

SIDE-BY-SIDE

Article 3-Wills and Administration.Parts 1-2

ARTICLE 3: Existing Code language	Bill # S. 1243
Article 3.Part 1. General Provisions	Article 3.Part 1.
<p>SECTION 62-3-101. Devolution of estate at death; restrictions.</p> <p>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.</p> <p>REPORTER’S COMMENTS Real property devolves to the devisees or substitutes, under decedent’s will, or to his heirs or substitutes, in an intestate estate, at the death of the owner whereas personal property devolves at the expiration of three years after decedent’s death if not yet distributed by the personal representative. As to devolution of real property, see Sections 62-3-711 and 62-3-715 concerning certain powers of the personal representative over real estate. The devolution of personal property to devisees or heirs is expressly made subject to other provisions of this Code regarding exempt property, the rights of creditors, and the administration of estates. Further, the power (and fiduciary obligation) of the personal representative to apply</p>	<p>SECTION 62-3-101.</p> <p>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.</p> <p>REPORTER’S COMMENTS Real property devolves to the devisees or substitutes, under decedent’s will, or to his heirs or substitutes, in an intestate estate, at the death of the owner whereas personal property devolves at the expiration of three years after decedent’s death if not yet distributed by the personal representative. As to devolution of real property, see Sections 62-3-711 and 62-3-715 concerning certain powers of the personal representative over real estate. The devolution of personal property to devisees or heirs is expressly made subject to other provisions of this Code regarding exempt property, the rights of creditors, and the administration of estates. Further, the power (and fiduciary obligation) of the personal representative to apply</p>

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personal property to the benefit of creditors and others interested in the estate is provided for in Section 62-3-711. Only if the property is not required to protect the rights of creditors or others does it devolve with no affirmative act of transfer of title by distribution being necessary. Thus, under the system of this Code and the provisions of this section, title to personal property devolves to devisees or heirs, but subject to exempt property provisions and the power to shift title to the personal representative where required in administration and to protect the rights of creditors or others.

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.

REPORTER’S COMMENTS

A duly executed, unrevoked will must be declared to be valid by order of informal probate or an adjudication of probate in order to be effective to prove the transfer of any property or to nominate an executor, with one exception, the affidavit procedures authorized for collection of estates worth less than ten thousand dollars. Section 62-3-1201. The time limitations on probate proceedings to establish testacy are stated in Section 62-3-108.

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.

REPORTER’S COMMENTS

Before one acquires the status of personal representative, he must be appointed by the court, qualify, and be issued letters. Failure to secure appointment by one who possesses the goods of a decedent makes him liable as executor in his own wrong, Sections 62-3-619, 62-3-620, 62-3-621.

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personal property to the benefit of creditors and others interested in the estate is provided for in Section 62-3-711. Only if the property is not required to protect the rights of creditors or others does it devolve with no affirmative act of transfer of title by distribution being necessary. Thus, under the system of this Code and the provisions of this section, title to personal property devolves to devisees or heirs, but subject to exempt property provisions and the power to shift title to the personal representative where required in administration and to protect the rights of creditors or others.

SECTION 62-3-102.

Except as provided in Section 62-3-1201 and except as to a will that has been admitted to probate in another jurisdiction which is filed as provided in Article 4, to be effective to prove the transfer of any property or to nominate ~~an executor~~ a personal representative, 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.

REPORTER’S COMMENTS

A duly executed, unrevoked will must be declared to be valid by order of informal probate or an adjudication of probate in order to be effective to prove the transfer of any property or to nominate an executor, with one exception, the affidavit procedures authorized for collection of estates worth less than twenty-five thousand dollars. Section 62-3-1201. The time limitations on probate proceedings to establish testacy are stated in Section 62-3-108.

SECTION 62-3-103.

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.

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Before one acquires the status of personal representative, he must be appointed by the court, qualify, and be issued letters. Failure to secure appointment by one who possesses the goods of a decedent makes him liable as executor in his own wrong, Sections 62-3-619, 62-3-620, 62-3-621.

