SIDE-BY-SIDE

Article 3-Wills and Administration.Parts 3-5

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Article 3.Part 3. Informal Probate	Article 3.Part 3
SECTION 62-3-301. Informal probate or appointment proceedings; application; contents. (a) Applications for informal probate or informal appointment shall be directed to the court, and verified by the applicant to be accurate and complete to the best of his knowledge and belief as to the following information: (1) Every application for informal probate of a will or for informal appointment of a personal representative, other than a special or successor representative, shall contain the following: (i) a statement of the interest of the applicant; (ii) the name, and date of death of the decedent, his age, and the county and state of his domicile at the time of death, and the names and addresses of the spouse, children, heirs (regardless of whether the decedent died intestate and determined as if the decedent died intestate) and devisees, and the ages of any who are minors so far as known or ascertainable with reasonable diligence by the applicant; (iii) if the decedent was not domiciled in the State at the time of his death, a statement showing venue; (iv) a statement identifying and indicating the address of any personal representative of the decedent appointed in this State or elsewhere whose appointment has not been terminated; (v) a statement indicating whether the applicant has received a demand for notice, or is aware of a demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this State or elsewhere; (vi) that the time limit for informal probate or appointment as provided in this article has not expired either because ten years or less has passed since the decedent's death, or, if more than ten years from death have passed, circumstances as described by Section 62-3-108 authorizing tardy probate or appointment have occurred; (vii) such further information as may be prescribed by the South Carolina Department of Revenue pursuant to Sections 12-15-510 and 12-15-540 of the 1976 Code. (2) An application for informal probate of a will shall state the following in addition to the statements required by (1): (i) that the original of the decedent's last will is in the possession of the court, or accompanies	**SECTION 62-3-301.** (a) Applications for informal probate or informal appointment shall be directed to the court, and verified by the applicant to be accurate and complete to the best of his knowledge and belief as to the following information: (1) Every application for informal probate of a will or for informal appointment of a personal representative, other than a special or successor representative, shall contain the following: (i) a statement of the interest of the applicant; (ii) the name, and date of death of the decedent, his age, and the county and state of his domicile at the time of death, and the names and addresses of the spouse, children, heirs (regardless of whether the decedent died intestate and determined as if the decedent died intestate) and devisees, and the ages of any who are minors so far as known or ascertainable with reasonable diligence by the applicant; (iii) if the decedent was not domiciled in the State at the time of his death, a statement showing venue; (iv) a statement identifying and indicating the address of any personal representative of the decedent appointed in this State or elsewhere whose appointment has not been terminated; (v) a statement indicating whether the applicant has received a demand for notice, or is aware of a demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this State or elsewhere; and (vi) that the time limit for informal probate or appointment as provided in this article has not expired either because ten years or less has passed since the decedent's death, or, if more than ten years from death have passed, circumstances as described by Section 62-3-108 authorizing tardy probate or appointment have occurred~~;~~. ~~(vii) such further information as may be prescribed by the South Carolina Department of Revenue pursuant to Sections 12-15-510 and 12-15-540 of the 1976 Code.~~ (2) An application for informal probate of a will shall state the following in addition to the statements required by (1):

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the application, or that an authenticated copy of a will probated in another jurisdiction accompanies the application; (ii) that the applicant, to the best of his knowledge, believes the will to have been validly executed; (iii) that after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the will, and that the applicant believes that the instrument which is the subject of the application is the decedent's last will. (3) An application for informal appointment of a personal representative to administer an estate under a will shall describe the will by date of execution and state the time and place of probate or the pending application or petition for probate. The application for appointment shall adopt the statements in the application or petition for probate and state the name, address, and priority for appointment of the person whose appointment is sought. (4) An application for informal appointment of an administrator in intestacy must state the name and address of the person whose appointment is sought and must state in addition to the statements required by (1): (i) that after the exercise of reasonable diligence, the applicant is unaware of any unrevoked testamentary instrument relating to property having a situs in this State under Section Section 62-1-301 or a statement why any such instrument of which he may be aware is not being probated; (ii) the priority of the person whose appointment is sought and the names of any other persons having a prior or equal right to the appointment under Section 62-3-203. (5) An application for appointment of a personal representative to succeed a personal representative appointed under a different testacy status shall refer to the order in the most recent testacy proceeding, state the name and address of the person whose appointment is sought and of the person whose appointment will be terminated if the application is granted, and describe the priority of the applicant. (6) An application for appointment of a personal representative to succeed a personal representative who has tendered a resignation as provided in Section 62-3-610(c), or whose appointment has been terminated by death or removal, shall adopt the statements in the application or petition which led to the appointment of the person being succeeded except as specifically changed or corrected, state the name and address of the person who seeks appointment as successor, and describe the priority of the applicant. (b) By verifying an application for informal probate, or informal appointment, the applicant submits personally to the jurisdiction of the court in any proceeding for relief from fraud relating to the application, or for perjury, that may be instituted against him.	(i) that the original of the decedent's last will is in the possession of the court, or accompanies the application, or that an authenticated copy of a will probated in another jurisdiction accompanies the application; (ii) that the applicant, to the best of his knowledge, believes the will to have been validly executed; (iii) that after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the will, and that the applicant believes that the instrument which is the subject of the application is the decedent's last will. (3) An application for informal appointment of a personal representative to administer an estate under a will shall describe the will by date of execution and state the time and place of probate or the pending application or petition for probate. The application for appointment shall adopt the statements in the application or petition for probate and state the name, address, and priority for appointment of the person whose appointment is sought. (4) An application for informal appointment of an administrator in intestacy must state the name and address of the person whose appointment is sought and must state in addition to the statements required by (1): (i) that after the exercise of reasonable diligence, the applicant is unaware of any unrevoked testamentary instrument relating to property having a situs in this State under Section Section 62-1-301 or a statement why any such instrument of which he may be aware is not being probated; (ii) the priority of the person whose appointment is sought and the names of any other persons having a prior or equal right to the appointment under Section 62-3-203. (5) An application for appointment of a personal representative to succeed a personal representative appointed under a different testacy status shall refer to the order in the most recent testacy proceeding, state the name and address of the person whose appointment is sought and of the person whose appointment will be terminated if the application is granted, and describe the priority of the applicant. (6) An application for appointment of a personal representative to succeed a personal representative who has tendered a resignation as provided in Section 62-3-610(c), or whose appointment has been terminated by death or removal, shall adopt the statements in the application or petition which led to the appointment of the person being succeeded except as specifically changed or corrected, state the name and address of the person who seeks appointment as successor, and describe the priority of the applicant. (7) The court may probate a will without appointing a personal representative. (b) By verifying an application for informal probate, or informal appointment, the applicant

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	submits personally to the jurisdiction of the court in any proceeding for relief from fraud relating to the application, or for perjury, that may be instituted against him.
REPORTER'S COMMENTS This section prescribes the contents of the application for the informal probate of a will or for the informal appointment of a personal representative. The proofs and findings required for issuance of any order of informal probate or informal appointment are contained in Sections 62-3-303 and 62-3-308. This section requires that the application be verified, 62-3-301(a) and (b). The application is a part of the public record. Persons injured by deliberately false representation may invoke remedies for fraud without any specified time limit (See Article 1). This section allows the court to probate a will without appointing a personal representative. Further, it allows the court to appoint a personal representative without notice. Under Subsection (a)(1)(vii) of this section, the Tax Commission may prescribe the contents of the application beyond the basic contents required by this section.	REPORTER'S COMMENTS This section prescribes the contents of the application for the informal probate of a will or for the informal appointment of a personal representative. The proofs and findings required for issuance of any order of informal probate or informal appointment are contained in Sections 62-3-303 and 62-3-308. This section requires that the application be verified, 62-3-301(a) and (b). The application is a part of the public record. Persons injured by deliberately false representation may invoke remedies for fraud without any specified time limit (See Article 1). This section allows the court to probate a will without appointing a personal representative. Further, it allows the court to appoint a personal representative without notice.
SECTION 62-3-302. Informal probate; duty of court; effect of informal probate.	**SECTION 62-3-302.**
Upon receipt of an application requesting informal probate of a will, the court, upon making the findings required by Section 62-3-303, shall issue a written statement of informal probate. Informal probate is conclusive as to all persons until superseded by an order in a formal testacy proceeding. No defect in the application or procedure relating thereto which leads to informal probate of a will renders the probate void.	Upon receipt of an application requesting informal probate of a will, the court, upon making the findings required by Section 62-3-303, shall issue a written statement of informal probate. Informal probate is conclusive as to all persons until superseded by an order in a formal testacy proceeding. No defect in the application or procedure relating thereto which leads to informal probate of a will renders the probate void.
REPORTER'S COMMENTS "Informal Probate" is designed to keep the vast majority of wills, which are simple and generate no controversy, from becoming involved in truly judicial proceedings. An order of informal probate makes the will operative and may be the only official action concerning its validity. The order is subjected to the safeguards which seem appropriate to this transaction. To that extent it is roughly approximate to probate in common form. Informal probate is conclusive unless superseded by a formal testacy proceeding.	REPORTER'S COMMENTS 'Informal Probate' is designed to keep the vast majority of wills, which are simple and generate no controversy, from becoming involved in truly judicial proceedings. An order of informal probate makes the will operative and may be the only official action concerning its validity. The order is subjected to the safeguards which seem appropriate to this transaction.
SECTION 62-3-303. Informal probate; proof and findings required.	**SECTION 62-3-303.**
(a) In an informal proceeding for original probate of a will, the court shall determine whether: (1) the application is complete;	(a) In an informal proceeding for original probate of a will, the court shall determine whether: (1) the application is complete;

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(2) the applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief; (3) the applicant appears from the application to be an interested person as defined in Section 62-1-201(20); (4) on the basis of the statements in the application, venue is proper; (5) an original, duly executed and apparently unrevoked will is in the court's possession; (6) any notice required by Section 62-3-204 has been given and that the application is not within Section 62-3-304; (7) it appears from the application that the time limit for original probate has not expired. (b) The application shall be denied if it indicates that a personal representative has been appointed in another county of this State or except as provided in subsection (d) below, if it appears that this or another will of the decedent has been the subject of a previous probate order. (c) A will which appears to have the required signatures and which contains an attestation clause showing that requirements of execution under Section 62-2-502 or 62-2-505 have been met shall be probated without further proof. In other cases, the court may assume execution if the will appears to have been properly executed, or he may accept a sworn statement or affidavit of any person having knowledge of the circumstances of execution, whether or not the person was a witness to the will. (d) Informal probate of a will which has been previously probated elsewhere may be granted at any time upon written application by any interested person, together with deposit of an authenticated copy of the will and of the statement probating it from the office or court where it was first probated. (e) A will from a place which does not provide for probate of a will after death and which is not eligible for probate under subsection (a) above, may be probated in this State upon receipt by the court of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of the other place. REPORTER'S COMMENTS This section lists the proofs and findings required to be made by the court as a part of an order of informal probate.	(2) the applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief; (3) the applicant appears from the application to be an interested person as defined in Section 62-1-201(20); (4) on the basis of the statements in the application, venue is proper; (5) an original, duly executed and apparently unrevoked will is in the court's possession; (6) any notice required by Section 62-3-204 has been given and that the application is not within Section 62-3-304; (7) it appears from the application that the time limit for original probate has not expired. (b) The application shall be denied if it indicates that a personal representative has been appointed in another county of this State or except as provided in subsection (d) below, if it appears that this or another will of the decedent has been the subject of a previous probate order. (c) A will which appears to have the required signatures and which contains an attestation clause showing that requirements of execution under Section 62-2-502 or 62-2-505 have been met shall be probated without further proof. In other cases, the court may assume execution if the will appears to have been properly executed, or he may accept a sworn statement or affidavit of any person having knowledge of the circumstances of execution, whether or not the person was a witness to the will. (d) Informal probate of a will which has been previously probated elsewhere may be granted at any time upon written application by any interested person, together with deposit of an authenticated copy of the will and of the statement probating it from the office or court where it was first probated. (e) ~~A will from a place which does not provide for probate of a will after death and which is not eligible for probate under subsection (a) above, may be probated in this State upon receipt by the court of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of the other place.~~ A will of a nonresident decedent which has not been probated and is not eligible for probate under subsection (a)(5) may nevertheless be probated in this State upon receipt by the court of a copy of the will authenticated as true by its legal custodian together with the legal custodian's certificate that the will is not ineligible for probate under the law of the other place. REPORTER'S COMMENTS This section lists the proofs and findings required to be made by the court as a part of an order of informal probate.

