributee to object to the proposed distribution on the basis of the kind or value of asset he is to receive, if not waived earlier in writing, terminates if he fails to object in writing received by the personal representative within thirty days after mailing or delivery of the proposal.

 (c) When a personal representative or a trustee is empowered under the will or trust of a decedent to satisfy a pecuniary bequest, devise, or transfer in trust, in kind with assets at their value for federal estate tax purposes, the fiduciary, in order to implement the bequest, devise, or transfer in trust, shall, unless the governing instrument provides otherwise, distribute assets, including cash, fairly representative of appreciation or depreciation in the value of all property thus available for distribution in satisfaction of the pecuniary bequest, devise, or transfer.

 (d) Personal representatives and trustees are authorized to enter into agreements with beneficiaries and with governmental authorities, agreeing to make distribution in accordance with the terms of Section 62‑3‑906 for any purpose which they consider to be in the best interests of the estate, including the purpose of protecting and preserving the federal estate tax marital deduction as applicable to the estate, and the guardian or conservator of a surviving beneficiary or the personal representative of a deceased beneficiary is empowered to enter into such agreements for and on behalf of the beneficiary or the deceased beneficiary.

 (e) The provisions of Section 62‑3‑906 are not intended to change the present laws applicable to fiduciaries, but are statements of the fiduciary principles applicable to these fiduciaries and are declaratory of these laws.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 41; 2000 Act No. 398,Section 5.

**SECTION 62‑3‑907.** Distribution in kind; evidence.

 (A) If distribution in kind is made, whether real or personal property, the personal representative must execute an instrument or deed of distribution assigning, transferring, or releasing the assets to the distributee as evidence of the distributee's title to the property.

 (B) If the decedent dies intestate or devises real property to a distributee, the personal representative's execution of a deed of distribution of real property constitutes a release of the personal representative's power over the title to the real property, equivalent to that of an absolute owner, in trust, however, for the benefit of the creditors and others interested in the estate, provided by Section 62‑3‑711(a). The deed of distribution affords the distributee and his purchasers or encumbrancers the protection provided in Sections 62‑3‑908 and 62‑3‑910.

 (C) If the decedent devises real property to a personal representative, either in a specific or residuary devise, the personal representative's execution of a deed of distribution of the real property constitutes a transfer of the title to the real property from the personal representative to the distributee, as well as a release of the personal representative's power over the title to the real property, equivalent to that of an absolute owner, in trust, however, for the benefit of the creditors and others interested in the estate, provided by Section 62‑3‑711(a). The deed of distribution affords the distributee, and his purchasers or encumbrancers, the protection provided in Sections 62‑3‑908 and 62‑3‑910.

 (D) The personal representative's execution of an instrument or deed of distribution of personal property constitutes a transfer of the title to the personal property from the personal representative to the distributee, as well as a release of the personal representative's power over the title to the personal property, equivalent to that of an absolute owner, in trust, however, for the benefit of the creditors and others interested in the estate, provided by Section 62‑3‑711(a).

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 42; 2000 Act No. 398,Section 6; 2002 Act No. 174, Section 1.

**SECTION 62‑3‑908.** Distribution; right or title of distributee.

 Proof that a distributee has received an instrument or deed of distribution of assets in kind whether real or personal property, or payment in distribution, from a personal representative is conclusive evidence that the distributee has succeeded to the interest of the estate in the distributed assets, as against all persons interested in the estate, except that the personal representative may recover the assets or their value if the distribution was improper. An improper distribution includes, but is not limited to, those instances where the instrument or deed of distribution is found to be inconsistent with the provisions of the will or statutes governing intestacy.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 43; 2000 Act No. 398,Section 7.

**SECTION 62‑3‑909.** Improper distribution; liability of distributee.

 Unless the distribution or payment no longer can be questioned because of adjudication, estoppel, or limitation, a distributee of property improperly distributed or paid, or a claimant who was improperly paid, is liable to return the property improperly received and its income since distribution if he has the property. If he does not have the property, then he is liable to return the value as of the date of disposition of the property improperly received and its income and gain received by him.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑910.** Purchasers from distributees or personal representatives protected.