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The exceptions provided in Article 4 permit a personal representative appointed in another state to collect certain assets in this State, Sections 62-4-201 through 62-4-203, and to exercise the powers of a local personal representative, if no local administration or application is pending in this State, by filing authenticated copies of his appointment and any will and any bond, Sections 62-4-204, 62-4-205.

For “qualification,” see Section 62-3-601; for “letters,” see Section 62-1-305; for the time of accrual of duties and powers of personal representative, see Section 62-3-701.

Section 62-3-108 imposes time limitations on appointment proceedings.

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.

REPORTER’S COMMENTS

This section requires creditors of decedents to assert their claims against a duly appointed personal representative. Notice to creditors, time limitations, payment of claims, and other provisions relating to creditors’ claims are in Part 8 of Article 3. Creditors are interested persons who may seek appointment either in informal proceedings for appointment of a personal representative, Section 62-3-301, or in formal proceedings for appointment, Section 62-3-414. A creditor may seek appointment as personal representative, and has priority for appointment if no other interested person has applied for appointment within forty-five days after death, Section 62-3-203, and may do so at any time within ten years of decedent’s death, Section 62-3-108. If a personal representative has been appointed and has closed the estate under circumstances which leave a creditor’s claim unbarred and unpaid, the creditor may recover from the distributees, Section 62-3-1004, or from the former personal representative individually liable for breach of fiduciary duty as provided in Sections 62-3-807 and 62-3-1003, subject to the limitations of Section 62-3-1005.

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Section 62-3-108 imposes time limitations on appointment proceedings.

SECTION 62-3-104.

No claim can be filed against the estate of a decedent and 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.

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A secured creditor is not affected by this section except as to any deficiency judgment sought. A secured creditor is not required to assert his claim against the personal representative of the deceased debtor; however, the secured creditor who wishes to enforce a claim for deficiency, even if unliquidated or only potential, is required to comply with the claims provisions of this section and Part 8 of this article.

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.

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.

REPORTER'S COMMENTS

The notice provisions of this section cover all proceedings within the exclusive jurisdiction of the probate court where notice is required by this Code or by rule. Notice provisions also apply to proceedings to construe probated wills or to determine heirs in an intestate estate which has not been and cannot be opened for administration due to time limitations. Thus, this section and the exceptions to the time limitations of Section 62-3-108 make it clear that proceedings to construe a probated will or to determine heirs of intestates may be commenced more than ten years after death. Notice may be given to less than all interested persons but is binding upon only those who are given notice.

For the time and method of giving notice, see Section 62-1-401; and waiver of notice, Section 62-1-402.

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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.

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The notice provisions of this section cover all proceedings within the exclusive jurisdiction of the probate court where notice is required by this Code or by rule. Notice provisions also apply to proceedings to construe probated wills or to determine heirs in an intestate estate which has not been and cannot be opened for administration due to time limitations. Thus, this section and the exceptions to the time limitations of Section 62-3-108 make it clear that proceedings to construe a probated will or to determine heirs of intestates may be commenced more than ten years after death. Notice may be given to less than all interested persons but is binding upon only those who are given notice.

For the time and method of giving notice, see Section 62-1-401; and waiver of notice, Section 62-1-402.

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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.

REPORTER’S COMMENTS

This section and the other provisions of this article are designed to establish a flexible system of administration of decedents’ estates which permits interested persons to determine the extent to which matters relating to estates become the subjects of judicial orders.

Administration under Part 5, Sections 62-3-501, et seq., is a single proceeding for judicial determination of testacy, priority, and qualification for appointment as personal representative and administration and settlement of decedents’ estates. Section 62-3-107 applies to all other proceedings except those which are particularly described in other sections of this article. With the exceptions stated, proceedings for probate of wills and adjudication of intestacy may be combined with proceedings for appointment of personal representatives. Jurisdiction over interested persons is facilitated by Sections 62-3-106 and 62-3-602. Venue is determined by Section 62-3-201.

Except in circumstances which permit appointment of a special administrator, Section 62-3-614, a personal representative may not be appointed unless the will to which the requested appointment relates has been formally or informally probated, Sections 62-3-308, 62-3-402, and 62-3-414.