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The purpose of subparagraph (c) of the section is to permit the informal probate of a will which, from a simple attestation clause, appears to have been executed properly. It is not necessary that the will be notarized or self-proved. If the will has been made self-proved under Section 62-2-503 it will of course “appear” to be well executed and will include the recitals necessary for ease of probate under this section. This section does not require that the court examine one or both of the subscribing witnesses to the will. Any interested person who desires more rigorous proof of due execution may commence a formal testacy proceeding. Note the provision of subparagraph (b) that informal probate is generally unavailable if there has been a previous probate of this or another will, unless, as under subparagraph (d), ancillary probate is desired. **SECTION 62-3-304.** Informal probate; unavailable in certain cases. Applications for informal probate which relate to one or more of a known series of testamentary instruments (other than a will and its codicils), the latest of which does not expressly revoke the earlier, shall be declined. REPORTER’S COMMENTS The court is required to decline applications for informal probate in the circumstances specified in this section where a formal proceeding with notice and hearing would provide a desirable safeguard. **SECTION 62-3-305.** Informal probate; court not satisfied. If the court is not satisfied that a will is entitled to be probated in informal proceedings because of failure to meet the requirements of Sections 62-3-303 and 62-3-304 or any other reason, he may decline the application. A declination of informal probate is not an adjudication and does not preclude formal probate proceedings. REPORTER’S COMMENTS This section confers upon the court the discretion to deny probate to an instrument even though all of the statutory requirements have arguably been met. The denial of an application for informal probate does not give rise to a right of appeal. The proponent of the will is left with the option of initiating a formal testacy proceeding.	The purpose of subparagraph (c) of the section is to permit the informal probate of a will which, from a simple attestation clause, appears to have been executed properly. It is not necessary that the will be notarized or self-proved. If the will has been made self-proved under Section 62-2-503 it will of course ‘appear’ to be well executed and will include the recitals necessary for ease of probate under this section. This section does not require that the court examine one or both of the subscribing witnesses to the will. Any interested person who desires more rigorous proof of due execution may commence a formal testacy proceeding. Note the provision of subparagraph (b) that informal probate is generally unavailable if there has been a previous probate of this or another will, unless, as under subparagraph (d), ancillary probate is desired. **SECTION 62-3-304.** Applications for informal probate which relate to one or more of a known series of testamentary instruments (other than a will and its codicils), the latest of which does not expressly revoke the earlier, shall be declined. REPORTER’S COMMENTS The court is required to decline applications for informal probate in the circumstances specified in this section where a formal proceeding with notice and hearing would provide a desirable safeguard. **SECTION 62-3-305.** If the court is not satisfied that a will is entitled to be probated in informal proceedings because of failure to meet the requirements of Sections 62-3-303 and 62-3-304 or any other reason, he may decline the application. A declination of informal probate is not an adjudication and does not preclude formal probate proceedings. REPORTER’S COMMENTS This section confers upon the court the discretion to deny probate to an instrument even though all of the statutory requirements have arguably been met. The denial of an application for informal probate does not give rise to a right of appeal. The proponent of the will is left with the option of initiating a formal testacy proceeding.

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SECTION 62-3-306. Informal probate; notice requirements. (a) The moving party must give notice as described by Section 62-1-401 of his application for informal probate to any person demanding it pursuant to Section 62-3-204, and to any personal representative of the decedent whose appointment has not been terminated. No other notice of informal probate is required. (b) If an informal probate is granted, within thirty days thereafter the applicant shall give written information of the probate to the heirs (determined as if the decedent died intestate) and devisees. The information must include the name and address of the applicant, the date of execution of the will, and any codicil thereto, the name and location of the court granting the informal probate, and the date of the probate. The information must be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the applicant. No duty to give information is incurred if a personal representative is appointed who is required to give the written information required by Section 62-3-705. An applicant's failure to give information as required by this section is a breach of his duty to the heirs and devisees but does not affect the validity of the probate. REPORTER'S COMMENTS The party seeking informal probate of a will (who may or may not be seeking informal appointment as personal representative) must give notice of his application for informal probate, presumably at the time he makes his application. The notice must be given to any personal representative of the decedent whose appointment has not been terminated, and to any other person who demands notice pursuant to Section 62-3-204. Section 62-3-204 prescribes that a person demanding notice under that section must have "a financial or property interest." The notice must be in conformity with Section 62-1-401, which provides that a notice may be given by certified, registered, or ordinary first class mail, by personal service, or if the address or identity of the person sought to be notified cannot be ascertained, by publication. As to notice after informal probate is granted, the requirement in subsection (b) of giving written information of the probate to heirs and devisees is unnecessary if a personal representative is appointed who is required to give the written information required by Section 62-3-705. This latter section provides that every personal representative except any special administrator must give written information of his appointment to heirs and devisees. The information requirement of Section 62-3-306(b) is effectively limited to those circumstances where an informal probate is granted but no personal representative is appointed. The term "heirs and devisees" appears to encompass not only those persons who take by virtue of a probated will, but also those persons	**SECTION 62-3-306.** (a) The moving party must give notice as described by Section 62-1-401 of his application for informal probate to any person demanding it pursuant to Section 62-3-204, and to any personal representative of the decedent whose appointment has not been terminated. No other notice of informal probate is required. (b) If an informal probate is granted, within thirty days thereafter the applicant shall give written information of the probate to the heirs (determined as if the decedent died intestate) and devisees. The information must include the name and address of the applicant, the date of execution of the will, and any codicil thereto, the name and location of the court granting the informal probate, and the date of the probate. The information must be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the applicant. No duty to give information is incurred if a personal representative is appointed who is required to give the written information required by Section 62-3-705. An applicant's failure to give information as required by this section is a breach of his duty to the heirs and devisees but does not affect the validity of the probate. REPORTER'S COMMENTS The party seeking informal probate of a will (who may or may not be seeking informal appointment as personal representative) must give notice of his application for informal probate, presumably at the time he makes his application. The notice must be given to any personal representative of the decedent whose appointment has not been terminated, and to any other person who demands notice pursuant to Section 62-3-204. Section 62-3-204 prescribes that a person demanding notice under that section must have 'a financial or property interest.' The notice must be in conformity with Section 62-1-401, which provides that a notice may be given by certified, registered, or ordinary first class mail, by personal service, or if the address or identity of the person sought to be notified cannot be ascertained, by publication. As to notice after informal probate is granted, the requirement in subsection (b) of giving written information of the probate to heirs and devisees is unnecessary if a personal representative is appointed who is required to give the written information required by Section 62-3-705. This latter section provides that every personal representative except any special administrator must give written information of his appointment to heirs and devisees. The information requirement of Section 62-3-306(b) is effectively limited to those circumstances where an informal probate is granted but no personal representative is appointed. The term 'heirs and devisees' appears to encompass not only those persons who take by virtue of a probated will, but also those persons

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who would have been the decedent's heirs had he died intestate. **SECTION 62-3-307.** Informal appointment proceedings; delay in order; duty of court; effect of appointment. (a) Upon receipt of an application for informal appointment of a personal representative other than a special administrator as provided in Section 62-3-614, the court, after making the findings required by Section 62-3-308, shall appoint the applicant subject to qualification and acceptance; provided, that if the decedent was a nonresident, the court shall delay the order of appointment until thirty days have elapsed since death unless the personal representative appointed at the decedent's domicile is the applicant, or unless the decedent's will directs that his estate be subject to the laws of this State. (b) The status of a personal representative and the powers and duties pertaining to the office are fully established by informal appointment. An appointment, and the office of personal representative created thereby, is subject to termination as provided in Sections 62-3-608 through 62-3-612, but is not subject to retroactive vacation. REPORTER'S COMMENTS This section and those that follow establish the mechanism for informal appointment of a personal representative. The thirty day waiting period in the case of a nonresident decedent is designed to permit the first appointment to be at the decedent's domicile and presumably, to allow the domiciliary personal representative to then seek appointment in this State. **SECTION 62-3-308.** Informal appointment proceedings; proof and findings required. (a) In informal appointment proceedings, the court must determine whether: (1) the application for informal appointment of a personal representative is complete; (2) the applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief; (3) the applicant appears from the application to be an interested person as defined in Section 62-1-201(20); (4) on the basis of the statements in the application, venue is proper; (5) any will to which the requested appointment relates has been formally or informally probated; but this requirement does not apply to the appointment of a special administrator;	who would have been the decedent's heirs had he died intestate. **SECTION 62-3-307.** (a) Upon receipt of an application for informal appointment of a personal representative other than a special administrator as provided in Section 62-3-614, the court, after making the findings required by Section 62-3-308, shall appoint the applicant subject to qualification and acceptance; provided, that if the decedent was a nonresident, the court shall delay the order of appointment until thirty days have elapsed since death unless the personal representative appointed at the decedent's domicile is the applicant, or unless the decedent's will directs that his estate be subject to the laws of this State. (b) The status of a personal representative and the powers and duties pertaining to the office are fully established by informal appointment. An appointment, and the office of personal representative created thereby, is subject to termination as provided in Sections 62-3-608 through 62-3-612, but is not subject to retroactive vacation. REPORTER'S COMMENTS This section and those that follow establish the mechanism for informal appointment of a personal representative. The thirty day waiting period in the case of a nonresident decedent is designed to permit the first appointment to be at the decedent's domicile and presumably, to allow the domiciliary personal representative to then seek appointment in this State. **SECTION 62-3-308.** (a) In informal appointment proceedings, the court must determine whether: (1) the application for informal appointment of a personal representative is complete; (2) the applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief; (3) the applicant appears from the application to be an interested person as defined in Section 62-1-201(20); (4) on the basis of the statements in the application, venue is proper; (5) any will to which the requested appointment relates has been formally or informally probated; but this requirement does not apply to the appointment of a special administrator;

