

PART III
ESTATES OF DECEDENTS; GUARDIANSHIPS

CHAPTER 524

UNIFORM PROBATE CODE

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Article 1

GENERAL PROVISIONS, DEFINITIONS AND
PROBATE JURISDICTION OF COURT

Part 1

CITATION, CONSTRUCTION, GENERAL PROVISIONS

524.1—101 CITATION AND NUMBERING SYSTEM. This chapter shall be known and may be cited as the uniform probate code. It is arranged and numbered, subject however to the provisions of section 648.34, so that the enacted chapter may be compiled in the next published edition of Minnesota Statutes without change and in conformity with the official numbering of the uniform probate code. The articles of Laws 1974, Chapter 442 are numbered out of sequence to facilitate the possible inclusion of other articles of the probate code in one chapter.

[1974 c 442 art 1 s 524.1—101]

524.1—102 PURPOSES; RULE OF CONSTRUCTION. (a) This chapter shall be liberally construed and applied to promote its underlying purposes and policies.

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

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

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

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

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

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

[1974 c 442 art 1 s 524.1—102]

524.1—103 SUPPLEMENTARY GENERAL PRINCIPLES OF LAW APPLICABLE. Unless displaced by the particular provisions of this chapter, the principles of law and equity supplement its provisions.

[1974 c 442 art 1 s 524.1—103]

524.1—104 SEVERABILITY. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

[1974 c 442 art 1 s 524.1—104]

524.1—105 CONSTRUCTION AGAINST IMPLIED REPEAL. This chapter is a general act intended as a unified coverage of its subject matter and no part of it shall be deemed impliedly repealed by subsequent legislation if it can reasonably be avoided.

[1974 c 442 art 1 s 524.1—105]

524.1—106 EFFECT OF FRAUD AND EVASION. Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this chapter or if fraud is used to avoid or circumvent the provisions or purposes of this chapter, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud or restitution from any person, other than a bona fide purchaser, benefitting from the fraud, whether innocent or not. Any proceeding must be commenced within two years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than five years after the time of commission of the fraud. This section has no bearing on remedies relating to fraud practiced on a decedent during his lifetime which affects the succession of his estate.

[1974 c 442 art 1 s 524.1—106]

524.1—107 EVIDENCE AS TO DEATH OR STATUS. In proceedings under this chapter the rules of evidence in courts of general jurisdiction including any relating to simultaneous death, are applicable unless specifically displaced by this chapter. In addition, the following rules relating to determination of death and status are applicable:

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

(2) a certified or authenticated copy of any record or report of a governmental

agency, domestic or foreign, that a person is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances and places disclosed by the record or report;

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

[1974 c 442 art 1 s 524.1—107]

524.1—108 ACTS BY HOLDER OF GENERAL POWER. For the purpose of granting consent or approval with regard to the acts or accounts of a personal representative or trustee, including relief from liability or penalty for failure to post bond, to register a trust, or to perform other duties, and for purposes of consenting to modification or termination of a trust or to deviation from its terms, the sole holder or all co-holders of a presently exercisable general power of appointment, including one in the form of a power of amendment or revocation, are deemed to act for beneficiaries to the extent their interests as objects, takers in default, or otherwise, are subject to the power.

[1974 c 442 art 1 s 524.1—108]

Part 2

DEFINITIONS

524.1—201 GENERAL DEFINITIONS. Subject to additional definitions contained in the subsequent articles which are applicable to specific articles or parts, and unless the context otherwise requires, in this chapter:

(1) "Application" means a written request to the registrar for an order of informal probate or appointment under article 3, part 3.

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

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

(4) "Claims," in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person whether arising in contract, in tort or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes, demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate or to actions pursuant to section 573.02.

(5) "Court" means the court or branch having jurisdiction in matters relating to the affairs of decedents. This court in this state is known as the probate court or county court.

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

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

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

(9) "Disability" means cause for a protective order as described by section 525.54.

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

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

(12) "Exempt property" means that property of a decedent's estate which is described in section 524.2—402.

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

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

(15) "Formal proceedings" means those conducted before a judge with notice to interested persons.

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

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

(18) "Incapacitated person" is as described in section 525.54, other than a minor.

(19) "Informal proceedings" mean those conducted without notice to interested persons by an officer of the court acting as a registrar for probate of a will or appointment of a personal representative.

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

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

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

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

(24) "Minor" means a person who is under 18 years of age.

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

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

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

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

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

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

(31) "Petition" means a written request to the court for an order after notice.

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

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

(34) "Protected person" is as described in section 525.54, subdivision 2.

(35) "Protective proceeding" is as described in sections 525.541 to 525.551.

(36) "Registrar" refers to the official of the court designated to perform the functions of registrar as provided in section 524.1—307.

(37) "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, collateral

trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.

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

(39) "Special administrator" means a personal representative as described by sections 524.3—614 through 524.3—618.

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

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

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

(43) "Supervised administration" refers to the proceedings described in article 3, part 5.

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

(45) "Trust" includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in chapter 528, custodial arrangements pursuant to sections 149.11 to 149.14, 318.01 to 318.06, 527.01 to 527.11, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

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

(47) "Ward" is as described in section 525.54, subdivision 1.

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

[1974 c 442 art 1 s 524.1—201]

Part 3

SCOPE, JURISDICTION AND COURTS

524.1—301 TERRITORIAL APPLICATION. Except as otherwise provided in this chapter, this chapter applies to (1) the affairs and estates of decedents, missing persons, and persons to be protected, domiciled in this state, (2) the property of nonresidents located in this state or property coming into the control of a fiduciary who is subject to the laws of this state, (3) incapacitated persons and minors in this state, (4) survivorship and related accounts in this state, and (5) trusts subject to administration in this state.

[1974 c 442 art 1 s 524.1—301]

524.1—302 SUBJECT MATTER JURISDICTION. (a) To the full extent permitted by the constitution, the court has jurisdiction over all subject matter relating to (1) estates of decedents, including construction of wills and determination of heirs and successors of decedents, and estates of protected persons; (2) protection of minors and incapacitated persons; and (3) trusts.

(b) The court has full power to make orders, judgments and decrees and take all other action necessary and proper to administer justice in the matters which come before it.

[1974 c 442 art 1 s 524.1—302]

524.1—303 VENUE; MULTIPLE PROCEEDINGS; TRANSFER. (a) Where a proceeding under this chapter could be maintained in more than one place in this state, the court in which the proceeding is first commenced has the exclusive right to proceed.

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

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

[1974 c 442 art 1 s 524.1—303]

524.1—304 PRACTICE IN COURT. Unless specifically provided to the contrary in this chapter or unless inconsistent with its provisions, the rules of civil procedure including the rules concerning vacation of orders and appellate review govern formal proceedings under this chapter.

[1974 c 442 art 1 s 524.1—304]

524.1—305 RECORDS AND CERTIFIED COPIES. The clerk of court shall keep a record for each decedent, ward, protected person or trust involved in any document which may be filed with the court under this chapter, including petitions and applications, demands for notices or bonds, trust registrations, and of any orders or responses relating thereto by the registrar or court, and establish and maintain a system for indexing, filing or recording which is sufficient to enable users of the records to obtain adequate information. Upon payment of the fees required by law the clerk must issue certified copies of any probated wills, letters issued to personal representatives, or any other record or paper filed or recorded. Certificates relating to probated wills must indicate whether the decedent was domiciled in this state and whether the probate was formal or informal. Certificates relating to letters must show the date of appointment.

[1974 c 442 art 1 s 524.1—305]

524.1—306 JURY TRIAL. (a) If duly demanded, a party is entitled to trial by jury in any proceeding in which any controverted question of fact arises as to which any party has a constitutional right to trial by jury.

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

[1974 c 442 art 1 s 524.1—306]

524.1—307 REGISTRAR; POWERS. The acts and orders which this chapter specifies as performable by the registrar may be performed either by a judge of the court or by a person, including the clerk, designated by the court by a written order filed and recorded in the office of the court.

[1974 c 442 art 1 s 524.1—307]

524.1—310 OATH OR AFFIRMATION ON FILED DOCUMENTS. Except as otherwise specifically provided in this chapter or by rule, every document filed with the court under this chapter including applications, petitions, and demands for notice, shall be deemed to include an oath, affirmation, or statement to the effect that its representations are true as far as the person executing or filing it knows or is informed, and penalties for perjury may follow deliberate falsification therein.

[1974 c 442 art 1 s 524.1—310]

Part 4

NOTICE, PARTIES AND REPRESENTATION IN ESTATE LITIGATION AND OTHER MATTERS

524.1—401 NOTICE; METHOD AND TIME OF GIVING. (a) If notice of a hearing on any petition is required and except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested person or his attorney if he has appeared by attorney or requested that notice be sent to his attorney. Notice shall be given:

(1) by mailing a copy thereof at least 14 days before the time set for the hearing by certified, registered or ordinary first class mail addressed to the person being notified at the post office address given in his demand for notice, if any, or at his office or place of residence, if known;

(2) by delivering a copy thereof to the person being notified personally at least 14 days before the time set for the hearing; or

(3) if the address, or identity of any person is not known and cannot be ascertained with reasonable diligence, by publishing at least once a week for three consecutive weeks, a copy thereof in a newspaper having general circulation in the county where the hearing is to be held, the last publication of which is to be at least 10 days before the time set for the hearing.

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

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

[1974 c 442 art 1 s 524.1—401]

524.1—402 NOTICE; WAIVER. A person, including a guardian ad litem, conservator, or other fiduciary, may waive notice by a writing signed by him or his attorney and filed in the proceeding.

[1974 c 442 art 1 s 524.1—402]

524.1—403 PLEADINGS; WHEN PARTIES BOUND BY OTHERS; NOTICE. In formal proceedings involving trusts or estates of decedents, minors, protected persons, or incapacitated persons, and in judicially supervised settlements, the following apply:

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

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

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

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

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

(3) Notice is required as follows:

(i) Notice as prescribed by section 524.1—401 shall be given to every interested person or to one who can bind an interested person as described in (2) (i) or (2) (ii) above. Notice may be given both to a person and to another who may bind him.

