

# MINNESOTA STATUTES 1975 SUPPLEMENT

## UNIFORM PROBATE CODE 524.1-102

### CHAPTER 524. UNIFORM PROBATE CODE

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### 524.1-102 Purposes; rule of construction.

(a) Chapters 524 and 525 shall be liberally construed and applied to promote the underlying purposes and policies.

(b) The underlying purposes and policies of chapters 524 and 525 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;

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

[1975 c 347 s 12]

### 524.1-105 [Repealed, 1975 c 347 s 144]

### 524.1-107 Evidence as to death or status.

In proceedings under chapter 524 the rules of evidence in courts of general jurisdiction including any relating to simultaneous deaths, are applicable unless specifically displaced by chapter 524. 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) the provisions of section 576.141 shall govern the presumption of death of a person whose absence is not satisfactorily explained.

[1975 c 347 s 13]

### 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 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.

[1975 c 347 s 14]

### 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 chapters 524 and 525:

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(1) "Application" means a written request to the registrar for an order of informal probate or appointment under article III, 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" includes liabilities of the decedent whether arising in contract or otherwise and liabilities of the estate which arise after the death of the decedent including funeral expenses and expenses of administration. The term does not include taxes, demands or disputes regarding title of a decedent to specific assets alleged to be included in the estate, tort claims, foreclosure of mechanic's liens, 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.

(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 by an officer of the court for probate of a will or appointment of a personal representative in accordance with sections 524.3-301 to 524.3-311.

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(20) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries and any others having a property right in or claim against 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.

(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.

(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.

(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.

(36) "Registrar" refers to the judge of the court or the person designated by the court 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 to 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, chapters 524 or 525.

(43) "Supervised administration" refers to the proceedings described in sections 524.3-501 to 524.3-505.

(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

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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.

[1975 c 347 s 15]

### 524.1-301 Territorial application.

Except as otherwise provided in chapter 524, chapters 524 and 525 apply to (1) the affairs and estates of decedents, missing persons, and persons to be protected, domiciled in this state, and (2) the property of nonresident decedents located in this state or property coming into the control of a fiduciary who is subject to the laws of this state.

[1975 c 347 s 16]

### 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 estates of decedents, including construction of wills and determination of heirs and successors of decedents.

(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.

[1975 c 347 s 17]

### 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, conservatee, or ward 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.

[1975 c 347 s 18]

524.1-304 [Repealed, 1975 c 347 s 144]

524.1-305 [Repealed, 1975 c 347 s 144]

### 524.1-307 Registrar; powers.

The acts and orders which chapter 524 specifies as performable by the registrar shall be performed 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.

[1975 c 347 s 19]

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### 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 once a week for two consecutive weeks, a copy thereof in a legal newspaper 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.

(d) No defect in any notice nor in publication or in service thereof shall limit or affect the validity of the appointment of the personal representative, his powers or other duties. Any of the notices required by sections 524.3-306, 524.3-310, 524.3-403, 524.3-801 and 524.1-401 may be combined into one notice.

[1975 c 347 s 20]

### 524.1-403 Pleadings; when parties bound by others; notice.

In formal proceedings involving estates of decedents 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 repre-

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sented 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.

[1975 c 347 s 21]

### Article 2

#### Part 1

#### INTESTATE SUCCESSION

##### 524.2-110 Advancements.

If a person dies intestate as to all his estate, property which he gave in his lifetime to an heir is treated as an advancement against the latter's share of the estate only if declared in a contemporaneous writing by the decedent or acknowledged in writing by the heir to be an advancement. For this purpose the property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of death of the decedent, whichever first occurs. If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the intestate share to be received by the recipient's issue, unless the declaration or acknowledgment provides otherwise.

[1975 c 347 s 22]

#### Part 5

#### WILLS

##### 524.2-501 Who may make a will.

Any person 18 or more years of age who is of sound mind may make a will.

[1975 c 347 s 22]

##### 524.2-502 Execution.

Except as provided for writings within section 524.2-513 and wills within section 524.2-506, every will shall be in writing signed by the testator or in the testator's name by some other person in the testator's presence and by his direction, and shall be signed by at least two persons each of whom witnessed either the signing or the testator's acknowledgment of the signature or of the will.

[1975 c 347 s 22]

##### 524.2-504 Self-proved will.

An attested will may at the time of its execution or at any subsequent date be made self-proved, by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of this state, or under the laws of the state where execution occurs, and evidenced by the officer's certificate, under official seal, attached or annexed to the will in form and content substantially as follows:

THE STATE OF .....

COUNTY OF .....

We, ....., ....., and ....., the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as his last will and that he had signed willingly or directed another to sign for him, and that he executed it as his free and voluntary act for the purposes therein expressed; and that each of the witnesses, in the presence and hearing of the testator, signed the will as witnesses and that to the best of his knowledge the testator was at the time 18 or more years of age, of sound mind and under no constraint or undue influence.

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.....
Testator
.....
Witness
.....
Witness

Subscribed, sworn to and acknowledged before me by ..... the testator,
and subscribed and sworn to before me by ..... and ....., witnesses, this .....
day of ....., .....

(SEAL) (Signed).....
.....
(Official capacity of officer)

[1975 c 347 s 22]

524.2-505 Who may witness.

(a) Any person generally competent to be a witness may act as a witness to
a will.

(b) A will is not invalid because the will is signed by an interested witness.

[1975 c 347 s 22]

524.2-506 Choice of law as to execution.

A written will is valid if executed in compliance with section 524.2-502 or if
its execution complies with the law at the time of execution of the place where the
will is executed, or of the law of the place where at the time of execution or at the
time of death the testator is domiciled, has a place of abode or is a national.

[1975 c 347 s 22]

524.2-507 Revocation by writing or by act.

