

## CHAPTER 525

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**POWERS OF COURT**

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- 525.0105 [Repealed, 1971 c 951 s 44]

**525.011 CIVIL AND CRIMINAL JURISDICTION.**

Subdivision 1. Except in the counties of Hennepin and Ramsey the probate court shall also exercise the powers, duties and jurisdiction conferred upon courts by chapters 487, 491, 492, and 493.

Subd. 2. The county board of a county in which additional powers, duties and jurisdictions are conferred upon the probate court by subdivision 1, shall provide and furnish to the probate court such supplies, equipment and personnel as may be necessary for the purposes of the subdivision.

Subd. 3. The clerk of the probate court of a county in which additional powers, duties and jurisdictions are conferred upon probate court by subdivision 1 shall exercise such powers and duties as the probate judge may direct in order to enable the probate court to carry out the provisions of subdivision 1.

**History:** 1959 c 494 s 1; 1971 c 166 s 1; 1979 c 41 s 7

**525.012 FEES, FINES, AND COSTS.**

Subdivision 1. Except where otherwise specifically provided by law or any ordinance, charter provision, rule, or regulation of a city in the county of the court's

jurisdiction, all fees, fines, and costs collected by the probate court, or the clerk thereof, shall be paid to the treasurer of the county in which the court is situated and credited to the general fund.

Subd. 2. On or before the tenth day of each month, the clerk shall file with the treasurer a verified report showing: (1) The names of all persons convicted during the preceding month, and the nature of the offense; (2) The fine or other punishment imposed; (3) The amount paid by cash, and the amount of cash deposited in lieu of bail, since his last report; (4) The total amount of money received from all sources during the same period; (5) The names of all persons discharged from jail by order of the court.

Subd. 3. The clerk shall receive all fines, deposits, penalties, and other moneys paid into court and keep detailed accounts thereof.

Subd. 4. Upon filing the reports required by this section, the clerk shall pay to the treasurer of the county in which the court is situated all sums in his hands to which the treasurer is entitled; he shall pay all other moneys to the other public officers entitled thereto; and he shall inform the treasurer of all moneys remaining in his hands pursuant to law or court order.

Subd. 5. The clerk shall pay such fees and mileage to witnesses as may be ordered by the probate judge in any action or proceeding involving a charged violation of criminal law or municipal ordinance. The clerk shall obtain receipts therefor as vouchers for the sums paid and shall deduct these payments from the amounts otherwise due the officers to whom the clerk is required to pay fees, costs, and fines. If the clerk is without funds to make the payments required by this subdivision, the witnesses shall be paid, upon certification by the clerk, by the city whose municipal ordinance, charter provision, rule, or regulation is involved in the proceeding, and in other cases by the county in which the court is situated. No witness fees under this subdivision shall be paid in advance. No public officer or employee shall be paid any witness fees when he is called upon to testify in a matter resulting from his public employment.

*History: 1959 c 494 s 2; 1973 c 123 art 5 s 7*

### **525.013 JURY TRIALS.**

Subdivision 1. Except as otherwise provided in chapter 487, the laws relating to jury trials in the district court apply to jury trials in a probate court under sections 525.011 to 525.015.

Subd. 2. [Repealed, 1977 c 201 s 2]

Subd. 2a. Petit jurors for the trial of all types of action shall be selected in the same manner as petit jurors are selected in district court.

Subd. 3. [Repealed, 1977 c 201 s 2]

Subd. 4. Petit jurors shall be drawn from the list of persons properly qualified. The clerk of probate court shall issue a venire for the jurors drawn which shall be returnable on such dates and hours as the judge directs. No person shall be drawn as a juror more than once every two years.

Subd. 5. When necessary, the court may issue a special venire.

Subd. 6. Failure to attend as a juror when duly drawn and summoned is punishable as contempt of court.

Subd. 7. Jurors shall be paid by the county in which the court is situated the same compensation and mileage as prescribed by law for jurors in the district court. The clerk of probate court shall deliver to each juror a certificate showing the number of days of service and the mileage for which he is entitled to receive compensation. This certificate shall be filed with the county auditor in which the

court is situated and the amount due shall be paid from the treasury of such county. The certificate is a proper and sufficient voucher for the issuance of a warrant. Any juror regularly summoned who actually attends at the time named in such summons is entitled to per diem and mileage whether or not sworn as a juror.

Subd. 8. Whenever a petit jury is desired by a party to a proceeding in probate court under sections 525.011 to 525.015, and such jury is permitted by law, such party shall request such jury, in writing, when the case is set for trial and pay the fees prescribed by chapter 487. The court, by order, may waive the payment of jury fees in a criminal case if it appears that the defendant is unable to make such payment.

**History:** 1959 c 494 s 3; 1977 c 201 s 1; 1979 c 41 s 8,9

#### **525.014 PLEADING, PRACTICE, PROCEDURE, AND APPEALS.**

Subdivision 1. Pleading, practice, procedure, and the forms thereof in civil actions shall be the same in probate court as in the county court under chapter 487.

Subd. 2. Appeals from any judgment of a probate court exercising the powers, duties, and jurisdiction in certain civil and criminal cases under sections 525.011 to 525.015, shall be made in the same manner as in the county courts under chapter 487.

**History:** 1959 c 494 s 4; 1961 c 238 s 1; 1979 c 41 s 10

#### **525.015 JUDGMENTS.**

No judgment of a probate court under sections 525.011 to 525.015 shall be a lien upon the real estate until a transcript thereof is filed and docketed with the clerk of the district court. If no execution thereon be outstanding, the judgment creditor may cause such transcript to be docketed in the same county, and thereafter execution may issue from either court. The clerk with whom the transcript is so filed may issue transcripts to be filed and docketed in other counties, as in the case of a judgment originally rendered in his court. When docketed as herein provided, the judgment shall have the same force and effect in all respects as the judgment of the district court.

**History:** 1959 c 494 s 5

#### **525.02 POWERS.**

In addition to its general powers, the court shall have power to correct, modify, vacate, or amend its records, orders and decrees:

(a) At any time, for the correction of clerical error or pursuant to the provisions of section 524.3-413.

(b) Within the time for taking an appeal, for the correction of judicial error;

(c) Within two years after petitioner's discovery thereof, for fraud, whether intrinsic or extrinsic, or misrepresentation unless petitioner be a party to such fraud;

(d) Within two years after the date of filing of any record, order or decree, for excusable neglect, inadvertence or mistake.

In any case, the petitioner must proceed with due diligence and may be barred by laches or the court may deny relief where it appears that the granting thereof would be inequitable in view of all the facts and circumstances appearing.

**History:** 1935 c 72 s 2; 1965 c 563 s 1; 1975 c 347 s 81 (8992-2)

**525.03 RECORDS.**

The court shall keep the following records:

(1) An index to the court records, in which all proceedings shall be entered in alphabetical order under the name of the subject person, together with the case number and the date of the filing of the first document;

(2) A register, in which shall be entered the title of each proceeding, the case number and a listing of each document filed with the date of the filing.

**History:** 1935 c 72 s 3; 1937 c 435 s 1,2; 1959 c 100 s 1; 1975 c 347 s 82; 1982 c 592 s 2 (8992-3)

**525.031 FEES FOR COPIES.**

The probate court shall furnish a return on appeal or a certified, exemplified, or authenticated copy of any paper on file or of record upon payment therefor at the rate of \$1 per page, 50 cents per half page, and 50 cents for each certificate; and the court may furnish any other copies of any paper on file or of record upon payment therefor at the rate of 50 cents per page.

