ARTICLE 1

General Provisions, Definitions, and Probate Jurisdiction of Court

Editor's Note

2013 Act No. 100, Section 4, provides as follows:

"SECTION 4. (A) This act [amending Articles 1, 2, 3, 4, 6, and 7] takes effect on January 1, 2014.

"(B) Except as otherwise provided in this act, on the effective date of this act:

"(1) this act applies to any estates of decedents dying thereafter and to all trusts created before, on, or after its effective date;

"(2) the act applies to all judicial proceedings concerning estates of decedents and trusts commenced on or after its effective date;

"(3) this act applies to judicial proceedings concerning estates of decedents and trusts commenced before its effective date unless the court finds that application of a particular provision of this act would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of this act does not apply and the superseded law applies;

"(4) subject to item (5) and subsection (C) of this section, any rule of construction or presumption provided in this act applies to governing instruments executed before the effective date of the act unless there is a clear indication of a contrary intent in the terms of the governing instrument; and

"(5) an act done and any right acquired or accrued before the effective date of the act is not affected by this act. Unless otherwise provided in this act, any right in a trust accrues in accordance with the law in effect on the date of the creation of a trust and a substantive right in the decedent's estate accrues in accordance with the law in effect on the date of the decedent's death.

"(C) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before the effective date of the act, that statute continues to apply to the right even if it has been repealed or superseded."

Part 1

Short Title, Construction, General Provisions

**SECTION 62‑1‑100.** Effective date.

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

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

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

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

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

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

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

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

HISTORY: 1986 Act No. 539, Section 5; 1987 Act No. 171, Section 78; 1990 Act No. 522, Part I, Section 1; 1997 Act No. 152, Section 1; 2013 Act No. 100, Section 1, eff January 1, 2014.

**SECTION 62‑1‑101.** Short title.

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

HISTORY: 1986 Act No. 539, Section 1; 2013 Act No. 100, Section 1, eff January 1, 2014.

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

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

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

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

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

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

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

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

HISTORY: 1986 Act No. 539, Section 1; 2013 Act No. 100, Section 1, eff January 1, 2014.

**SECTION 62‑1‑103.** Supplementary general principles of law applicable.

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

HISTORY: 1986 Act No. 539, Section 1; 2013 Act No. 100, Section 1, eff January 1, 2014.

**SECTION 62‑1‑104.** Severability.

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

HISTORY: 1986 Act No. 539, Section 1; 2013 Act No. 100, Section 1, eff January 1, 2014.

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

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

HISTORY: 1986 Act No. 539, Section 1; 2013 Act No. 100, Section 1, eff January 1, 2014.

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

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

HISTORY: 1986 Act No. 539, Section 1; 2013 Act No. 100, Section 1, eff January 1, 2014.

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

 In proceedings under this Code the South Carolina Rules of Evidence are applicable unless specifically displaced by the Code.

HISTORY: 1986 Act No. 539, Section 1; 2013 Act No. 100, Section 1, eff January 1, 2014.

Effect of Amendment

The 2013 amendment rewrote the section, deleting rules relating to determination of death and status.

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

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

HISTORY: 1986 Act No. 539, Section 1; 1988 Act No. 659, Section 1; 2013 Act No. 100, Section 1, eff January 1, 2014.

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

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

HISTORY: 1994 Act No. 449, Section 2; 2013 Act No. 100, Section 1, eff January 1, 2014.

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

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

HISTORY: 2008 Act No. 211, Section 1, eff May 13, 2008; 2013 Act No. 100, Section 1, eff January 1, 2014.

**SECTION 62‑1‑111.** Authority to award costs and expenses.

 In a formal proceeding, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the estate that is the subject of the controversy.

HISTORY: 2013 Act No. 100, Section 1, eff January 1, 2014.

Part 2

Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

 (14) "Fair market value" is the price that property would sell for on the open market that would be agreed on between a willing buyer and a willing seller, with neither being required to act, and both having reasonable knowledge of the relevant facts.

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

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

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

 (18) "Guardian" means a person appointed by the court as guardian, but excludes one who is a guardian ad litem.

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

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

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

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

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

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

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

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

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

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

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

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

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

 (32) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government or governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

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

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

 (35) "Probate estate" means the decedent's property passing under the decedent's will plus the decedent's property passing by intestacy.

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

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

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

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

 (40) "SCACR" means the South Carolina Appellate Court Rules.

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

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

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

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

 (45) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

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

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

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

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

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

 (51) "VA" means the United States Department of Veterans Affairs or its successor.