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(6) any notice required by Section 62-3-204 has been given; (7) from the statements in the application, the person whose appointment is sought has priority entitling him to the appointment. (b) Unless Section 62-3-612 controls, the application must be denied if it indicates that a personal representative who has not filed a written statement of resignation as provided in Section 62-3-610(c) has been appointed in this or another county of this State, that (unless the applicant is the domiciliary personal representative or his nominee) the decedent was not domiciled in this State and that a personal representative whose appointment has not been terminated has been appointed by a court in the state of domicile, or that other requirements of this section have not been met. REPORTER'S COMMENTS Subsection (a) sets out those findings required of the court in an order of informal appointment of a personal representative. Of particular importance is the finding that any will to which the requested appointment relates has been formally or informally probated. As noted in the comment to Section 62-3-301, this Code allows the court to probate a will without appointing a personal representative. However, the effect of subsection (a) is that while the court may probate a will without appointing the personal representative designated in that will, it cannot informally appoint the personal representative without a prior formal or informal probate of the will to which the personal representative's appointment relates. The court must enter a finding that the person appears to have priority entitling him to appointment. Section 62-3-203 establishes priority among persons seeking appointment as personal representative. Subsection (b) sets out certain circumstances in which the application must be denied. The first such circumstance is where another personal representative has been appointed in this or another county of this State, except under the special situation of Section 62-3-612. The second such circumstance is in the case of a nondomiciliary decedent. Here, the section is designed to prevent informal appointment of a personal representative in this State when a personal representative has been previously appointed at the decedent's domicile. Sections 62-4-201, 62-4-204, and 62-4-205 may make local appointment unnecessary. **SECTION 62-3-309.** Informal appointment proceedings; court not satisfied. If the court is not satisfied that a requested informal appointment of a personal representative should be made because of failure to meet the requirements of Sections 62-3-307 and 62-3-308	(6) any notice required by Section 62-3-204 has been given; (7) from the statements in the application, the person whose appointment is sought has priority entitling him to the appointment. (b) Unless Section 62-3-612 controls, the application must be denied if it indicates that a personal representative who has not filed a written statement of resignation as provided in Section 62-3-610(c) has been appointed in this or another county of this State, that (unless the applicant is the domiciliary personal representative or his nominee) the decedent was not domiciled in this State and that a personal representative whose appointment has not been terminated has been appointed by a court in the state of domicile, or that other requirements of this section have not been met. REPORTER'S COMMENTS Subsection (a) sets out those findings required of the court in an order of informal appointment of a personal representative. Of particular importance is the finding that any will to which the requested appointment relates has been formally or informally probated. As noted in the comment to Section 62-3-301, this Code allows the court to probate a will without appointing a personal representative. However, the effect of subsection (a) is that while the court may probate a will without appointing the personal representative designated in that will, it cannot informally appoint the personal representative without a prior formal or informal probate of the will to which the personal representative's appointment relates. The court must enter a finding that the person appears to have priority entitling him to appointment. Section 62-3-203 establishes priority among persons seeking appointment as personal representative. Subsection (b) sets out certain circumstances in which the application must be denied. The first such circumstance is where another personal representative has been appointed in this or another county of this State, except under the special situation of Section 62-3-612. The second such circumstance is in the case of a nondomiciliary decedent. Here, the section is designed to prevent informal appointment of a personal representative in this State when a personal representative has been previously appointed at the decedent's domicile. Sections 62-4-201, 62-4-204, and 62-4-205 may make local appointment unnecessary. **SECTION 62-3-309.** If the court is not satisfied that a requested informal appointment of a personal representative should be made because of failure to meet the requirements of Sections 62-3-307 and 62-3-308

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or, for any other reason, he may decline the application. A declination of informal appointment is not an adjudication and does not preclude appointment in formal proceedings.	or, for any other reason, he may decline the application. A declination of informal appointment is not an adjudication and does not preclude appointment in formal proceedings.
REPORTER'S COMMENTS Because the appointment of a personal representative confers broad powers over the assets of the decedent's estate, the authority granted the court to deny the appointment for unclassified reasons is an important safeguard.	REPORTER'S COMMENTS Because the appointment of a personal representative confers broad powers over the assets of the decedent's estate, the authority granted the court to deny the appointment for unclassified reasons is an important safeguard.
SECTION 62-3-310. Informal appointment proceedings; notice requirements.	**SECTION 62-3-310.**
The moving party must give notice as described by Section 62-1-401 of his intention to seek an appointment informally: (1) to any person demanding it pursuant to Section 62-3-204; and (2) to any person having a prior or equal right to appointment not waived in writing and filed with the court. No other notice of an informal appointment proceeding is required.	~~The moving party must give notice as described by Section 62-1-401 of his intention to seek an appointment informally: (1) to any person demanding it pursuant to Section 62-3-204; and (2) to any person having a prior or equal right to appointment not waived in writing and filed with the court. No other notice of an informal appointment proceeding is required.~~ The applicant must give notice of his intention to seek an appointment informally to any person having equal right to appointment not waived in writing and filed with the court. The notice shall state that, if no objection or nomination of another or no competing application or petition for appointment is filed with the court within forty-five days from mailing of the application and notice, the applicant may be appointed informally as the personal representative. If an objection, nomination, application, or petition is filed within the forty-five day period, the court shall decline the initial application pursuant to Section 62-3-309. The court can require the formal proceedings to appoint someone of equal or lesser priority.
REPORTER'S COMMENTS This section requires that the party seeking informal appointment must give notice to Section 62-3-204 demandants and to any person having a prior or equal right to appointment, presumably in the order established by Section 62-3-203.	REPORTER'S COMMENTS This section requires that the party seeking informal appointment must give notice to any person having equal right to appointment. It provides a forty-five day period in which a person with equal right of appointment may respond.
SECTION 62-3-311. Informal appointment unavailable in certain cases.	**SECTION 62-3-311.**
If an application for informal appointment indicates the existence of a possible unrevoked testamentary instrument which may relate to property subject to the laws of this State, and which is not filed for probate in this court, the court shall decline the application.	If an application for informal appointment indicates the existence of a possible unrevoked testamentary instrument which may relate to property subject to the laws of this State, and which is not filed for probate in this court, the court shall decline the application.
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This section is the counterpart of Section 62-3-304. Section 62-3-301(a)(4) requires that an applicant for informal appointment make certain representations concerning the existence of any unrevoked testamentary instrument. If any such instrument is not being offered for probate by the applicant, nor has been otherwise offered for probate, the court must decline the application for informal appointment. This section is a necessary safeguard against the abuse of the informal process.	This section is the counterpart of Section 62-3-304. Section 62-3-301(a)(4) requires that an applicant for informal appointment make certain representations concerning the existence of any unrevoked testamentary instrument. If any such instrument is not being offered for probate by the applicant, nor has been otherwise offered for probate, the court must decline the application for informal appointment. This section is a necessary safeguard against the abuse of the informal process. Article 3.Part 4.
Article 3.Part 4. Formal Testacy Proceedings	Article 3.Part 4.
SECTION 62-3-401. Formal testacy proceedings; nature; when commenced. A formal testacy proceeding is litigation to determine whether a decedent left a valid will. A formal testacy proceeding must be commenced by an interested person filing and serving a summons and a petition as described in Section 62-3-402(a) in which he requests that the court, after notice and hearing, enter an order probating a will, or a petition to set aside an informal probate of a will or to prevent informal probate of a will which is the subject of a pending application, or a petition in accordance with Section 62-3-402(b) for an order that the decedent died intestate. A petition may seek formal probate of a will without regard to whether the same or a conflicting will has been informally probated. A formal testacy proceeding may, but need not, involve a request for appointment of a personal representative. During the pendency of a formal testacy proceeding, the court shall not act upon any application for informal probate of any will of the decedent or any application for informal appointment of a personal representative of the decedent. Unless a petition in a formal testacy proceeding also requests confirmation of the previous informal appointment, a previously appointed personal representative, after receipt of notice of the commencement of a formal probate proceeding, must refrain from exercising his power to make any further distribution of the estate during the pendency of the formal proceeding. A petitioner who seeks the appointment of a different personal representative in a formal proceeding also may request an order restraining the acting personal representative from exercising any of the powers of his office and requesting the appointment of a special administrator. In the absence of a request, or if the request is denied, the commencement of a formal proceeding has no effect on the powers and duties of a previously appointed personal representative other than those relating to distribution.	**SECTION 62-3-401.** A formal testacy proceeding is litigation to determine whether a decedent left a valid will. A formal testacy proceeding must be commenced by an interested person filing and serving a summons and a petition as described in Section 62-3-402(a) in which he requests that the court, after notice and hearing, enter an order probating a will, or a petition to set aside an informal probate of a will or to prevent informal probate of a will which is the subject of a pending application, or a petition in accordance with Section 62-3-402(b) for an order that the decedent died intestate. A petition may seek formal probate of a will without regard to whether the same or a conflicting will has been informally probated. A formal testacy proceeding may, but need not, involve a request for appointment of a personal representative. During the pendency of a formal testacy proceeding, the court shall not act upon any application for informal probate of any will of the decedent or any application for informal appointment of a personal representative of the decedent. Unless a petition in a formal testacy proceeding also requests confirmation of the previous informal appointment, a previously appointed personal representative, after receipt of notice of the commencement of a formal probate proceeding, must refrain from exercising his power to make any further distribution of the estate during the pendency of the formal proceeding. A petitioner who seeks the appointment of a different personal representative in a formal proceeding also may request an order restraining the acting personal representative from exercising any of the powers of his office and requesting the appointment of a special administrator. In the absence of a request, or if the request is denied, the commencement of a formal proceeding has no effect on the powers and duties of a previously appointed personal representative other than those relating to distribution.

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REPORTER'S COMMENTS This section establishes the formal testacy proceeding and prescribes the effect of a formal proceeding on an informal probate proceeding. The word "testacy" as used in this section encompasses any determination with respect to the testacy status of the decedent including that the decedent died without a will. See Section 62-1-201 (43). Although not specifically listed, the six uses for a formal testacy proceeding are: (1) an original proceeding to secure probate of a will; (2) a proceeding to corroborate a previous informal probate; (3) a proceeding to block a pending application for informal probate or to prevent informal application from occurring thereafter; (4) a proceeding to contradict a previous order of informal probate; (5) a proceeding to secure a declaratory judgment of intestacy or partial intestacy and a determination of heirs; (6) a proceeding to probate a will that has been lost, destroyed, or is otherwise unavailable. The pendency of an action under this section automatically suspends any informal probate proceeding. Unless the petitioner requests confirmation of a previous informal appointment, a formal testacy proceeding suspends the personal representative's power of distribution but has no effect on the representative's other powers. If the petitioner seeks the appointment of a different personal representative, the court may further restrain the representative's powers, specifying the court's power over representatives. See also Sections 62-3-607 and 62-3-611. It should be noted that a "distribution" does not include a payment of claims. See Section 62-1-121(10) for the definition of "distributee" and Section 62-3-807 regarding payment of claims. Under this section, any interested person may initiate a formal testacy proceeding. See Section 62-1-201 (20) for the definition of "interested person." A formal testacy proceeding need not follow an informal proceeding and can be commenced without regard to whether a personal representative has been appointed. The representative's power of distribution is automatically suspended upon the representative's receipt of notice of the proceeding. If there is a contest over who should serve, the court has the discretion to restrict further the representative's power.	REPORTER'S COMMENTS This section establishes the formal testacy proceeding and prescribes the effect of a formal proceeding on an informal probate proceeding. The word 'testacy' as used in this section encompasses any determination with respect to the testacy status of the decedent including that the decedent died without a will. See Section 62-1-201 (48). Although not specifically listed, the six uses for a formal testacy proceeding are: (1) an original proceeding to secure probate of a will; (2) a proceeding to corroborate a previous informal probate; (3) a proceeding to block a pending application for informal probate or to prevent informal application from occurring thereafter; (4) a proceeding to contradict a previous order of informal probate; (5) a proceeding to secure a declaratory judgment of intestacy or partial intestacy and a determination of heirs; (6) a proceeding to probate a will that has been lost, destroyed, or is otherwise unavailable. The pendency of an action under this section automatically suspends any informal probate proceeding. Unless the petitioner requests confirmation of a previous informal appointment, a formal testacy proceeding suspends the personal representative's power of distribution but has no effect on the representative's other powers. If the petitioner seeks the appointment of a different personal representative, the court may further restrain the representative's powers, specifying the court's power over representatives. See also Sections 62-3-607 and 62-3-611. It should be noted that a 'distribution' does not include a payment of claims. See Section 62-1-121(10) for the definition of 'distributee' and Section 62-3-807 regarding payment of claims. Under this section, any interested person may initiate a formal testacy proceeding. See Section 62-1-201 (23) for the definition of 'interested person.' A formal testacy proceeding need not follow an informal proceeding and can be commenced without regard to whether a personal representative has been appointed. The representative's power of distribution is automatically suspended upon the representative's receipt of notice of the proceeding. If there is a contest over who should serve, the court has the discretion to restrict further the representative's power. The 2010 amendment deleted 'may' and replaced it with 'must' and added 'and serving a summons' to clarify that a summons and petition are required to commence a formal proceeding, including a formal testacy proceeding. See 2010 amendments to certain definitions in S.C. Code §62-1-201 and also see §§14-23-280, 62-1-304, and Rules 1 and 81, SCRCP.
SECTION 62-3-402. Formal testacy or appointment proceedings; petition; contents. (a) Petitions for formal probate of a will, or for adjudication of intestacy with or without request	**SECTION 62-3-402.** (a) Petitions for formal probate of a will, or for adjudication of intestacy with or without