**History:** 1935 c 72 s 4; 1967 c 128 s 1 (8992-4)

**525.033 FEES FOR FILING PETITIONS.**

The probate court shall collect a fee of \$15 for filing a petition to commence a proceeding under sections 524.3-401 or 524.3-502. There shall be no additional fee in such proceedings for certified copies except the final decree, for which an additional fee of \$5 shall be charged.

**History:** 1978 c 730 s 3

**PERSONNEL****525.04 [Repealed, 1Sp1981 c 4 art 3 s 8]****525.041 WRITTEN DECISION SHALL BE FILED WITHIN 90 DAYS; MANDATORY.**

The decision of every issue of law or fact shall be in writing and shall be filed within 90 days after submission unless prevented by illness or casualty.

Upon the filing of any appealable order, judgement, or decree, except in uncontested matters or where the final decision was announced at the hearing, the court shall give notice by mail of such filing to each party, or his attorney, who appeared of record at the hearing.

**History:** 1935 c 72 s 6; 1967 c 317 s 1 (8992-6)

**525.05 JUDGE OR REFEREE; GROUNDS FOR DISQUALIFICATION.**

The following shall be grounds for disqualification of any judge or referee from acting in any matter: (1) That the judge or the judge's spouse or any of either of their kin nearer than first cousin is interested as representative, heir, devisee, legatee, ward, or creditor in the estate involved therein; (2) that it involves the validity or interpretation of a will drawn or witnessed by the judge; (3) that the judge may be a necessary witness in the matter; (4) that it involves a property right in respect to which the judge has been engaged or is engaged as an attorney; or (5) that the judge was engaged in a joint enterprise for profit with the decedent at the time of death or that the judge is then engaged in a joint enterprise for profit with any person interested in the matter as representative, heir, devisee, legatee, ward, or creditor.

When grounds for disqualification exist, the judge may, and upon proper petition of any person interested in the estate must, request the probate judge of another county or a probate judge who has retired as provided in section 490.12, subdivision 2, to act in his stead in the matter.

**History:** 1935 c 72 s 7; 1961 c 6 s 1; 1981 c 31 s 12 (8992-7)

#### **525.051 TEMPORARY ASSIGNMENT OF JUDGES.**

Whenever by reason of disqualification, absence, illness, incapacity or other cause, the probate judge of any county is unable to act, or whenever the interest of the public or of any person interested in any matter requires that such probate judge should not act, any other probate judge, or probate judge who has retired as a probate judge, and who consents so to act, may be assigned to serve and discharge the duties of such probate judge in his stead at such times or for such purposes as may be directed by order of such probate judge or in the event of his death or his refusal, failure, or inability so to order as determined by the chief judge of the district court of the judicial district in which the county is situated, by order of such chief judge. Any probate judge or retired probate judge temporarily assigned to serve and discharge the duties of the probate judge in such other county shall be reimbursed for all reasonable and necessary mileage and expenses and may, when so ordered by such chief judge, be paid such additional compensation as such chief judge shall fix, but in no event shall any compensation so paid exceed the rate of compensation prescribed by law as the salary of the probate judge in the county in which said probate judge or retired probate judge is temporarily assigned. It shall be the duty of the county to which a probate judge or retired probate judge is temporarily assigned to make payment to such probate judge or retired probate judge of all amounts due him under the provisions hereof for mileage, expenses or compensation.

Any substitute judge while acting in such capacity shall have all the power, authority, and jurisdiction of the resident judge, including juvenile, municipal or other jurisdiction conferred by law, irrespective of the nature of the jurisdiction of the substitute judge in the county from which called to serve.

**History:** 1935 c 72 s 8; Ex1959 c 60 s 1; 1961 c 267 s 1 (8992-8)

#### **525.052 INSANITY OF JUDGE.**

When a verified petition of five voters of any county is presented to a judge of the district court stating that the probate judge of such county is insane and incapacitated to act by reason of mental disability, such district judge shall examine into such alleged insanity or mental disability in the manner provided by law for examinations of insane persons by probate judges. If, upon the examination, such probate judge is found to be insane or incapacitated to act by reason of mental disability, the district judge shall certify such findings to the governor, who shall thereupon declare the office of such probate judge vacant and fill the same by appointment.

**History:** 1935 c 72 s 9 (8992-9)

#### **525.053 DELIVERY TO SUCCESSOR.**

When the term of office of any judge expires, he shall deliver to his successor all books, records, and papers in his possession relating to his office. Upon his failure to do so within five days after demand by his successor, he shall be guilty of a gross misdemeanor.

**History:** 1935 c 72 s 10 (8992-10)

**525.06 ANNUAL ASSEMBLAGE; RULES.**

The judges of the probate courts shall assemble each year at such places and times as may be designated by the probate judges' according to rule governing their meetings, and any 30 of them shall constitute a quorum, except where rules are adopted, revised, or amended, the quorum shall be 44. When so assembled such judges shall formulate and adopt rules and make such revision and amendment thereof as they may deem expedient conformably to law, and the same shall take effect from and after the publication thereof as directed by them. Such rules shall govern all the probate courts of this state, but, in furtherance of justice, the court may relax or modify them or relieve a party from the effect thereof on such terms as may be just. The reasonable expenses of the judges attending such meetings shall be paid by their respective counties.

**History:** 1935 c 72 s 11; 1967 c 317 s 2 (8992-11)

**525.07 ACTING AS COUNSEL PROHIBITED.**

No judge, referee, registrar, clerk, deputy clerk, or employee of any court, or the law partner of any of them, shall be counsel or attorney in any action or proceedings for or against any devisee, legatee, heir, creditor, representative, or ward over whom, or whose estate, claim, or accounts such court has jurisdiction. Except in matters relating to commitments, none of them shall give counsel or advice, or draw or prepare any paper relating to any matter which is or may be brought before such court, except orders, judgments, decrees, executions, warrants, certificates, or subpoenas issuing out of such court. No judge, referee, registrar, or clerk shall keep or hold his official office with any practicing attorney.

**History:** 1935 c 72 s 12; 1975 c 347 s 83 (8992-12)

**525.08 SALARIES.**

The salaries of the judges, referees, registrars, clerks, reporters, and employees shall be as provided by law, but the salaries of the registrars, clerks and employees shall be fixed by the judge within the budget approved by the board of county commissioners, subject to the provisions of section 382.265.

**History:** 1935 c 72 s 13; 1967 c 317 s 3; 1975 c 347 s 84 (8992-13)

**525.081 PRACTICE OF LAW; APPRAISALS.**

Subdivision 1. [Repealed, 1977 c 432 s 49]

Subd. 2. [Repealed, 1977 c 432 s 49]

Subd. 3. [Repealed, 1977 c 432 s 49]

Subd. 4. [Repealed, 1977 c 432 s 49]

Subd. 5. [Repealed, 1977 c 432 s 49]

Subd. 6. [Repealed, 1977 c 432 s 49]

Subd. 7. No judge of the probate court shall practice as an attorney or counselor at law, nor shall he be a partner of any practicing attorney in the business of his profession, nor shall he serve as an appraiser in any estate proceeding.