A will or any part thereof is revoked

(1) by a subsequent will which revokes the prior will or part expressly or by
inconsistency; or

(2) by being burned, torn, canceled, obliterated, or destroyed, with the intent
and for the purpose of revoking it by the testator or by another person in his pres-
ence and by his direction.

[1975 c 347 s 22]

524.2-508 Revocation by dissolution of marriage; no revocation by other changes of
circumstances.

If after executing a will the testator's marriage is dissolved or annulled, the
dissolution or annulment revokes any disposition or appointment of property made
by the will to the former spouse, any provision conferring a general or special
power of appointment on the former spouse, and any nomination of the former
spouse as executor, trustee, conservator, or guardian, unless the will expressly pro-
vides otherwise. Property prevented from passing to a former spouse because of
revocation by dissolution of marriage or annulment passes as if the former spouse
failed to survive the decedent, and other provisions conferring some power or office
on the former spouse are interpreted as if the spouse failed to survive the decedent.
If provisions are revoked solely by this section, they are revived by testator's re-
marriage to the former spouse. For purposes of chapters 524 and 525, dissolution
of marriage includes divorce. A decree of separation which does not terminate the
status of husband and wife is not a dissolution of marriage for purposes of this sec-
tion. No change of circumstances other than as described in this section revokes a
will.

[1975 c 347 s 22]



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### **524.2-509 Revival of revoked will.**

(a) If a second will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked by acts under section 524.2-507, the first will is revoked in whole or in part unless it is evident from the circumstances of the revocation of the second will or from testator's contemporary or subsequent declarations that he intended the first will to take effect as executed.

(b) If a second will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked by a third will, the first will is revoked in whole or in part, except to the extent it appears from the terms of the third will that the testator intended the first will to take effect.

[1975 c 347 s 22]

### **524.2-510 Incorporation by reference.**

Any writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

[1975 c 347 s 22]

### **524.2-512 Events of independent significance.**

A will may dispose of property by reference to acts and events which have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of a will of another person is such an event.

[1975 c 347 s 22]

### **524.2-513 Separate writing identifying bequest of tangible property.**

A will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money, evidences of indebtedness, documents of title, and securities, and property used in trade or business. To be admissible under this section as evidence of the intended disposition, the writing must either be in the handwriting of the testator or be signed by him and must describe the items and the devisees with reasonable certainty. The writing may be referred to as one to be in existence at the time of the testator's death; it may be prepared before or after the execution of the will; it may be altered by the testator after its preparation; and it may be a writing which has no significance apart from its effect upon the dispositions made by the will.

[1975 c 347 s 22]

## Part 6 RULES OF CONSTRUCTION

### **524.2-602 Choice of law as to meaning and effect of wills.**

The meaning and legal effect of a disposition in a will shall be determined by the local law of a particular state selected by the testator in his instrument unless the application of that law is contrary to the public policy of this state otherwise applicable to the disposition.

[1975 c 347 s 22]

### **524.2-603 Rules of construction and intention.**

The intention of a testator as expressed in his will controls the legal effect of his dispositions. The rules of construction expressed in the succeeding sections of this part apply unless a contrary intention is indicated by the will.

[1975 c 347 s 22]

### **524.2-604 Construction that will passes all property; after acquired property.**

A will is construed to pass all property which the testator owns at his death including property acquired after the execution of the will.

[1975 c 347 s 22]

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### 524.2-605 Anti-lapse; deceased devisee; class gifts.

If a devisee who is a grandparent or a lineal descendant of a grandparent of the testator is dead at the time of execution of the will, or fails to survive the testator, the issue of the deceased devisee who survive the testator take in place of the deceased devisee and if they are all of the same degree of kinship to the devisee they take equally, but if of unequal degree then those of more remote degree take by representation. One who is a grandparent or a lineal descendant of a grandparent of the testator and who would have been a devisee under a class gift if he had survived the testator is treated as a devisee for purposes of this section whether his death occurred before or after the execution of the will.

[1975 c 347 s 22]

### 524.2-606 Failure of testamentary provision.

(a) Except as provided in section 524.2-605 if a devise other than a residuary devise fails for any reason, it becomes a part of the residue.

(b) Except as provided in section 524.2-605 if the residue is devised to two or more persons and the share of one of the residuary devisees fails for any reason, his share passes to the other residuary devisee, or to other residuary devisees in proportion to their interests in the residue.

[1975 c 347 s 22]

### 524.2-607 Change in securities; accessions; nonademption.

(a) If the testator intended a specific devise of certain securities rather than the equivalent value thereof, the specific devisee is entitled only to:

(1) as much of the devised securities as is a part of the estate at time of the testator's death;

(2) any additional or other securities of the same entity owned by the testator by reason of action initiated by the entity excluding any acquired by exercise of purchase options;

(3) securities of another entity owned by the testator as a result of a merger, consolidation, reorganization or other similar action initiated by the entity; and

(4) any additional securities of the entity owned by the testator as a result of a plan of reinvestment if it is a regulated investment company.

(b) Distributions prior to death with respect to a specifically devised security not provided for in subsection (a) are not part of the specific devise.

[1975 c 347 s 22]

### 524.2-608 Nonademption of specific devises in certain cases; sale by conservator or guardian; unpaid proceeds of sale, condemnation or insurance.

(a) If specifically devised property is sold by a conservator or guardian, or if a condemnation award or insurance proceeds are paid to a conservator or guardian as a result of condemnation, fire, or casualty, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the condemnation award, or the insurance proceeds. This subsection does not apply if subsequent to the sale, condemnation, or casualty, it is adjudicated that the disability of the testator has ceased and the testator survives the adjudication by one year. The right of the specific devisee under this subsection is reduced by any right he has under subsection (b).

(b) Any specific devisee has the right to the remaining specifically devised property and:

(1) any balance of the purchase price together with any security interest owing from a purchaser to the testator at death by reason of sale of the property;

(2) any amount of a condemnation award for the taking of the property unpaid at death;

(3) any proceeds unpaid at death on fire or casualty insurance on the property; and

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(4) property owned by testator at his death as a result of foreclosure, or obtained in lieu of foreclosure, of the security for a specifically devised obligation.