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for appointment of a personal representative, must be directed to the court, request a judicial order after notice and hearing, and contain further statements as indicated in this section. A petition for formal probate of a will: (1) requests an order as to the testacy of the decedent in relation to a particular instrument which may or may not have been informally probated and determining the heirs; (2) contains the statements required for informal applications as stated in the seven subitems under Section 62-3-301(a)(1), the statements required by subitems (ii) and (iii) of Section 62-3-301(a)(2); (3) states whether the original of the last will of the decedent is in the possession of the court or accompanies the petition. If the original will is neither in the possession of the court nor accompanies the petition and no authenticated copy of a will probated in another jurisdiction accompanies the petition, the petition also must state the contents of the will, and indicate that it is lost, destroyed, or otherwise unavailable. (b) A petition for adjudication of intestacy and appointment of an administrator in intestacy must request a judicial finding and order that the decedent left no will and determining the heirs, contain the statements required by (1) and (4) of Section 62-3-301(a) and indicate whether administration under Part 5 [Sections 62-3-501 et seq.] is sought. A petition may request an order determining intestacy and heirs without requesting the appointment of an administrator, in which case, the statements required by subitem (ii) of Section 62-3-301(a)(4) above may be omitted. REPORTER'S COMMENTS An interested person who petitions the court for a formal testacy proceeding must comply with the requirements of this section concerning the contents of the petition. Regardless of whether the formal testacy proceeding concerns a testate or intestate decedent, the petitioner must request an order determining the decedent's heirs. Requiring the determination of heirship precludes later questions that might arise at the time of distribution. If formal probate of a will is requested, the petition must provide the court with information concerning the location of the original will. If the original is "lost, destroyed, or otherwise unavailable, the petition must contain the terms of the missing will. The petition should indicate whether administration under Part 5 of this article is desired. Once a formal testacy proceeding has been initiated, notice must be given as specified in Section 62-3-403. If a formal order of appointment is sought because of a dispute over who should serve, Section 62-3-414 describes the appropriate procedure.	request for appointment of a personal representative, must be directed to the court, request a judicial order after notice and hearing, and contain further statements as indicated in this section. A petition for formal probate of a will: (1) requests an order as to the testacy of the decedent in relation to a particular instrument which may or may not have been informally probated and determining the heirs; (2) contains the statements required for informal applications as stated in the ~~seven~~ six subitems under Section 62-3-301(a)(1), and the statements required by subitems (ii) and (iii) of Section 62-3-301(a)(2); (3) states whether the original of the last will of the decedent is in the possession of the court or accompanies the petition. If the original will is neither in the possession of the court nor accompanies the petition and no authenticated copy of a will probated in another jurisdiction accompanies the petition, the petition also must state the contents of the will, and indicate that it is lost, destroyed, or otherwise unavailable. (b) A petition for adjudication of intestacy and appointment of an administrator in intestacy must request a judicial finding and order that the decedent left no will and determining the heirs, contain the statements required by (1) and (4) of Section 62-3-301(a) and indicate whether administration under Part 5 [Sections 62-3-501 et seq.] is sought. A petition may request an order determining intestacy and heirs without requesting the appointment of an administrator, in which case, the statements required by subitem (ii) of Section 62-3-301(a)(4) above may be omitted. REPORTER'S COMMENTS An interested person who petitions the court for a formal testacy proceeding must comply with the requirements of this section concerning the contents of the petition. Regardless of whether the formal testacy proceeding concerns a testate or intestate decedent, the petitioner must request an order determining the decedent's heirs. Requiring the determination of heirship precludes later questions that might arise at the time of distribution. If formal probate of a will is requested, the petition must provide the court with information concerning the location of the original will. If the original is 'lost, destroyed, or otherwise unavailable, the petition must contain the terms of the missing will. The petition should indicate whether administration under Part 5 of this article is desired. Once a formal testacy proceeding has been initiated, notice must be given as specified in Section 62-3-403. If a formal order of appointment is sought because of a dispute over who should serve, Section 62-3-414 describes the appropriate procedure.

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SECTION 62-3-403. Formal testacy proceeding; notice of hearing on petition. (a) Upon commencement of a formal testacy proceeding or at any time after that, the court shall fix a time and place of hearing. Notice must be given in the manner prescribed by Section 62-1-401 by the petitioner to the persons herein enumerated and to any additional person who has filed a demand for notice under Section 62-3-204. The following persons must be properly served with summons and petition: the surviving spouse, children, and other heirs of the decedent (regardless of whether the decedent died intestate and determined as if the decedent died intestate), the devisees, and personal representatives named in any will that is being, or has been, probated, or offered for informal or formal probate in the county, or that is known by the petitioner to have been probated, or offered for informal or formal probate elsewhere, and any personal representative of the decedent whose appointment has not been terminated. (b) If it appears by the petition or otherwise that the fact of the death of the alleged decedent may be in doubt, or on the written demand of any interested person, a copy of the summons, petition, and notice of the hearing on the petition shall be sent by registered mail to the alleged decedent at his last known address. The court shall direct the petitioner to report the results of, or make and report back concerning, a reasonably diligent search for the alleged decedent in any manner that may seem advisable, including any or all of the following methods: (1) by inserting in one or more suitable periodicals a notice requesting information from any person having knowledge of the whereabouts of the alleged decedent; (2) by notifying law enforcement officials and public welfare agencies in appropriate locations of the disappearance of the alleged decedent; (3) by engaging the services of an investigator. The costs of any search so directed shall be paid by the petitioner if there is no administration or by the estate of the decedent in case there is administration. REPORTER'S COMMENTS Section 62-3-403(a) specifies those persons to whom notice of a formal testacy proceeding must be given. If another will has been or is being offered for probate within the county, those persons named in that will must be notified. The petitioner is not required to determine whether another will has been probated or offered for probate in other counties, but if the petitioner has actual knowledge of such a will, the devisees and executors named therein must be notified If the notice which is given does not fully comply with the requirements of this section, that	**SECTION 62-3-403.** (a) Upon commencement of a formal testacy proceeding or at any time after that, the court shall fix a time and place of hearing. Notice must be given in the manner prescribed by Section 62-1-401 by the petitioner to the persons herein enumerated and to any additional person who has filed a demand for notice under Section 62-3-204. The following persons must be properly served with summons and petition: the surviving spouse, children, and other heirs of the decedent (regardless of whether the decedent died intestate and determined as if the decedent died intestate), the devisees, and personal representatives named in any will that is being, or has been, probated, or offered for informal or formal probate in the county, or that is known by the petitioner to have been probated, or offered for informal or formal probate elsewhere, and any personal representative of the decedent whose appointment has not been terminated. (b) If it appears by the petition or otherwise that the fact of the death of the alleged decedent may be in doubt, or on the written demand of any interested person, a copy of the summons, petition, and notice of the hearing on the petition shall be sent by registered mail to the alleged decedent at his last known address. The court shall direct the petitioner to report the results of, or make and report back concerning, a reasonably diligent search for the alleged decedent in any manner that may seem advisable, including any or all of the following methods: (1) by inserting in one or more suitable periodicals a notice requesting information from any person having knowledge of the whereabouts of the alleged decedent; (2) by notifying law enforcement officials and public welfare agencies in appropriate locations of the disappearance of the alleged decedent; (3) by engaging the services of an investigator. The costs of any search so directed shall be paid by the petitioner if there is no administration or by the estate of the decedent in case there is administration. REPORTER'S COMMENTS Section 62-3-403(a) specifies those persons to whom notice of a formal testacy proceeding must be given. If another will has been or is being offered for probate within the county, those persons named in that will must be notified. The petitioner is not required to determine whether another will has been probated or offered for probate in other counties, but if the petitioner has actual knowledge of such a will, the devisees and executors named therein must be notified. If the notice which is given does not fully comply with the requirements of this section, that