 (A) If property distributed in kind (whether real or personal property) or a mortgage or other security interest therein is acquired for value by a purchaser from or lender to a distributee who has received an instrument or deed of distribution from the personal representative, or is so acquired by a purchaser from or lender to a transferee from such distributee, the purchaser or lender takes title free of rights of any interested person in the estate and incurs no personal liability to the estate, or to any interested persons, whether or not the distribution was proper or supported by court order or the authority of the personal representative was terminated before execution of the instrument or deed. This section protects a purchaser from or lender to a distributee who, as personal representative, has executed a deed of distribution to himself, as well as a purchaser from or lender to any other distributee or his transferee. To be protected under this provision, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind, even if the personal representative and the distributee are the same person, or whether the authority of the personal representative had terminated before the distribution. Any recorded instrument described in this section on which the appropriate documentary or revenue stamps are affixed is prima facie evidence that the transfer was made for value.

 (B) If a will devises real property to a personal representative or authorizes a personal representative to sell real property (the title to which was not devised to the personal representative), a purchaser for value who receives a deed from the personal representative takes title to the real property free of rights of any heirs or devisees or other interested person in the estate and incurs no personal liability to the estate or to any heir or devisee or other interested person in the estate. The purchaser is protected whether or not the sale was proper and regardless of whether the heirs or devisees to whom title devolved pursuant to Section 62‑3‑101 executed or consented to the deed, because the personal representative exercises the power of sale in trust, for the benefit of creditors, and others interested in the estate, who have recourse against the personal representative under Section 62‑3‑712 if the sale constitutes a breach of the personal representative's fiduciary duty. This section protects a purchaser of real property from a personal representative who has title to the real property or who has sold real property to the purchaser pursuant to an authorization in the will. To be protected under this provision, a purchaser need not inquire whether a personal representative acted properly in making the sale, even if the personal representative and the purchaser are the same person, or whether the authority of the personal representative had terminated before the sale. Any recorded instrument described in this section on which the appropriate documentary or revenue stamps are affixed is prima facie evidence that the sale was made for value.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 44; 2000 Act No. 398,Section 8.

**SECTION 62‑3‑911.** Partition for purpose of distribution.

 When two or more heirs or devisees are entitled to distribution of undivided interests in any personal or real property of the estate, the personal representative or one or more of the heirs or devisees may petition the court prior to the closing of the estate, to make partition. After service of summons and petition and after notice to the interested heirs or devisees, the court shall partition the property in kind if it can be fairly and equitably partitioned in kind. If not subject to fair and equitable partition in kind, the court shall direct the personal representative to sell the property and distribute the proceeds.

HISTORY: 1986 Act No. 539, Section 1; 1990 Act No. 521, Section 56; 2010 Act No. 244,Section 18, eff June 7, 2010.

**SECTION 62‑3‑912.** Private agreements among successors to decedent binding on personal representative.

 Subject to the rights of creditors and taxing authorities, competent successors may agree among themselves to alter the interests, shares, or amounts to which they are entitled under the will of the decedent, or under the laws of intestacy, in any way that they provide in a written contract executed by all who are affected by its provisions. The personal representative shall abide by the terms of the agreement subject to his obligation to administer the estate for the benefit of creditors, to pay all taxes and costs of administration, and to carry out the responsibilities of his office for the benefit of any successors of the decedent who are not parties. Personal representatives of decedents' estates are not required to see to the performance of trusts if the trustee thereof is another person who is willing to accept the trust. Accordingly, trustees of a testamentary trust are successors for the purposes of this section. Nothing herein relieves trustees of any duties owed to beneficiaries of trusts.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑913.** Distributions to trustee.

 (a) Before distributing to a trustee, the personal representative may require that the trust be registered if the state in which it is to be administered provides for registration and that the trustee inform the beneficiaries as provided in Section 62‑7‑813.

 (b) If the trust instrument does not excuse the trustee from giving bond, the personal representative may petition the appropriate court to require that the trustee post bond if he apprehends that distribution might jeopardize the interests of persons who are not able to protect themselves, and he may withhold distribution until the court has acted.

 (c) No inference of negligence on the part of the personal representative shall be drawn from his failure to exercise the authority conferred by subsections (a) and (b).

HISTORY: 1986 Act No. 539, Section 1; 2005 Act No. 66, Section 6.