Subd. 8. [Repealed, 1977 c 432 s 49]

Subd. 9. [Repealed, 1977 c 432 s 49]

**History:** 1961 c 596 s 1; 1965 c 826 s 1; Ex1967 c 54 s 1; 1969 c 1023 s 1-3; 1971 c 81 s 2; 1973 c 654 s 15; 1975 c 271 s 6; 1977 c 432 s 44

**525.082 JUDICIAL OFFICERS, INCREASE IN COMPENSATION.**

Notwithstanding any law to the contrary, or any provision of Laws 1971, Chapter 951, the salaries of all judges of probate as provided under section 525.081, subdivisions 1 and 2, who do not become county court judges, but who are eligible to serve out the balance of their term as judicial officers of the county district court as provided in Laws 1971, Chapter 951, shall be increased by 10 percent of the amount provided for and received by the judge under the provisions of section 525.081, subdivisions 1 and 2, which salary shall be the salary for the balance of the term for which they are elected, and which salary shall determine any retirement and spouse's survivorship to which the judge and the judge's spouse may be entitled to under the laws pertaining thereto.

*History: Ex1971 c 32 s 26 subd 1; 1981 c 31 s 13*

**525.09 CLERKS; APPOINTMENT; POWERS.**

The judge may appoint a clerk, deputy clerks, and employees as provided by law, to hold office during his pleasure, who shall perform the duties imposed by law and such judge. Such appointments shall be in writing and filed in such court. Before entering upon the duties of his office, each clerk and such deputy clerks and employees designated by the court shall execute a bond to the state in the amount of \$1,000 approved by the county board and conditioned upon the faithful discharge of his duties. Such bond with the oath of the appointee shall be recorded in the office of the county recorder. The premiums on such bonds and the expenses of such recording and filing shall be paid by the county. An action may be maintained on such bond by any person aggrieved by the violation of the conditions thereof. A clerk or deputy clerk may take acknowledgments, administer oaths, authenticate, exemplify, or certify copies of instruments, documents, or records of the court, and when so ordered may hear and report to the court the testimony of any witnesses and the interrogatories and objections of counsel.

*History: 1935 c 72 s 14; 1937 c 435 s 4; 1945 c 209 s 1; 1973 c 524 s 13; 1976 c 181 s 2 (8992-14)*

**525.091 DESTRUCTION AND REPRODUCTION OF PROBATE RECORDS.**

Subdivision 1. The clerk of court of any county upon order of the probate judge may destroy all the original documents in any proceeding of record in his office five years after the file in such proceeding has been closed provided the original or a Minnesota state archives commission approved photographic, photo-static, microphotographic, microfilmed, or similarly reproduced copy of the original of the following enumerated documents in the proceeding are on file in his office.

Enumerated original documents:

(a) In estates, the jurisdictional petition and proof of publication of the notice of hearing thereof; will and certificate of probate; letters; inventory and appraisal; orders directing and confirming sale, mortgage, lease, or for conveyance of real estate; order setting apart statutory selection; receipts for federal estate taxes and state estate taxes; orders of distribution and general protection; decrees of distribution; federal estate tax closing letter, consent to discharge by commissioner of revenue and order discharging representative; and any amendment of the listed documents.

When an estate is deemed closed as provided in clause (d) of this subdivision, the enumerated documents shall include all claims of creditors.

(b) In guardianships or conservatorships, the jurisdictional petition and order for hearing thereof with proof of service; letters; orders directing and confirming



sale, mortgage, lease or for conveyance of real estate; order for restoration to capacity and order discharging guardian; and any amendment of the listed documents.

(c) In mental, inebriety, and indigent matters, the jurisdictional petition; report of examination; warrant of commitment; notice of discharge from institution, or notice of death and order for restoration to capacity; and any amendment of the listed documents.

(d) Except for the enumerated documents described in this subdivision, the clerk of probate court may destroy all other original documents in any proceeding without retaining any reproduction of the document. For the purpose of this subdivision, a proceeding in the probate court is deemed closed if no document has been filed in the proceeding for a period of 15 years, except in the cases of wills filed for safe-keeping and those containing wills of decedents not adjudicated upon.

Subd. 2. The clerk of probate court of any county upon order of the probate judge may destroy the original record books as enumerated in this subdivision provided a Minnesota state archives commission approved photographic, photostatic, microphotographic, microfilmed, or similarly reproduced copy of the original record book is on file in his office.

Enumerated original record books:

All record books kept for recording in compliance with section 525.03, clauses (3), (4), (5) and (6).

Subd. 3. A photographic, photostatic, microphotographic, microfilmed, or similarly reproduced record is of the same force and effect as the original and may be used as the original document or book of record in all proceedings.

Subd. 4. This section does not apply to the court of any county until the county board of the county adopts a resolution authorizing the destruction of probate records pursuant to the provisions of this section. When the county board has complied with this subdivision, section 525.092 and any act amendatory thereof shall no longer apply to the probate court of that county.

**History:** 1965 c 883 s 1; 1971 c 484 s 1; 1973 c 582 s 3; 1975 c 347 s 85-87; 1979 c 303 art 3 s 35,36

#### **525.092 CLERK MAY DESTROY CERTAIN PAPERS.**

Subdivision 1. **Certain vouchers and receipts.** The clerk of the probate court is hereby authorized to destroy all vouchers or receipts filed in estates and guardianship proceedings of record in his office after such estates or guardianships have been closed for a period of 25 years, or more, except receipts for any federal or state taxes.

Subd. 2. **Certain guardianships excepted.** The provisions of this section shall not apply to guardianships of incompetent or insane persons, nor to guardianships of minors until one year after the minor has attained his eighteenth birthday.

**History:** 1947 c 117 s 1,2; 1949 c 409 s 1; 1951 c 21 s 1; 1973 c 725 s 75

**525.094** [Repealed, 1965 c 883 s 2]

#### **525.095 CLERK MAY ISSUE ORDERS UNDER DIRECTION OF THE COURT.**

The judge may authorize the clerk or any deputy clerk to issue orders for hearing petitions for general administration, for the probate of any will, for determination of descent, for sale, lease, mortgage, or conveyance of real estate, for the settlement and allowance of any account, for partial or final distribution, for

commitment, orders limiting the time to file claims and fixing the time and place for the hearing thereon, and to issue notice of the entry of any order. The issuance of any such order or notice by the clerk or deputy clerk shall be prima facie evidence of his authority to issue it.

**History:** 1935 c 72 s 15; 1937 c 435 s 5 (8992-15)

#### **525.10 REFEREE; APPOINTMENT; BOND; OFFICE ABOLISHED.**

Subdivision 1. **Office abolished.** The office of referee is abolished. No vacancy in the office of referee shall be filled, nor new office created.

Subd. 2. **Incumbents.** Persons holding the office of referee on June 30, 1980, in the second and August 15, 1980, in the fourth judicial district may continue to serve at the pleasure of the chief judge of the district under the terms and conditions of their appointment. All referees are subject to the administrative authority and assignment power of the chief judge of the district as provided in section 484.69, subdivision 3, and are not limited to assignment to probate court. All referees are subject to the provisions of section 484.70. Part time referees holding office in the second judicial district pursuant to this subdivision shall cease to hold office on July 31, 1984.

Subd. 3. **Referees.** Each referee in probate court shall be an attorney at law duly admitted in this state. The appointment shall be in writing and filed in the court. The referee has the power to take acknowledgments and administer oaths.