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defect is not necessarily fatal to the validity of an order. Section 62-3-106 provides that an order is valid as to those given notice though less than all interested persons were given notice. Section 62-3-1001(b) allows the court to confirm or amend as it affects those persons who were not notified of the formal testacy proceeding. Section 62-3-403(b) sets out the additional steps which must be taken if the fact of the decedent's death is in doubt. In addition to giving notice to the alleged decedent, the petitioner must make a "reasonably diligent search" for that individual. The court is to determine whether the search has been sufficiently diligent in light of the circumstances. In the event the alleged decedent is in fact alive or if the court is not convinced of the death of the alleged decedent, the petitioner is responsible for the costs of the search. In the event the court finds the alleged decedent is dead, the estate of that decedent will bear the cost of the search.	defect is not necessarily fatal to the validity of an order. Section 62-3-106 provides that an order is valid as to those given notice though less than all interested persons were given notice. Section 62-3-1001(b) allows the court to confirm or amend as it affects those persons who were not notified of the formal testacy proceeding. Section 62-3-403(b) sets out the additional steps which must be taken if the fact of the decedent's death is in doubt. In addition to giving notice to the alleged decedent, the petitioner must make a 'reasonably diligent search' for that individual. The court is to determine whether the search has been sufficiently diligent in light of the circumstances. In the event the alleged decedent is in fact alive or if the court is not convinced of the death of the alleged decedent, the petitioner is responsible for the costs of the search. In the event the court finds the alleged decedent is dead, the estate of that decedent will bear the cost of the search. The 2010 amendment revised subsection (a) to add 'or at any time after that,' to delete Notice at the beginning of the third sentence and replacing it with 'The following persons' and also including the requirement for a summons and petition. The 2010 amendment also revised subsection (b) to clarify that a summons and petition are required to commence a formal proceeding, including a formal testacy proceeding. See 2010 amendments to certain definitions in S.C. Code §62-1-201 and also see §§14-23-280, 62-1-304, and Rules 1 and 81, SCRCP.
SECTION 62-3-404. Formal testacy proceedings; written objections to probate.	**SECTION 62-3-404.**
Any party to a formal proceeding who opposes the probate of a will for any reason shall state in his pleadings his objections to probate of the will.	Any party to a formal proceeding who opposes the probate of a will for any reason shall state in his pleadings his objections to probate of the will.
REPORTER'S COMMENTS In order to object to the formal probate of a will, the objections must be stated in a pleading. The filing of such a response makes the proceeding a contested matter, and a hearing must be held in accordance with Section 62-3-406.	REPORTER'S COMMENTS In order to object to the formal probate of a will, the objections must be stated in a pleading. The filing of such a response makes the proceeding a contested matter, and a hearing must be held in accordance with Section 62-3-406.
SECTION 62-3-405. Formal testacy proceedings; uncontested cases; hearings and proof.	**SECTION 62-3-405.**
If a petition in a testacy proceeding is unopposed, the court may order probate or intestacy on the strength of the pleadings if satisfied that the conditions of Section 62-3-409 have been met or conduct a hearing in open court and require proof of the matters necessary to support the order sought. If evidence concerning execution of the will is necessary, the affidavit (including an affidavit of self-proof executed in compliance with Section 62-2-503) or testimony of one of any	If a petition in a testacy proceeding is unopposed, the court may order probate or intestacy on the strength of the pleadings if satisfied that the conditions of Section 62-3-409 have been met or conduct a hearing in open court and require proof of the matters necessary to support the order sought. If evidence concerning execution of the will is necessary, the affidavit (including an affidavit of self-proof executed in compliance with Section 62-2-503) or testimony of one of any

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attesting witnesses to the instrument is sufficient. If the affidavit or testimony of an attesting witness is not available, execution of the will may be proved by other evidence or affidavit.	attesting witnesses to the instrument is sufficient. If the affidavit or testimony of an attesting witness is not available, execution of the will may be proved by other evidence or affidavit.
REPORTER'S COMMENTS If proper notice has been given and no objection has been stated in a pleading, the proceeding is an uncontested one. The court may enter relief on the pleadings alone and without a hearing if the court finds that the alleged decedent is dead, venue is proper, and the proceeding is a timely one. Even in the absence of an objection, the court may require a hearing and evidence concerning the execution of the will. In the latter case, the section provides that the affidavit or testimony of one or more witnesses is sufficient proof of such execution. Section 14-23-330 establishes a mechanism for the judge to receive the deposition of an attesting witness who lives at a distance from the court. Under Section 62-3-405, the court is given more flexibility in considering evidence of proof of execution of the will in an uncontested proceeding.	REPORTER'S COMMENTS If proper notice has been given and no objection has been stated in a pleading, the proceeding is an uncontested one. The court may enter relief on the pleadings alone and without a hearing if the court finds that the alleged decedent is dead, venue is proper, and the proceeding is a timely one. Even in the absence of an objection, the court may require a hearing and evidence concerning the execution of the will. In the latter case, the section provides that the affidavit or testimony of one or more witnesses is sufficient proof of such execution. Section 14-23-330 establishes a mechanism for the judge to receive the deposition of an attesting witness who lives at a distance from the court. Under Section 62-3-405, the court is given more flexibility in considering evidence of proof of execution of the will in an uncontested proceeding.
SECTION 62-3-406. Formal testacy proceedings; contested cases; testimony of attesting witnesses.	**SECTION 62-3-406.**
(a) If evidence concerning execution of an attested will which is not self-proved is necessary in contested cases, the testimony of at least one of the attesting witnesses is required. Such testimony is not required if: (1) no attesting witness is within the State; (2) no attesting witness is competent to testify; (3) no attesting witness can be found; or (4) all attesting witnesses are otherwise unable to testify. Due execution of an attested will may be proved by other evidence. (b) If the will is self-proved, compliance with signature requirements for execution and other requirements of execution are presumed subject to rebuttal, without the testimony of any witness upon filing the will and the acknowledgment and affidavits annexed or attached thereto, unless there is proof of fraud or forgery affecting the acknowledgment or affidavit.	~~(a) If evidence concerning execution of an attested will which is not self-proved is necessary in contested cases, the testimony of at least one of the attesting witnesses is required. Such testimony is not required if: (1) no attesting witness is within the State; (2) no attesting witness is competent to testify; (3) no attesting witness can be found; or (4) all attesting witnesses are otherwise unable to testify. Due execution of an attested will may be proved by other evidence.~~ ~~(b) If the will is self-proved, compliance with signature requirements for execution and other requirements of execution are presumed subject to rebuttal, without the testimony of any witness upon filing the will and the acknowledgment and affidavits annexed or attached thereto, unless there is proof of fraud or forgery affecting the acknowledgment or affidavit.~~ In a contested case in which the proper execution of a will is at issue: (1) if the will is self-proved pursuant to Section 62-2-503, the will satisfies the requirements for execution, subject to rebuttal, without the testimony of any attesting witness, upon filing the will and the acknowledgment and affidavits annexed or attached to it; (2) if the will is notarized pursuant to Section 62-2-503(c), but not self-proved, there is a rebuttable presumption that the will satisfies the requirements for execution upon filing the will; (3) if the will is witnessed pursuant to Section 62-2-502, but not notarized or self-proved, the testimony of at least one of the attesting witnesses is required to establish proper execution if the

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	witness is within this state, competent, and able to testify. Proper execution may be established by other evidence, including an affidavit of an attesting witness. An attestation clause that is signed by the attesting witnesses raises a rebuttable presumption that the events recited in the clause occurred.
REPORTER'S COMMENTS In the event an objection to a formal testacy proceeding has been received, the evidence necessary to prove the will depends upon whether the will is self-proved. If the will is not self-proved, testimony of at least one attesting witness is required; an affidavit is not sufficient if one of the witnesses is within the State, competent and able to testify. For this reason the deposition procedure of Section 14-23-330 was retained. Compliance with the self-proving procedure of Section 62-2-503 gives rise to a conclusive presumption that the will was properly executed, and the testimony of attesting witnesses is not required. The presumption does not extend to other grounds of attack, such as undue influence, lack of testamentary intent or capacity, fraud, duress, mistake, or revocation.	REPORTER'S COMMENTS In the event an objection to a formal testacy proceeding has been received, the evidence necessary to prove the will depends upon whether the will is self-proved or notorized. If the will is not self-proved or notorized, testimony of at least one attesting witness is required. Compliance with the self-proving procedure of Section 62-2-503 gives rise to a rebuttable presumption that the will was properly executed, and the testimony of attesting witnesses is not required. The presumption does not extend to other grounds of attack, such as undue influence, lack of testamentary intent or capacity, fraud, duress, mistake, or revocation.
SECTION 62-3-407. Formal testacy proceedings; burdens in contested cases.	**SECTION 62-3-407.**
In contested cases, petitioners who seek to establish intestacy have the burden of establishing prima facie proof of death, venue, and heirship. Proponents of a will have the burden of establishing prima facie proof of due execution in all cases and, if they are also petitioners, prima facie proof of death and venue. Contestants of a will have the burden of establishing undue influence, fraud, duress, mistake, revocation, or lack of testamentary intent or capacity. Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof. If a will is opposed by the petition for probate of a later will revoking the former, it must be determined first whether the later will is entitled to probate, and if a will is opposed by a petition for a declaration of intestacy, it must be determined first whether the will is entitled to probate.	In contested cases, petitioners who seek to establish intestacy have the burden of establishing prima facie proof of death, venue, and heirship. Proponents of a will have the burden of establishing prima facie proof of due execution in all cases and, if they are also petitioners, prima facie proof of death and venue. Contestants of a will have the burden of establishing undue influence, fraud, duress, mistake, revocation, or lack of testamentary intent or capacity. Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof. If a will is opposed by the petition for probate of a later will revoking the former, it must be determined first whether the later will is entitled to probate, and if a will is opposed by a petition for a declaration of intestacy, it must be determined first whether the will is entitled to probate.
REPORTER'S COMMENTS In all contested formal testacy proceedings, the petitioner bears the burden of proving death and venue. If the petitioner is attempting to establish that the decedent died intestate, he must also prove heirship. Any person asserting that a will is valid bears the burden of proving due execution. This section also specifies the order of proof when two wills are offered and the later will	REPORTER'S COMMENTS In all contested formal testacy proceedings, the petitioner bears the burden of proving death and venue. If the petitioner is attempting to establish that the decedent died intestate, he must also prove heirship. Any person asserting that a will is valid bears the burden of proving due execution. This section also specifies the order of proof when two wills are offered and the later will

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purports to revoke the earlier. Proof of the later will is considered first, and an earlier will cannot be probated unless the later will is found to be invalid. **SECTION 62-3-408.** Formal testacy proceedings; effect of final order in another jurisdiction. A final order of a court of another state determining testacy, or the validity of a will made in a proceeding involving notice to and an opportunity for contest by all interested persons, must be accepted as determinative by the courts of this State if it includes, or is based upon, a finding that the decedent was domiciled at his death in the state where the order was made. REPORTER'S COMMENTS This section makes it incumbent upon the local court to give full faith and credit to final orders of courts in another jurisdiction in the United States determining testacy or the validity of a will regardless of whether the parties before the local court were personally before the foreign court. However, the foreign proceeding must have provided the requisite notice and opportunity for contest for the resulting order to be binding locally. This section does not apply unless the foreign proceeding has been previously concluded. If a local proceeding is concluded before completion of the foreign formal proceedings, local law will control. If there is a contest concerning the decedent's domicile in formal proceedings commenced in different jurisdictions, Section 62-3-202 applies. Local courts are bound by the foreign court's determination of the validity of the will so long as this determination is part of a final order; local courts are not bound by the foreign court's construction of the will. **SECTION 62-3-409.** Formal testacy proceedings; order; foreign will. Upon proof of service of the summons and petition, and after any hearing and notice that may be necessary, if the court finds that the testator is dead, venue is proper, and that the proceeding was commenced within the limitation prescribed by Section 62-3-108, it shall determine the decedent's domicile at death, his heirs (regardless of whether the decedent died intestate and determined as if the decedent died intestate), and his state of testacy. Any will found to be valid and unrevoked must be formally probated. Termination of any previous informal appointment of a personal representative, which may be appropriate in view of the relief requested and	purports to revoke the earlier. Proof of the later will is considered first, and an earlier will cannot be probated unless the later will is found to be invalid. **SECTION 62-3-408.** A final order of a court of another state determining testacy, or the validity <u>or construction</u> of a will made in a proceeding involving notice to and an opportunity for contest by all interested persons, must be accepted as determinative by the courts of this State if it includes, or is based upon, a finding that the decedent was domiciled at his death in the state where the order was made. REPORTER'S COMMENTS This section makes it incumbent upon the local court to give full faith and credit to final orders of courts in another jurisdiction in the United States determining testacy or the validity or construction of a will regardless of whether the parties before the local court were personally before the foreign court. However, the foreign proceeding must have provided the requisite notice and opportunity for contest or construction for the resulting order to be binding locally. This section does not apply unless the foreign proceeding has been previously concluded. If a local proceeding is concluded before completion of the foreign formal proceedings, local law will control. If there is a contest concerning the decedent's domicile in formal proceedings commenced in different jurisdictions, Section 62-3-202 applies. Local courts are bound by the foreign court's determination of the validity or construction of the will so long as this determination is part of a final order. **SECTION 62-3-409.** Upon proof of service of the summons and petition, and after any hearing and notice that may be necessary, if the court finds that the testator is dead, venue is proper, and that the proceeding was commenced within the limitation prescribed by Section 62-3-108, it shall determine the decedent's domicile at death, his heirs (regardless of whether the decedent died intestate and determined as if the decedent died intestate), and his state of testacy. Any will found to be valid and unrevoked must be formally probated. Termination of any previous informal appointment of a personal representative, which may be appropriate in view of the relief requested and