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

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

[1974 c 442 art 1 s 524.1—403]

Article 3

PROBATE OF WILLS AND ADMINISTRATION

Part 1

GENERAL PROVISIONS

524.3—101 DEVOLUTION OF ESTATE AT DEATH; RESTRICTIONS. The

power of a person to leave property by will, and the rights of creditors, devisees, and heirs to his property are subject to the restrictions and limitations contained in this chapter to facilitate the prompt settlement of estates. Upon the death of a person, his real and personal property devolves to the persons to whom it is devised by his last will or to those indicated as substitutes for them in cases involving lapse, renunciation, or other circumstances affecting the devolution of testate estate, or in the absence of testamentary disposition, to his heirs, or to those indicated as substitutes for them in cases involving renunciation or other circumstances affecting devolution of intestate estates, subject to homestead allowance, exempt property and family allowance, to rights of creditors, elective share of the surviving spouse, and to administration.

[1974 c 442 art 3 s 524.3—101]

524.3—102 NECESSITY OF ORDER OF PROBATE FOR WILL. Except as provided in section 524.3—1201, to be effective to prove the transfer of any property or to nominate an executor, a will must be declared to be valid by an order of informal probate by the registrar, or an adjudication of probate by the court, except that a duly executed and unrevoked will which has not been probated may be admitted as evidence of a devise if (1) no court proceeding concerning the succession or administration of the estate has occurred, and (2) either the devisee or his successors and assigns possessed the property devised in accordance with the provisions of the will, or the property devised was not possessed or claimed by anyone by virtue of the decedent's title during the time period for testacy proceedings.

[1974 c 442 art 3 s 524.3—102]

524.3—103 NECESSITY OF APPOINTMENT FOR ADMINISTRATION. Except as otherwise provided in article 4, to acquire the powers and undertake the duties and liabilities of a personal representative of a decedent, a person must be appointed by order of the court or registrar, qualify and be issued letters. Administration of an estate is commenced by the issuance of letters.

[1974 c 442 art 3 s 524.3—103]

524.3—104 CLAIMS AGAINST DECEDENT; NECESSITY OF ADMINISTRATION. No proceeding to enforce a claim against the estate of a decedent or his successors may be revived or commenced before the appointment of a personal representative. After the appointment and until distribution, all proceedings and actions to enforce a claim against the estate are governed by the procedure prescribed by chapter 525 or this article except that the time limited for filing claims under section 525.41 shall be 60 days from the date of the filing of the application for appointment of a personal representative. The notice to creditors shall be in the form prescribed by court rule. After distribution a creditor whose claim has not been barred may recover from the distributees as provided in section 524.3—1004 or from a former personal representative individually liable as provided in section 524.3—1005. This section has no application to a proceeding by a secured creditor of the decedent to enforce his right to his security except as to any deficiency judgment which might be sought therein.

[1974 c 442 art 3 s 524.3—104]

524.3—105 PROCEEDINGS AFFECTING DEVOLUTION AND ADMINISTRATION; JURISDICTION OF SUBJECT MATTER. Persons interested in decedents' estates may apply to the registrar for determination in the informal proceedings provided in this article, and may petition the court for orders in formal proceedings within the court's jurisdiction including but not limited to those described in this article. The court has exclusive jurisdiction of formal proceedings to determine how decedents' estates subject to the laws of this state are to be administered, expended and distributed. The court has concurrent jurisdiction of any other action or proceeding concerning a succession or to which an estate, through a personal representative, may be a party, including actions to determine title to property alleged to belong to the estate, and of any action or proceeding in which property distributed by a personal representative or its value is sought to be subjected to rights of creditors or successors of the decedent. This section shall not be applicable to actions under section 573.02.

[1974 c 442 art 3 s 524.3—105]

524.3—106 PROCEEDINGS WITHIN THE EXCLUSIVE JURISDICTION OF COURT; SERVICE; JURISDICTION OVER PERSONS. In proceedings within the exclusive jurisdiction of the court where notice is required by this chapter

or by rule, interested persons may be bound by the orders of the court in respect to property in or subject to the laws of this state by notice in conformity with section 524.1—401. An order is binding as to all who are given notice of the proceeding though less than all interested persons are notified.

[1974 c 442 art 3 s 524.3—106]

524.3—107 SCOPE OF PROCEEDINGS; PROCEEDINGS INDEPENDENT; EXCEPTION. Unless supervised administration as described in part 5 is involved, (1) each proceeding before the court or registrar is independent of any other proceeding involving the same estate; (2) petitions for formal orders of the court may combine various requests for relief in a single proceeding if the orders sought may be finally granted without delay. Except as required for proceedings which are particularly described by other sections of this article, no petition is defective because it fails to embrace all matters which might then be the subject of a final order; (3) proceedings for probate of wills or adjudications of no will may be combined with proceedings for appointment of personal representatives; and (4) a proceeding for appointment of a personal representative is concluded by an order making or declining the appointment.

[1974 c 442 art 3 s 524.3—107]

524.3—108 PROBATE, TESTACY AND APPOINTMENT PROCEEDINGS; ULTIMATE TIME LIMIT. No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than three years after the decedent's death, except (1) if a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding; (2) appropriate probate, appointment or testacy proceedings may be maintained in relation to the estate of an absent, disappeared or missing person for whose estate a conservator has been appointed, at any time within three years after the conservator becomes able to establish the death of the protected person; and (3) a proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful, may be commenced within the later of twelve months from the informal probate or three years from the decedent's death. These limitations do not apply to proceedings to construe probated wills or determine heirs of an intestate. In cases under (1) or (2) above, the date on which a testacy or appointment proceeding is properly commenced shall be deemed to be the date of the decedent's death for purposes of other limitations provisions of this chapter which relate to the date of death.

[1974 c 442 art 3 s 524.3—108]

524.3—109 STATUTES OF LIMITATION ON DECEDENT'S CAUSE OF ACTION. No statute of limitation running on a cause of action belonging to a decedent which had not been barred as of the date of his death, shall apply to bar a cause of action surviving the decedent's death sooner than four months after death. A cause of action which, but for this section, would have been barred less than four months after death, is barred after four months unless tolled.

[1974 c 442 art 3 s 524.3—109]

Part 2

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

524.3—201 VENUE FOR FIRST AND SUBSEQUENT ESTATE PROCEEDINGS; LOCATION OF PROPERTY. (a) Venue for the first informal or formal testacy or appointment proceedings after a decedent's death is:

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

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

(b) Venue for all subsequent proceedings within the exclusive jurisdiction of

the court is in the place where the initial proceeding occurred, unless the initial proceeding has been transferred as provided in section 524.1—303 or (c) of this section.

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

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

[1974 c 442 art 3 s 524.3—201]

524.3—202 APPOINTMENT OR TESTACY PROCEEDINGS; CONFLICTING CLAIM OF DOMICILE IN ANOTHER STATE. If conflicting claims as to the domicile of a decedent are made in a formal testacy or appointment proceeding commenced in this state, and in a testacy or appointment proceeding after notice pending at the same time in another state, the court of this state must stay, dismiss, or permit suitable amendment in, the proceeding here unless it is determined that the local proceeding was commenced before the proceeding elsewhere. The determination of domicile in the proceeding first commenced must be accepted as determinative in the proceeding in this state.

[1974 c 442 art 3 s 524.3—202]

524.3—203 PRIORITY AMONG PERSONS SEEKING APPOINTMENT AS PERSONAL REPRESENTATIVE. (a) Whether the proceedings are formal or informal, persons who are not disqualified have priority for appointment in the following order:

- (1) the person with priority as determined by a probated will including a person nominated by a power conferred in a will;
- (2) the surviving spouse of the decedent who is a devisee of the decedent;
- (3) other devisees of the decedent;
- (4) the surviving spouse of the decedent;
- (5) other heirs of the decedent;
- (6) 45 days after the death of the decedent, any creditor.

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

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

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

(c) A person entitled to letters under (2) through (5) of (a) above may nominate a qualified person to act as personal representative. Any person aged 18 and over may renounce his right to nominate or to an appointment by appropriate writing filed with the court. When two or more persons share a priority, those of them who do not renounce must concur in nominating another to act for them, or in applying for appointment.

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

(e) Appointment of one who does not have priority, including priority resulting from renunciation or nomination determined pursuant to this section, may be made only in formal proceedings. Before appointing one without priority, the court must determine that those having priority, although given notice of the proceedings, have failed to request appointment or to nominate another for appointment, and that administration is necessary.

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

- (1) under the age of 18;

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

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

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

[1974 c 442 art 3 s 524.3—203]

524.3—204 DEMAND FOR NOTICE OF ORDER OR FILING CONCERNING DECEDENT'S ESTATE. Any person desiring notice of any order or filing pertaining to a decedent's estate in which he has a financial or property interest, may file a demand for notice with the court at any time after the death of the decedent stating the name of the decedent, the nature of his interest in the estate, and the demandant's address or that of his attorney. The clerk shall mail a copy of the demand to the personal representative if one has been appointed. After filing of a demand, no order or filing to which the demand relates shall be made or accepted without notice as prescribed in section 524.1—401 to the demandant or his attorney. The validity of an order which is issued or filing which is accepted without compliance with this requirement shall not be affected by the error, but the petitioner receiving the order or the person making the filing may be liable for any damage caused by the absence of notice. The requirement of notice arising from a demand under this provision may be waived in writing by the demandant and shall cease upon the termination of his interest in the estate.

[1974 c 442 art 3 s 524.3—204]

Part 3

INFORMAL PROBATE AND APPOINTMENT PROCEEDINGS

524.3—301 INFORMAL PROBATE OR APPOINTMENT PROCEEDINGS; APPLICATION; CONTENTS. Applications for informal probate or informal appointment shall be directed to the registrar, 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 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 any demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere.

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

- (i) that the original of the decedent's last will is in the possession of the court, or accompanies the application, or that an authenticated copy of a will probated in another jurisdiction accompanies the application;
- (ii) that the applicant, to the best of his knowledge, believes the will to have been validly executed;
- (iii) that after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the will, and that the applicant believes that the instrument which is the subject of the application is the decedent's last will;
- (iv) that the time limit for informal probate as provided in this article has not expired either because three years or less have passed since the decedent's death, or, if more than three years from death have passed, that circumstances as described by section 524.3—108 authorizing tardy probate have occurred.