**History:** 1935 c 72 s 16; 1937 c 435 s 6; 1957 c 212 s 1; 1973 c 524 s 14; 1974 c 165 s 1; 1974 c 387 s 1; 1976 c 181 s 2; 1981 c 272 s 6 (8992-16)

NOTE: St. Louis county probate court referees, see Laws 1971, Chapter 223.

Washington county referee, see Laws 1967, Chapter 814.

#### **525.101 COMPENSATION OF REFEREE.**

Such referee shall receive from the county as compensation \$3,600 per annum in counties having more than 500,000 inhabitants, payable from the general funds of the county not otherwise appropriated, at the same time and in the same manner and subject to the provisions of law applicable to the compensation of the judge. The county shall furnish him with a suitable office in the courthouse or in some other suitable place or places designated by the judge. The judge may assign to the referee from the court's clerks and employees such clerical help as may be necessary to enable him properly to discharge his duties.

**History:** 1935 c 72 s 17; 1957 c 212 s 2; 1971 c 471 s 1 (8992-17)

#### **525.102 REFERENCE.**

After such appointment the judge by order may refer to the referee any matter, cause, or proceeding pending in such court. In all matters so referred the referee shall find the facts and report the findings to the judge. In all matters referred and reported the referee may append his signature to the order or decree of the court; and whenever his signature shall be so appended, it shall constitute conclusive evidence that the matter was referred, heard, and reported in the manner required by law and the order of the court therein, provided that the failure of the referee to append his signature to any such order or decree shall not affect its validity.

**History:** 1935 c 72 s 18 (8992-18)

**525.103 DELIVERY OF BOOKS AND RECORDS.**

When the term of office of such referee expires or is terminated, he shall deliver to his successor or to the judge all books and papers in his possession relating to his office. Upon his failure to do so within five days after demand by his successor or the judge, he shall be guilty of a gross misdemeanor.

*History: 1935 c 72 s 19 (8992-19)*

**525.11 REPORTER; APPOINTMENT AND DUTIES.**

The judge may appoint a competent stenographer as reporter and secretary in all matters pertaining to his official duties to hold office during his pleasure. Such reporter shall make a complete record of all testimony given and all proceedings had before the court upon the trial of issue of fact except that in commitment proceedings a tape recording of the proceedings may be kept in lieu of a stenographic record. The reporter shall inscribe all questions in the exact language thereof, all answers thereto precisely as given by the witness or sworn interpreter, all objections made and the grounds thereof as stated by counsel, all rulings thereon, all exceptions taken, all admissions made, all oral stipulations, and all oral motions and orders. When directed by the judge, he shall make a record of any matter or proceeding and without charge shall read to or transcribe for such judge any record made by him or any tape recording made in a commitment proceeding. Upon completion of every trial or proceeding, such reporter shall file his stenographic record or tape recording in the manner directed by the judge. Upon request of any person and payment of his fees by such person, he shall furnish a transcript. The reporter may take acknowledgments, administer oaths, and certify copies of his stenographic record or transcript of either such record or tape recording made in a commitment proceeding.

*History: 1935 c 72 s 20; 1974 c 482 s 8 (8992-20)*

**525.111 COMPENSATION; TRANSCRIPT FEES.**

Where the salary of the reporter is not provided for by law, his compensation shall be paid by the representative as an expense of administration or guardianship, or by the party or parties presenting or contesting the proceedings reported, as the court may determine. In addition to the salary fixed by law or compensation fixed by the court, the reporter shall receive for transcripts furnished such fees as may be fixed by the court not exceeding those allowed by law to the district court reporters of the same county.

*History: 1935 c 72 s 21 (8992-21)*

**525.112 COURT REPORTERS FOR HENNEPIN COUNTY COURT.**

The county judge or judge of probate of any county now having or which may hereafter have 400,000 inhabitants, or over, may appoint a competent stenographer as court reporter and secretary, who shall be paid a salary of \$3,000 per annum; and, in addition to this salary, the court reporter may also be paid such fees for transcripts of evidence made in relation to probate hearings, as the judge of probate shall fix and allow, and appoint two additional clerks who shall be competent stenographers, who shall each be paid a salary of \$1,200 per annum.

*History: 1935 c 373 s 1; 1941 c 179 s 1; 1975 c 347 s 88 (8992-21a)*

**525.113 ADDITIONAL EMPLOYEES.**

The reporter and clerk mentioned in section 525.112 shall be employed and appointed in addition to the clerk, deputy clerks, and employees now provided by

law, to hold office during the pleasure of the judge of probate and shall perform the duties imposed by law and such judge, and their salary shall be paid from the county funds in the same manner as prescribed for the payment of other employees of such court.

**History:** 1935 c 373 s 2 (8992-21b)

### 525.12 AUDITOR; APPOINTMENT.

The court may appoint an auditor in any matter involving an annual, partial, or final account, or the amount due on a claim or an offset thereto. Such appointment may be made with or without notice and on the court's own motion or upon the petition of the personal representative or of any person interested in the estate or guardianship.

**History:** 1935 c 72 s 22; 1975 c 347 s 89 (8992-22)

### 525.121 POWERS.

The auditor shall have the same power as the court to set hearings, grant adjournments, compel the attendance of witnesses or the production of books, papers, and documents, and to hear all proper evidence relating to such matter. He shall report his findings of fact to the court.

**History:** 1935 c 72 s 23 (8992-23)

### 525.122 COMPENSATION OF AUDITOR.

The auditor shall be allowed such reasonable fees, disbursements, and expenses as may be determined by the court and shall be paid by the personal representative as expenses of administration, guardianship or conservatorship or by the person applying for such audit as the court may determine.

**History:** 1935 c 72 s 24; 1975 c 347 s 90 (8992-24)

## INTESTATE SUCCESSION

### 525.13 ESTATE.

As used in sections 525.13 to 525.173, the word "estate" includes every right and interest of a decedent in property, real or personal, except such as are terminated or otherwise extinguished by his death.

**History:** 1935 c 72 s 25 (8992-25)

### 525.14 DESCENT OF CEMETERY LOT.

Subject to the right of interment of the decedent therein, a cemetery lot or burial plot, unless disposed of as provided in section 306.29, shall descend free of all debts as follows:

(1) To the decedent's surviving spouse, a life estate with right of interment of the spouse therein, and remainder over to the person who would be entitled to the fee if there were no spouse, provided, however, if no person entitled to the remainder of the fee survives, then the entire fee to the surviving spouse with right of interment therein;

(2) If there is no surviving spouse, then to the decedent's eldest surviving child;

(3) If there is no surviving child, then to the decedent's youngest surviving sibling;

(4) If there is no surviving spouse, child or sibling of the decedent, then, if not sold during administration of decedent's estate, to the cemetery association or

private cemetery in trust as a burial lot for the decedent and such of the decedent's relatives as the governing body thereof shall deem proper.

The cemetery association or private cemetery, or, with its consent, any person to whom the lot shall descend may grant and convey the lot to any of the decedent's parents, siblings or descendants.

A crypt or group of crypts or burial vaults owned by one person in a public or community mausoleum shall be deemed a cemetery lot.

Grave markers, monuments, memorials and all structures lawfully installed or erected on any cemetery lot or burial plot shall be deemed to be a part of and shall descend with the lot or plot.