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

SECTION 62-3-107.

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.

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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.

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(A)(1) 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.

(2) Notwithstanding any other provision of this section:

(a) 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 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;

(b) 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

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REPORTER’S COMMENTS

This section establishes a time limitation of ten years after decedent’s death for commencement of any proceeding to determine whether a decedent died testate or for commencing administration of his estate, with the following exceptions:

- (1) a proceeding to probate a will previously probated in testator’s domicile;
- (2) appointment proceedings relating to an estate in which there has been a prior appointment;
- (3) if a previous proceeding was dismissed because of doubt about the fact of death, and if decedent’s death in fact occurred prior to commencement of the previous proceeding, and if there has been no undue delay in commencing the subsequent proceeding;
- (4) if the decedent was a protected person, as an absent, disappeared, or missing person, Section 62-5-401, for whose estate a conservator has been appointed, and if the proceeding is commenced within three years after the conservator is able to establish the death of the protected person; or.
- (5) a proceeding to contest an informally probated will and appointment if the contest is successful, may be commenced within the later of twelve months from informal probate or three years from decedent’s death.

These limitations do not apply to proceedings to construe wills or to determine heirs of an intestate. See Comments, Section 62-3-107.

This section also fixes as the date of death for purposes of the other limitations of this Code which relate to date of death, the date of proper commencement of a testacy or appointment proceeding more than three years after the established date of death in the two exceptions

establish the death of the protected person; and

(c) 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 eight months from informal probate or one year from the decedent’s death, whichever is later.

(B) If no informal probate and no formal testacy proceedings are commenced within ten years after the decedent’s death, and no proceedings under subsection (A)(2)(b) 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 proceedings commenced under subsection (A)(2)(a) or (A)(2)(b), 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.

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This section establishes a time limitation of ten years after a decedent’s death for commencement of any proceeding to determine whether a decedent died testate or for commencing administration of his estate, with the following exceptions:

- (1) a proceeding to probate a will previously probated in testator’s domicile;
- (2) appointment proceedings relating to an estate in which there has been a prior appointment;
- (3) if a previous proceeding was dismissed because of doubt about the fact of death, and if decedent’s death in fact occurred prior to commencement of the previous proceeding, and if there has been no undue delay in commencing the subsequent proceeding;
- (4) if the decedent was a protected person, as an absent, disappeared, or missing person for whose estate a conservator has been appointed, and if the proceeding is commenced within three years after the conservator is able to establish the death of the protected person; or.
- (5) a proceeding to contest an informally probated will and appointment if the contest is successful, may be commenced within the later of eight months from informal probate or one year from the decedent’s death.

These limitations do not apply to proceedings to construe wills or to determine heirs of an intestate.

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relating to dismissal of a formal proceeding because of doubt about the fact of death and estates of protected persons for whom a conservator has been appointed.
If no will is probated within ten years from death, or within the time permitted by one of the exceptions, this section makes the assumption of intestacy final.
If a will has been probated informally within ten years, this section makes the informal probate conclusive within the later of three years from death or twelve months from informal probate, whichever is later. The limitation period prescribed applies to all persons including those under disability. Interested persons can protect themselves against changes within the period of doubt concerning whether a person died testate or intestate by commencing at an earlier date a formal proceeding, Sections 62-3-412, 62-3-413. Protection to a personal representative appointed after informal probate of a will or informally issued letters of administration, but which is subject to change in a subsequent formal proceeding commenced within the limitations prescribed, is afforded under Section 62-3-703.
Distributees who receive distributions from an estate before the expiration of the period remain potentially liable to those determined to be entitled in properly commenced formal proceedings, Section 62-3-909, 62-3-1006.
Purchasers from the personal representative or a distributee may be protected without regard to whether the period has run, Sections 62-3-715, 62-3-910.
Creditors' claims are barred against the personal representative, heirs, and devisees after three years from date of death in any event. Section 62-3-803(a)(2). See, also, Comments, Section 62-3-102.

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.