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

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

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Sections 1, 2; 1990 Act No. 521, Sections 2‑7; 1997 Act No. 152, Section 2; 2010 Act No. 244, Section 1, eff June 7, 2010; 2013 Act No. 100, Section 1, eff January 1, 2014; 2016 Act No. 278 (S.777), Section 2, eff June 9, 2016.

Effect of Amendment

The 2010 amendment rewrote the definitions of "Application", "Formal proceedings", "Informal proceedings", and "Petition", and added "formal" preceding "proceeding" in the definition of "Testacy proceeding".

The 2013 amendment added subsection (14), definition of "Fair market value"; rewrote subsection (18), definition of "Guardian"; rewrote subsection (32), definition of "Person"; added subsection (35), definition of "Probate estate"; added subsection (40), definition of "SCACR"; rewrote subsection (45), definition of "State"; deleted former subsection (40), definition of "Stepchild"; and renumbered the subsections accordingly.

The 2016 amendment added a definition of "VA" as (51); renumbered "Ward" as (52) and "Will" as (53); and made a nonsubstantive change.

Part 3

Scope, Jurisdiction, and Courts

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

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

HISTORY: 1986 Act No. 539, Section 1; 2013 Act No. 100, Section 1, eff January 1, 2014.

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

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

 (1) estates of decedents, including the contest of wills, construction of wills, determination of property in which the estate of a decedent or a protected person has an interest, and determination of heirs and successors of decedents and estates of protected persons, except that the circuit court also has jurisdiction to determine heirs and successors as necessary to resolve real estate matters, including partition, quiet title, and other actions pending in the circuit court;

 (2) subject to Part 7, Article 5, and excluding jurisdiction over the care, custody, and control of a person or minor:

 (i) protective proceedings and guardianship proceedings under Article 5;

 (ii) gifts made pursuant to the South Carolina Uniform Gifts to Minors Act under Article 5, Chapter 5, Title 63;

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

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

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

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

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

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

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

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

 (2) construction of wills;

 (3) actions to try title concerning property in which the estate of a decedent or protected person asserts an interest;

 (4) matters involving the internal or external affairs of trusts as provided in Section 62‑7‑201, excluding matters involving the establishment of a "special needs trust" as described in Article 7;

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

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

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

 (f) Notwithstanding the exclusive jurisdiction of the probate court over the matters set forth in subsections (a) through (c), if an action described in subsection (d) is removed to the circuit court by motion of a party, or by the probate court on its own motion, the probate court may, in its discretion, remove any other related matter or matters which are before the probate court to the circuit court if the probate court finds that the removal of such related matter or matters would be in the best interest of the estate or in the interest of judicial economy. For any matter removed by the probate court to the circuit court pursuant to this subsection, the circuit court shall proceed upon the matter de novo.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 3; 1988 Act No. 659, Sections 2, 3; 1990 Act No. 521, Section 8; 1992 Act No. 475, Section 2; 1997 Act No. 152, Section 3; 2005 Act No. 132, Section 4; 2008 Act No. 257, Section 1, eff June 4, 2008; 2013 Act No. 100, Section 1, eff January 1, 2014.

Code Commissioner's Note

Pursuant to 2011 Act No. 47, Section 14(B), the Code Commissioner substituted "intellectual disability" for "mentally retarded" and "person with intellectual disability" or "persons with intellectual disability" for "mentally retarded".

Effect of Amendment

The 2008 amendment, in paragraph (d)(1), added "general".

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

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

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

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

 (d) If a court transfers venue of a proceeding or file to a court in another county, venue for that proceeding or file, and any subsequent matters concerning that proceeding or file, including appeals, shall be retained by the county to which the venue has been transferred.

 (e) If a probate court judge is disqualified from matters concerning a proceeding or a file, and venue has not been transferred to another county, a special probate court judge appointed for that proceeding or file has all of the powers and duties appertaining to the probate court judge of the county where the proceeding or file commenced, and venue for any subsequent matters concerning that proceeding or file, including appeals, remains with the county where that proceeding or file commenced.

HISTORY: 1986 Act No. 539, Section 1; 2013 Act No. 100, Section 1, eff January 1, 2014.

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

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

HISTORY: 1986 Act No. 539, Section 1; 2010 Act No. 244, Section 2, eff June 7, 2010; 2013 Act No. 100, Section 1, eff January 1, 2014.

Effect of Amendment

The 2010 amendment rewrote this section.

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

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

HISTORY: 1986 Act No. 539, Section 1; 2013 Act No. 100, Section 1, eff January 1, 2014.