[1975 c 347 s 22]

### **524.2-609 Nonexoneration.**

A specific devise passes subject to any security interest existing at the date of death, without right of exoneration, regardless of a general directive in the will to pay debts.

[1975 c 347 s 22]

### **524.2-610 Exercise of power of appointment.**

A general residuary clause in a will, or a will making general disposition of all of the testator's property, does not exercise a power of appointment held by the testator unless specific reference is made to the power or there is some other indication of intention to include the property subject to the power.

[1975 c 347 s 22]

### **524.2-612 Ademption by satisfaction.**

Property which a testator gave in his lifetime to a person is treated as a satisfaction of a devise to that person in whole or in part, only if the will provides for deduction of the lifetime gift, or the testator declares in a contemporaneous writing that the gift is to be deducted from the devise or is in satisfaction of the devise, or the devisee acknowledges in writing that the gift is in satisfaction. For purpose of partial satisfaction, property given during lifetime is valued as of the time the devisee came into possession or enjoyment of the property or as of the time of death of the testator, whichever occurs first.

[1975 c 347 s 22]

## Part 7

### CONTRACTUAL ARRANGEMENTS RELATING TO DEATH

#### **524.2-701 Contracts concerning succession.**

A contract to make a will or devise, or not to revoke a will or devise, or to die intestate, if executed after January 1, 1976, can be established only by (1) provisions of a will stating material provisions of the contract; (2) an express reference in a will to a contract and extrinsic evidence proving the terms of the contract; or (3) a writing signed by the decedent evidencing the contract. The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.

[1975 c 347 s 22]

## Part 8

### GENERAL PROVISIONS

#### **524.2-802 Effect of dissolution of marriage, annulment, and decree of separation.**

A person whose marriage to the decedent has been dissolved or annulled is not a surviving spouse unless, by virtue of a subsequent marriage, he is married to the decedent at the time of death. A decree of separation which does not terminate the status of husband and wife is not a dissolution of marriage for purposes of this section.

[1975 c 347 s 22]

#### **524.2-803 Effect of homicide on intestate succession, wills, joint assets, life insurance and beneficiary designations.**

(a) A surviving spouse, heir or devisee who feloniously and intentionally kills the decedent is not entitled to any benefits under the will or under this article, and the estate of decedent passes as if the killer had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of the killer passes as if the killer had predeceased the decedent.

(b) Any joint tenant who feloniously and intentionally kills another joint ten-

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ant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as his property and the killer has no rights by survivorship. This provision applies to joint tenancies in real and personal property, joint accounts in banks, savings and loan associations, credit unions and other institutions, and any other form of coownership with survivorship incidents.

(c) A named beneficiary of a bond, life insurance policy, or other contractual arrangement who feloniously and intentionally kills the principal obligee or the person upon whose life the policy is issued is not entitled to any benefit under the bond, policy or other contractual arrangement, and it becomes payable as though the killer had predeceased the decedent.

(d) Any other acquisition of property or interest by the killer shall be treated in accordance with the principles of this section.

(e) A final judgment of conviction of felonious and intentional killing is conclusive for purposes of this section. In the absence of a conviction of felonious and intentional killing the court may determine by a preponderance of evidence whether the killing was felonious and intentional for purposes of this section.

(f) This section does not affect the rights of any person who, before rights under this section have been adjudicated, purchases from the killer for value and without notice property which the killer would have acquired except for this section, but the killer is liable for the amount of the proceeds or the value of the property. Any insurance company, bank, or other obligor making payment according to the terms of its policy or obligation is not liable by reason of this section unless prior to payment it has received at its home office or principal address written notice of a claim under this section.

[1975 c 347 s 22]

### 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 chapters 524 and 525 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, disclaimer, renunciation, or other circumstances affecting the devolution of testate estates, or in the absence of testamentary disposition, to his heirs, or to those indicated as substitutes for them in cases involving disclaimer, renunciation or other circumstances affecting devolution of intestate estates, subject to the provisions of sections 525.14 and 525.145, the allowances provided for by section 525.15, to the rights of creditors, elective share of the surviving spouse, and to administration.

[1975 c 347 s 23]

### 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, to nominate an executor or to exercise a power of appointment, 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 in a formal proceeding or proceedings to determine descent, 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.

[1975 c 347 s 24]

### 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

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to enforce a claim against the estate are governed by this article. 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.

[1975 c 347 s 25]

### **524.3-105 Proceedings affecting devolution and administration; jurisdiction of subject matter.**

Any interested person in a decedent's estate 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 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, except actions to determine title to property, tort actions, foreclosure of mechanic's liens, 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 and any actions under section 573.02.

[1975 c 347 s 26]

### **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 absentee, or disappeared or missing person, at any time within three years after the death of the absentee or disappeared or missing person is established; 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, determine heirs of an intestate, or proceedings to determine descent. 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.

[1975 c 347 s 27]

### **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 one year after death. A cause of action which, but for this section, would have been barred less than one year after death, is barred after one year unless tolled.

[1975 c 347 s 28]

### **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 per-

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son 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) to (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 disclaimer, 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 as provided in (b)(1) or 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.

[1975 c 347 s 29]

### 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 personal representative or other person shall apply to the court for an order or filing to which the demand relates unless demandant or his attorney is given notice thereof at least 14 days before the date of such order or filing, except that this requirement shall not apply to any order entered or petition filed in any formal proceeding. Such notice

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shall be given by delivery of a copy thereof to the person being notified or by mailing a copy thereof to him by certified, registered or ordinary first class mail addressed to him at the post office address given in the demand or at his office or place of residence, if known. The court for good cause shown may provide for a different method or time of giving such notice and proof thereof shall be made on or before the making or acceptance of such order or filing and filed in the proceeding. 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.