(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 shall 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 524.1—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 524.3—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 524.3—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.

[1974 c 442 art 3 s 524.3—301]

524.3—302 INFORMAL PROBATE; DUTY OF REGISTRAR; EFFECT OF INFORMAL PROBATE. Upon receipt of an application requesting informal probate of a will, the registrar, upon making the findings required by section 524.3—303 shall issue a written statement of informal probate if at least 120 hours have elapsed since the decedent's death. 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.

[1974 c 442 art 3 s 524.3—302]

524.3—303 INFORMAL PROBATE; PROOF AND FINDINGS REQUIRED.

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

(1) the application is complete;

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

(3) the applicant appears from the application to be an interested person as defined in section 524.1—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 registrar's possession;

(6) any notice required by section 524.3—204 has been given and that the application is not within section 524.3—304; and

(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 525.18 have been met shall be probated without further proof. In other cases, the registrar 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 registrar 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.

[1974 c 442 art 3 s 524.3—303]

524.3—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 wills and codicils, the latest of which does not expressly revoke the earlier, shall be declined.

[1974 c 442 art 3 s 524.3—304]

524.3—305 INFORMAL PROBATE; REGISTRAR NOT SATISFIED. If the registrar is not satisfied that a will is entitled to be probated in informal proceedings because of failure to meet the requirements of sections 524.3—303 and 524.3—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.

[1974 c 442 art 3 s 524.3—305]

524.3—306 INFORMAL PROBATE; NOTICE REQUIREMENTS. The moving party must give notice as described by section 524.1—401 of his application for informal probate (1) to any person demanding it pursuant to section 524.3—204; and (2) to any personal representative of the decedent whose appointment has not been terminated. No other notice of informal probate is required.

[1974 c 442 art 3 s 524.3—306]

524.3—307 INFORMAL APPOINTMENT PROCEEDINGS; DELAY IN ORDER; DUTY OF REGISTRAR; 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 524.3—614, if at least 120 hours have elapsed since the decedent's death, the registrar, after making the findings required by section 524.3—308, shall appoint the applicant subject to qualification and acceptance; provided, that if the decedent was a non-resident, the registrar shall delay the order of appointment until 30 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 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 524.3—608 through 524.3—612, but is not subject to retroactive vacation.

[1974 c 442 art 3 s 524.3—307]

524.3—308 INFORMAL APPOINTMENT PROCEEDINGS; PROOF AND FINDINGS REQUIRED. (a) In informal appointment proceedings, the registrar 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 524.1—201 (20);
- (4) on the basis of the statements in the application, venue is proper;
- (5) any will to which the requested appointment relates has been formally or informally probated; but this requirement does not apply to the appointment of a special administrator;
- (6) any notice required by section 524.3—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 524.3—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 524.3—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.

[1974 c 442 art 3 s 524.3—308]

524.3—309 INFORMAL APPOINTMENT PROCEEDINGS; REGISTRAR NOT SATISFIED. If the registrar is not satisfied that a requested informal appointment of a personal representative should be made because of failure to meet the requirements of sections 524.3—307 and 524.3—308, or for any other reason, he may decline the application. A declination of informal appointment is not an adjudication and does not preclude appointment in formal proceedings.

[1974 c 442 art 3 s 524.3—309]

524.3—310 INFORMAL APPOINTMENT PROCEEDINGS; NOTICE REQUIREMENTS. The moving party must give notice as described by section 524.1—401 of his intention to seek an appointment informally; (1) to any person demanding it pursuant to section 524.3—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.

[1974 c 442 art 3 s 524.3—310]

524.3—311 INFORMAL APPOINTMENT UNAVAILABLE IN CERTAIN CASES. If an application for informal appointment indicates the existence of a possible unrevoked testamentary instrument which may relate to property subject to the laws of this state, and which is not filed for probate in this court, the registrar shall decline the application.

[1974 c 442 art 3 s 524.3—311]

Part 4

FORMAL TESTACY AND APPOINTMENT PROCEEDINGS

524.3—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 may be commenced by an interested person filing a petition as described in section 524.3—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 524.3—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 registrar 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.

[1974 c 442 art 3 s 524.3—401]

524.3—402 FORMAL TESTACY OR APPOINTMENT PROCEEDINGS; PETITION; CONTENTS. (a) Petitions for formal probate of a will, or for adjudication of intestacy with or without request for appointment of a personal representative, must be directed to the court, request a judicial order after notice and hearing and contain further statements as indicated in this section. A petition for formal probate of a will

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

(2) contains the statements required for informal applications as stated in the five subparagraphs under section 524.3—301 (1), the statements required by subparagraphs (ii) and (iii) of section 524.3—301 (2), and

(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 524.3—301 and indicate whether supervised administration 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 subparagraph (ii) of section 524.3—301 (4) above may be omitted.

[1974 c 442 art 3 s 524.3—402]

524.3—403 FORMAL TESTACY PROCEEDING; NOTICE OF HEARING ON PETITION. (a) Upon commencement of a formal testacy proceeding, the court shall fix a time and place of hearing. Notice shall be given in the manner prescribed by section 524.1—401 by the petitioner to the persons herein enumerated and to any additional person who has filed a demand for notice under section 524.3—204 of this chapter.

Notice shall be given to the following persons: the surviving spouse, children, and other heirs of the decedent, the devisees and executors 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. Notice may be given to other persons. In addition, the petitioner shall give notice by publication to all unknown persons and to all known persons whose addresses are unknown who have any interest in the matters being litigated.

(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 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.

[1974 c 442 art 3 s 524.3—403]

524.3—404 FORMAL TESTACY PROCEEDINGS; WRITTEN OBJECTIONS TO PROBATE. Any party to a formal proceeding who opposes the probate of a will for any reason shall state in his pleadings his objections to probate of the will.

[1974 c 442 art 3 s 524.3—404]

524.3—405 FORMAL TESTACY PROCEEDINGS; UNCONTESTED CASES; HEARINGS AND PROOF. If a petition in a testacy proceeding is unopposed, the court may order probate or intestacy on the strength of the pleadings if satisfied that the conditions of section 524.3—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 or testimony of one of any attesting witnesses to the instrument is sufficient. If the affidavit or

testimony of an attesting witness is not available, execution of the will may be proved by other evidence or affidavit.

[1974 c 442 art 3 s 524.3—405]

524.3—406 FORMAL TESTACY PROCEEDINGS; CONTESTED CASES; TESTIMONY OF ATTESTING WITNESSES. (a) If evidence concerning execution of an attested will which is not self-proved is necessary in contested cases, the testimony of at least one of the attesting witnesses, if within the state competent and able to testify, is required. Due execution of an attested or unattested will may be proved by other evidence.

(b) If the will is self-proved, compliance with signature requirements for execution is conclusively presumed 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.

[1974 c 442 art 3 s 524.3—406]

524.3—407 FORMAL TESTACY PROCEEDINGS; BURDENS IN CONTESTED CASES. In contested cases, petitioners who seek to establish intestacy have the burden of establishing prima facie proof of death, venue and heirship. Proponents of a will have the burden of establishing prima facie proof of due execution in all cases, and, if they are also petitioners, prima facie proof of death and venue. Contestants of a will have the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake or revocation. 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 shall 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 shall be determined first whether the will is entitled to probate.

[1974 c 442 art 3 s 524.3—407]

524.3—408 FORMAL TESTACY PROCEEDINGS; WILL CONSTRUCTION; EFFECT OF FINAL ORDER IN ANOTHER JURISDICTION. A final order of a court of another state determining testacy, the validity or construction 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.

[1974 c 442 art 3 s 524.3—408]

524.3—409 FORMAL TESTACY PROCEEDINGS; ORDER; FOREIGN WILL. After the time required for any notice has expired, upon proof of notice, and after any hearing 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 524.3—108, it shall determine the decedent's domicile at death, his heirs and his state of testacy. Any will found to be valid and unrevoked shall be formally probated. Termination of any previous informal appointment of a personal representative, which may be appropriate in view of the relief requested and findings, is governed by section 524.3—612. The petition shall 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.

[1974 c 442 art 3 s 524.3—409]

524.3—410 FORMAL TESTACY PROCEEDINGS; PROBATE OF MORE THAN ONE INSTRUMENT. If two or more instruments are offered for probate before a final order is entered in a formal testacy proceeding, more than one instrument may be probated if neither expressly revokes the other or contains provisions which work a total revocation by implication. If more than one instrument is probated, the order shall indicate what provisions control in respect to the nomination of an executor, if any. The order may, but need not, indicate how any provisions of a particular instrument are affected by the other instrument. After a final order in a testacy proceeding has been entered, no petition for probate of any other instrument of the decedent may be entertained, except incident to a petition to vacate

or modify a previous probate order and subject to the time limits of section 524.3—412.

[1974 c 442 art 3 s 524.3—410]

524.3—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.

[1974 c 442 art 3 s 524.3—411]

524.3—412 FORMAL TESTACY PROCEEDINGS; EFFECT OF ORDER; VACATION. Subject to appeal and subject to vacation as provided herein and in section 524.3—413, a formal testacy order under sections 524.3—409 to 524.3—411, including an order that the decedent left no valid will and determining heirs, is final as to all persons with respect to all issues concerning the decedent's estate that the court considered or might have considered incident to its rendition relevant to the question of whether the decedent left a valid will, and to the determination of heirs, except that:

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

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

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

(i) If a personal representative has been appointed for the estate, the time of entry of any order approving final distribution of the estate, or, if the estate is closed by statement, six months after the filing of the closing statement.

(ii) Whether or not a personal representative has been appointed for the estate of the decedent, the time prescribed by section 524.3—108 when it is no longer possible to initiate an original proceeding to probate a will of the decedent.

(iii) 12 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 524.3—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.

[1974 c 442 art 3 s 524.3—412]

524.3—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.