**SECTION 62‑1‑306.** Jury trials.

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

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

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

HISTORY: 1986 Act No. 539, Section 1; 1988 Act No. 659, Section 4; 2013 Act No. 100, Section 1, eff January 1, 2014.

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

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

HISTORY: 1986 Act No. 539, Section 1; 2013 Act No. 100, Section 1, eff January 1, 2014.

**SECTION 62‑1‑308.** Appeals.

 Except as provided in subsection (1), appeals from the probate court must be to the circuit court and are governed by the following rules:

 (a) A person interested in a final order, sentence, or decree of a probate court may appeal to the circuit court in the same county, subject to the provisions of Section 62‑1‑303. The notice of intention to appeal to the circuit court must be filed in the office of the circuit court and in the office of the probate court and a copy served on all parties not in default within ten days after receipt of written notice of the appealed from order, sentence, or decree of the probate court.

 (b) Within forty‑five days after receipt of written notice of the order, sentence, or decree of the probate court, the appellant must file with the clerk of the circuit court a Statement of Issues on Appeal (in a format described in Rule 208(b)(1)(B), SCACR) with proof of service and a copy served on all parties.

 (c) Where a transcript of the testimony and proceedings in the probate court was prepared, the appellant shall, within ten days after the date of service of the notice of intention to appeal, make satisfactory arrangements with the court or court reporter for furnishing the transcript. If the appellant has not received the transcript within forty‑five days after receipt of written notice of the order, sentence, or decree of the probate court, the appellant may make a motion to the circuit court for an extension to serve and file the parties' briefs and Designations of Matter to be Included in the Record on Appeal, as provided in subsections (d) and (e).

 (d) Within thirty days after service of the Statement of Issues on Appeal, all parties to the appeal shall serve on all other parties to the appeal a Designation of Matter to be Included in the Record on Appeal (in a format described in Rule 209, SCACR) and file with the clerk of the circuit court one copy of the Designation of Matter to be Included in the Record on Appeal with proof of service.

 (e) At the same time the appellant serves his Designation of Matter to be Included in the Record on Appeal, the appellant shall serve one copy of his brief on all parties to the appeal, and file with the clerk of the circuit court one copy of the brief with proof of service. The appellant's brief shall be in a format described in Rule 208(b)(1), SCACR. Within thirty days after service of the appellant's brief, the respondent shall serve one copy of his brief on all parties to the appeal, and file with the clerk of the circuit court one copy of the brief with proof of service. The respondent's brief shall be in a format described in Rule 208(b)(2), SCACR. Appellant may file and serve a brief in reply to the brief of the respondent. If a reply brief is prepared, the appellant shall, within ten days after service of the respondent's brief, serve one copy of the reply brief on all parties to the appeal and file with the clerk of circuit court one copy of the reply brief with proof of service. The appellant's reply brief shall be in a format described in Rule 208(b)(3), SCACR.

 (f) Within thirty days after service of the respondent's brief, the appellant shall serve a copy of the Record on Appeal (in a format described in subsections (c), (e), (f) and (g) of Rule 210, SCACR, except that the Record of Appeal need not comply with the requirements of Rule 267, SCACR) on each party who has served a brief and file with the clerk of the circuit court one copy of the Record on Appeal with proof of service.

 (g) Except as provided in this section, no party is required to comply with any other requirements of the South Carolina Appellate Court Rules. Upon final disposition of the appeal, all exhibits filed separately (as described in Rule 210(f), SCACR), but not included in the Record on Appeal, must be forwarded to the probate court.

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

 (i) The circuit court, court of appeals, or Supreme Court shall hear and determine the appeal according to the rules of law. The hearing must be strictly on appeal and no new evidence may be presented.

 (j) The final decision and judgment in cases appealed, as provided in this code, shall be certified to the probate court by the circuit court, court of appeals, or Supreme Court, as the case may be, and the same proceedings shall be had in the probate court as though the decision had been made in the probate court. Within forty‑five days after receipt of written notice of the final decision and judgment in cases appealed, the prevailing party shall provide a copy of such decision and judgment to the probate court.

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

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

HISTORY: 1986 Act No. 539, Section 1; 1990 Act No. 521, Section 9; 1997 Act No. 152, Section 4; 1999 Act No. 55, Section 56; 2013 Act No. 100, Section 1, eff January 1, 2014.

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

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

HISTORY: 1986 Act No. 539, Section 1; 2013 Act No. 100, Section 1, eff January 1, 2014.