**History:** 1935 c 72 s 26; 1969 c 852 s 1; 1981 c 25 s 1 (8992-26)

### 525.145 DESCENT OF HOMESTEAD.

(1) Where there is a surviving spouse the homestead, including a manufactured home which is the family residence, shall descend free from any testamentary or other disposition thereof to which the spouse has not consented in writing or by election to take under the will as provided by law, as follows:

- (a) If there be no surviving child or issue of any deceased child, to the spouse;
- (b) If there be children or issue of deceased children surviving, then to the spouse for the term of the spouse's natural life and the remainder in equal shares to the children and the issue of deceased children by right of representation.

(2) Where there is no surviving spouse and the homestead has not been disposed of by will it shall descend as other real estate.

(3) Where the homestead passes by descent or will to the spouse or children or issue of deceased children, it shall be exempt from all debts which were not valid charges thereon at the time of decedent's death except that the homestead shall be subject to a claim filed pursuant to section 246.53 for state hospital care or 256B.15 for medical assistance benefits. If the homestead passes to a person other than a spouse or child or issue of a deceased child, it shall be subject to the payment of the items mentioned in section 525.16. No lien or other charge against any homestead which is so exempted shall be enforced in the probate court, but the claimant may enforce the lien or charge by an appropriate action in the district court.

**History:** 1935 c 72 s 27; 1937 c 435 s 7; 1943 c 329 s 1; 1981 c 105 s 1; 1981 c 365 s 9; 1982 c 621 s 3; 1982 c 641 art 1 s 20 (8992-27)

### 525.15 ALLOWANCES TO SPOUSE.

When any person dies, testate or intestate,

(1) The surviving spouse shall be allowed from the personal property of which the decedent was possessed or to which he was entitled at the time of his death, the wearing apparel, and, as selected by him, furniture and household goods not exceeding \$6,000 in value, and other personal property not exceeding \$3,000 in value;

(2) When, except for one automobile, all of the personal estate of the decedent is allowed to the surviving spouse by clause (1), the surviving spouse shall also be allowed such automobile;

(3) If there be no surviving spouse, the minor children shall receive the property specified in clause (1) as selected in their behalf;

(4) During administration, but not exceeding 18 months, unless an extension shall have been granted by the court, or, if the estate be insolvent, not exceeding 12

months, the spouse or children, or both, constituting the family of the decedent shall be allowed reasonable maintenance;

(5) In the administration of an estate of a nonresident decedent, the allowances received in the domiciliary administration shall be deducted from the allowances under this section.

**History:** 1935 c 72 s 28; 1947 c 45 s 1; 1955 c 189 s 1; 1975 c 347 s 91; 1981 c 103 s 1 (8992-28)

#### **525.151 ALLOWANCE SELECTION AND MAINTENANCE PAYMENT.**

The surviving spouse, and conservators or guardians of the minor children, may select the property of the estate allowed to them under section 525.15, clauses (1), (2) and (3). The personal representative may make these selections if the surviving spouse or the conservators or guardians of the minor children are unable or fail to do so within a reasonable time or if there are no conservators or guardians of the minor children. The personal representative may execute an instrument or deed of distribution to establish the ownership of such property. He may determine maintenance in periodic installments not exceeding \$500 per month for one year, if the estate is insolvent or 18 months if the estate is solvent, and may disburse funds of the estate in payment of such maintenance. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief which relief may provide a family allowance larger or smaller than that which the personal representative determined or could have determined.

**History:** 1975 c 347 s 92

#### **525.16 DESCENT OF PROPERTY.**

Except as provided in sections 525.14 and 525.145, and subject to the allowances provided in section 525.15, and the payment of the expenses of administration, funeral expenses, expenses of last illness, taxes, and debts, the estate, real and personal, shall descend and be distributed as follows:

(1) Personal property: To the surviving spouse one-third thereof free from any testamentary disposition thereof to which such survivor shall not have consented in writing or by election to take under the will as provided by law;

(2) Real property: To the surviving spouse an undivided one-third of all real property of which the decedent at any time while married to such spouse was seized or possessed, to the disposition whereof by will or otherwise such survivor shall not have consented in writing or by election to take under the will as provided by law, except such as has been transferred or sold by judicial partition proceedings or appropriated to the payment of the decedent's debts by execution or judicial sale, by general assignment for the benefit of creditors, or by insolvency or bankruptcy proceedings, and subject to all judgment liens;

(3) If only a spouse, or a spouse and only one child or the issue of a deceased child survive, the share of the spouse under the provisions of clauses (1) and (2) shall be one-half instead of one-third;

(4) Subject to the preceding provisions of this section, the whole estate, real and personal, except as otherwise disposed of by will shall descend and be distributed as follows:

(a) In equal shares to the surviving children and to the issue of deceased children by right of representation;

(b) If there be no surviving child nor issue of any deceased child, and if the intestate leave a surviving spouse, then to such spouse;

(c) If there be no surviving issue nor spouse, then to the father and mother in equal shares, or if but one survive, then to such survivor;

(d) If there be no surviving issue, spouse, father nor mother, then in equal shares to the surviving brothers and sisters and to the issue of deceased brothers and sisters by right of representation; and if there be no surviving brothers or sisters, then in equal shares to the issue of deceased brothers and sisters if all are of equal degree and, if not, then in equal shares to those in the nearest degree and by right of representation to those in a more remote degree;

(e) If there be no surviving issue, spouse, father, mother, brother, sister, nor issue of any deceased brother or sister, then in equal shares to the next of kin in equal degree, except that when there are two or more collateral kindred in equal degree claiming through different ancestors, those who claim through the nearest ancestor shall take to the exclusion of those claiming through an ancestor more remote.

(5) If a minor dies leaving no spouse nor issue surviving, all of his estate that came to him by inheritance or will from his parent shall descend and be distributed to the other children of the same parent, if any, and to the issue of any deceased child of such parent in equal shares if all are of equal degree and, if not, then in equal shares to those in the nearest degree and by right of representation to those in a more remote degree; failing all such, it shall descend and be distributed by intestate succession as in other cases;

(6) If the intestate leave no spouse nor kindred, the estate shall escheat to the state.

**History:** 1935 c 72 s 29; 1937 c 435 s 8; 1939 c 270 s 1-3; 1971 c 497 s 1 (8992-29)

### **525.161 NO SURVIVING SPOUSE OR KINDRED, NOTICES TO ATTORNEY GENERAL.**

When it appears from the petition or application for administration of the estate, or otherwise, in a proceeding in the court that the intestate left surviving no spouse or kindred, the court shall give notice of such fact and notice of all subsequent proceedings in such estate to the attorney general forthwith; and the attorney general shall protect the interests of the state during the course of administration. The residue which escheats to the state shall be transmitted to the attorney general. All moneys, stocks, bonds, notes, mortgages and other securities, and all other personal property so escheated shall then be given into the custody of the state treasurer, who shall notify the commissioner of finance thereof and immediately credit the moneys received to the general fund. The treasurer shall hold such stocks, bonds, notes, mortgages and other securities, and all other personal property, subject to such investment, sale or other disposition as the state board of investment may direct pursuant to section 11A.04, clause (9). The attorney general shall immediately report to the state executive council all real property received in the individual escheat, and any sale or disposition of such real estate shall be made in accordance with sections 94.09 to 94.16.