[1974 c 442 art 3 s 524.3—413]

524.3—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 personal representative, or of one who previously has been appointed personal representative in informal proceedings, if an issue concerning the testacy of the decedent is or may be involved, is governed by section 524.3—402, as well as by this section. In other cases, the petition shall contain or adopt the statements re-

quired by section 524.3—301 (1) and describe the question relating to priority or qualification of the personal representative which is to be resolved. If the proceeding precedes any appointment of a personal representative, it shall stay any pending informal appointment proceedings as well as any commenced thereafter. If the proceeding is commenced after appointment, the previously appointed personal representative, after receipt of notice thereof, shall refrain from exercising any power of administration except as necessary to preserve the estate or unless the court orders otherwise.

(b) After notice 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 personal representative; the court shall determine who is entitled to appointment under section 524.3—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 524.3—611.

[1974 c 442 art 3 s 524.3—414]

Part 5

SUPERVISED ADMINISTRATION

524.3—501 SUPERVISED ADMINISTRATION; NATURE OF PROCEEDING.

Supervised administration 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 supervised personal representative 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 supervised personal representative has the same duties and powers as a personal representative who is not supervised.

[1974 c 442 art 3 s 524.3—501]

524.3—502 SUPERVISED ADMINISTRATION; PETITION; ORDER. A petition for supervised administration may be filed by any interested person or by a personal representative at any time or the prayer for supervised administration may be joined with a petition in a testacy or appointment proceeding. If the testacy of the decedent and the priority and qualification of any personal representative have not been adjudicated previously, the petition for supervised administration 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 supervised administration, even though the request for supervised administration may be denied. After notice to interested persons, the court shall order supervised administration of a decedent's estate: (1) if the decedent's will directs supervised administration, it shall be ordered unless the court finds that circumstances bearing on the need for supervised administration have changed since the execution of the will and that there is no necessity for supervised administration; (2) if the decedent's will directs unsupervised administration, supervised 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 supervised administration is necessary under the circumstances.

[1974 c 442 art 3 s 524.3—502]

524.3—503 SUPERVISED ADMINISTRATION; EFFECT ON OTHER PROCEEDINGS. (a) The pendency of a proceeding for supervised administration 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 supervised administration is as provided for formal testacy proceedings by section 524.3—401.

(c) After he has received notice of the filing of a petition for supervised administration, 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.

[1974 c 442 art 3 s 524.3—503]

524.3—504 SUPERVISED ADMINISTRATION; POWERS OF PERSONAL REPRESENTATIVE. Unless restricted by the court, a supervised personal representative has, without interim orders approving exercise of a power, all powers of personal representatives under this chapter, 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, unless so endorsed, is ineffective as to persons dealing in good faith with the personal representative.

[1974 c 442 art 3 s 524.3—504]

524.3—505 SUPERVISED ADMINISTRATION; INTERIM ORDERS; DISTRIBUTION AND CLOSING ORDERS. Unless otherwise ordered by the court, supervised administration is terminated by order in accordance with time restrictions, notices and contents of orders prescribed for proceedings under section 524.3—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 a supervised administration on the application of the personal representative or any interested person.

[1974 c 442 art 3 s 524.3—505]

Part 6

PERSONAL REPRESENTATIVE; APPOINTMENT, CONTROL AND TERMINATION OF AUTHORITY

524.3—601 QUALIFICATION. Prior to receiving letters, a personal representative shall qualify by filing with the appointing court any required bond and a statement of acceptance of the duties of the office.

[1974 c 442 art 3 s 524.3—601]

524.3—602 ACCEPTANCE OF APPOINTMENT; CONSENT TO JURISDICTION. By accepting appointment, a personal representative submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be delivered to the personal representative, or mailed to him by ordinary first class mail at his address as listed in the application or petition for appointment or as thereafter reported to the court and to his address as then known to the petitioner.

[1974 c 442 art 3 s 524.3—602]

524.3—603 BOND NOT REQUIRED WITHOUT COURT ORDER, EXCEPTIONS. No bond is required of a personal representative appointed in informal proceedings, except (1) upon the appointment of a special administrator; (2) when an executor or other personal representative is appointed to administer an estate under a will containing an express requirement of bond or (3) when bond is required under section 524.3—605. Bond may be required by court order at the time of appointment of a personal representative appointed in any formal proceeding except that bond is not required of a personal representative appointed in formal proceedings if the will relieves the personal representative of bond, unless bond has been requested by an interested party and the court is satisfied that it is desirable. Bond required by any will may be dispensed with in formal proceedings upon determination by the court that it is not necessary. No bond is required of any personal representative who, pursuant to statute, has deposited cash or collateral with an agency of this state to secure performance of his duties.

[1974 c 442 art 3 s 524.3—603]

NOTE: This section is effective August 1, 1974, notwithstanding section 524.8-101, see section 524.8-103.

524.3—604 BOND AMOUNT; SECURITY; PROCEDURE; REDUCTION. If bond is required and the provisions of the will or order do not specify the amount, unless stated in his application or petition, the person qualifying shall file a statement under oath with the registrar indicating his best estimate of the value of the personal estate of the decedent and of the income expected from the personal and real estate during the next year, and he shall execute and file a bond with the registrar, or give other suitable security, in an amount not less than the estimate. The registrar shall determine that the bond is duly executed by a corporate surety, or one or more individual sureties whose performance is secured by pledge of personal property, mortgage on real property or other adequate security. The registrar may

permit the amount of the bond to be reduced by the value of assets of the estate deposited with a domestic financial institution, as defined in section 528.02, in a manner that prevents their unauthorized disposition. On petition of the personal representative or another interested person the court may excuse a requirement of bond, increase, or reduce the amount of the bond, release sureties, or permit the substitution of another bond with the same or different sureties.

[1974 c 442 art 3 s 524.3—604]

NOTE: This section is effective August 1, 1974, notwithstanding section 524.8-101, see section 524.8-103.

524.3—605 DEMAND FOR BOND BY INTERESTED PERSON. Any person apparently having an interest in the estate worth in excess of \$1,000, or any creditor having a claim in excess of \$1,000, may make a written demand that a personal representative give bond. The demand must be filed with the registrar and a copy mailed to the personal representative, if appointment and qualification have occurred. Thereupon, bond is required, but the requirement ceases if the person demanding bond ceases to be interested in the estate, or if bond is excused as provided in sections 524.3—603 or 524.3—604. After he has received notice and until the filing of the bond or cessation of the requirement of bond, the personal representative shall refrain from exercising any powers of his office except as necessary to preserve the estate. Failure of the personal representative to meet a requirement of bond by giving suitable bond within 30 days after receipt of notice is cause for his removal and appointment of a successor personal representative.

[1974 c 442 art 3 s 524.3—605]

NOTE: This section is effective August 1, 1974, notwithstanding section 524.8-101, see section 524.8-103.

524.3—606 TERMS AND CONDITIONS OF BONDS. (a) The following requirements and provisions apply to any bond required by this part:

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

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

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

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

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

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

[1974 c 442 art 3 s 524.3—606]

NOTE: This section is effective August 1, 1974, notwithstanding section 524.8-101, see section 524.8-103.

524.3—607 ORDER RESTRAINING PERSONAL REPRESENTATIVE. (a) On petition of any person who appears to have an interest in the estate, the court by temporary order may restrain a personal representative from performing specified acts of administration, disbursement, or distribution, or exercise of any powers or discharge of any duties of his office, or make any other order to secure proper performance of his duty, if it appears to the court that the personal representative otherwise may take some action which would jeopardize unreasonably the interest of the applicant or of some other interested person. Persons with whom the personal representative may transact business may be made parties.

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

[1974 c 442 art 3 s 524.3—607]

524.3—608 TERMINATION OF APPOINTMENT; GENERAL. Termination of appointment of a personal representative occurs as indicated in sections 524.3—609 to 524.3—612, inclusive. Termination ends the right and power pertaining to the office of personal representative as conferred by this chapter or any will, except that a personal representative, at any time prior to distribution or until restrained or enjoined by court order, may perform acts necessary to protect the estate and may deliver the assets to a successor representative. Termination does not discharge a personal representative from liability for transactions or omissions occurring before termination, or relieve him of the duty to preserve assets subject to his control, to account therefor and to deliver the assets. Termination does not affect the jurisdiction of the court over the personal representative, but terminates his authority to represent the estate in any pending or future proceeding.

[1974 c 442 art 3 s 524.3—608]

524.3—609 TERMINATION OF APPOINTMENT; DEATH OR DISABILITY. The death of a personal representative or the appointment of a conservator for the estate of a personal representative, terminates his appointment. Until appointment and qualification of a successor or special representative to replace the deceased or protected representative, the representative of the estate of the deceased or protected personal representative, if any, has the duty to protect the estate possessed and being administered by his decedent or ward at the time his appointment terminates, has the power to perform acts necessary for protection and shall account for and deliver the estate assets to a successor or special personal representative upon his appointment and qualification.

[1974 c 442 art 3 s 524.3—609]

524.3—610. TERMINATION OF APPOINTMENT; VOLUNTARY. (a) An appointment of a personal representative terminates as provided in section 524.3—1003, one year after the filing of a closing statement.

(b) An order closing an estate as provided in section 524.3—1001 or 524.3—1002 terminates an appointment of a personal representative.

(c) A personal representative may resign his position by filing a written statement of resignation with the registrar after he has given at least 15 days written notice to the persons known to be interested in the estate. If no one applies or petitions for appointment of a successor representative within the time indicated in the notice, the filed statement of resignation is ineffective as a termination of appointment and in any event is effective only upon the appointment and qualification of a successor representative and delivery of the assets to him.

[1974 c 442 art 3 s 524.3—610]

524.3—611 TERMINATION OF APPOINTMENT BY REMOVAL; CAUSE; PROCEDURE. (a) A person interested in the estate may petition for removal of a personal representative for cause at any time. Upon filing of the petition, the court shall fix a time and place for hearing. Notice shall be given by the petitioner to the personal representative, and to other persons as the court may order. Except as otherwise ordered as provided in section 524.3—607, after receipt of notice of removal proceedings, the personal representative shall not act except to account, to correct maladministration or preserve the estate. If removal is ordered, the court also shall direct by order the disposition of the assets remaining in the name of, or under the control of, the personal representative being removed.