REPORTER'S COMMENTS

Any statute of limitations running on a decedent's cause of action surviving decedent, which had not been barred at decedent's death, is tolled for four months after decedent's death. This section has the effect of extending the running of a statute of limitations with respect to a cause of action surviving decedent for four months from the time when it would have run, if the action had not been barred at decedent's death.
For the tolling or suspension of any statute of limitations running on a cause of action against

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If no will is probated within ten years from death, or within the time permitted by one of the exceptions, this section makes the assumption of intestacy final.
If a will has been probated informally within ten years, this section makes the informal probate conclusive within one year from death or eight months from informal probate, whichever is later. The limitation period prescribed applies to all persons including those under disability.
Interested persons can protect themselves against changes within the period of doubt concerning whether a person died testate or intestate by commencing at an earlier date a formal proceeding, Sections 62-3-401, 62-3-402.
Protection to a personal representative appointed after informal probate of a will or informally issued letters of administration, but which is subject to change in a subsequent formal proceeding commenced within the limitations prescribed, is afforded under Section 62-3-703.
Distributees who receive distributions from an estate before the expiration of the period remain potentially liable to those determined to be entitled in properly commenced formal proceedings, Section 62-3-909, 62-3-1006.
Purchasers from the personal representative or a distributee may be protected without regard to whether the period has run, Sections 62-3-714, 62-3-910.
Creditors' claims are barred against the personal representative, heirs, and devisees after one year from date of death in any event. Section 62-3-803(a).

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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.

REPORTER'S COMMENTS

Any statute of limitations running on a decedent's cause of action surviving decedent, which had not been barred at decedent's death, is tolled for eight months after decedent's death. This section has the effect of extending the running of a statute of limitations with respect to a cause of action surviving decedent for eight months from the time when it would have run, if the action had not been barred at decedent's death.
For the tolling or suspension of any statute of limitations running on a cause of action against

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decedent for the four months following decedent's death, see Section 62-3-802.	decedent for the eight months following decedent's death, see Section 62-3-802.
Article 3.Part 2. Venue; Priority; Notice	Article 3.Part 2.
<p>SECTION 62-3-201. Venue for first and subsequent estate proceedings; location of property.</p> <p>(a) Venue for the first informal or formal testacy or appointment proceedings after a decedent's death is:</p> <p>(1) in the county where the decedent had his domicile at the time of his death; or</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>REPORTER'S COMMENTS</p> <p>Venue for the first informal or formal testacy and appointment proceedings and subsequent proceedings is established in Section 62-3-201. For domiciliaries, venue is the county of domicile. For decedents not domiciled in this State, venue is in any county where property of the decedent was located.</p> <p>If proceedings concerning the same estate are commenced in more than one court of this State, the court in which the proceeding was first commenced makes the finding of proper venue, Sections 62-3-201, 62-1-303. Upon finding that venue is elsewhere, the court in which the first proceeding was filed may transfer the proceeding to some other court, Section 62-3-201(c).</p> <p>Where a proceeding could be maintained in more than one court in this State, the court in which the first proceeding was commenced has the exclusive right to proceed or to transfer, Section 62-1-303.</p>	<p>SECTION 62-3-201.</p> <p>(a) Venue for the first informal or formal testacy or appointment proceedings after a decedent's death is:</p> <p>(1) in the county where the decedent had his domicile at the time of his death; or</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>REPORTER'S COMMENTS</p> <p>Venue for the first informal or formal testacy and appointment proceedings and subsequent proceedings is established in Section 62-3-201. For domiciliaries, venue is the county of domicile. For decedents not domiciled in this State, venue is in any county where property of the decedent was located.</p> <p>If proceedings concerning the same estate are commenced in more than one court of this State, the court in which the proceeding was first commenced makes the finding of proper venue, Sections 62-3-201, 62-1-303. Upon finding that venue is elsewhere, the court in which the first proceeding was filed may transfer the proceeding to some other court, Section 62-3-201(c).</p> <p>Where a proceeding could be maintained in more than one court in this State, the court in which the first proceeding was commenced has the exclusive right to proceed or to transfer, Section 62-1-303.</p>

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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.