**History:** 1955 c 194 s 1; 1957 c 861 s 1; 1969 c 399 s 1; 1973 c 492 s 14; 1975 c 347 s 93; 1980 c 607 art 14 s 46

### **525.17 DEGREE OF KINDRED.**

The degree of kindred shall be computed according to the rules of the civil law. Kindred of the half blood shall inherit equally with those of the whole blood in the same degree unless the inheritance comes to the intestate by descent, devise, or

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bequest from one of his ancestors, in which case all those who are not of the blood of such ancestor shall be excluded from such inheritance.

**History:** 1935 c 72 s 30 (8992-30)

## 525.171 POSTHUMOUS CHILD.

A posthumous child shall be considered as living at the death of its parent.

**History:** 1935 c 72 s 31 (8992-31)

## 525.172 CERTAIN CHILDREN AS HEIRS.

A child born to a mother who was not married to the child's father when the child was conceived nor when the child was born shall inherit from his mother the same as if the child was conceived or born to her while she was married, and also from the person who in writing and before a competent witness shall have declared himself to be his father, provided such writing or an authenticated copy thereof shall be produced in the proceeding in which it is asserted or from the person who has been determined to be the father of such child in a paternity proceeding before a court of competent jurisdiction; but such child shall not inherit from the kindred of the father by right of representation.

**History:** 1935 c 72 s 32; 1963 c 649 s 1; 1971 c 122 s 1; 1979 c 161 s 1; 1983 c 7 s 13; 1983 c 243 s 5 subd 11 (8992-32)

## 525.173 HEIRS TO CERTAIN CHILDREN.

If any child born to a mother who was not married to the child's father when the child was conceived nor when the child was born dies intestate and without spouse or issue who inherit under the law, his estate shall descend to his mother, or in case of her prior decease to her heirs other than such child.

**History:** 1935 c 72 s 33; 1983 c 7 s 14; 1983 c 243 s 5 subd 12 (8992-33)

## WILLS

525.18 [Repealed, 1975 c 347 s 144]

525.181 [Repealed, 1975 c 347 s 144]

525.182 [Repealed, 1975 c 347 s 144]

525.183 [Repealed, 1975 c 347 s 144]

525.184 [Repealed, 1975 c 347 s 144]

525.19 [Repealed, 1975 c 347 s 144]

525.191 [Repealed, 1975 c 347 s 144]

## 525.20 AFTER-BORN CHILD.

If any child of the testator, including a posthumous child, born after the making of a will has no provision made for him by the testator by will or otherwise, he shall take the same share that he would have taken if the testator had died intestate unless it appears that such omission was intentional and not occasioned by accident or mistake.

**History:** 1935 c 72 s 41 (8992-41)

## 525.201 OMITTED CHILD.

If a testator omits to provide in his will for any of his children or the issue of a deceased child, they shall take the same share of his estate which they would have



taken if he had died intestate unless it appears that such omission was intentional and not occasioned by accident or mistake.

**History:** 1935 c 72 s 42 (8992-42)

#### **525.202 APPORTIONMENT.**

If the person takes a portion of a testator's estate under the provisions of section 525.20 or 525.201, such portion shall be taken from the estate not disposed of by the will; if that be insufficient, the devises made by the will abate as provided in section 524.3-902.

**History:** 1935 c 72 s 43; 1975 c 347 s 94 (8992-43)

**525.203** [Repealed, 1975 c 347 s 144]

#### **525.21 QUANTITY OF ESTATE DEVISED.**

Every devise of real estate shall convey all the estate of the testator therein subject to liens and encumbrances thereon unless a different intention appears from the will.

**History:** 1935 c 72 s 45 (8992-45)

**525.211** [Repealed, 1975 c 347 s 144]

#### **525.212 RENUNCIATION AND ELECTION.**

If a will make provision for a surviving spouse in lieu of the rights in the estate secured by statute, such spouse shall be deemed to have elected to take under the will, unless he shall have filed with the court and mailed or delivered to the personal representative, if any, within nine months after the date of death, or within six months after the probate of the decedent's will, whichever limitation last expires, an instrument in writing renouncing and refusing to accept the provisions in such will. For good cause shown, the court may permit an election within such further time as the court may determine. No devise to a surviving spouse shall be considered as adding to the rights in the estate secured by sections 525.145 and 525.16 to such spouse, unless it clearly appears from the contents of the will that such was the testator's intent.

**History:** 1935 c 72 s 47; 1975 c 347 s 95 (8992-47)

#### **525.213 CONVEYANCES TO DEFEAT MARITAL RIGHTS; RIGHT OF SURVIVING SPOUSE.**

Title and transferability of assets shall remain unfettered and freely alienable to third parties unless the surviving spouse gives proper notice as required hereunder. A conveyance of assets by a person who retains a power of appointment by will, or a power of revocation or consumption over the principal thereof, shall at the election of his surviving spouse be treated as a testamentary disposition so far as the surviving spouse is concerned to the extent to which the power has been reserved, but the right of the surviving spouse shall be subject to the rights of any income beneficiary whose interest in income becomes vested in enjoyment prior to the death of the conveyor. The provisions of this section shall not apply to any contract of life insurance purchased by a decedent whether payable in trust or otherwise.

The rights of a surviving spouse created by this section shall not give rise to any right, claim, or cause of action against any person who pays over, delivers or transfers title to any asset in reliance upon the terms of any conveyance, deposit contract or other agreement upon the death of the conveyor without prior notice in

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## 525.213 PROBATE PROCEEDINGS

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writing given to such person of the election of such surviving spouse to treat such conveyance, deposit contract, or other agreement as a testamentary disposition.

A spouse's rights as against the person to whom assets were initially conveyed by decedent under the aforementioned conditions shall be preserved in all events even though the assets cannot be recovered for the reason that they have been transferred to a third party. The value of said assets shall be accounted for by such person to the court to the extent that the spouse had a potential interest therein and the court shall determine the spouse's rights and grant equitable relief only as against the person to whom the assets were initially conveyed by decedent and succeeded to upon his death, unless the required notice is given.

In the case of real estate, a notice of lis pendens shall be filed in the office of the county recorder as to abstract property, and with the registrar of titles as to registered property, in the county wherein the property is located, giving the name and address of the surviving spouse, containing a brief statement of the nature and extent of the interest claimed, legal description of the real estate involved, and the title and venue of the case wherein such rights are being determined.

**History:** 1969 c 1003 s 1; 1971 c 483 s 1; 1976 c 2 s 145; 1976 c 181 s 2

## 525.214 DETERMINATION OF SHARE.

The spouse may elect to take against any such conveyance and shall be entitled to one-third thereof if the conveyor is survived by more than one child, or by one or more children and the issue of a deceased child or children, or by the issue of more than one deceased child, and in all other circumstances one-half thereof. In addition thereto, the spouse shall be entitled to personal property selection and maintenance as provided by section 525.15, if there are insufficient probate assets to pay the same.

**History:** 1969 c 1003 s 2

## 525.215 ELECTION AGAINST OTHER CONVEYANCES.

A spouse electing under sections 525.213 to 525.216 also must elect to take against the will, if spouse is a beneficiary thereunder, and against all other conveyances within the scope of section 525.213 of which spouse is a beneficiary. A spouse electing to take against the will pursuant to section 525.212 also must elect to take against all conveyances within the scope of section 525.213 of which spouse is a beneficiary. The share of any surviving spouse in all assets, probate and non-probate, shall thereupon be determined in accordance with the provisions of sections 525.145, 525.15, and 525.16 (1), (2) and (3).