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

[1974 c 442 art 3 s 524.3—611]

524.3—612 TERMINATION OF APPOINTMENT; CHANGE OF TESTACY STATUS. Except as otherwise ordered in formal proceedings, the probate of a

will subsequent to the appointment of a personal representative in intestacy or under a will which is superseded by formal probate of another will, or the vacation of an informal probate of a will subsequent to the appointment of the personal representative thereunder, does not terminate the appointment of the personal representative although his powers may be reduced as provided in section 524.3—401. Termination occurs upon appointment in informal or formal appointment proceedings of a person entitled to appointment under the later assumption concerning testacy. If no request for new appointment is made within 30 days after expiration of time for appeal from the order in formal testacy proceedings, or from the informal probate, changing the assumption concerning testacy, the previously appointed personal representative upon request may be appointed personal representative under the subsequently probated will, or as in intestacy as the case may be.

[1974 c 442 art 3 s 524.3—612]

524.3—613 SUCCESSOR PERSONAL REPRESENTATIVE. Sections 524.3—301 to 524.3—311 and 524.3—401 to 524.3—414 govern proceedings for appointment of a personal representative to succeed one whose appointment has been terminated. After appointment and qualification, a successor personal representative may be substituted in all actions and proceedings to which the former personal representative was a party, and no notice, process or claim which was given or served upon the former personal representative need be given to or served upon the successor in order to preserve any position or right the person giving the notice or filing the claim may thereby have obtained or preserved with reference to the former personal representative. Except as otherwise ordered by the court, the successor personal representative has the powers and duties in respect to the continued administration which the former personal representative would have had if his appointment had not been terminated.

[1974 c 442 art 3 s 524.3—613]

524.3—614 SPECIAL ADMINISTRATOR; APPOINTMENT. A special administrator may be appointed:

(1) informally by the registrar on the application of any interested person when necessary to protect the estate of a decedent prior to the appointment of a general personal representative or if a prior appointment has been terminated as provided in section 524.3—609;

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

[1974 c 442 art 3 s 524.3—614]

524.3—615 SPECIAL ADMINISTRATOR; WHO MAY BE APPOINTED. (a) If a special administrator is to be appointed pending the probate of a will which is the subject of a pending application or petition for probate, the person named executor in the will shall be appointed if available, and qualified.

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

[1974 c 442 art 3 s 524.3—615]

524.3—616 SPECIAL ADMINISTRATOR; APPOINTED INFORMALLY; POWERS AND DUTIES. A special administrator appointed by the registrar in informal proceedings pursuant to section 524.3—614 (1) has the duty to collect and manage the assets of the estate, to preserve them, to account therefor and to deliver them to the general personal representative upon his qualification. The special administrator has the power of a personal representative under the chapter necessary to perform his duties.

[1974 c 442 art 3 s 524.3—616]

524.3—617 SPECIAL ADMINISTRATOR; FORMAL PROCEEDINGS; POWER AND DUTIES. A special administrator appointed by order of the court in any formal proceeding has the power of a general personal representative except as limited in the appointment and duties as prescribed in the order. The appointment may be for a specified time, to perform particular acts or on other terms as the court may direct.

[1974 c 442 art 3 s 524.3—617]

524.3—618 TERMINATION OF APPOINTMENT; SPECIAL ADMINISTRATOR. The appointment of a special administrator terminates in accordance with the provisions of the order of appointment or on the appointment of a general personal representative. In other cases, the appointment of a special administrator is subject to termination as provided in sections 524.3—608 through 524.3—611.

[1974 c 442 art 3 s 524.3—618]

Part 7

DUTIES AND POWERS OF PERSONAL REPRESENTATIVES

524.3—701 TIME OF ACCRUAL OF DUTIES AND POWERS. The duties and powers of a personal representative commence upon his appointment. The powers of a personal representative relate back in time to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter. Prior to appointment, a person named executor in a will may carry out written instructions of the decedent relating to his body, funeral and burial arrangements. A personal representative may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative.

[1974 c 442 art 3 s 524.3—701]

524.3—702 PRIORITY AMONG DIFFERENT LETTERS. A person to whom general letters are issued first has exclusive authority under the letters until his appointment is terminated or modified. If, through error, general letters are afterwards issued to another, the first appointed representative may recover any property of the estate in the hands of the representative subsequently appointed, but the acts of the latter done in good faith before notice of the first letters are not void for want of validity of appointment.

[1974 c 442 art 3 s 524.3—702]

524.3—703 GENERAL DUTIES; RELATION AND LIABILITY TO PERSONS INTERESTED IN ESTATE; STANDING TO SUE. (a) A personal representative is a fiduciary who shall observe the standards of care applicable to trustees. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this chapter, and as expeditiously and efficiently as is consistent with the best interests of the estate. He shall use the authority conferred upon him by this chapter, the terms of the will, if any, and any order in proceedings to which he is party for the best interests of successors to the estate.

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

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

[1974 c 442 art 3 s 524.3—703]

524.3—704 PERSONAL REPRESENTATIVE TO PROCEED WITHOUT COURT ORDER; EXCEPTION. A personal representative shall proceed expeditiously with the settlement and distribution of a decedent's estate and, except as otherwise specified or ordered in regard to a supervised personal representative, do so without adjudication, order, or direction of the court, but he may invoke the jurisdiction of the court, in proceedings authorized by this chapter, to resolve questions concerning the estate or its administration.

[1974 c 442 art 3 s 524.3—704]

524.3—705 DUTY OF PERSONAL REPRESENTATIVE; INFORMATION TO HEIRS AND DEVISEES. Not later than 30 days after his appointment every personal representative, except any special administrator, shall give information of his appointment to the heirs and devisees, including, if there has been no formal testacy proceeding and if the personal representative was appointed on the assumption that the decedent died intestate, the devisees in any will mentioned in the application for appointment of a personal representative. The information shall be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the personal representative. The duty does not extend to require information to persons who have been adjudicated in a prior formal testacy proceeding to have no interest in the estate. The information shall include the name and address of the personal representative, indicate that it is being sent to persons who have or may have some interest in the estate being administered, indicate whether bond has been filed, and describe the court where papers relating to the estate are on file. The personal representative's failure to give this information is a breach of his duty to the persons concerned but does not affect the validity of his appointment, his powers or other duties. A personal representative may inform other persons of his appointment by delivery or ordinary first class mail.

[1974 c 442 art 3 s 524.3—705]

524.3—706 DUTY OF PERSONAL REPRESENTATIVE; INVENTORY AND APPRAISEMENT. Within three months after his appointment, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall prepare and file or mail an inventory of property owned by the decedent at the time of his death, listing it with reasonable detail, and indicating as to each listed item, its fair market value as of the date of the decedent's death, and the type and amount of any encumbrance that may exist with reference to any item.

The personal representative shall send a copy of the inventory to interested persons who request it, and shall file the original of the inventory with the court and an executed copy of the Minnesota inheritance tax return with the court and same shall be part of the court records.

[1974 c 442 art 3 s 524.3—706]

524.3—707 EMPLOYMENT OF APPRAISERS. The personal representative may employ a qualified and disinterested appraiser to assist him in ascertaining the fair market value as of the date of the decedent's death of any asset the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser shall be indicated on the inventory with the item or items he appraised.

[1974 c 442 art 3 s 524.3—707]

524.3—708 DUTY OF PERSONAL REPRESENTATIVE; SUPPLEMENTARY INVENTORY. If any property not included in the original inventory comes to the knowledge of a personal representative or if the personal representative learns that the value or description indicated in the original inventory for any item is erroneous or misleading, he shall make a supplementary inventory or appraisal showing the market value as of the date of the decedent's death of the new item or the revised market value or descriptions, and the appraisers or other data relied upon, if any, and file it with the court if the original inventory was filed, or furnish copies thereof or information thereof to persons interested in the new information.

[1974 c 442 art 3 s 524.3—708]

524.3—709 DUTY OF PERSONAL REPRESENTATIVE; POSSESSION OF ESTATE. Except as otherwise provided by a decedent's will, every personal representative has a right to, and shall take possession or control of, the decedent's property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled thereto unless or until, in the judgment of the personal representative, possession of the property by him will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by an heir or devisee is conclusive evidence, in any action against the heir or devisee for possession thereof, that the possession of the property by the personal representative is necessary for purposes of administration. The personal representative shall pay taxes on, and take all steps reasonably necessary for the management, protection and preservation of,

the estate in his possession. He may maintain an action to recover possession of property or to determine the title thereto.

[1974 c 442 art 3 s 524.3—709]

524.3—710 POWER TO AVOID TRANSFERS. The property liable for the payment of unsecured debts of a decedent includes all property transferred by him by any means which is in law void or voidable as against his creditors, and subject to prior liens, the right to recover this property, so far as necessary for the payment of unsecured debts of the decedent, is exclusively in the personal representative.

[1974 c 442 art 3 s 524.3—710]

524.3—711 POWERS OF PERSONAL REPRESENTATIVES; IN GENERAL. Until termination of his appointment a personal representative has the same power over the title to property of the estate that an absolute owner would have, in trust however, for the benefit of the creditors and others interested in the estate. This power may be exercised without notice, hearing, or order of court and when so exercised shall transfer good title to the transferee to the same extent that decedent had title thereto.

[1974 c 442 art 3 s 524.3—711]

524.3—712 IMPROPER EXERCISE OF POWER; BREACH OF FIDUCIARY DUTY. If the exercise of power concerning the estate is improper, the personal representative is liable to interested persons for damage or loss resulting from breach of his fiduciary duty to the same extent as a trustee of an express trust. The rights of purchasers and others dealing with a personal representative shall be determined as provided in sections 524.3—713 and 524.3—714.