**SECTION 62‑3‑914.** Disposition of unclaimed assets.

 (a) If after the expiration of eight months from the appointment of the personal representative of a decedent it appears to the satisfaction of the court by whom the appointment was granted that the personal representative of the estate is unable to ascertain the whereabouts of a person entitled to be heir or devisee of the estate or whether a person who, if living, would be entitled as heir or devisee of this estate is dead or alive, the court may issue a notice addressed to all persons interested in the estate as heirs or devisees calling on the person whose whereabouts or the fact of whose death is unknown, his personal representatives, or heirs or devisees, to appear before the court on a certain day and hour as specified in this notice and to show cause why the personal representative should not be ordered to distribute the estate as if the person whose whereabouts or the fact of whose death is unknown had died before the decedent, and notifying all persons entitled to the estate as heir or devisee, or otherwise, to appear on a designated day and time before the court to intervene for their interest in the estate. The day fixed in the notice, on which cause must be shown, must not be less than one month after the date of the first publication of the notice.

 (b) The notice must be published once a week for three successive weeks in a newspaper published in the county in which the court is held. The court has the right, in its discretion, to order the notice to be published once a week for three successive weeks in one other newspaper published in another place most likely to give notice to interested persons.

 (c) The publication of the notice as prescribed in subsection (b) must be proved by filing with the court copies of the newspapers containing the publication of the notice and the affidavit of the publishers or printers of the respective newspapers.

 (d) At the time fixed in the notice for cause to be shown, due proof of publication having been made and filed as required by subsection (c), if no person appears as required, the court must decree distribution of the estate to be made as if the person whose whereabouts or the fact of whose death is unknown had died before the decedent. Distribution by the personal representative is a full and complete discharge to the personal representative.

 (e) At the time fixed in the notice for cause to be shown, due proof of publication having been made and filed as required by subsection (c), if the person whose whereabouts or the fact of whose death was unknown appears, all further proceedings must be discharged.

 (f) If the identity of the person appearing is disputed by the personal representative, an heir or devisee of the decedent or the legal representatives of an heir or devisee, the court must proceed to hear and determine the controversy. If the controversy is determined against the person appearing, distribution of the estate must be made as prescribed in subsection (d); but if the controversy is determined in favor of the party appearing, he is considered to be the person whose whereabouts or the fact of whose death was unknown. The determination in either case is subject to appeal as provided in Section 62‑1‑308.

 (g) At the expiration of the time fixed in the notice for cause to be shown, due proof of publication having been made and filed as required by subsection (c), if a person appears claiming to be heir, devisee, or personal representative of the person whose whereabouts or the fact of whose death is unknown or to be otherwise entitled to his estate and claiming a distributive share in the decedent's estate, the court shall proceed to hear and determine whether the person whose whereabouts or the fact of whose death is unknown died before or after the decedent, and if the determination is that the person whose whereabouts or the fact of whose death is unknown died before the decedent, distribution of the decedent's estate must be made accordingly; but if the court determines that the person whose whereabouts or the fact of whose death is unknown died after the death of the decedent, the distributive share of the person must be paid and delivered by the personal representative to the person legally entitled to receive it, the determination in either case, is subject to appeal as provided in Section 62‑1‑308.

 (h) Instead of the procedure required in this section, an unclaimed devise of one hundred dollars or less may be paid or transferred by the personal representative to the South Carolina State Treasurer.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 45; 1990 Act No. 521, Sections 57, 58, 103; 1997 Act No. 152, Section 17.

**SECTION 62‑3‑915.** Distribution to person under disability.

 A personal representative may discharge his obligation to distribute to any person under legal disability by distributing to his conservator or any other person authorized by this Code or otherwise to give a valid receipt and discharge for the distribution.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑916.** Apportionment of estate taxes.

 (a) For purposes of this section:

 (1) "Estate" means the gross estate of a decedent as determined for the purpose of federal estate tax and the estate tax payable to this State.

 (2) "Person" means any individual, partnership, association, joint stock company, corporation, government, political subdivision, governmental agency, or local governmental agency.

 (3) "Persons interested in the estate" means any person entitled to receive, or who has received, from a decedent or by reason of the death of a decedent any property or interest therein included in the decedent's estate. It includes a personal representative, conservator, and trustee.

 (4) "State" means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

 (5) "Tax" means the federal estate tax and the basic and any additional estate tax imposed by the State of South Carolina and interest and penalties imposed in addition to the tax.

 (6) "Fiduciary" means personal representative or trustee.

 (b) Unless the will otherwise provides, the tax shall be apportioned among all persons interested in the estate. The apportionment is to be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax are to be used for that purpose. If the decedent's will directs a method of apportionment of tax different from the method described in this Code, the method described in the will controls.

 (c)(1) The court in which venue lies for the administration of the estate of a decedent, on petition for the purpose, may determine the apportionment of the tax.