[1975 c 347 s 30]

**524.3-301 Informal probate or appointment proceedings; application; contents.**

An informal probate proceeding is an informal proceeding for the probate of decedent's will with or without an application for informal appointment. An informal appointment proceeding is an informal proceeding for appointment of a personal representative in testate or intestate estates. These proceedings may be combined in a single proceeding. 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, birthdate and date of death of the decedent, 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

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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.

[1975 c 347 s 31]

### 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 524.2-502 or 524.2-506 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 pro-



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bated 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.

[1975 c 347 s 32]

**524.3-304** [Repealed, 1975 c 347 s 144]

**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 section 524.3-303 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.

[1975 c 347 s 33]

**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. Upon issuance of the written statement by the registrar pursuant to section 524.3-302, notice of the informal probate proceedings, in the form prescribed by court rule, shall be given under the direction of the clerk of court by publication once a week for two consecutive weeks in a legal newspaper and by mailing a copy of the notice by ordinary first class mail to all interested persons, other than creditors. Further if the decedent was born in a foreign country or left heirs or devisees in any foreign country, notice shall be given to the consul or other representative of such country, if he resides in this state and has filed a copy of his appointment with the secretary of state, or to the nominee or nominees of such consul or representative. If no such consul or representative exists, then notice shall be given to the chief diplomatic representative of such country at Washington, D.C. or to the secretary of state at St. Paul, Minnesota, who shall forward the same to such representative.

[1975 c 347 s 34]

**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. Notice of the appointment of the personal representative shall be given under the direction of the clerk of court by publication once a week for two consecutive weeks in a legal newspaper and by mailing a copy of the notice by ordinary first class mail to all interested persons, other than creditors. The notice, in the form prescribed by court rule, shall state that any heir, devisee or other interested person may be entitled to appointment as personal representative or may object to the appointment of the personal representative and that the personal representative is empowered to fully administer the estate including, after 30 days from the date of issuance of his letters, the power to sell, encumber, lease or distribute real estate, unless objections thereto are filed with the court (pursuant to section 524.3-607) and the court otherwise orders. Further, if the decedent was born in a foreign country or left heirs or devisees in any foreign country, notice shall be given to the consul or other representative of such country, if he resides in this state and has filed a copy of his appointment with the secretary of state, or to the nominee or nominees of such consul or representative. If no such consul or representative exists, then notice shall be given to the chief diplomatic representative of such country at Washington, D.C. or to the secretary of state at St. Paul, Minnesota, who shall forward the same to such representative. No defect in any notice nor in publication or service thereof shall limit or affect the validity of the appointment of the personal representative, his powers or other duties.

[1975 c 347 s 35]

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### 524.3-311 Informal appointment unavailable in certain cases.

If an application for informal appointment indicates the existence of a possible unrevoked will or codicil 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.

[1975 c 347 s 36]

### 524.3-401 Formal testacy proceedings; nature; when commenced.

A formal testacy proceeding is one conducted with notice to interested persons before a court to establish a will or determine intestacy. A formal testacy proceeding may be commenced by an interested person or a personal representative named in the will 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, shall 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.

[1975 c 347 s 37]

### 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, shall 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 shall 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 shall 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 peti-

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tion 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.

[1975 c 347 s 38]

### **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, in the form prescribed by court rule, 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. If the petitioner has reason to believe that the will has been lost or destroyed, he shall include a statement to that effect in the notice.

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 of the hearing, in the form prescribed by court rule, shall also be given under the direction of the clerk of court by publication once a week for two consecutive weeks in a legal newspaper in the county where the hearing is to be held, the last publication of which is to be at least ten days before the time set for hearing.

If the decedent was born in a foreign country or left heirs or devisees in any foreign country, notice of a formal testacy proceeding shall be given to the consul or other representative of such country, if he resides in this state and has filed a copy of his appointment with the secretary of state, or to the nominee or nominees of such consul or representative. If no such consul or representative exists, then notice shall be given to the chief diplomatic representative of such country at Washington, D.C. or to the secretary of state at St. Paul, Minnesota, who shall forward the same to such representative.

(b) If it appears by the petition or otherwise that the fact of the death of the alleged decedent may be in doubt, the court shall direct the petitioner to proceed in the manner provided in chapter 576.

[1975 c 347 s 39]

### **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 a 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.

[1975 c 347 s 40]

### **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. 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

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copy and that the will has become effective under the law of the other place.

[1975 c 347 s 41]

### **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.

[1975 c 347 s 42]

### **524.3-413 Formal testacy proceedings; vacation of order for other cause and modification of orders, judgments, and decrees.**

For good cause shown, an order, judgment or decree in a formal proceeding may be modified or vacated within the time limits and upon the grounds stated in section 525.02, except that the same may be modified to include omitted property or to correct a description at any time, as hereinafter provided.

Whenever real or personal property or any interest therein has been omitted from probate proceedings, from a deed or transfer of distribution, a decree of distribution, or an order for distribution, or has been incorrectly described therein, any person interested in the estate or claiming an interest in such property may petition the probate court of the county in which such proceedings were had for a decree to determine its descent and to assign it to the persons entitled thereto, or to amend the deed or transfer of distribution, decree of distribution, or order of distribution to include such omitted property, or to correct the description, with or without notice. No order or decree of omitted property shall be entered under this section until any inheritance taxes due are paid or the court finds there are no taxes due.

[1975 c 347 s 43]

### **524.3-502 Supervised administration; petition; order.**

A petition for supervised administration may be filed by any interested person or by an appointed personal representative or one named in the will at any time or the prayer for supervised administration may be joined with a petition in a

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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.

[1975 c 347 s 44]

**524.3-601 Qualification.**

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

[1975 c 347 s 45]

**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. Service of process on a nonresident personal representative appointed in Minnesota shall be made pursuant to section 524.4-303.