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findings, is governed by Section 62-3-612. The petition must be dismissed or appropriate amendment allowed if the court is not satisfied that the alleged decedent is dead. A will from a place which does not provide for probate of a will after death may be proved for probate in this State by a duly authenticated certificate of its legal custodian that the copy introduced is a true copy and that the will has become effective under the law of the other place.	findings, is governed by Section 62-3-612. The petition must be dismissed or appropriate amendment allowed if the court is not satisfied that the alleged decedent is dead. A will from a place which does not provide for probate of a will after death may be proved for probate in this State by a duly authenticated certificate of its legal custodian that the copy introduced is a true copy and that the will ~~has become effective~~ is not ineligible for probate under the law of the other place.
REPORTER'S COMMENTS This section governs the scope and content of the formal testacy order. Every order must contain the court's findings regarding whether the alleged decedent is dead, the decedent's domicile at death, whether venue is proper, and whether the proceeding is a timely one. Regardless of whether the decedent is alleged to have died intestate, the order must contain a determination of heirs. If the court is not convinced of the alleged decedent's death, the court may dismiss the proceeding or it may permit amendment of the proceeding so as to make it a proceeding to protect the estate of a missing and therefore "disabled" person under Article 5. Provision is made for proof of a will from a foreign jurisdiction which does not provide for probate of wills.	REPORTER'S COMMENTS This section governs the scope and content of the formal testacy order. Every order must contain the court's findings regarding whether the alleged decedent is dead, the decedent's domicile at death, whether venue is proper, and whether the proceeding is a timely one. Regardless of whether the decedent is alleged to have died intestate, the order must contain a determination of heirs and testacy. If the court is not convinced of the alleged decedent's death, the court may dismiss the proceeding or it may permit amendment of the proceeding so as to make it a proceeding to protect the estate of a missing and therefore 'disabled' person under Article 5. Provision is made for proof of a will from a foreign jurisdiction which does not provide for probate of wills. The 2010 amendment revised this section to delete 'After the time required for any notice has expired, upon' at the beginning and replace it with 'Upon' proof of 'service of the summons and petition' and also included the notice requirement for any hearing. The foregoing amendment was intended to clarify that a summons and petition are required to commence a formal proceeding, including a formal testacy proceeding. See 2010 amendments to certain definitions in S.C. Code §62-1-201 and also see §§14-23-280, 62-1-304, and Rules 1 and 81, SCRCP.
SECTION 62-3-410. Formal testacy proceedings; probate of more than one instrument. If two or more instruments are offered for probate before a final order is entered in a formal testacy proceeding, more than one instrument may be probated if neither expressly revokes the other or contains provisions which work a total revocation by implication. If more than one instrument is probated, the order shall indicate what provisions control in respect to the nomination of an executor, if any. The order may, but need not, indicate how any provisions of a particular instrument are affected by the other instrument. After a final order in a testacy proceeding has been entered, no petition for probate of any other instrument of the decedent may be entertained, except incident to a petition to vacate or modify a previous probate order and	**SECTION 62-3-410.** (A) If two or more instruments are offered for probate before a final order is entered in a formal testacy proceeding, more than one instrument may be probated if neither expressly revokes the other or contains provisions which work a total revocation by implication. If more than one instrument is probated, the order shall indicate what provisions control in respect to the nomination of an executor, if any. The order may, but need not, indicate how any provisions of a particular instrument are affected by the other instrument. (B) After a final order in a testacy proceeding has been entered, no petition for probate of any other instrument of the decedent may be entertained, except incident to a petition to vacate

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subject to the time limits of Section 62-3-412. REPORTER'S COMMENTS An order in a formal testacy proceeding ends the time within which it is possible to probate after-discovered wills, though subject to the provisions for vacation of that order under Sections 62-3-412 and 62-3-413. While a determination of heirs is not barred by the ten year limitation under Section 62-3-108, a judicial determination of heirs in a final order is conclusive unless the order is vacated or modified. Under this section the court may admit more than one will to probate if the court in the exercise of its sound discretion determines that the instruments can be construed together. **SECTION 62-3-411.** Formal testacy proceedings; partial intestacy. If it becomes evident in the course of a formal testacy proceeding that, though one or more instruments are entitled to be probated, the decedent's estate is or may be partially intestate, the court shall enter an order to that effect. **SECTION 62-3-412.** Formal testacy proceedings; effect of order; vacation. Subject to appeal and subject to vacation as provided herein and in Section 62-3-413, a formal testacy order under Sections 62-3-409 through 62-3-411, including an order that the decedent left no valid will and determining heirs, is final as to all persons with respect to all issues concerning the decedent's estate that the court considered or might have considered incident to its rendition relevant to the question of whether the decedent left a valid will, and to the determination of heirs, except that: (1) The court shall entertain a petition for modification or vacation of its order and probate of another will of the decedent if it is shown that the proponents of the later-offered will were unaware of its existence at the time of the earlier proceeding or were unaware of the earlier proceeding and were given no notice thereof, except by publication. (2) If intestacy of all or part of the estate has been ordered, the determination of heirs of the decedent may be reconsidered if it is shown that one or more persons were omitted from the determination and it is also shown that the persons were unaware of their relationship to the decedent, were unaware of his death, or were given no notice of any proceeding concerning his estate, except by publication. (3) A petition for vacation under either (1) or (2) above must be filed prior to the earlier of the	or modify a previous probate order and subject to the time limits of Section 62-3-412. REPORTER'S COMMENTS An order in a formal testacy proceeding ends the time within which it is possible to probate after-discovered wills, though subject to the provisions for vacation or modification of that order under Sections 62-3-412 and 62-3-413. While a determination of heirs is not barred by the ten year limitation under Section 62-3-108, a judicial determination of heirs in a final order is conclusive unless the order is vacated or modified. Under this section the court may admit more than one will to probate if the court in the exercise of its sound discretion determines that the instruments can be construed together. **SECTION 62-3-411.** If it becomes evident in the course of a formal testacy proceeding that, though one or more instruments are entitled to be probated, the decedent's estate is or may be partially intestate, the court shall enter an order to that effect. **SECTION 62-3-412.** Subject to appeal and subject to vacation as provided herein and in Section 62-3-413, a formal testacy order under Sections 62-3-409 through 62-3-411, including an order that the decedent left no valid will and determining heirs, is final as to all persons with respect to all issues concerning the decedent's estate that the court considered or might have considered incident to its rendition relevant to the question of whether the decedent left a valid will, and to the determination of heirs, except that: (1) The court shall entertain a petition for modification or vacation of its order and probate of another will of the decedent if it is shown that the proponents of the later-offered will were unaware of its existence at the time of the earlier proceeding or were unaware of the earlier proceeding and were given no notice thereof, except by publication. (2) If intestacy of all or part of the estate has been ordered, the determination of heirs of the decedent may be reconsidered if it is shown that one or more persons were omitted from the determination and it is also shown that the persons were unaware of their relationship to the decedent, were unaware of his death, or were given no notice of any proceeding concerning his estate, except by publication. (3) A petition for vacation under either (1) or (2) above must be filed prior to the earlier of

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following time limits: (i) If a personal representative has been appointed for the estate, the time of entry of any order approving final distribution of the estate. (ii) Whether or not a personal representative has been appointed for the estate of the decedent, the time prescribed by Section 62-3-108 when it is no longer possible to initiate an original proceeding to probate a will of the decedent. (iii) Twelve months after the entry of the order sought to be vacated. (4) The order originally rendered in the testacy proceeding may be modified or vacated, if appropriate under the circumstances by the order of probate of the later-offered will or the order redetermining heirs. (5) The finding of the fact of death is conclusive as to the alleged decedent only if notice of the hearing on the petition in the formal testacy proceeding was sent by registered or certified mail addressed to the alleged decedent at his last known address and the court finds that a search under Section 62-3-403(b) was made. If the alleged decedent is not dead, even if notice was sent and search was made, he may recover estate assets in the hands of the personal representative. In addition to any remedies available to the alleged decedent by reason of any fraud or intentional wrongdoing, the alleged decedent may recover any estate or its proceeds from distributees that is in their hands, or the value of distributions received by them, to the extent that any recovery from distributees is equitable in view of all of the circumstances. REPORTER'S COMMENTS This section establishes the exceptions to the res judicata effect of a formal testacy order. If a decedent's will has been probated and a final order issued, the court may modify or vacate the order only if: (1) the proponents of a later-offered will had no knowledge of the existence of the will at the time of the proceeding; or (2) the proponents of the later will did not have actual knowledge of the earlier proceeding and were given no notice of it other than by publication. If the final order determined that all or a part of the estate was intestate, that order may be vacated or modified only if the petitioner can establish: (1) that one or more heirs were omitted and (2) that the omitted heir or heirs had no knowledge of their status as an heir, that they were unaware the decedent had died, or that they were given no notice of the proceeding other than by publication. Section 62-3-412(3) prescribes the time limits for filing a petition for vacation under this section. The petition must be filed prior to the earlier of the following: (1) in an estate where a personal representative has been appointed, the entry of an order approving final distribution as provided in Sections 62-3-1001 and 62-3-1002, or if the estate has been closed by statement	the following time limits: (i) If a personal representative has been appointed for the estate, the time of entry of any order approving final distribution of the estate. (ii) Whether or not a personal representative has been appointed for the estate of the decedent, the time prescribed by Section 62-3-108 when it is no longer possible to initiate an original proceeding to probate a will of the decedent. (iii) Twelve months after the entry of the order sought to be vacated. (4) The order originally rendered in the testacy proceeding may be modified or vacated, if appropriate under the circumstances by the order of probate of the later-offered will or the order redetermining heirs. (5) The finding of the fact of death is conclusive as to the alleged decedent only if notice of the hearing on the petition in the formal testacy proceeding was sent by registered or certified mail addressed to the alleged decedent at his last known address and the court finds that a search under Section 62-3-403(b) was made. If the alleged decedent is not dead, even if notice was sent and search was made, he may recover estate assets in the hands of the personal representative. In addition to any remedies available to the alleged decedent by reason of any fraud or intentional wrongdoing, the alleged decedent may recover any estate or its proceeds from distributees that is in their hands, or the value of distributions received by them, to the extent that any recovery from distributees is equitable in view of all of the circumstances. REPORTER'S COMMENTS This section establishes the exceptions to the res judicata effect of a formal testacy order. If a decedent's will has been probated and a final order issued, the court may modify or vacate the order only if: (1) the proponents of a later-offered will had no knowledge of the existence of the will at the time of the proceeding; or (2) the proponents of the later will did not have actual knowledge of the earlier proceeding and were given no notice of it other than by publication. If the final order determined that all or a part of the estate was intestate, that order may be vacated or modified only if the petitioner can establish: (1) that one or more heirs were omitted and (2) that the omitted heir or heirs had no knowledge of their status as an heir, that they were unaware the decedent had died, or that they were given no notice of the proceeding other than by publication. Section 62-3-412(3) prescribes the time limits for filing a petition for vacation under this section. The petition must be filed prior to the earlier of the following: (1) in an estate where a personal representative has been appointed, the entry of an order approving final distribution; (2) the ten-year ultimate time limit under Section 62-3-108; or (3) twelve months from the entry