 (2) If the court finds that it is inequitable to apportion interest and penalties in the manner provided in subsection (b), because of special circumstances, it may direct apportionment thereof in the manner it finds equitable.

 (3) If the court finds that the assessment of penalties and interest assessed in relation to the tax is due to delay caused by the negligence of the fiduciary, the court may charge him with the amount of the assessed penalties and interest.

 (4) In any action to recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this Code, the determination of the court in respect thereto shall be prima facie correct.

 (5) The expenses reasonably incurred by the fiduciary and by any other person interested in the estate in connection with the determination of the amount and apportionment of the tax shall be apportioned as provided in subsection (b) and charged and collected as a part of the tax apportioned. If the court finds it is inequitable to apportion the expenses as provided in subsection (b), it may direct apportionment thereof equitably.

 (d)(1) The personal representative or other person in possession of the property of the decedent required to pay the tax may withhold from any property distributable to any person interested in the estate, upon its distribution to him, the amount of tax attributable to his interest. If the property in possession of the personal representative or other person required to pay the tax and distributable to any person interested in the estate is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the personal representative or other person required to pay the tax may recover the deficiency from the person interested in the estate. If the property is not in the possession of the personal representative or the other person required to pay the tax, the personal representative or the other person required to pay the tax may recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this section.

 (2) If property held by the personal representative is distributed prior to final apportionment of the tax, the distributee shall provide a bond or other security for the apportionment liability in the form and amount prescribed by the personal representative.

 (e)(1) In making an apportionment, allowances shall be made for any exemptions granted, any classification made of persons interested in the estate, and for any deductions and credits allowed by the law imposing the tax.

 (2) Any exemption or deduction allowed by reason of the relationship of any person to the decedent or by reason of the purposes of the gift inures to the benefit of the person bearing such relationship or receiving the gift; but if an interest is subject to a prior present interest which is not allowable as a deduction, the tax apportionable against the present interest shall be paid from principal.

 (3) Any deduction for property previously taxed and any credit for gift taxes or death taxes of a foreign country paid by the decedent or his estate inures to the proportionate benefit of all persons liable to apportionment.

 (4) Any credit for inheritance, succession, or estate taxes or taxes in the nature thereof applicable to property or interest includable in the estate, inures to the benefit of the persons or interests chargeable with the payment thereof to the extent proportionately that the credit reduces the tax.

 (5) To the extent that property passing to or in trust for a surviving spouse or any charitable, public, or similar purpose is not an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property is not included in the computation provided for in subsection (b) hereof, and to that extent no apportionment is made against the property. The sentence immediately preceding does not apply to any case if the result would be to deprive the estate of a deduction otherwise allowable under Section 2053(d) of the Internal Revenue Code of 1954, as amended, of the United States, relating to deduction for state death taxes on transfers for public, charitable, or religious uses.

 (f) No interest in income and no estate for years or for life or other temporary interest in any property or fund is subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder is chargeable against the corpus of the property or funds subject to the temporary interest and remainder.

 (g) Neither the personal representative nor other person required to pay the tax is under any duty to institute any action to recover from any person interested in the estate the amount of the tax apportioned to the person until the expiration of the three months next following final determination of the tax. A personal representative or other person required to pay the tax who institutes the action within a reasonable time after the three months' period is not subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the estate was collectible at a time following the death of the decedent but thereafter became uncollectible. If the personal representative or other person required to pay the tax cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be equitably apportioned among the other persons interested in the estate who are subject to apportionment.

 (h) A personal representative acting in another state or a person required to pay the tax domiciled in another state may institute an action in the courts of this State and may recover a proportionate amount of the federal estate tax, of an estate tax payable to another state or of a death duty due by a decedent's estate to another state, from a person interested in the estate who is either domiciled in this State or who owns property in this State subject to attachment or execution. For the purposes of the action, the determination of apportionment by the court having jurisdiction of the administration of the decedent's estate in the other state is prima facie correct.

HISTORY: 1986 Act No. 539, Section 1; 1990 Act No. 521, Sections 59, 60.

PART 10.

CLOSING ESTATES

**SECTION 62‑3‑1001.** Required filings with court; petition for order compelling personal representative to perform duties; court orders.