[1974 c 442 art 3 s 524.3—712]

524.3—713 SALE, ENCUMBRANCE OR TRANSACTION INVOLVING CONFLICT OF INTEREST; VOIDABLE; EXCEPTIONS. Any sale or encumbrance to the personal representative, his spouse, agent or attorney, or any corporation or trust in which he has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest on the part of the personal representative, is voidable by any person interested in the estate except one who has consented after fair disclosure, unless

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

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

[1974 c 442 art 3 s 524.3—713]

524.3—714 PERSONS DEALING WITH PERSONAL REPRESENTATIVE; PROTECTION. A person who in good faith either assists a personal representative or deals with him for value is protected as if the personal representative properly exercised his power. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise. Except for restrictions on powers of supervised personal representatives which are endorsed on letters as provided in section 524.3—504, no provision in any will or order of court purporting to limit the power of a personal representative is effective except as to persons with actual knowledge thereof. A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

[1974 c 442 art 3 s 524.3—714]

524.3—715 TRANSACTIONS AUTHORIZED FOR PERSONAL REPRESENTATIVES; EXCEPTIONS. Except as restricted or otherwise provided by the will or by an order in a formal proceeding and subject to the priorities stated in section 524.3—902, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

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

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- (2) receive assets from fiduciaries, or other sources;
- (3) perform, compromise or refuse performance of the decedent's contracts that continue as obligations of the estate, as he may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:
 - (i) execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or
 - (ii) deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement;
- (4) satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;
- (5) if funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including moneys received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements or other prudent investments which would be reasonable for use by trustees generally;
- (6) acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale; and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;
- (7) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing or erect new party walls or buildings;
- (8) subdivide, develop or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; or adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate easements to public use without consideration;
- (9) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration;
- (10) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;
- (11) abandon property when, in the opinion of the personal representative, it is valueless, or is so encumbered, or is in condition that it is of no benefit to the estate;
- (12) vote stocks or other securities in person or by general or limited proxy;
- (13) pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;
- (14) hold a security in the name of a nominee or in other form without disclosure of the interest of the estate but the personal representative is liable for any act of the nominee in connection with the security so held;
- (15) insure the assets of the estate against damage, loss and liability and himself against liability as to third persons;
- (16) borrow money with or without security to be repaid from the estate assets or otherwise; and advance money for the protection of the estate;
- (17) effect a fair and reasonable compromise with any debtor or obligor, or extend, renew or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge or other lien upon property of another person, he may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien;
- (18) pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate;
- (19) sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;
- (20) allocate items of income or expense to either estate income or principal, as permitted or provided by law;
- (21) employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the personal representative, to advise or

assist the personal representative in the performance of his administrative duties; act without independent investigation upon their recommendations; and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;

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

(23) sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit, or for part cash and part credit, and with or without security for unpaid balances;

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

(25) incorporate any business or venture in which the decedent was engaged at the time of his death;

(26) provide for exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate;

(27) satisfy and settle claims and distribute the estate as provided in this chapter.

[1974 c 442 art 3 s 524.3—715]

524.3—716 POWERS AND DUTIES OF SUCCESSOR PERSONAL REPRESENTATIVE. A successor personal representative has the same power and duty as the original personal representative to complete the administration and distribution of the estate, as expeditiously as possible, but he shall not exercise any power expressly made personal to the executor named in the will.

[1974 c 442 art 3 s 524.3—716]

524.3—717 CO-REPRESENTATIVES; WHEN JOINT ACTION REQUIRED. If two or more persons are appointed co-representatives and unless the will provides otherwise, the concurrence of all is required on all acts connected with the administration and distribution of the estate. This restriction does not apply when any co-representative receives and receipts for property due the estate, when the concurrence of all cannot readily be obtained in the time reasonably available for emergency action necessary to preserve the estate, or when a co-representative has been delegated to act for the others. Persons dealing with a co-representative if actually unaware that another has been appointed to serve with him or if advised by the personal representative with whom they deal that he has authority to act alone for any of the reasons mentioned herein, are as fully protected as if the person with whom they dealt had been the sole personal representative.

[1974 c 442 art 3 s 524.3—717]

524.3—718 POWERS OF SURVIVING PERSONAL REPRESENTATIVE. Unless the terms of the will otherwise provide, every power exercisable by personal co-representatives may be exercised by the one or more remaining after the appointment of one or more is terminated, and if one of two or more nominated as co-executors is not appointed, those appointed may exercise all the powers incident to the office.

[1974 c 442 art 3 s 524.3—718]

524.3—719 COMPENSATION OF PERSONAL REPRESENTATIVE. A personal representative is entitled to reasonable compensation for his services. If a will provides for compensation of the personal representative and there is no contract with the decedent regarding compensation, he may renounce the provision before qualifying and be entitled to reasonable compensation. A personal representative also may renounce his right to all or any part of the compensation. A written renunciation of fee may be filed with the court.

[1974 c 442 art 3 s 524.3—719]

524.3—720 EXPENSES IN ESTATE LITIGATION. If any personal repre-

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

[1974 c 442 art 3 s 524.3—720]

524.3—721 PROCEEDINGS FOR REVIEW OF EMPLOYMENT OF AGENTS AND COMPENSATION OF PERSONAL REPRESENTATIVES AND EMPLOYEES OF ESTATE. After notice to all interested persons or on petition of an interested person or on appropriate motion if administration is supervised, the propriety of employment of any person by a personal representative including any attorney, auditor, investment advisor or other specialized agent or assistant, the reasonableness of the compensation of any person so employed, or the reasonableness of the compensation determined by the personal representative for his own services, may be reviewed by the court. Any person who has received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.

[1974 c 442 art 3 s 524.3—721]

Part 9

SPECIAL PROVISIONS RELATING TO DISTRIBUTION

524.3—901 SUCCESSORS' RIGHTS IF NO ADMINISTRATION. In the absence of administration, the heirs and devisees are entitled to the estate in accordance with the terms of a probated will or the laws of intestate succession. Devisees may establish title by the probated will to devised property. Persons entitled to property by homestead allowance, exemption or intestacy may establish title thereto by proof of the decedent's ownership, his death, and their relationship to the decedent. Successors take subject to all charges incident to administration, including the claims of creditors and allowances of surviving spouse and dependent children, and subject to the rights of others resulting from abatement, retainer, advancement, and ademption.

[1974 c 442 art 3 s 524.3—901]

524.3—902 DISTRIBUTION; ORDER IN WHICH ASSETS APPROPRIATED; ABATEMENT. (a) Except as provided in subsection (b) and except as provided in connection with the share of the surviving spouse who elects to take an elective share, shares of distributees abate, without any preference or priority as between real and personal property, in the following order: (1) property not disposed of by the will; (2) residuary devises; (3) general devises; (4) specific devises. For purposes of abatement, a general devise charged on any specific property or fund is a specific devise to the extent of the value of the property on which it is charged, and upon the failure or insufficiency of the property on which it is charged, a general devise to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.

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

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

[1974 c 442 art 3 s 524.3—902]

524.3—903 RIGHT OF RETAINER. The amount of a non-contingent indebtedness of a successor to the estate if due, or its present value if not due, shall be offset against the successor's interest; but the successor has the benefit of any defense which would be available to him in a direct proceeding for recovery of the debt.

[1974 c 442 art 3 s 524.3—903]

524.3—904 INTEREST ON GENERAL PECUNIARY DEVISE. General pecuniary devises bear interest at the legal rate beginning one year after the first appointment of a personal representative until payment, unless a contrary intent is indicated by the will.

[1974 c 442 art 3 s 524.3—904]

524.3—905 PENALTY CLAUSE FOR CONTEST. A provision in a will pur-

porting to penalize any interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings.

[1974 c 442 art 3 s 524.3—905]

524.3—906 DISTRIBUTION IN KIND; VALUATION; METHOD. (a) Unless a contrary intention is indicated by the will, the distributable assets of a decedent's estate shall be distributed in kind to the extent possible through application of the following provisions:

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

(2) Any homestead or family allowance or devise payable in money may be satisfied by value in kind provided

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

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

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

(3) For the purpose of valuation under paragraph (2) securities regularly traded on recognized exchanges, if distributed in kind, are valued at the price for the last sale of like securities, traded on the business day prior to distribution, or if there was no sale on that day, at the median between amounts bid and offered at the close of that day. Assets consisting of sums owed the decedent or the estate by solvent debtors as to which there is no known dispute or defense are valued at the sum due with accrued interest or discounted to the date of distribution. For assets which do not have readily ascertainable values, a valuation as of a date not more than 30 days prior to the date of distribution, if otherwise reasonable, controls. For purposes of facilitating distribution, the personal representative may ascertain the value of the assets as of the time of the proposed distribution in any reasonable way, including the employment of qualified appraisers, even if the assets may have been previously appraised.

(4) The residuary estate shall be distributed in kind if there is no objection to the proposed distribution and it is practicable to distribute undivided interests. In other cases, residuary property may be converted into cash for distribution.

(b) After the probable charges against the estate are known, the personal representative may mail or deliver a proposal for distribution to all persons who have a right to object to the proposed distribution. The right of any distributee to object to the proposed distribution on the basis of the kind or value of asset he is to receive, if not waived earlier in writing, terminates if he fails to object in writing received by the personal representative within 30 days after mailing or delivery of the proposal.

[1974 c 442 art 3 s 524.3—906]

524.3—907 DISTRIBUTION IN KIND; EVIDENCE. If distribution in kind is made, the personal representative shall execute an instrument or deed of distribution assigning, transferring or releasing the assets to the distributee as evidence of the distributee's title to the property.

[1974 c 442 art 3 s 524.3—907]

524.3—908 DISTRIBUTION; RIGHT OR TITLE OF DISTRIBUTE. Proof that a distributee has received an instrument or deed of distribution of assets in kind, or payment in distribution, from a personal representative, is conclusive evidence that the distributee has succeeded to the interest of the estate in the distributed assets, as against all persons interested in the estate, except that the personal representative may recover the assets or their value if the distribution was improper.

[1974 c 442 art 3 s 524.3—908]

524.3—909 IMPROPER DISTRIBUTION; LIABILITY OF DISTRIBUTE. Unless the distribution or payment no longer can be questioned because of adjudication, estoppel, or limitation, a distributee of property improperly distributed or paid, or a claimant who was improperly paid, is liable to return the property improperly received and its income since distribution if he has the property. If he does not have the property, then he is liable to return the value as of the date of disposition of the property improperly received and its income and gain received by him.