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under Section 62-3-1003, six months after the filing of the statement; (2) twelve months from the entry of the formal testacy order; (3) the ten-year ultimate time limit under Section 62-3-108. The individual submitting a petition for vacation bears the burden of proving that modification or vacation of the order is "appropriate under the circumstances." This section also specifies the procedure to be followed when an alleged decedent is discovered to be alive subsequent to a final order finding the fact of death. In such a situation, the alleged decedent may recover assets retained by the personal representative. The heirs and distributees may be required to restore the "estate or its proceeds" if it is "equitable in view of all the circumstances." **SECTION 62-3-413.** Formal testacy proceedings; vacation of order for other cause. For good cause shown, an order in a formal testacy proceeding may be modified or vacated within the time allowed for appeal. REPORTER'S COMMENTS This section deals with the modification or vacation of an order during the pendency of an appeal or within the time allowed for appeal. Under Section 62-1-308, a party may appeal within fifteen days of receipt of notice of a final order. Broadly speaking, the power to vacate or modify an order under Section 62-3-412 provides the court with a means of dealing with facts not before the court during the proceeding. Section 62-3-413 gives the court the option of reconsidering its decision although it has no new evidence before it. **SECTION 62-3-414.** Formal proceedings concerning appointment of personal representative. (a) A formal proceeding for adjudication regarding the priority or qualification of one who is an applicant for appointment as a personal representative, or of one who previously has been appointed a personal representative in informal proceedings, if an issue concerning the testacy of the decedent is or may be involved, is governed by Section 62-3-402, as well as by this section. In other cases, the petition shall contain or adopt the statements required by Section 62-3-301(a)(1) and describe the question relating to priority or qualification of the personal representative which is to be resolved. If the proceeding precedes any appointment of a personal representative, it shall stay any pending informal appointment proceedings as well as any commenced thereafter. If the proceeding is commenced after appointment, the previously appointed personal representative, after receipt of notice thereof, shall refrain from exercising	of the formal testacy order. The individual submitting a petition for vacation bears the burden of proving that modification or vacation of the order is 'appropriate under the circumstances.' This section also specifies the procedure to be followed when an alleged decedent is discovered to be alive subsequent to a final order finding the fact of death. In such a situation, the alleged decedent may recover assets retained by the personal representative. The heirs and distributees may be required to restore the 'estate or its proceeds' if it is 'equitable in view of all the circumstances.' **SECTION 62-3-413.** For good cause shown, an order in a formal testacy proceeding may be modified or vacated within the time allowed for appeal. REPORTER'S COMMENTS This section deals with the modification or vacation of an order during the pendency of an appeal or within the time allowed for appeal. Broadly speaking, the power to vacate or modify an order under Section 62-3-412 provides the court with a means of dealing with facts not before the court during the proceeding. Section 62-3-413 gives the court the option of reconsidering its decision although it has no new evidence before it. **SECTION 62-3-414.** (a) A formal proceeding for adjudication regarding the priority or qualification of one who is an applicant for appointment as a personal representative, or of one who previously has been appointed a personal representative in informal proceedings, if an issue concerning the testacy of the decedent is or may be involved, is governed by Section 62-3-402, as well as by this section. In other cases, the petition shall contain or adopt the statements required by Section 62-3-301(a)(1) and describe the question relating to priority or qualification of the personal representative which is to be resolved. If the proceeding precedes any appointment of a personal representative, it shall stay any pending informal appointment proceedings as well as any commenced thereafter. If the proceeding is commenced after appointment, the previously appointed personal representative, after receipt of notice thereof, shall refrain from exercising

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any power of administration except as necessary to preserve the estate or unless the court orders otherwise. (b) After service of the summons and petition to interested persons, including all persons interested in the administration of the estate as successors under the applicable assumption concerning testacy, any previously appointed personal representative and any person having or claiming priority for appointment as a personal representative, the court shall determine who is entitled to appointment under Section 62-3-203, make a proper appointment, and, if appropriate, terminate any prior appointment found to have been improper as provided in cases of removal under Section 62-3-611. REPORTER'S COMMENTS If there is a question concerning the priority or qualifications of a personal representative, the issue may be combined with a request for the determination of testacy in a petition for a formal testacy proceeding. However, the formal appointment of a personal representative can be considered alone. If the proceeding under this section is combined with a formal testacy proceeding, the petition must not only comply with the requirements of a petition for formal testacy, but must also describe the issue regarding appointment. Once a proceeding has been initiated under this section alone, the court must receive a petition which complies with the requirements of Section 62-3-402 and describes the issue regarding appointment. Once initiated, a proceeding under this section effects a stay of any pending informal appointment proceedings. If a representative had been appointed prior to this proceeding, the filing of a petition under this section automatically effects a restraint on all of the representative's powers which are not necessary to preserve the estate. Under this section, notice must be given to all interested persons as defined in subparagraph (b). Formal proceedings concerning appointment should be distinguished from administration under Part 5. The former includes any proceeding after notice involving a request for an appointment. Administration under Part 5 begins with a formal proceeding and may be requested in addition to a ruling concerning testacy or appointment, but it is descriptive of a special proceeding with a different scope and purpose than those concerned merely with establishing the bases for an administration. A personal representative appointed in a formal proceeding may or may not be subject to administration under Part 5. Procedures for securing the appointment of a new personal representative after a previous assumption as to testacy under Section 62-3-612 may be informal or related to pending formal proceedings concerning testacy. When an order authorizing appointment is issued, the personal representative must then comply with Section 62-3-601 et seq., concerning bond requirements.	any power of administration except as necessary to preserve the estate or unless the court orders otherwise. (b) After service of the summons and petition to interested persons, including all persons interested in the administration of the estate as successors under the applicable assumption concerning testacy, any previously appointed personal representative and any person having or claiming priority for appointment as a personal representative, the court shall determine who is entitled to appointment under Section 62-3-203, make a proper appointment, and, if appropriate, terminate any prior appointment found to have been improper as provided in cases of removal under Section 62-3-611. REPORTER'S COMMENTS If there is a question concerning the priority or qualifications of a personal representative, the issue may be combined with a request for the determination of testacy in a petition for a formal testacy proceeding. However, the formal appointment of a personal representative can be considered alone. If the proceeding under this section is combined with a formal testacy proceeding, the petition must not only comply with the requirements of a petition for formal testacy, but must also describe the issue regarding appointment. Once a proceeding has been initiated under this section alone, the court must receive a petition which complies with the requirements of Section 62-3-402 and describes the issue regarding appointment. Once initiated, a proceeding under this section stays any pending informal appointment proceedings. If a representative had been appointed prior to this proceeding, the filing of a petition under this section automatically restraints all of the representative's powers which are not necessary to preserve the estate. Under this section, service of the summons and petition must be given to all interested persons as defined in subparagraph (b). Formal proceedings concerning appointment should be distinguished from administration under Part 5. The former includes any proceeding after notice involving a request for an appointment. Administration under Part 5 begins with a formal proceeding and may be requested in addition to a ruling concerning testacy or appointment, but it is descriptive of a special proceeding with a different scope and purpose than those concerned merely with establishing the bases for an administration. A personal representative appointed in a formal proceeding may or may not be subject to administration under Part 5. Procedures for securing the appointment of a new personal representative after a previous assumption as to testacy under Section 62-3-612 may be informal or related to pending formal proceedings concerning testacy. When an order authorizing appointment is issued, the personal representative must then comply with Section 62-3-601 et seq., concerning bond requirements.

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This section does not require notice by a publication; rather, notice is to be given by certified or ordinary mail. See Section 62-1-402.	The 2010 amendment revised subsection (b) to delete 'notice' and replace it with 'service of the summons and petition' to clarify that a summons and petition are required to commence a formal proceeding, including a formal proceeding concerning appointment of a personal representative as referred to in this section. See 2010 amendments to certain definitions in S.C. Code §62-1-201 and also see §§14-23-280, 62-1-304, and Rules 1 and 81, SCRCP.
Article 3.Part 5. Administration under Part 5	Article 3.Part 5.
SECTION 62-3-501. Administration under Part 5 [Sections 62-3-501 et seq.]; nature of proceeding. Administration under Part 5 [Sections 62-3-501 et seq.] is a single in rem proceeding to secure complete administration and settlement of a decedent's estate under the continuing authority of the court which extends until entry of an order approving distribution of the estate and discharging the personal representative or other order terminating the proceeding. A personal representative under Part 5 [Sections 62-3-501 et seq.] is responsible to the court, as well as to the interested parties, and is subject to directions concerning the estate made by the court on its own motion or on the motion of any interested party. Except as otherwise provided in this part, or as otherwise ordered by the court, a personal representative under Part 5 [Sections 62-3-501 et seq.] has the same duties and powers as a personal representative who is not subject to administration under Part 5 [Sections 62-3-501 et seq.]. REPORTER'S COMMENTS This section and the following sections of this part describe an optional procedure for settling an estate in one continuous proceeding in the court. The proceeding is a single "in rem" action designed to secure complete administration and settlement of a decedent's estate when it is desired to make sure that every step in probate is adjudicated with notice and hearing. If administration under Part 5 is not requested or ordered, there may be no compelling reason to employ all the available formal proceedings in the administration of an estate. **SECTION 62-3-502.** Administration under Part 5 [Sections 62-3-501 et seq.]; petition; order. A petition for administration under Part 5 [Sections 62-3-501 et seq.] may be filed by any interested person or by a personal representative at any time, a prayer for administration under	**SECTION 62-3-501.** Administration under Part 5 [Sections 62-3-501 et seq.] is a single in rem proceeding to secure complete administration and settlement of a decedent's estate under the continuing authority of the court which extends until entry of an order approving distribution of the estate and discharging the personal representative or other order terminating the proceeding. A personal representative under Part 5 [Sections 62-3-501 et seq.] is responsible to the court, as well as to the interested ~~parties~~ persons, and is subject to directions concerning the estate made by the court on its own motion or on the motion of any interested party. Except as otherwise provided in this part, or as otherwise ordered by the court, a personal representative under Part 5 [Sections 62-3-501 et seq.] has the same duties and powers as a personal representative who is not subject to administration under Part 5 [Sections 62-3-501 et seq.]. REPORTER'S COMMENTS This section and the following sections of this part describe an optional procedure for settling an estate in one continuous proceeding in the court. The proceeding is a single 'in rem' action designed to secure complete administration and settlement of a decedent's estate when it is desired to make sure that every step in probate is adjudicated with notice and hearing. If administration under Part 5 is not requested or ordered, there may be no compelling reason to employ all the available formal proceedings in the administration of an estate. **SECTION 62-3-502.** A petition for administration under Part 5 [Sections 62-3-501 et seq.] may be filed by any interested person or by a personal representative at any time, a prayer for administration under