Part 4

Notice, Parties, and Representation in Estate Litigation and Other Matters

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

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

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

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

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

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

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

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

HISTORY: 1986 Act No. 539, Section 1; 2010 Act No. 244, Section 3, eff June 7, 2010; 2013 Act No. 100, Section 1, eff January 1, 2014.

**SECTION 62‑1‑402.** Notice; waiver.

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

HISTORY: 1986 Act No. 539, Section 1; 2013 Act No. 100, Section 1, eff January 1, 2014.

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

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

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

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

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

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

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

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

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

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

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

HISTORY: 1986 Act No. 539, Section 1; 1997 Act No. 152, Section 5; 2010 Act No. 244, Section 4, eff June 7, 2010; 2013 Act No. 100, Section 1, eff January 1, 2014.

Part 5

Uniform Simultaneous Death Act

**SECTION 62‑1‑500.** Short title.

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

HISTORY: 1986 Act No. 539, Section 1; 1976 Code Section 62‑1‑501; 2013 Act No. 100, Section 1, eff January 1, 2014.

**SECTION 62‑1‑501.** Definitions.

 For purposes of this part:

 (1) "Co‑owners with right of survivorship" includes joint tenants in a joint tenancy with right of survivorship, joint tenants in a tenancy in common with right of survivorship, tenants by the entireties, and other co‑owners of property or accounts held under circumstances that entitle one or more to the whole of the property or account on the death of the other or others.

 (2) "Governing instrument" means a deed, will, trust, insurance or annuity policy, account with POD designation, pension, profit‑sharing, retirement, or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any similar type.

 (3) "Payor" means a trustee, insurer, business entity, employer, government, governmental agency, subdivision, or instrumentality, or any other person authorized or obligated by law or a governing instrument to make payments.

HISTORY: 2013 Act No. 100, Section 1, eff January 1, 2014.

**SECTION 62‑1‑502.** Requirement of Survival by 120 Hours; individuals, two or more beneficiaries, class members.

 (a) Except as otherwise provided by this Code, where the title to property, the devolution of property, the right to elect an interest in property, or any other right or benefit depends upon an individual's survivorship of the death of another individual, an individual who is not established by clear and convincing evidence to have survived the other individual by at least one hundred twenty hours is deemed to have predeceased the other individual.

 (b) If the language of the governing instrument disposes of property in such a way that two or more beneficiaries are designated to take alternatively by reason of surviving each other and it is not established by clear and convincing evidence that any such beneficiary has survived any other beneficiary by at least one hundred twenty hours, the property shall be divided into as many equal shares as there are alternative beneficiaries, and these shares shall be distributed respectively to each such beneficiary's estate.

 (c) If the language of the governing instrument disposes of property in such a way that it is to be distributed to the member or members of a class who survived an individual, each member of the class will be deemed to have survived that individual by at least one hundred twenty hours unless it is established by clear and convincing evidence that the individual survived the class member or members by at least one hundred twenty hours.

HISTORY: 2013 Act No. 100, Section 1, eff January 1, 2014.

Editor's Note

Prior Laws: Former Section 62‑1‑502 was titled Disposition of property when persons die simultaneously, and had the following history: 1986 Act No. 539, Section 1.

**SECTION 62‑1‑503.** Requirement of survival by 120 hours under governing instruments.

 Except as otherwise provided by this Code, for purposes of a provision of a governing instrument that relates to an individual surviving an event, including the death of another individual, an individual who is not established by clear and convincing evidence to have survived the event by at least one hundred twenty hours is deemed to have predeceased the event.

HISTORY: 2013 Act No. 100, Section 1, eff January 1, 2014.

Editor's Note

Prior Laws: Former Section 62‑1‑503 was titled Successive beneficiaries of disposition of property, and had the following history: 1986 Act No. 539, Section 1.

**SECTION 62‑1‑504.** Co‑owners with right of survivorship; requirement of survival by 120 hours.

 Except as otherwise provided by this Code, if:

 (a) it is not established by clear and convincing evidence that one of two co‑owners with right of survivorship survived the other co‑owner by at least one hundred twenty hours, one‑half of the property passes as if one had survived by at least one hundred twenty hours and one‑half as if the other had survived by at least one hundred twenty hours;

 (b) there are more than two co‑owners and it is not established by clear and convincing evidence that at least one of them survived the others by at least one hundred twenty hours, the property passes to the estates of each of the co‑owners in the proportion that one bears to the whole number of co‑owners.

HISTORY: 2013 Act No. 100, Section 1, eff January 1, 2014.

Editor's Note

Prior Laws: Former Section 62‑1‑504 was titled Joint tenants or tenants by the entirety, and had the following history: 1986 Act No. 539, Section 1.