[1974 c 442 art 3 s 524.3—909]

524.3—910 PURCHASERS FROM DISTRIBUTEES PROTECTED. If property distributed in kind or a security interest therein is acquired by a purchaser, or lender, for value from a distributee who has received an instrument or deed of distribution from the personal representative, the purchaser or lender takes title free of any claims of the estate, whether or not the distribution was proper. To be protected under this provision, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind.

[1974 c 442 art 3 s 524.3—910]

524.3—911 PARTITION FOR PURPOSE OF DISTRIBUTION. When two or more heirs or devisees are entitled to distribution of undivided interests in any real or personal property of the estate, the personal representative or one or more of the heirs or devisees may petition the court prior to the formal or informal closing of the estate, to make partition. After notice to the interested heirs or devisees, the court shall partition the property in the same manner as provided by the law for civil actions of partition. The court may direct the personal representative to sell any property which cannot be partitioned without prejudice to the owners and which cannot conveniently be allotted to any one party.

[1974 c 442 art 3 s 524.3—911]

524.3—912 PRIVATE AGREEMENTS AMONG SUCCESSORS TO DECEDENT BINDING ON PERSONAL REPRESENTATIVE. Subject to the rights of creditors and taxing authorities, competent successors may agree among themselves to alter the interests, shares, or amounts to which they are entitled under the will of the decedent, or under the laws of intestacy, in any way that they provide in a written contract executed by all who are affected by its provisions. The personal representative shall abide by the terms of the agreement subject to his obligation to administer the estate for the benefit of creditors, to pay all taxes and costs of administration, and to carry out the responsibilities of his office for the benefit of any successors of the decedent who are not parties. Personal representatives of decedent's estates are not required to see to the performance of trusts if the trustee thereof is another person who is willing to accept the trust. Accordingly, trustees of a testamentary trust are successors for the purposes of this section. Nothing herein relieves trustees of any duties owed to beneficiaries of trusts.

[1974 c 442 art 3 s 524.3—912]

524.3—913 DISTRIBUTIONS TO TRUSTEE. (a) Before distributing to a trustee, the personal representative may require that the trust be registered if the state in which it is to be administered provides for registration and that the trustee inform the beneficiaries as provided in section 524.7—303.

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

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

[1974 c 442 art 3 s 524.3—913]

524.3—914 DISPOSITION OF UNCLAIMED ASSETS. (a) If an heir, devisee or claimant cannot be found, the personal representative shall distribute the share of the missing person to his conservator, if any, otherwise to the state treasurer to become a part of the general fund.

(b) The money received by state treasurer shall be paid to the person entitled on proof of his right thereto or, if the state treasurer refuses or fails to pay, the person may petition the court which appointed the personal representative, whereupon the court upon notice to the state treasurer may determine the person entitled to the money and order the treasurer to pay it to him. No interest is allowed thereon and the heir, devisee or claimant shall pay all costs and expenses incident to the proceeding. If no petition is made to the court within eight years after payment to the state treasurer, the right of recovery is barred.

[1974 c 442 art 3 s 524.3—914]

524.3—915 DISTRIBUTION TO PERSON UNDER DISABILITY. A personal representative may discharge his obligation to distribute to any person under legal disability by distributing to his conservator, or any other person authorized by this chapter or otherwise to give a valid receipt and discharge for the distribution.

[1974 c 442 art 3 s 524.3—915]

Part 10
CLOSING ESTATES

524.3—1001 FORMAL PROCEEDINGS TERMINATING ADMINISTRATION; TESTATE OR INTETATE; ORDER OF GENERAL PROTECTION. (a) A personal representative or any interested person may petition for an order of complete settlement of the estate. The personal representative may petition at any time, and any other interested person may petition after one year from the appointment of the original personal representative except that no petition under this section may be entertained until the time for presenting claims which arose prior to the death of the decedent has expired. The petition may request the court to determine testacy, if not previously determined, to consider the final account or compel or approve an accounting and distribution, to construe any will or determine heirs and adjudicate the final settlement and distribution of the estate. After notice to all interested persons and hearing the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate, and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any interested person.

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

[1974 c 442 art 3 s 524.3—1001]

524.3—1002 FORMAL PROCEEDINGS TERMINATING TESTATE ADMINISTRATION; ORDER CONSTRUING WILL WITHOUT ADJUDICATING TESTACY. A personal representative administering an estate under an informally probated will or any devisee under an informally probated will may petition for an order of settlement of the estate which will not adjudicate the testacy status of the decedent. The personal representative may petition at any time, and a devisee may petition after one year, from the appointment of the original personal representative, except that no petition under this section may be entertained until the time for presenting claims which arose prior to the death of the decedent has expired. The petition may request the court to consider the final account or compel or approve an accounting and distribution, to construe the will and adjudicate final settlement and distribution of the estate. After notice to all devisees and the personal representative and hearing, the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate under the will, and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any devisee who is a party to the proceeding and those he represents. If it appears that a part of the estate is intestate, the proceedings shall be dismissed or amendments made to meet the provisions of section 524.3—1001.

[1974 c 442 art 3 s 524.3—1002]

524.3—1003 CLOSING ESTATES; BY SWORN STATEMENT OF PERSONAL REPRESENTATIVE. (a) Unless prohibited by order of the court and except for estates being administered in supervised administration proceedings, a personal representative may close an estate by filing with the court no earlier than six months after the date of original appointment of a general personal representative for the estate, a verified statement stating that he, or a prior personal representative whom he has succeeded, has or have:

(1) published notice to creditors and that the first publication occurred more than six months prior to the date of the statement;

(2) fully administered the estate of the decedent by making payment, settlement or other disposition of all claims which were presented, expenses of adminis-

tration and estate, inheritance and other taxes, except as specified in the statement, and that the assets of the estate have been inventoried and distributed to the persons entitled. If any claims, expenses or taxes remain undischarged, the statement shall state in detail other arrangements which have been made to accommodate outstanding liabilities; and

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

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

[1974 c 442 art 3 s 524.3—1003]

524.3—1004 LIABILITY OF DISTRIBUTEES TO CLAIMANTS. After assets of an estate have been distributed and subject to section 524.3—1006, an undischarged claim not barred may be prosecuted in a proceeding against one or more distributees. No distributee shall be liable to claimants for amounts in excess of the value of his distribution as of the time of distribution. As between distributees, each shall bear the cost of satisfaction of unbarred claims as if the claim had been satisfied in the course of administration. Any distributee who shall have failed to notify other distributees of the demand made upon him by the claimant in sufficient time to permit them to join in any proceeding in which the claim was asserted against him loses his right of contribution against other distributees.

[1974 c 442 art 3 s 524.3—1004]

524.3—1005 LIMITATIONS ON PROCEEDINGS AGAINST PERSONAL REPRESENTATIVE. Unless previously barred by adjudication and except as provided in the closing statement, the rights of successors and of creditors whose claims have not otherwise been barred against the personal representative for breach of fiduciary duty are barred unless a proceeding to assert the same is commenced within six months after the filing of the closing statement. The rights thus barred do not include rights to recover from a personal representative for fraud, misrepresentation, or inadequate disclosure related to the settlement of the decedent's estate.

[1974 c 442 art 3 s 524.3—1005]

524.3—1006 LIMITATIONS ON ACTIONS AND PROCEEDINGS AGAINST DISTRIBUTEES. Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling the accounts of a personal representative or otherwise barred, the claim of any claimant to recover from a distributee who is liable to pay the claim, and the right of any heir or devisee, or of a successor personal representative acting in their behalf, to recover property improperly distributed or the value thereof from any distributee is forever barred at the later of (1) three years after the decedent's death; or (2) one year after the time of distribution thereof. This section does not bar an action to recover property or value received as the result of fraud.

[1974 c 442 art 3 s 524.3—1006]

524.3—1007 CERTIFICATE DISCHARGING LIENS SECURING FIDUCIARY PERFORMANCE. After his appointment has terminated, the personal representative, his sureties, or any successor of either, upon the filing of a verified application showing, so far as is known by the applicant, that no action concerning the estate is pending in any court, is entitled to receive a certificate from the registrar that the personal representative appears to have fully administered the estate in question. The certificate evidences discharge of any lien on any property given to secure the obligation of the personal representative in lieu of bond or any surety, but does not preclude action against the personal representative or the surety.

[1974 c 442 art 3 s 524.3—1007]

524.3—1008 SUBSEQUENT ADMINISTRATION. If other property of the estate is discovered after an estate has been settled and the personal representative discharged or after one year after a closing statement has been filed, the court upon petition of any interested person and upon notice as it directs may appoint the same or a successor personal representative to administer the subsequently discovered estate. If a new appointment is made, unless the court orders otherwise, the provisions of this chapter apply as appropriate; but no claim previously barred may be asserted in the subsequent administration.

[1974 c 442 art 3 s 524.3—1008]

Part 11

COMPROMISE OF CONTROVERSIES

524.3—1101 EFFECT OF APPROVAL OF AGREEMENTS INVOLVING TRUSTS, INALIENABLE INTERESTS, OR INTERESTS OF THIRD PERSONS. A compromise of any controversy as to admission to probate of any instrument offered for formal probate as the will of a decedent, the construction, validity, or effect of any probated will, the rights or interests in the estate of the decedent, of any successor, or the administration of the estate, if approved in a formal proceeding in the court for that purpose, is binding on all the parties thereto including those unborn, unascertained or who could not be located. An approved compromise is binding even though it may affect a trust or an inalienable interest. A compromise does not impair the rights of creditors or of taxing authorities who are not parties to it.

[1974 c 442 art 3 s 524.3—1101]

524.3—1102 PROCEDURE FOR SECURING COURT APPROVAL OF COMPROMISE. The procedure for securing court approval of a compromise is as follows:

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

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

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

[1974 c 442 art 3 s 524.3—1102]

Part 12

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

524.3—1201 COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT.