[1975 c 347 s 46]

**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. No bond shall be required of a personal representative appointed in formal proceedings (1) if the will relieves the personal representative of bond, or (2) if all interested persons with an apparent interest in the estate in excess of \$1,000, other than creditors, make a written request that no bond be required, unless in either case the court determines that bond is required for the protection of interested persons. Except as provided in the preceding sentence, the court may by its order require bond or dispense with the requirement of bond at the time of appointment of a personal representative appointed in formal proceedings. No bond shall be 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. If two or more persons are appointed corepresentatives and one of them has complied with the preceding sentence, no bond shall be required of any such corepresentatives.

[1975 c 347 s 47]

**524.3-604 Bond amount; security; procedure; reduction.**

If bond is required then the personal representative shall file the bond with the court or give other suitable security in an amount not less than the bond. The

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court shall determine that the bond is duly executed by a corporate surety, or one or more individual sureties whose performance is secured by pledge of personal property, mortgage on real property or other adequate security. The court may permit the amount of the bond to be reduced by the value of assets of the estate deposited with a domestic financial institution, in a manner that prevents their unauthorized disposition. The court on its own motion or on petition of the personal representative or another interested person 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.

[1975 c 347 s 48]

### 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 court and a copy mailed to the personal representative, if appointment and qualification have occurred. Thereupon, the court may require or excuse the requirement of a bond. After he has received notice and until the filing of the bond or until the requirement of bond is excused, 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. An interested person who initially waived bond may demand bond under this section.

[1975 c 347 s 49]

### 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 such 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.

[1975 c 347 s 50]

### 524.3-609 Termination of appointment; death or disability.

The death of a personal representative or the appointment of a conservator or guardian for the estate of a personal representative, terminates his appointment. Until appointment and qualification of a successor or special representative to re-

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place 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.

[1975 c 347 s 51]

**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 in dealing with the estate assets that would be observed by a prudent man dealing with the property of another, and if the personal representative has special skills or is named personal representative on a basis of representation of special skills or expertise, he is under a duty to use those skills. 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 applicable law, and as expeditiously and efficiently as is consistent with the best interests of the estate. He shall use the authority conferred upon him by applicable law, 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.

[1975 c 347 s 52]

**524.3-705** [Repealed, 1975 c 347 s 144]

**524.3-706 Duty of personal representative; inventory and appraisal.**

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 with the court or registrar and mail to the surviving spouse, if there be one, and to all residuary distributees 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 also mail a copy of the inventory to interested persons or creditors who request it, and shall file an executed copy of the Minnesota inheritance tax return with the court or registrar.

[1975 c 347 s 53]

**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

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so exercised shall transfer good title to the transferee to the same extent that decedent had title thereto; provided, however, that a personal representative appointed in an informal proceeding shall not be empowered to sell, encumber, lease or distribute any interest in real estate owned by the decedent until 30 days have passed from the date of the issuance of his letters.

[1975 c 347 s 54]

### 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;
- (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 dis-



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closure 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 in compliance with section 524.3-805, but without the presentation of a claim, the reasonable and necessary last illness expenses of the decedent (except as provided in section 524.3-806(a)), reasonable funeral expenses, debts and taxes with preference under federal or state law, and other taxes, assessments, compensation of the personal representative and his attorney, and all other costs and expenses of administration although the same may be otherwise barred under section 524.3-803;

(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, provided, however, that the homestead of a decedent when the spouse takes any interest therein shall not be sold, mortgaged or leased unless the written consent of the spouse has been obtained;

(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;

(28) foreclose a mortgage, lien, or pledge or collect the debts secured thereby, or complete any such proceeding commenced by the decedent;

(29) exercise all powers granted to guardians and conservators by sections 525.67 and 525.68.

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[1975 c 347 s 55]

### 524.3-717 Co-representatives; when joint action required.

If two or more persons are appointed co-representatives and unless the will or the court 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.

[1975 c 347 s 56]

### 524.3-720 Expenses in estate litigation.

If any personal representative or person nominated as personal representative defends or prosecutes any proceeding in good faith, whether successful or not, or if any interested person successfully opposes the allowance of a will, he is entitled to receive from the estate his necessary expenses and disbursements including reasonable attorneys' fees incurred. When after demand the personal representative refuses to prosecute or pursue a claim or asset of the estate or a claim is made against him on behalf of the estate and any interested person shall then by his own attorney prosecute or pursue and recover such fund or asset for the benefit of the estate, or when, and to the extent that, the services of an attorney for any interested person contribute to the benefit of the estate, as such, as distinguished from the personal benefit of such person, such attorney shall be paid such compensation from the estate as the court shall deem just and reasonable and commensurate with the benefit to the estate from the recovery so made or from such services.

[1975 c 347 s 57]

## Part 8 CREDITORS' CLAIMS

### 524.3-801 Notice to creditors.

Unless notice has already been given under this section, upon appointment of a general personal representative in informal proceedings or upon the filing of a petition for formal appointment of a general personal representative, notice thereof, in the form prescribed by court rule, shall be given under the direction of the clerk of court by publication once a week for two successive weeks in a legal newspaper in the county wherein the proceedings are pending giving the name and address of the general personal representative and notifying creditors of the estate to present their claims within four months after the date of the clerk's notice which is subsequently published or be forever barred.

[1975 c 347 s 58]

### 524.3-802 Statutes of limitations.

Unless an estate is insolvent the personal representative, with the consent of all successors, may waive any defense of limitations available to the estate. If the defense is not waived, no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid. The running of any statute of limitations measured from some other event than death and advertisement for claims against a decedent is suspended during the 12 months following the decedent's death but resumes thereafter as to claims not barred pursuant to the sections which follow. For purposes of any statute of limitations, the proper presentation of a claim under section 524.3-804 is equivalent to commencement of a proceeding on the claim.