 (a) Within one year after the date of the first publication of notice to creditors (or if a state or federal estate tax return was filed, within ninety days after the receipt of a state or federal estate tax closing letter, whichever is later), a personal representative must file with the court:

 (1) a full account in writing of his administration;

 (2) a proposal for distribution of assets not yet distributed;

 (3) an application for settlement of the estate to consider the final account or approve an accounting distribution and adjudicate the final settlement and distribution of the estate; and

 (4) proof that a notice of right to demand hearing and copies of the account, the proposal for distribution, and the application for settlement of the estate have been sent to all interested persons including all creditors or other claimants of whom the personal representative is aware whose claims are neither paid nor barred.

 (b) If the personal representative does not timely perform his duties under subsection (a), any interested person may petition for an order compelling the personal representative to perform his duties under subsection (a). The court may issue an order requiring the personal representative to perform his duties under subsection (a).

 (c) After thirty days from the filing by the personal representative of proof that a notice of right to demand hearing has been sent to all persons entitled to such notice under subsection (a), the court may enter an order or orders approving settlement and directing or approving distribution of the estate, terminating the appointment of the personal representative, and discharging the personal representative from further claim or demand of any interested person. However, if any interested person files with the court a written demand for hearing within thirty days after the personal representative files proof that a notice of right to demand hearing has been sent to all persons entitled to such notice under subsection (a), the court may enter its order or orders only after notice to all interested persons in accordance with Section 62‑1‑401 and hearing.

 (d) If one or more heirs or devisees were omitted as parties in, or were not given notice of, a previous formal testacy proceeding, the court, on proper petition for an order of complete settlement of the estate under this section, and after notice of hearing to the omitted or unnotified persons and other interested parties determined to be interested on the assumption that the previous order concerning testacy is conclusive as to those given notice of the earlier proceeding, may determine testacy as it affects the omitted persons and confirm or alter the previous order of testacy as it affects all interested persons as appropriate in the light of the new proofs. In the absence of objection by an omitted or unnotified person, evidence received in the original testacy proceeding constitutes prima facie proof of due execution of any will previously admitted to probate, or of the fact that the decedent left no valid will if the prior proceedings determined this fact.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 46; 1990 Act No. 521, Section 61; 1991 Act No. 143, Section 1; 1997 Act No. 152, Section 18; 2010 Act No. 244, Section 19, eff June 7, 2010.

**SECTION 62‑3‑1002.** Payment of taxes; certificate from Department of Revenue.

 No final account of a fiduciary shall be allowed by the probate court unless such account shows, and the judge of such court finds, that all taxes imposed by the provisions of Chapter 6 of Title 12 upon such fiduciary, which have become payable, have been paid, and that all taxes which may become due are secured by bond, deposit, or otherwise. The certificate of the South Carolina Department of Revenue and the receipt for the amount of the tax therein certified shall be conclusive as to the payment of the tax to the extent of such certificate.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 47; 1990 Act No. 521, Section 62; 1993 Act No. 181, Section 1610.

**SECTION 62‑3‑1003.** Payment of taxes; filing federal estate tax return.

 No final account of a personal representative in any probate proceeding who is required to file a federal estate tax return may be allowed and approved by the court before whom the proceeding is pending unless the court finds that the tax imposed on the property by Chapter 16 of Title 12, including applicable interest, has been paid in full or that no such tax is due.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 48; 1990 Act No. 521, Section 63.

**SECTION 62‑3‑1004.** Liability of distributees to claimants.

 After assets of an estate have been distributed and subject to Section 62‑3‑1006, an undischarged claim not barred may be prosecuted in a proceeding against one or more distributees. No distributee shall be liable to claimants for amounts received as exempt property or for amounts in excess of the value of his distribution as of the time of distribution. As between distributees, each shall bear the cost of satisfaction of unbarred claims as if the claim had been satisfied in the course of administration. Any distributee who shall have failed to notify other distributees of the demand made upon him by the claimant in sufficient time to permit them to join in any proceeding in which the claim was asserted against him loses his right of contribution against other distributees.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑1005.** Rights of successors and creditors.

 Unless previously barred by adjudication and except as provided in the accounting, the rights of successors and of creditors whose claims have not otherwise been barred against the personal representative for breach of fiduciary duty are barred unless a proceeding to assert the same is commenced within six months after the filing of the account, proposal for distribution of the estate, petition for settlement of the estate, and proofs required by Section 62‑3‑1001. The rights thus barred do not include rights to recover from a personal representative for fraud, misrepresentation, or inadequate disclosure related to the settlement of the decedent's estate.

HISTORY: 1986 Act No. 539, Section 1; 1990 Act No. 521, Section 64.