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

(1) the value of the entire estate, wherever located, less liens and encumbrances, does not exceed \$5,000;

(2) 30 days have elapsed since the death of the decedent;

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

(4) the claiming successor is entitled to payment or delivery of the property.

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

[1974 c 442 art 3 s 524.3—1201]

524.3—1202 EFFECT OF AFFIDAVIT. The person paying, delivering, transferring, or issuing personal property or the evidence thereof pursuant to affidavit is discharged and released to the same extent as if he dealt with a personal repre-

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

[1974 c 442 art 3 s 524.3—1202]

524.3—1203 SMALL ESTATES; SUMMARY ADMINISTRATIVE PROCEDURE. If it appears from the inventory and appraisal that the value of the entire estate, less liens and encumbrances, does not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent, the personal representative, without giving notice to creditors, may immediately disburse and distribute the estate to the persons entitled thereto and file a closing statement as provided in section 524.3—1204.

[1974 c 442 art 3 s 524.3—1203]

524.3—1204 SMALL ESTATES; CLOSING BY SWORN STATEMENT OF PERSONAL REPRESENTATIVE. (a) Unless prohibited by order of the court and except for estates being administered by supervised personal representatives, a personal representative may close an estate administered under the summary procedures of section 524.3—1203 by filing with the court, at any time after disbursement and distribution of the estate, a verified statement stating that:

(1) to the best knowledge of the personal representative, the value of the entire estate, less liens and encumbrances, did not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable, necessary medical and hospital expenses of the last illness of the decedent;

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

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

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

(c) A closing statement filed under this section has the same effect as one filed under section 524.3—1003.

[1974 c 442 art 3 s 524.3—1204]

Article 4

FOREIGN PERSONAL REPRESENTATIVES; ANCILLARY ADMINISTRATION

Part 1

DEFINITIONS

524.4—101 DEFINITIONS. In this article

(1) "local administration" means administration by a personal representative appointed in this state pursuant to appointment proceedings described in article 3.

(2) "local personal representative" includes any personal representative appointed in this state pursuant to appointment proceedings described in article 3 and excludes foreign personal representatives who acquire the power of a local personal representative pursuant to section 524.4—205.

(3) "resident creditor" means a person domiciled in, or doing business in this state, who is, or could be, a claimant against an estate of a nonresident decedent.

[1974 c 442 art 4 s 524.4—101]

Part 2

POWERS OF FOREIGN PERSONAL REPRESENTATIVES

524.4—201 PAYMENT OF DEBT AND DELIVERY OF PROPERTY TO DOMICILIARY FOREIGN PERSONAL REPRESENTATIVE WITHOUT LOCAL ADMINISTRATION. At any time after the expiration of 60 days from the death of a nonresident decedent, any person indebted to the estate of the nonresident dece-

dent or having possession or control of personal property, or of an instrument evidencing a debt, obligation, stock or chose in action belonging to the estate of the nonresident decedent may pay the debt, deliver the personal property, or the instrument evidencing the debt, obligation, stock or chose in action, to the domiciliary foreign personal representative of the nonresident decedent upon being presented with proof of his appointment and an affidavit made by or on behalf of the representative stating:

- (1) the date of the death of the nonresident decedent,
- (2) that no local administration, or application or petition therefor, is pending in this state,
- (3) that the domiciliary foreign personal representative is entitled to payment or delivery.

[1974 c 442 art 4 s 524.4—201]

524.4—202 PAYMENT OR DELIVERY DISCHARGES. Payment or delivery made in good faith on the basis of the proof of authority and affidavit releases the debtor or person having possession of the personal property to the same extent as if payment or delivery had been made to a local personal representative.

[1974 c 442 art 4 s 524.4—202]

524.4—203 RESIDENT CREDITOR NOTICE. Payment or delivery under section 524.4—201 may not be made if a resident creditor of the nonresident decedent has notified the debtor of the nonresident decedent or the person having possession of the personal property belonging to the nonresident decedent that the debt should not be paid nor the property delivered to the domiciliary foreign personal representative.

[1974 c 442 art 4 s 524.4—203]

524.4—204 PROOF OF AUTHORITY-BOND. If no local administration or application or petition therefor is pending in this state, a domiciliary foreign personal representative may file with a court in this state in a county in which property belonging to the decedent is located, authenticated copies of his appointment and of any official bond he has given.

[1974 c 442 art 4 s 524.4—204]

524.4—205 POWERS. A domiciliary foreign personal representative who has complied with section 524.4—204 may exercise as to assets in this state all powers of a local personal representative and may maintain actions and proceedings in this state subject to any conditions imposed upon nonresident parties generally.

[1974 c 442 art 4 s 524.4—205]

524.4—206 POWER OF REPRESENTATIVES IN TRANSITION. The power of a domiciliary foreign personal representative under section 524.4—201 or 524.4—205 shall be exercised only if there is no administration or application therefor pending in this state. An application or petition for local administration of the estate terminates the power of the foreign personal representative to act under section 524.4—205, but the local court may allow the foreign personal representative to exercise limited powers to preserve the estate. No person who, before receiving actual notice of a pending local administration, has changed his position in reliance upon the powers of a foreign personal representative shall be prejudiced by reason of the application or petition for, or grant of, local administration. The local personal representative is subject to all duties and obligations which have accrued by virtue of the exercise of the powers by the foreign personal representative and may be substituted for him in any action or proceedings in this state.

[1974 c 442 art 4 s 524.4—206]

524.4—207 ANCILLARY AND OTHER LOCAL ADMINISTRATIONS; PROVISIONS GOVERNING. In respect to a nonresident decedent, the provisions of article 3 of this chapter govern (1) proceedings, if any, in a court of this state for probate of the will, appointment, removal, supervision, and discharge of the local personal representative, and any other order concerning the estate; and (2) the status, powers, duties and liabilities of any local personal representative and the rights of claimants, purchasers, distributees and others in regard to a local administration.

[1974 c 442 art 4 s 524.4—207]

Part 3

JURISDICTION OVER FOREIGN REPRESENTATIVES

524.4—301 JURISDICTION BY ACT OF FOREIGN PERSONAL REPRESENTATIVE.

SENTATIVE. A foreign personal representative submits personally to the jurisdiction of the courts of this state in any proceeding relating to the estate by (1) filing authenticated copies of his appointment as provided in section 524.4—204, (2) receiving payment of money or taking delivery of personal property under section 524.4—201, or (3) doing any act as a personal representative in this state which would have given the state jurisdiction over him as an individual. Jurisdiction under (2) is limited to the money or value of personal property collected.

[1974 c 442 art 4 s 524.4—301]

524.4—302 JURISDICTION BY ACT OF DECEDENT. In addition to jurisdiction conferred by section 524.4—301, a foreign personal representative is subject to the jurisdiction of the courts of this state to the same extent that his decedent was subject to jurisdiction immediately prior to death.

[1974 c 442 art 4 s 524.4—302]

524.4—303 SERVICE ON FOREIGN PERSONAL REPRESENTATIVE. (a) Service of process may be made upon the foreign personal representative by registered or certified mail, addressed to his last reasonably ascertainable address, requesting a return receipt signed by addressee only. Notice by ordinary first class mail is sufficient if registered or certified mail service to the addressee is unavailable. Service may be made upon a foreign personal representative in the manner in which service could have been made under other laws of this state on either the foreign personal representative or his decedent immediately prior to death.

(b) If service is made upon a foreign personal representative as provided in subsection (a), he shall be allowed at least 30 days within which to appear or respond.

[1974 c 442 art 4 s 524.4—303]

Part 4

JUDGMENTS AND PERSONAL REPRESENTATIVE

524.4—401 EFFECT OF ADJUDICATION FOR OR AGAINST PERSONAL REPRESENTATIVE. An adjudication rendered in any jurisdiction in favor of or against any personal representative of the estate is as binding on the local personal representative as if he were a party to the adjudication.

[1974 c 442 art 4 s 524.4—401]

Article 8

EFFECTIVE DATE AND REPEALER

524.8—101 TIME OF TAKING EFFECT; PROVISIONS FOR TRANSITION. (a) This chapter takes effect on August 1, 1975.

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

(1) the chapter applies to any wills of decedents dying thereafter;

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

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

(4) an act done before the effective date in any proceeding and any accrued right is not impaired by this chapter. If a right is acquired, extinguished or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before the effective date, the provisions shall remain in force with respect to that right;

(5) any rule of construction or presumption provided in this chapter applies to instruments executed and multiple party accounts opened before the effective date unless there is a clear indication of a contrary intent;

(6) a person holding office as judge of the court on the effective date of this chapter may continue the office of judge of this court and may be selected for additional terms after the effective date of this chapter even though he does not meet the qualifications of a judge as provided in article 1.

[1974 c 442 art 8 s 524.8—101]

524.8—102 SPECIFIC REPEALER. Minnesota Statutes, 1973 Supplement, Sec-

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524.8—103 UNIFORM PROBATE CODE

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tions 525.331, 525.481, 525.482, 525.485, 525.501, and 525.80, are repealed. Minnesota Statutes 1971, Sections 525.222, 525.23, 525.231, 525.24, 525.241, 525.243, 525.244, 525.25, 525.251, 525.252, 525.273, 525.28, 525.281, 525.282, 525.29, 525.291, 525.292, 525.30, 525.301, 525.302, 525.303, 525.304, 525.31, 525.311, 525.312, 525.314, 525.315, 525.316, 525.32, 525.321, 525.322, 525.323, 525.324, 525.34, 525.35, 525.36, 525.37, 525.38, 525.40, 525.401, 525.47, 525.486, 525.49, 525.50, 525.502, 525.503, 525.504, 525.52, 525.805, 525.81, 525.82, 525.89, and 525.91, are repealed.

[1974 c 442 art 8 s 524.8—102]

524.8—103 EARLY EFFECTIVE DATE. Notwithstanding section 524.8—101, the provisions of Laws 1974, Chapter 442 relating to bonds found at sections 524.3—603 to 524.3—606 and Laws 1974, Chapter 442, Article 9, and that portion of section 524.8—102 which repeals Minnesota Statutes 1971, Sections 525.32 to 525.324, are effective August 1, 1974.

[1974 c 442 art 8 s 524.8—103]