[1975 c 347 s 58]

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### **524.3-803** Limitations on presentation of claims.

(a) All claims as defined in section 524.1-201 (4) against a decedent's estate which arose before the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

(1) within four months after the date of the clerk of court's notice to creditors which is subsequently published pursuant to section 524.3-801;

(2) within three years after the decedent's death, if notice to creditors has not been published.

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

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

(2) any other claim, within four months after it arises.

(c) Nothing in this section affects or prevents:

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

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

(3) the payment at any time before a petition is filed in compliance with sections 524.3-1001 or 524.3-1002 or a closing statement is filed under section 524.3-1003, of any claim referred to in section 524.3-715 (18) although the same may be otherwise barred hereunder.

(4) the personal representative from permitting the presentment to him of any claim which would otherwise be barred hereunder or, upon petition of a claimant whose claim is otherwise barred hereunder for cause shown and upon notice to the personal representative and to those other persons interested in the estate as the court may direct, the court from permitting the presentment of such claim to the personal representative.

[1975 c 347 s 58]

### **524.3-804** Manner of presentation of claims.

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

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

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

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(3) If a claim is presented under subsection (1), no proceeding thereon may be commenced more than two months after the personal representative has mailed a notice of disallowance; but, in the case of a claim which is not presently due or which is contingent or unliquidated, the personal representative may consent to an extension of the two month period, or to avoid injustice the court, on petition, may order an extension of the two month period, but in no event shall the extension run beyond the applicable statute of limitations.

[1975 c 347 s 58]

### 524.3-805 Classification of claims.

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

- (1) costs and expenses of administration;
- (2) reasonable funeral expenses;
- (3) debts and taxes with preference under federal law;
- (4) reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him;
- (5) debts and taxes with preference under other laws of this state;
- (6) all other claims.

(b) No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due.

[1975 c 347 s 58]

### 524.3-806 Allowance of claims.

(a) As to claims presented in the manner described in section 524.3-804 within the time limit prescribed or permitted in section 524.3-803, the personal representative may mail a notice to any claimant stating that the claim has been disallowed. If, after allowing or disallowing a claim, the personal representative changes his decision concerning the claim, he shall notify the claimant. Without order of the court for cause shown, the personal representative may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run and the claim has been barred. Every claim which is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than two months after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar. Failure of the personal representative to mail notice to a claimant of action on his claim for two months after the time for original presentation of the claim has expired has the effect of a notice of allowance, except that upon petition of the personal representative and upon notice to the claimant, the court at any time before payment of such claim may for cause shown permit the personal representative to disallow such claim. Any claim in excess of \$3,000 for personal services rendered by an individual to the decedent including compensation of persons attending him during his last illness, and any claim of the personal representative which arose before the death of the decedent or in which the personal representative has an interest in excess of \$3,000 may be allowed only in compliance with subsection (b) of this section.

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

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

(d) Unless otherwise provided in any judgment in another court entered

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against the personal representative, allowed claims bear interest at the legal rate for the period commencing 60 days after the time for original presentation of the claim has expired unless based on a contract making a provision for interest, in which case they bear interest in accordance with that provision.

[1975 c 347 s 58]

### 524.3-807 Payment of claims.

(a) Upon the expiration of four months from the date of the first publication of the notice to creditors, the personal representative shall proceed to pay the claims allowed against the estate in the order of priority prescribed, after making provision for family maintenance and statutory allowances, for claims already presented which have not yet been allowed or whose allowance has been appealed, and for unbarred claims which may yet be presented, including costs and expenses of administration. By petition to the court in a proceeding for the purpose, or by appropriate motion if the administration is supervised, a claimant whose claim has been allowed but not paid as provided herein may secure an order directing the personal representative to pay the claim to the extent that funds of the estate are available for the payment.

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

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

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

[1975 c 347 s 58]

### 524.3-808 Individual liability of personal representative.

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

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

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

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

[1975 c 347 s 58]

### 524.3-809 Secured claims.

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

(1) if the creditor exhausts his security before receiving payment, unless precluded by other law, upon the amount of the claim allowed less the fair value of the security; or

(2) if the creditor does not have the right to exhaust his security or has not done so, upon the amount of the claim allowed less the value of the security deter-

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mined by converting it into money according to the terms of the agreement pursuant to which the security was delivered to the creditor, or by the creditor and personal representative by agreement, arbitration, compromise or litigation.

[1975 c 347 s 58]

### 524.3-810 Claims not due and contingent or unliquidated claims.

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

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

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

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

[1975 c 347 s 58]

### 524.3-811 Counterclaims.

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

[1975 c 347 s 58]

### 524.3-812 Execution and levies prohibited.

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

[1975 c 347 s 58]

### 524.3-813 Compromise of claims.

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

[1975 c 347 s 58]

### 524.3-814 Encumbered assets.

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

[1975 c 347 s 58]

### 524.3-815 Administration in more than one state; duty of personal representative.

(a) All assets of estates being administered in this state are subject to all

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claims, allowances and charges existing or established against the personal representative wherever appointed.

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

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

[1975 c 347 s 58]

**524.3-816 Final distribution to domiciliary representative.**

Real estate (excluding a vendor's interest in a contract for conveyance) located in this state with regard to which the decedent died intestate and the proceeds of the sale, mortgage or lease of any such real estate available for distribution, shall pass according to the laws of this state. All other assets included in the estate of a nonresident decedent being administered by a personal representative appointed in this state shall, if there is a personal representative of the decedent's domicile willing to receive it, be distributed to the domiciliary personal representative for the benefit of the successors of the decedent unless (1) by virtue of the decedent's will, if any, the successors are identified pursuant to the local law of this state without reference to the local law of the decedent's domicile; (2) the personal representative of this state, after reasonable inquiry, is unaware of the existence or identity of a domiciliary personal representative; or (3) the court orders otherwise in a proceeding for a closing order under section 524.3-1001 or incident to the closing of a supervised administration. In other cases, distribution of the estate of a decedent shall be made in accordance with the other parts of this article.