REPORTER’S COMMENTS

Conflicting claims of domicile arising in a formal testacy or appointment proceeding in a court of this State and a testacy or appointment proceeding after notice pending in another state are resolved by the court in which the first proceeding was commenced.

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

SECTION 62-3-202.

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.

REPORTER’S COMMENTS

Conflicting claims of domicile arising in a formal testacy or appointment proceeding in a court of this State and a testacy or appointment proceeding after notice pending in another state are resolved by the court in which the first proceeding was commenced.

SECTION 62-3-203.

- (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

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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

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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 for the protected person or the custodial parent of a minor, except a court appointed 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.~~ If the administration is necessary, appointment of one who has equal or lower priority may be made as follows within the discretion of the court:

(1) informally if all those of equal or higher priority have filed a writing with the court renouncing the right to serve and nominating the same person in his or her place; or

(2) in the absence of agreement, informally in accordance with the requirements of Section 62-3-310; or

(3) in formal proceedings.

(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,

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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.

REPORTER’S COMMENTS

The priorities of the right to appointment as personal representative or successor personal representative (but not special administrator, Sections 62-3-203(b), 62-3-615) are, in order, a person determined by a probated will, a spouse who is a devisee, other devisees, a spouse who is not a devisee, other heirs, and, after forty-five days after death, a creditor, Section 62-3-203(a). Objections to appointment can be made only in formal proceedings, Section 62-3-203(b). Conservators or guardians of protected persons may exercise the same right to nominate for or object to appointment which the protected person would have if qualified, Section 62-3-203(c). Persons disqualified include persons under age eighteen, those found unsuitable by the court,

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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~~ ; however, a probate judge may serve as a personal representative of the estate of a family member if the service does not interfere with the proper performance of the probate judge’s official duties and the estate must be transferred to another county for administration. For purposes of this subsection, ‘family member’ means a spouse, parent, child, brother, sister, aunt, uncle, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, or grandchild.

(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.~~

REPORTER’S COMMENTS

The priorities of the right to appointment as personal representative or successor personal representative (but not special administrator, Sections 62-3-203(b), 62-3-615) are, in order, a person determined by a probated will, a spouse who is a devisee, other devisees, a spouse who is not a devisee, other heirs, and, after forty-five days after death, a creditor, Section 62-3-203(a). Objections to appointment can be made only in formal proceedings, Section 62-3-203(b). Conservators or guardians of protected persons may exercise the same right to nominate for or object to appointment which the protected person would have if qualified, Section 62-3-203(c). Persons disqualified include persons under age eighteen, those found unsuitable by the court,

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and foreign corporations not having a place of business in this State, Section 62-3-203(e).

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.

REPORTER’S COMMENTS

Interested persons may file a demand for notice, requiring notice to be given to them or their attorneys prior to the making of any order or acceptance of any filing by the court. As to the method and time of giving the notice referred to, see Section 62-1-401.

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and foreign corporations not having a place of business in this State, Section 62-3-203(e).

The 2010 amendment revised subsection (d) to eliminate certain language as to ‘priority resulting from renunciation or waiver,’ and adding ‘or informal’ proceedings. The prior version of subsection (d) provided for only a formal proceeding. The 2010 amendment allows one who does not have priority to pursue either a formal proceeding (requiring summons and petition) or an informal proceeding (does not require summons and petition) for appointment. See *section* 62-3-310 for informal appointments to one who does not have priority. See 2010 amendments to certain definitions in §62-1-201.

SECTION 62-3-204.

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 demand for notice shall expire one year from the date of filing with the court. The clerk shall mail a copy of the demand to the personal representative if one has been appointed. After filing of a demand, the personal representative must give a copy of the demanded filing to the demandant or his attorney. If the demand is a demand for a hearing, then the personal representative must comply with ~~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.

REPORTER’S COMMENTS

Interested persons may file a demand for notice, requiring notice to be given to them or their attorneys. The 2012 amendment clarifies that a court may issue an order and accept a filing while a demand for notice is effective. As to the method and time of giving the notice referred to, see Section 62-1-401.