**SECTION 62‑1‑505.** Right or benefit that depends on surviving the death of a decedent's killer.

 Notwithstanding any other provisions of the Code, solely for the purpose of determining whether a decedent is entitled to any right or benefit that depends on surviving the death of a decedent's killer under Section 62‑2‑803, the killer is deemed to have predeceased the decedent, and the decedent is deemed to have survived the killer by at least one hundred twenty hours, or any greater survival period required of the decedent under the killer's will or other governing instrument, unless it is established by clear and convincing evidence that the killer survived the victim by at least one hundred twenty hours.

HISTORY: 2013 Act No. 100, Section 1, eff January 1, 2014.

Editor's Note

Prior Laws: Former Section 62‑1‑505 was titled Insured and beneficiary, and had the following history: 1986 Act No. 539, Section 1.

**SECTION 62‑1‑506.** Exceptions.

 Survival by one hundred twenty hours is not required if any of the following apply:

 (1) the governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and that language is operable under the facts of the case;

 (2) the governing instrument expressly indicates that an individual is not required to survive an event, including the death of another individual, by any specified period or expressly requires the individual to survive the event for a specified period; but survival of the event or the specified period must be established by clear and convincing evidence;

 (3) the imposition of a one hundred twenty hour requirement of survival would cause a nonvested property interest or a power of appointment to be invalid under other provisions of the Code; but survival must be established by clear and convincing evidence;

 (4) the application of a one hundred and twenty hour requirement of survival to multiple governing instruments would result in an unintended failure or duplication of a disposition; but survival must be established by clear and convincing evidence;

 (5) the application of a one hundred twenty hour requirement of survival would deprive an individual or the estate of an individual of an otherwise available tax exemption, deduction, exclusion, or credit, expressly including the marital deduction, resulting in the imposition of a tax upon a donor or a decedent's estate, other person, or their estate, as the transferor of any property. "Tax" includes any federal or state gift, estate or inheritance tax;

 (6) the application of a one hundred twenty hour requirement of survival would result in an escheat.

HISTORY: 2013 Act No. 100, Section 1, eff January 1, 2014.

Editor's Note

Prior Laws: Former Section 62‑1‑506 was titled Part is not retroactive, and had the following history: 1986 Act No. 539, Section 1.

**SECTION 62‑1‑507.** Evidence of death or status.

 In addition to the South Carolina Rules of Evidence, the following rules relating to a determination of death and status apply:

 (1) Death occurs when an individual is determined to be dead under the Uniform Determination of Death Act, Section 44‑43‑460.

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

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

 (4) In the absence of prima facie evidence of death under subsection (2) or (3), the fact of death may be established by clear and convincing evidence, including circumstantial evidence.

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

 (6) In the absence of evidence disputing the time of death stated on a document described in subsection (2) or (3), a document described in subsection (2) or (3) that states a time of death one hundred twenty hours or more after the time of death of another person, however the time of death of the other person is determined, establishes by clear and convincing evidence that the person survived the other person by one hundred twenty hours.

HISTORY: 1986 Act No. 539, Section 1; Code 1976 Section 62‑1‑107; 2013 Act No. 100, Section 1, eff January 1, 2014.

Editor's Note

Prior Laws: Former Section 62‑1‑507 was titled Part is not applicable if instrument provides otherwise, and had the following history: 1986 Act No. 539, Section 1.

**SECTION 62‑1‑508.** Protection of payors, bona fide purchasers, and other third parties; personal liability of recipient.

 (1) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a person designated in a governing instrument who, under this part, is not entitled to the payment or item of property, or for having taken any other action in good faith reliance on the person's apparent entitlement under the terms of the governing instrument, before the payor or other third party received written notice of a claimed lack of entitlement under this part. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed lack of entitlement under this part.

 (2) Written notice of a claimed lack of entitlement under subsection (1) must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed lack of entitlement under this part, a payor or other third party may pay any amount owed or transfer or deposit any item of property, other than tangible personal property, held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this part, shall order disbursement in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

 (3) A person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is not obligated under this part to return the payment, item of property, or benefit, and is not liable under this part for the amount of the payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment, item of property, or any other benefit to which the person is not entitled under this part is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this part.

HISTORY: 2013 Act No. 100, Section 1, eff January 1, 2014.

**SECTION 62‑1‑509.** Construction.

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

HISTORY: 1986 Act No. 539, Section 1; 1976 Code Section 62‑1‑508; 2013 Act No. 100, Section 1, eff January 1, 2014.