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Part 5 [Sections 62-3-501 et seq.] may be joined with a petition in a testacy or appointment proceeding, or the court may order administration under Part 5 [Sections 62-3-501 et seq.] on its own motion. If the testacy of the decedent and the priority and qualification of any personal representative have not been adjudicated previously, the petition for administration under Part 5 [Sections 62-3-501 et seq.] shall include the matters required of a petition in a formal testacy proceeding and the notice requirements and procedures applicable to a formal testacy proceeding apply. If not previously adjudicated, the court shall adjudicate the testacy of the decedent and questions relating to the priority and qualifications of the personal representative in any case involving a request for administration under Part 5 [Sections 62-3-501 et seq.], even though the request for administration under Part 5 [Sections 62-3-501 et seq.] may be denied. After service of the summons and petition and upon notice to interested persons, the court shall order administration under Part 5 [Sections 62-3-501 et seq.] of a decedent's estate: (1) if the decedent's will directs administration under Part 5 [Sections 62-3-501 et seq.], it shall be ordered unless the court finds that circumstances bearing on the need for administration under Part 5 [Sections 62-3-501 et seq.] have changed since the execution of the will and that there is no necessity for administration under Part 5 [Sections 62-3-501 et seq.]; (2) if the decedent's will directs no administration under Part 5 [Sections 62-3-501 et seq.], then administration shall be ordered only upon a finding that it is necessary for protection of persons interested in the estate; or (3) in other cases if the court finds that administration under Part 5 [Sections 62-3-501 et seq.] is necessary under the circumstances. REPORTER'S COMMENTS Under this section any "interested person" or the personal representative may request administration under Part 5, or the probate court may order it on its own motion. If the decedent's will directs such administration it must be ordered unless the court finds circumstances have changed since execution of the will. Likewise, where the will directs no such administration, it will be ordered only if the court finds it is necessary for protection of interested persons. Even though it is possible that a request for administration under Part 5 may be made after a determination of testacy has been made, this section requires the petition for such administration to include matters necessary to put the issue of testacy before the court. The result is that the question of testacy will be adjudicated. While administration under Part 5 compels a judicial settlement of an estate there are other sections which grant a judicial review and settlement. This fact leads to the conclusion that administration under Part 5 will be valuable primarily when there is some advantage in a single	Part 5 [Sections 62-3-501 et seq.] may be joined with a petition in a testacy or appointment proceeding, or the court may order administration under Part 5 [Sections 62-3-501 et seq.] on its own motion. If the testacy of the decedent and the priority and qualification of any personal representative have not been adjudicated previously, the petition for administration under Part 5 [Sections 62-3-501 et seq.] shall include the matters required of a petition in a formal testacy proceeding and the notice requirements and procedures applicable to a formal testacy proceeding apply. If not previously adjudicated, the court shall adjudicate the testacy of the decedent and questions relating to the priority and qualifications of the personal representative in any case involving a request for administration under Part 5 [Sections 62-3-501 et seq.], even though the request for administration under Part 5 [Sections 62-3-501 et seq.] may be denied. After service of the summons and petition and upon notice to interested persons, the court shall order administration under Part 5 [Sections 62-3-501 et seq.] of a decedent's estate: (1) if the decedent's will directs administration under Part 5 [Sections 62-3-501 et seq.], it shall be ordered unless the court finds that circumstances bearing on the need for administration under Part 5 [Sections 62-3-501 et seq.] have changed since the execution of the will and that there is no necessity for administration under Part 5 [Sections 62-3-501 et seq.]; (2) if the decedent's will directs no administration under Part 5 [Sections 62-3-501 et seq.], then administration shall be ordered only upon a finding that it is necessary for protection of persons interested in the estate; or (3) in other cases if the court finds that administration under Part 5 [Sections 62-3-501 et seq.] is necessary under the circumstances. REPORTER'S COMMENTS Under this section any 'interested person' or the personal representative may request administration under Part 5, or the probate court may order it on its own motion. If the decedent's will directs such administration it must be ordered unless the court finds circumstances have changed since execution of the will. Likewise, where the will directs no such administration, it will be ordered only if the court finds it is necessary for protection of interested persons. Even though it is possible that a request for administration under Part 5 may be made after a determination of testacy has been made, this section requires the petition for such administration to include matters necessary to put the issue of testacy before the court. The result is that the question of testacy will be adjudicated. While administration under Part 5 compels a judicial settlement of an estate there are other sections which grant a judicial review and settlement. This fact leads to the conclusion that administration under Part 5 will be valuable primarily when there is some advantage in a single

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judicial proceeding which will adjudicate all major points involved in an estate settlement.	judicial proceeding which will adjudicate all major points involved in an estate settlement. The 2010 amendment revised this section to add 'service of the summons and petition and upon' in the fourth sentence to clarify that a summons and petition and notice of any hearing are required for a formal proceeding for administration under Part 5. See 2010 amendments to certain definitions in S.C. Code §62-1-201 and also see §§14-23-280, 62-1-304, and Rules 1 and 81, SCRCP.
SECTION 62-3-503. Administration under Part 5 [Sections 62-3-501 et seq.]; effect on other proceedings.	**SECTION 62-3-503.**
(a) The pendency of a proceeding for administration under Part 5 [Sections 62-3-501 et seq.] of a decedent's estate stays action on any informal application then pending or thereafter filed. (b) If a will has been previously probated in informal proceedings, the effect of the filing of a petition for administration under Part 5 [Sections 62-3-501 et seq.] is as provided for formal testacy proceedings by Section 62-3-401. (c) After service of the summons and petition upon the personal representative and notice of the filing of a petition for administration under Part 5 [Sections 62-3-501 et seq.], a personal representative who has been appointed previously shall not exercise his power to distribute any estate. The filing of the petition does not affect his other powers and duties unless the court restricts the exercise of any of them pending full hearing on the petition.	(a) The pendency of a proceeding for administration under Part 5 [Sections 62-3-501 et seq.] of a decedent's estate stays action on any informal application then pending or thereafter filed. (b) If a will has been previously probated in informal proceedings, the effect of the filing of a petition for administration under Part 5 [Sections 62-3-501 et seq.] is as provided for formal testacy proceedings by Section 62-3-401. (c) After service of the summons and petition upon the personal representative and notice of the filing of a petition for administration under Part 5 [Sections 62-3-501 et seq.], a personal representative who has been appointed previously shall not exercise his power to distribute any estate. The filing of the petition does not affect his other powers and duties unless the court restricts the exercise of any of them pending full hearing on the petition.
REPORTER'S COMMENTS This section deals with the effect of administration under Part 5 on other proceedings. Primarily pendency of such administration does two things: (1) it stays action on any informal proceedings and (2) it prohibits the personal representative from exercising his power to distribute the estate. However, the filing of the petition does not otherwise affect the powers and duties of the personal representative unless the court restricts the exercise of such power. In regard to the effect of such action on the personal representative's ability to create good title in a purchaser of estate assets, it should be noted that such a power is not hampered by the fact that the personal representative may breach a duty created by statute or otherwise. However, the personal representative may be held for contempt of court. In any event, the pendency of the proceeding could be recorded as is usual under a lis pendens.	REPORTER'S COMMENTS This section deals with the effect of administration under Part 5 on other proceedings. Primarily pendency of such administration does two things: (1) it stays action on any informal proceedings and (2) it prohibits the personal representative from exercising his power to distribute the estate. However, the filing of the petition does not otherwise affect the powers and duties of the personal representative unless the court restricts the exercise of such power. In regard to the effect of such action on the personal representative's ability to create good title in a purchaser of estate assets, it should be noted that such a power is not hampered by the fact that the personal representative may breach a duty created by statute or otherwise. However, the personal representative may be held for contempt of court. In any event, the pendency of the proceeding could be recorded as is usual under a lis pendens. The 2010 amendment deleted 'he has received' and added 'service of the summons and petition upon the personal representative and' to the first sentence to clarify that a summons and

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	petition are required to commence a formal proceeding, including a formal proceeding under Part 5. See 2010 amendments to certain definitions in S.C. Code §62-1-201 and also see §§14-23-280, 62-1-304, and Rules 1 and 81, SCRCP.
SECTION 62-3-504. Administration under Part 5 [Sections 62-3-501 et seq.]; powers of personal representative.	**SECTION 62-3-504.**
Unless restricted by the court, a personal representative under Part 5 [Sections 62-3-501 et seq.] has, without interim orders approving exercise of a power, all powers of personal representatives under this Code, but he shall not exercise his power to make any distribution of the estate without prior order of the court. Any other restriction on the power of a personal representative which may be ordered by the court must be endorsed on his letters of appointment and any court certification thereof, and unless so endorsed is ineffective as to persons dealing in good faith with the personal representative.	Unless restricted by the court, a personal representative under Part 5 [Sections 62-3-501 et seq.] has, without interim orders approving exercise of a power, all powers of personal representatives under this Code, but he shall not exercise his power to make any distribution of the estate without prior order of the court. Any other restriction on the power of a personal representative which may be ordered by the court must be endorsed on his letters of appointment and any court certification thereof, and unless so endorsed is ineffective as to persons dealing in good faith with the personal representative.
REPORTER'S COMMENTS This section acknowledges that the powers of a personal representative in an administration under Part 5 are the same as in any other administration unless restricted by the court and endorsed on the letters of appointment. If not so endorsed, the restrictions are ineffective as to persons dealing with the estate in good faith. The practical effect of this provision is to require persons dealing with the personal representative to examine the representative's letters.	REPORTER'S COMMENTS This section acknowledges that the powers of a personal representative in an administration under Part 5 are the same as in any other administration unless restricted by the court and endorsed on the letters of appointment. If not so endorsed, the restrictions are ineffective as to persons dealing with the estate in good faith. The practical effect of this provision is to require persons dealing with the personal representative to examine the representative's letters.
SECTION 62-3-505. Administration under Part 5 [Sections 62-3-501 et seq.]; interim orders; distribution and closing orders.	**SECTION 62-3-505.**
Unless otherwise ordered by the court, administration under Part 5 [Sections 62-3-501 et seq.] is terminated by order in accordance with time restrictions, notices, and contents of orders prescribed for proceedings under Section 62-3-1001. Interim orders approving or directing partial distributions or granting other relief may be issued by the court at any time during the pendency of an administration under Part 5 [Sections 62-3-501 et seq.] on the application of the personal representative or any interested person.	Unless otherwise ordered by the court, administration under Part 5 [Sections 62-3-501 et seq.] is terminated by order in accordance with time restrictions, notices, and contents of orders prescribed for proceedings under Section 62-3-1001. Interim orders approving or directing partial distributions or granting other relief may be issued by the court at any time during the pendency of an administration under Part 5 [Sections 62-3-501 et seq.] on the application of the personal representative or any interested person.
REPORTER'S COMMENTS This section requires additional notice for a closing order. The requirement for notice of interim orders is left to the discretion of the court except to the extent such notice is required by other	REPORTER'S COMMENTS This section requires additional notice for a closing order. The requirement for notice of interim orders is left to the discretion of the court except to the extent such notice is required by other

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sections, see e.g. Section 62-3-204, which entitles any interested person to notice of any interim order.	sections, see e.g. Section 62-3-204, which entitles any interested person to notice of any interim order.