**SECTION 62‑3‑1006.** Limitations on actions and proceedings against distributees.

 Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling the accounts of a personal representative or otherwise barred, the claim of any claimant to recover from a distributee who is liable to pay the claim, and the right of any heir or devisee, or of a successor personal representative acting in their behalf, to recover property improperly distributed or the value thereof from any distributee is forever barred at the later of (i) if a claim by a creditor of the decedent, at one year after the decedent's death, and (ii) any other claimant and any heir or devisee, at the later of three years after the decedent's death or one year after the time of distribution thereof. This section does not bar an action to recover property or value received as the result of fraud.

HISTORY: 1986 Act No. 539, Section 1; 1990 Act No. 521, Section 65.

**SECTION 62‑3‑1007.** Certificate discharging liens securing fiduciary performance.

 After his appointment has terminated, the personal representative, his sureties, or any successor of either, upon the filing of a verified application showing, so far as is known by the applicant, that no action concerning the estate is pending in any court, is entitled to receive a certificate from the court that the personal representative appears to have fully administered the estate in question. The certificate evidences discharge of any lien on any property given to secure the obligation of the personal representative in lieu of bond or any surety, but does not preclude action against the personal representative or the surety.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑1008.** Subsequent administration.

 If other property of the estate is discovered after an estate has been settled and the personal representative discharged or for other good cause, the court upon application of any interested person and upon notice as it directs may appoint the same or a successor personal representative to administer the subsequently opened estate. If a new appointment is made, unless the court orders otherwise, the provisions of this code apply as appropriate; but no claim previously barred may be asserted in the subsequent administration.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 49; 2010 Act No. 244,Section 20, eff June 7, 2010.

PART 11.

COMPROMISE OF CONTROVERSIES

**SECTION 62‑3‑1101.** Effect of approval of agreements involving trusts, inalienable interests, or interests of third persons.

 A compromise of a controversy as to admission to probate of an instrument offered for formal probate as the will of a decedent, the construction, validity, or effect of a probated will, the rights or interests in the estate of the decedent, of a successor, or the administration of the estate, if approved by the court after hearing, is binding on all the parties including those unborn, unascertained, or who could not be located. An approved compromise is binding even though it may affect a trust or an inalienable interest. A compromise does not impair the rights of creditors or of taxing authorities who are not parties to it. A compromise approved pursuant to this section is not a settlement of a claim subject to the provisions of Section 62‑5‑433.

HISTORY: 1986 Act No. 539, Section 1; 1997 Act No. 152, Section 19; 2010 Act No. 244, Section 21, eff June 7, 2010.

**SECTION 62‑3‑1102.** Procedure for securing court approval of compromise.

 The procedure for securing court approval of a compromise is as follows:

 (1) The terms of the compromise shall be set forth in an agreement in writing which shall be executed by all competent persons and parents acting for any minor child having beneficial interests or having claims which will or may be affected by the compromise. Execution is not required by any person whose identity cannot be ascertained or whose whereabouts is unknown and cannot reasonably be ascertained.

 (2) Any interested person, including the personal representative or a trustee, then may submit the agreement to the court for its approval and for execution by the personal representative, the trustee of every affected testamentary trust, and other fiduciaries and representatives.

 (3) Upon application to the court and after notice to all interested persons or their representatives, including the personal representative of the estate and all affected trustees of trusts, the court, if it finds that the contest or controversy is in good faith and that the effect of the agreement upon the interests of persons represented by fiduciaries or other representatives is just and reasonable, shall make an order approving the agreement and directing all fiduciaries subject to its jurisdiction to execute the agreement. Minor children represented only by their parents may be bound only if their parents join with other competent persons in execution of the compromise. Upon the making of the order and the execution of the agreement, all further disposition of the estate is in accordance with the terms of the agreement.

HISTORY: 1986 Act No. 539, Section 1; 2010 Act No. 244, Section 22, eff June 7, 2010.

PART 12.

COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT AND SUMMARY ADMINISTRATION PROCEDURE FOR SMALL ESTATES

**SECTION 62‑3‑1201.** Collection of personal property by affidavit.

 (a) Thirty days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or the instrument evidencing the debt, obligation, stock, or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor. Before this affidavit may be presented to collect the decedent's personal property, it must:

 (1) state that the value of the entire probate estate (the decedent's property passing under the decedent's will plus the decedent's property passing by intestacy), wherever located, less liens and encumbrances, does not exceed ten thousand dollars;

 (2) state that thirty days have elapsed since the death of the decedent;

 (3) state that no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction;

 (4) state that the claiming successor is entitled to payment or delivery of the property;

 (5) be approved and countersigned by the probate judge of the county of the decedent's residence at the time of his death and only upon the judge's satisfaction that the successor is entitled to payment or delivery of the property; and

 (6) be filed in the probate court.