**History:** 1969 c 1003 s 3; 1973 c 398 s 1; 1975 c 347 s 96

## 525.216 PROCEDURE.

The election to treat a conveyance as testamentary shall be made in the same manner as an election to take against the will. If there is a will, such election shall be made within the same time limitations as an election to take against the will. If there is no will, such election shall be made within one year of the conveyor's death, and the probate court, on application of the surviving spouse made within such period, may extend the time for making the election. It can be made only if there has been no forfeiture of the right to make an election. The court having jurisdiction of the deceased conveyor's estate shall determine the rights of the surviving spouse in the property included in the conveyance.

**History:** 1969 c 1003 s 4

**525.22 DEPOSIT OF WILLS.**

A will in writing enclosed in a sealed wrapper upon which is endorsed the name and address of the testator, the day when, and the person by whom it is delivered, may be deposited in the probate court of the county where the testator resides. The court shall give a certificate of its deposit and shall retain such will. During the testator's lifetime, such will shall be delivered only to him or upon his written order witnessed by at least two subscribing witnesses and duly acknowledged. After the testator's death, the court shall open the will publicly and retain the same. Notice shall be given to the executor named therein and to such other persons as the court may designate. If the proper venue is in another court, the will shall be transmitted to such court; but before such transmission a true copy thereof shall be made by and retained in the court in which the will was deposited.

*History: 1935 c 72 s 48 (8992-48)*

**525.221 DUTY OF CUSTODIAN.**

After the death of a testator, the person having custody of his will shall deliver it to the court which has jurisdiction thereof. Every person who neglects to deliver a will after being duly ordered to do so shall be guilty of contempt of court.

*History: 1935 c 72 s 49 (8992-49)*

**525.222 [Repealed, 1974 c 442 art 8 s 524.8-102]****525.2221 WILLS NOT AFFECTED.**

Notwithstanding any other provision of law to the contrary, the provisions of any will executed prior to June 1, 1973 relating to ones "minority" or "majority" or other related terms shall be governed by the definitions of such terms existing at the time of the execution of the will.

*History: 1973 c 725 s 86*

**UNIFORM TESTAMENTARY  
ADDITIONS TO TRUSTS ACT****525.223 UNIFORM TESTAMENTARY ADDITIONS TO TRUSTS ACT.**

Subdivision 1. **Testamentary additions to trusts.** A devise, the validity of which is determinable by the law of this state, may be made by a will to the trustee or trustees of a trust established or to be established by the testator or by the testator and some other person or persons or by some other person or persons, including a funded or unfunded life insurance trust, although the trustor has reserved any or all rights of ownership of the insurance contracts, if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will, executed before or concurrently with the execution of the testator's will or in the valid last will of a person who has predeceased the testator, regardless of the existence, size, or character of the corpus of the trust. The devise shall not be invalid because the trust is amendable or revocable, or both, or because the trust was amended after the execution of the will or after the death of the testator. Unless the testator's will provides otherwise, the property so devised (a) shall not be deemed to be held under a testamentary trust of the testator but shall become a part of the trust to which it is given and (b) shall be administered and disposed of in accordance with the provisions of the instrument or will setting forth the terms of the trust, including any amendments thereto made before the death of the testator, regardless of whether made before or after the execution of the testator's will, and, if the testator's will so

provides, including any amendments to the trust made after the death of the testator. A revocation or termination of the trust before the death of the testator shall cause the devise to lapse.

Subd. 2. **Effect on prior wills.** This section shall not invalidate any devise made by a will executed prior to the effective date of Laws 1963, Chapter 13.

Subd. 3. **Uniformity of interpretation.** This section shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Subd. 4. **Short title.** This section is the uniform testamentary additions to trusts act.

Subd. 5. **Effective date.** This section shall take effect upon final enactment, and shall apply to all wills and trusts heretofore or hereafter executed.

**History:** 1963 c 13 s 1-5; 1975 c 347 s 97,98

### PROBATE OF WILLS

**525.23** [Repealed, 1974 c 442 art 8 s 524.8-102]

**525.231** [Repealed, 1974 c 442 art 8 s 524.8-102]

**525.24** [Repealed, 1974 c 442 art 8 s 524.8-102]

**525.241** [Repealed, 1974 c 442 art 8 s 524.8-102]

### **525.242 SECONDARY EVIDENCE.**

If no subscribing witness competent to testify resides in the state at the time appointed for proving the will, the court may admit the testimony of other witnesses to prove the capacity of the testator and the execution of the will, and as evidence of such execution may admit proof of the handwriting of the testator and of the subscribing witnesses.

**History:** 1935 c 72 s 55 (8992-55)

**525.243** [Repealed, 1974 c 442 art 8 s 524.8-102]

**525.244** [Repealed, 1974 c 442 art 8 s 524.8-102]

**525.25** [Repealed, 1974 c 442 art 8 s 524.8-102]

**525.251** [Repealed, 1974 c 442 art 8 s 524.8-102]

**525.252** [Repealed, 1974 c 442 art 8 s 524.8-102]

### **525.253 SALE OF DEVISED PROPERTY.**

Subdivision 1. Unless a contrary intent appears from the will, an agreement made by a testator for the sale or transfer of real property disposed of by the will previously made, does not revoke or adeem such disposal; but all the right, title, and interest of the decedent in such property and in said agreement shall pass, according to the terms of the will. Such an agreement shall be enforceable and subject to the same remedies for specific performance or otherwise against the devisees as exists against a decedent's successors if the same passed by succession.

Subd. 2. This section shall be applicable to estates of decedents dying after June 5, 1969.

**History:** 1969 c 944 s 1,2; 1975 c 347 s 99

**525.26** [Repealed, 1975 c 347 s 144]

**525.261** [Repealed, 1975 c 347 s 144]

**525.262** [Repealed, 1975 c 347 s 144]

- 525.27 [Repealed, 1975 c 347 s 144]
- 525.271 [Repealed, 1975 c 347 s 144]
- 525.272 [Repealed, 1975 c 347 s 144]
- 525.273 [Repealed, 1974 c 442 art 8 s 524.8-102]
- 525.28 [Repealed, 1974 c 442 art 8 s 524.8-102]
- 525.281 [Repealed, 1974 c 442 art 8 s 524.8-102]
- 525.282 [Repealed, 1974 c 442 art 8 s 524.8-102]
- 525.29 [Repealed, 1974 c 442 art 8 s 524.8-102]
- 525.291 [Repealed, 1974 c 442 art 8 s 524.8-102]
- 525.292 [Repealed, 1974 c 442 art 8 s 524.8-102]
- 525.30 [Repealed, 1974 c 442 art 8 s 524.8-102]
- 525.301 [Repealed, 1974 c 442 art 8 s 524.8-102]
- 525.302 [Repealed, 1974 c 442 art 8 s 524.8-102]
- 525.303 [Repealed, 1974 c 442 art 8 s 524.8-102]
- 525.304 [Repealed, 1974 c 442 art 8 s 524.8-102]

#### DETERMINATION OF DESCENT

- 525.31 MS 1971 [Repealed, 1974 c 442 art 8 s 524.8-102]

#### 525.31 ESSENTIALS.

Whenever any person has been dead for more than three years and has left real or personal property, or any interest therein, and no will or authenticated copy of a will probated outside this state in accordance with the laws in force in the place where probated has been probated nor proceedings had in this state, any interested person or assignee or successor of an interested person may petition the court of the county of the decedent's residence or of the county wherein such real or personal property, or any part thereof, is situated to determine the descent of such property and to assign such property to the persons entitled thereto.