[1975 c 347 s 58]

**524.3-817 Joint contract claims.**

When two or more persons are indebted on any joint contract or upon a judgment on a joint contract, and one of them dies, his estate shall be liable therefor, and the amount thereof may be allowed the same as though the contract had been joint and several or the judgment had been against him alone, but without prejudice to right to contribution.

[1975 c 347 s 58]

**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 pursuant to sections 525.14, 525.145, 525.15 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.

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[1975 c 347 s 59]

### 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 statutory allowances 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.

[1975 c 347 s 60]

### 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, and incurs no personal liability to 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.

[1975 c 347 s 61]

### 524.3-913 Distributions to trustee.

Before distributing to a testamentary trustee, the personal representative shall require that the trustee be qualified in a court of competent jurisdiction unless waived by the court or the will contains a waiver of qualification. Notwithstanding the waiver, upon petition of any interested person, the court may require qualification of the trustee in a court of competent jurisdiction.

[1975 c 347 s 62]



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**524.3-914 Unclaimed assets.**

If any asset of the estate has not been distributed because the person entitled thereto cannot be found or refuses to accept the same, or for any other good and sufficient reason the same has not been paid over, the court may direct the personal representative to deposit the same with the county treasurer, taking duplicate receipts therefor, one of which he shall file with the county auditor and the other in the court. If the money on hand exceeds the sum of \$2,000, the court may direct the personal representative to purchase with the money bearer bonds of the United States government or of the state of Minnesota, or any of its political subdivisions, which bonds shall be deposited with the county treasurer, taking duplicate receipts therefor, one of which he shall file with the county auditor and the other in the court, and the county treasurer shall collect the interest on these bonds as it becomes due, and the money so collected or deposited shall be credited to the county revenue fund. Upon application to the court within 21 years after such deposit, and upon notice to the county attorney and county treasurer, the court may direct the county auditor to issue to the person entitled thereto his warrant for the amount of the money so on deposit including the interest collected on bonds and, in the case of bonds, the county auditor shall issue to the person entitled thereto his order upon the county treasurer to deliver the bonds. No interest shall be allowed or paid thereon, except as herein provided, and if not claimed within such time no recovery thereof shall be had. The county treasurer, with the approval of the court, may make necessary sales, exchanges, substitutions, and transfers of bonds deposited, as aforesaid, and may present the same for redemption and invest the proceeds in other bonds of like character.

[1975 c 347 s 63]

**524.3-915 Distribution to person under disability.**

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

(b) When a minor child receives or is entitled to distribution of personal property the court may order and direct the personal representative of the estate to make payment of not to exceed \$2,000 thereof to the parent or parents, custodian, or the person, corporation, or institution with whom the minor child is, for the benefit, support, maintenance, and education of the minor child or may direct the investment of the whole or any part thereof in a savings account, savings certificate, or certificate of deposit in a bank, savings bank, building and loan association, or savings and loan association having deposit insurance, in the name of the minor child. When so invested the savings account passbook, savings certificate, certificate of deposit, or other acknowledgement of receipt of the deposit by the depository as the case may be, is to be kept as provided by the court, and the depository shall be instructed not to allow such investment to be withdrawn, except by order of the court. The court may authorize the use of any part or all thereof to purchase United States government savings bonds in the minor's name the bonds to be kept as provided by the court and to be retained until the minor reaches majority unless otherwise authorized by an order of the court.

[1975 c 347 s 64]

**524.3-916 Apportionment of estate taxes.**

(a) For purposes of this section:

- (1) "estate" means the gross estate of a decedent as determined for the purpose of federal estate tax and the estate tax payable to this state;
- (2) "person" means any individual, partnership, association, joint stock company, corporation, government, political subdivision, governmental agency, or local governmental agency;
- (3) "person interested in the estate" means any person entitled to receive, or who has received, from a decedent or by reason of the death of a decedent any

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property or interest therein included in the decedent's estate. It includes a personal representative, conservator, and trustee;

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

(5) "tax" means the federal estate tax and the state estate tax determined by the commissioner of revenue pursuant to section 291.34 and interest and penalties imposed in addition to the tax;

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

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

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

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

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

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

(d)(1) The personal representative or other person in possession of the property of the decedent required to pay the tax may withhold from any property distributable to any person interested in the estate, upon its distribution to him, the amount of tax attributable to his interest. If the property in possession of the personal representative or other person required to pay the tax and distributable to any person interested in the estate is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the personal representative or other person required to pay the tax may recover the deficiency from the person interested in the estate. If the property is not in the possession of the personal representative or the other person required to pay the tax, the personal representative or the other person required to pay the tax may recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with Laws 1975, Chapter 347.

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

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

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

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

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

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extent proportionately that the credit reduces the tax.

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

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

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

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

[1975 c 347 s 65]

### **524.3-1001 Formal proceedings terminating administration; testate or intestate; order of distribution, decree, and general protection.**

(a) (1) 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.

(2) In such petition for complete settlement of the estate, the petitioner may apply for a decree. Upon the hearing, if in the best interests of interested persons, the court may issue its decree which shall determine the persons entitled to the es-

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tate and assign the same to them in lieu of ordering the assignment by the personal representative. The decree shall name the heirs and distributees, state their relationship to the decedent, describe the property, and state the proportions or part thereof to which each is entitled. In the estate of a testate decedent, no heirs shall be named in the decree unless all heirs be ascertained.

(3) In solvent estates, the hearing may be waived by written consent to the proposed account and decree of distribution or order of distribution by all heirs or distributees, and the court may then enter its order allowing the account and issue its decree or order of distribution.