 (b) A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subsection (a).

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 50; 1990 Act No. 521, Sections 66, 67.

**SECTION 62‑3‑1202.** Effect of affidavit.

 The person paying, delivering, transferring, or issuing personal property or the evidence thereof pursuant to affidavit is discharged and released to the same extent as if he dealt with a personal representative of the decedent. He is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit. If any person to whom an affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled thereto. Any person to whom payment, delivery, transfer, or issuance is made is answerable and accountable therefor to any personal representative of the estate or to any other person having a superior right.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑3‑1203.** Small estates; summary administrative procedure.

 (a) If it appears from the inventory and appraisal that the value of the entire probate estate (the decedent's property passing under the decedent's will plus the decedent's property passing by intestacy), less liens and encumbrances, does not exceed ten thousand dollars and exempt property, costs and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent, the personal representative, after giving notice to creditors required by Section 62‑3‑801, but without giving additional notice to creditors, may immediately disburse and distribute the estate to the persons entitled thereto and file a closing statement as provided in Section 62‑3‑1204.

 (b) If it appears from an appointment proceeding that (1) the appointed personal representative is either the sole devisee under the probated will of a testate decedent or the sole heir of an intestate decedent, or (2) the appointed personal representatives are the sole devisees under the probated will of a testate decedent or the sole heirs of an intestate decedent, the personal representative, after giving notice to creditors as required by Section 62‑3‑801, may immediately disburse and distribute the estate to the persons entitled thereto and file a closing statement as provided in Section 62‑3‑1204.

HISTORY: 1986 Act No. 539, Section 1; 1990 Act No. 521, Section 69.

**SECTION 62‑3‑1204.** Small estates; closing by sworn statement of personal representative.

 (a) Unless prohibited by order of the court and except for estates being administered under Part 5 (Sections 62‑3‑501 et seq.), a personal representative may close an estate administered under the summary procedures of Section 62‑3‑1203 by filing with the court, at any time after disbursement and distribution of the estate, a verified statement stating that:

 (1) either

 (i) to the best knowledge of the personal representative, the value of the entire probate estate (the decedent's property passing under the decedent's will plus the decedent's property passing by intestacy), less liens and encumbrances, did not exceed ten thousand dollars and exempt property, costs, and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent; or

 (ii) the estate qualifies for summary administration according to the provisions of subsection (b) of Section 62‑3‑1203;

 (2) the personal representative has fully administered the estate by disbursing and distributing it to the persons entitled thereto;

 (3) the personal representative has sent a copy of the closing statement to all distributees of the estate and to all creditors or other claimants of whom he is aware whose claims are neither paid nor barred and has furnished a full account in writing of his administration to the distributees whose interests are affected.

 (b) If no actions or proceedings involving the personal representative are pending in the court one year after the closing statement is filed, the appointment of the personal representative terminates.

HISTORY: 1986 Act No. 539, Section 1; 1990 Act No. 521, Section 70.

PART 13.

SALE OF REAL ESTATE BY PROBATE COURT TO PAY DEBTS

**SECTION 62‑3‑1301.** Only procedure for sale of lands by court.

 The provisions of this Part are hereby declared to be the only procedure for the sale of lands by the court, except where the will of the decedent authorizes to the contrary.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 51.

**SECTION 62‑3‑1302.** Sale of real estate.

 The court may, as herein provided, authorize the sale of the real estate of such deceased person.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 52.

**SECTION 62‑3‑1303.** Issuance of summons upon application for sale.

 At any time after the qualification of the personal representative, on application to the court by an interested person requesting the sale of real estate of the deceased, a summons shall be issued to the personal representative (if not the petitioner), the heirs or devisees of the estate, and any other person as required by the court in its discretion.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 53; 1990 Act No. 521, Section 71.

**SECTION 62‑3‑1304.** Form of summons.

 The form of such summons must be in like form as summonses for civil actions in the circuit courts.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 54; 1990 Act No. 521, Section 72.