(4) The court shall have the power in its decree or order of distribution to waive the lien of inheritance taxes, find that the taxes have been satisfied by payment or, decree the property subject to the lien; provided, however, where a decree or order for distribution is issued, the personal representative shall not be discharged until all property is paid or transferred to the persons entitled thereto, and has otherwise fully discharged his trust. If objections are filed with the court by the commissioner of revenue, no discharge shall be issued until the objections are determined. The court shall send a copy of the decree, upon issuance, to the commissioner of revenue.

(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.

[1975 c 347 s 66]

### 524.3-1008 Subsequent administration.

If property of the estate is omitted or 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.

[1975 c 347 s 67]

### 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.

[1975 c 347 s 68]

### 524.3-1203 Small estates; summary administrative procedure.

If it appears from the inventory and appraisal that the entire estate, less liens and encumbrances, does not exceed an exempt homestead as provided for in section 525.145, the allowances provided for in section 525.15, 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 representa-

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tive, without giving further 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.

[1975 c 347 s 69]

### **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 entire estate, less liens and encumbrances, did not exceed an exempt homestead as provided for in section 525.145, the allowances provided for in section 525.15, 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.

[1975 c 347 s 70]

### **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 decedent or having possession or control 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 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.

[1975 c 347 s 71]

### **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 instrument evidencing the debt, obligation, stock or chose in action to the same extent as if payment or delivery had been made to a local personal representative.

[1975 c 347 s 72]

### **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 instrument evidencing the debt, obli-

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gation, stock or chose in action belonging to the nonresident decedent that the debt should not be paid nor such instrument delivered to the domiciliary foreign personal representative.

[1975 c 347 s 73]

### **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 the following with a court in this state in a county in which property belonging to the decedent is located:

(1) A certified or authenticated copy of his appointment and of any official bond he has given, and

(2) Notice of his intention to exercise as to assets in this state all powers of a local personal representative and to maintain actions and proceedings in this state in accordance with section 524.4-205.

When a domiciliary foreign personal representative files a certified or authenticated copy of his appointment and of any official bond and a notice in accordance with the preceding sentence, the clerk of court shall forthwith publish, at the expense of the estate, a notice once a week for two consecutive weeks in a legal newspaper in the county, giving the name and address of the domiciliary foreign personal representative and stating his intention to exercise as to assets in this state all powers of a local personal representative and to maintain actions and proceedings in this state in accordance with section 524.4-205.

[1975 c 347 s 74]

### **524.4-205 Powers.**

At any time after the expiration of 60 days from a domiciliary foreign personal representative's filing in accordance with section 524.4-204 such domiciliary foreign personal representative 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. The power of a domiciliary foreign personal representative under this section shall not be exercised if a resident creditor of the nonresident decedent has filed a written objection thereto within 60 days from the domiciliary foreign personal representative's filing in accordance with section 524.4-204.

[1975 c 347 s 75]

### **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. Any application or petition for local administration of the estate terminates the power of the foreign personal representative to act under sections 524.4-201 and 524.4-205, but the local court may allow the foreign personal representative to exercise limited powers to preserve the estate. No assets which have been removed from this state by the foreign personal representative through exercise of powers under sections 524.4-201 or 524.4-205 shall be subject to subsequent local administration. 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 or who is a distributee from the 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 rights in others and 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.

[1975 c 347 s 76]

### **524.4-301 Jurisdiction by act of foreign personal representative.**

A foreign personal representative submits personally to the jurisdiction of the

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courts of this state in any proceeding relating to the estate by (1) filing certified or authenticated copies of his appointment as provided in section 524.4-204, (2) receiving payment of money or taking delivery of 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.

[1975 c 347 s 77]

### **524.4-303 Service on foreign and nonresident personal representatives.**

(a) Service of process may be made upon a foreign personal representative and a nonresident personal representative appointed in this state 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 or a nonresident personal representative appointed in this state in the manner in which service could have been made under other laws of this state on either the foreign personal representative, the nonresident personal representative appointed in this state, or his decedent immediately prior to death.

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

[1975 c 347 s 78]

### Article 5

#### Part 5

#### POWERS OF ATTORNEY

### **524.5-501 When power of attorney not affected by disability.**

Whenever a principal designates another his attorney in fact or agent by a power of attorney in writing and the writing contains the words "This power of attorney shall not be affected by disability of the principal," or "This power of attorney shall become effective upon the disability of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding his disability, the authority of the attorney in fact or agent is exercisable by him as provided in the power on behalf of the principal notwithstanding later disability or incapacity of the principal at law or later uncertainty as to whether the principal is dead or alive. All acts done by the attorney in fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or his heirs, devisees and personal representative as if the principal were alive, competent and not disabled. If a conservator or guardian thereafter is appointed for the principal, the attorney in fact or agent, during the continuance of the appointment, shall account to the conservator or guardian rather than the principal. The conservator or guardian has the same power the principal would have had if he were not disabled or incompetent to revoke, suspend, or terminate all or any part of the power of the attorney or agency.

[1975 c 347 s 79]

### **524.5-502 Other powers of attorney not revoked until notice of death or disability.**

(a) The death, disability, or incompetence of any principal who has executed a power of attorney in writing other than a power as described by section 524.5-501, does not revoke or terminate the agency as to the attorney in fact, agent or other person who, without actual knowledge of the death, disability, or incompetence of the principal, acts in good faith under the power of attorney or agency. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and his heirs, devisees, and personal representatives.

(b) An affidavit, executed by the attorney in fact or agent stating that he did not have, at the time of doing an act pursuant to the power of attorney, actual knowledge of the revocation or termination of the power of attorney by death, dis-

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ability or incompetence, is, in the absence of fraud, conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power requires execution and delivery of any instrument which is recordable, the affidavit when authenticated for record is likewise recordable.

(c) This section shall not be construed to alter or affect any provision for revocation or termination contained in the power of attorney.

[1975 c 347 s 79]

## 524.8-101 Provisions for transition.

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.

[1975 c 347 s 80]