**SECTION 62‑3‑1305.** Service of summons and petition.

 To such summons a copy of the petition must be attached and copies of the summons and petition served on the personal representative (if not the petitioner), the heirs or devisees, and any other person as required by the court in its discretion, in like manner as summonses and complaints are served in civil actions in the circuit courts. If there are minors the court shall appoint guardians ad litem who must be served with copies of the summons and petition and the appointment and acceptance of such guardian endorsed on the petition. Nothing herein contained precludes any of the parties from accepting service of the summons and petition or from consenting to the sale as prayed for in the petition.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 55; 1990 Act No. 521, Section 73.

**SECTION 62‑3‑1306.** Execution of process by sheriff; fees.

 The sheriffs of the several counties in this State are required to serve all processes which may be issued, if so ordered by the court under the provisions of this Part, for which they shall receive the same fees as are allowed them by law for similar services, which must be paid from the proceeds of sale or by the petitioner.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 56; 1990 Act No. 521, Section 74.

**SECTION 62‑3‑1307.** Publication as to nonresidents and parties with unknown residences.

 If there is any party who resides beyond the limits of this State or whose residence is unknown and who does not consent in writing to the sale, the court may authorize publication of the summons as provided by this Code and if such party does not appear and show sufficient cause within the time named in the summons the court shall enter of record his consent as confessed and proceed with the sale.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 57; 1990 Act No. 521, Section 75.

**SECTION 62‑3‑1308.** Filing notice of pendency of action.

 Upon the filing of the petition, the petitioner shall file in the office of the clerk of the circuit court a notice of pendency of action authorized by Sections 15‑11‑10 to 15‑11‑50 and upon the filing of such notice it has the same force and effect as notice of pendency of action filed in an action in the circuit court.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 58; 1990 Act No. 521, Section 76.

**SECTION 62‑3‑1309.** Time for answer or other response; sale of real estate after hearing and notice.

 The time to answer or otherwise respond by motion to the summons and petition is at least thirty days from the date of service. Should the personal representative (if not the petitioner) or any of the heirs or devisees, or other parties, if any, desire to answer or otherwise respond by motion it must be in writing and the court shall in regular order, as in the case of other litigated cases, proceed to determine the issues made by petition, subsequent pleadings, and motions and if the court decides that the real estate should be sold it shall then, in its discretion, either (a) order the personal representative to sell the same at private sale upon such terms and conditions as the court may impose; or (b) proceed to sell the same upon the next or some subsequent convenient sales day after publishing a notice of such sale three weeks prior thereto in some paper published in the county. Upon the sale being made, after the payment of the costs and expenses thereof, the court shall pay over to the personal representative the net proceeds of such sale. The personal representative shall administer such proceeds in like manner as proceeds of personal property coming into his hands. Nothing in this part may be construed to abridge homestead exemptions.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 59; 1990 Act No. 521, Section 77; 2010 Act No. 244, Section 23, eff June 7, 2010.

**SECTION 62‑3‑1310.** Bond for handling of proceeds by personal representative.

 The regular bond of the personal representative must protect the creditors, heirs, devisees, or other interested persons, if any, in the handling of the proceeds of sale by the personal representative, but in case no such bond has been given, the court shall require the giving of a bond by such personal representative as provided in Sections 62‑3‑603, 62‑3‑604, and 62‑3‑605.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 60; 1990 Act No. 521, Section 78.

**SECTION 62‑3‑1311.** Filing of papers; requirement of returns.

 The court shall file and keep the original petition with due proof of service thereon and all original papers connected with the sale and shall require from such personal representative his final account showing the distribution of the funds received by him.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 61.

**SECTION 62‑3‑1312.** Entry of releases of liens on property sold.

 In case any lands of the deceased subject to the lien of any judgment, mortgage, or other lien is sold under the provisions of this Part the court may enter a release of the lands so sold upon the records in the office of the clerk of court or register of deeds of the county from the lien of such judgment, mortgage, or other lien and in case such mortgage, judgment, or other lien debt has been paid in full out of the proceeds of the sale of such lands the court may have cancellation of the same entered on the record thereof. The foregoing does not relieve any judgment, mortgage, or other lien creditor of the duty, as provided otherwise by law, of releasing or canceling such liens. Each release satisfaction or cancellation provided for herein must refer by proper notation to the file number of such estate in the court. The provisions of this section do not apply when the order of sale directs the sale of any lands which must be sold subject to any existing mortgage, judgment, or other lien, but only when such lands are sold freed and discharged from all such liens.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 62; 1990 Act No. 521, Section 79; 1997 Act No. 34, Section 1.