*History: 1975 c 347 s 100; 1976 c 161 s 15*

- 525.311 MS 1971 [Repealed, 1974 c 442 art 8 s 524.8-102]

#### 525.311 CONTENTS OF PETITION.

Such petition shall show so far as known to the petitioner:

- (1) The name of the decedent, his place of residence, the date and place of his death, his age and address at such date, and whether he died testate or intestate;
- (2) The names, ages, and addresses of his heirs, personal representatives, and devisees;
- (3) That no will or authenticated copy of a will probated outside of this state in accordance with the laws in force in the place where probated has been probated nor proceedings had in this state;
- (4) A description of the real or personal property, or interest therein and if a homestead, designated as such, the interest therein of the decedent, the value thereof at the date of his death, and the interest therein of the petitioner;
- (5) If the decedent left a will which has not been probated in this state, such will or authenticated copy of a will probated outside of this state in accordance with the laws in force in the place where probated shall be filed and the petition shall contain a prayer for its probate.

(6) That the devisee or his successors and assigns possess the property devised in accordance with the will, any heir or his successor and assigns possess such property which passes to such heir under the laws of intestate succession in force at the decedent's death, or such property was not possessed or claimed by anyone by virtue of the decedent's title during the time period for testacy proceedings.

(7) In any such proceeding wherein it appears that the property affected descends through several decedents under circumstances qualifying for a descent proceeding under this section in each case, the court in its discretion may consolidate the proceedings into one and may accept the filing of one petition for the several decedents where no interests are prejudiced thereby. The notice and other requirements of sections 525.31, 525.311, and 525.312 shall be complied with, and the matter shall be then adjudicated under one title combining the names of the several decedents and making appropriate findings for each decedent and determining heirship.

**History:** 1975 c 347 s 100

**525.312** MS 1971 [Repealed, 1974 c 442 art 8 s 524.8-102]

### **525.312 DECREE OF DESCENT.**

Upon the filing of such petition, the court shall fix the time and place for the hearing thereof, notice of which shall be given pursuant to section 524.1-401. Notice of the hearing, in the form prescribed by court rule, shall also be given under 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. Upon proof of the petition and of the will if there be one, or upon proof of the petition and of an authenticated copy of a will duly proved and allowed outside of this state in accordance with the laws in force in the place where proved, if there be one, the court shall allow the same and enter its decree of descent assigning the real or personal property, or any interest therein, to the persons entitled thereto pursuant to the will or such authenticated copy, if there be one, otherwise pursuant to the laws of intestate succession in force at the time of the decedent's death. The court may appoint two or more disinterested persons to appraise the property.

**History:** 1975 c 347 s 100; 1977 c 207 s 1; 1979 c 303 art 3 s 37

**525.314** [Repealed, 1974 c 442 art 8 s 524.8-102]

**525.315** [Repealed, 1974 c 442 art 8 s 524.8-102]

**525.316** [Repealed, 1974 c 442 art 8 s 524.8-102]

**525.32** [Repealed, 1974 c 442 art 8 s 524.8-102]

**525.321** [Repealed, 1974 c 442 art 8 s 524.8-102]

**525.322** [Repealed, 1974 c 442 art 8 s 524.8-102]

**525.323** [Repealed, 1974 c 442 art 8 s 524.8-102]

**525.324** [Repealed, 1974 c 442 art 8 s 524.8-102]

**525.33** [Repealed, 1975 c 347 s 144]

**525.331** [Repealed, 1974 c 442 art 8 s 524.8-102]

### **PROPERTY DISPOSITION**

**525.34** [Repealed, 1974 c 442 art 8 s 524.8-102]

**525.35** [Repealed, 1974 c 442 art 8 s 524.8-102]

**525.36** [Repealed, 1974 c 442 art 8 s 524.8-102]

**525.37** MS 1971 [Repealed, 1974 c 442 art 8 s 524.8-102]

**525.37 FORECLOSURE OF MORTGAGES.**

The guardian or conservator shall have the same right to foreclose a mortgage, lien, or pledge or collect the debt secured thereby as the ward or conservatee would have had, if competent, and he may complete any such proceeding commenced by such ward or conservatee.

*History: 1975 c 347 s 101*

**525.38** MS 1971 [Repealed, 1974 c 442 art 8 s 524.8-102]

**525.38 REALTY ACQUIRED.**

When a foreclosure sale or a sale on execution for the recovery of a debt due the estate is had or redemption is made the personal representative shall receive the money paid and execute the necessary satisfaction or release. If bid in by the personal representative or if bid in by the decedent or ward and the redemption period expired during the administration of the estate or guardianship or conservatorship without redemption, the real estate shall be treated as personal property. If not so sold, mortgaged, or leased, the real estate or, if so sold, mortgaged, or leased, the proceeds shall be assigned or distributed to the same persons and in the same proportions as if it had been part of the personal estate of the decedent, unless otherwise provided in the will.

*History: 1975 c 347 s 102*

**525.39** [Repealed, 1975 c 347 s 144]

**525.391 PROPERTY FRAUDULENTLY CONVEYED.**

When the property available for the payment of debts is insufficient to pay the same in full, the representative may recover any property which the decedent may have disposed of with intent to defraud his creditors, or by conveyance or transfer which for any reason is void as to them. Upon the application of any creditor and upon making the payment of or providing security for the expenses thereof as directed by the court, the representative shall prosecute all actions necessary to recover the property.

*History: 1935 c 72 s 95 (8992-95)*

**525.392 PROPERTY CONVERTED.**

If any person embezzles, alienates, or converts to his own use any of the personal estate of a decedent or ward before the appointment of a representative, such person shall be liable for double the value of the property so embezzled, alienated, or converted.

*History: 1935 c 72 s 96 (8992-96)*

**525.393 DISPOSAL BY CORONER.**

When personal property of a decedent has come into the custody of any coroner and has not been surrendered as hereinafter provided and no will has been admitted to probate or no administration has been had within three months after the decedent's death, the coroner, after the expiration of said time, shall file in the court an inventory of all such property and a fingerprint of each finger of each hand of the

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decedent. Wearing apparel and such other property as the coroner determines to be of nominal value, may be surrendered by the coroner to the spouse or to any blood relative of the decedent. If no will is admitted to probate nor administration had within six months after death, the coroner shall sell the same at public auction upon such notice and in such manner as the court may direct. He shall be allowed reasonable expenses for the care and sale of the property, and shall deposit the net proceeds of such sale with the county treasurer in the name of the decedent, if known. The treasurer shall give the coroner duplicate receipts therefor, one of which he shall file with the county auditor and the other in the court. If a representative shall qualify within six years from the time of such deposit, the treasurer shall pay the same to such representative.

**History:** 1935 c 72 s 97; Ex1936 c 48; 1975 c 347 s 103 (8992-97)

- 525.40 [Repealed, 1974 c 442 art 8 s 524.8-102]
- 525.401 [Repealed, 1974 c 442 art 8 s 524.8-102]
- 525.41 [Repealed, 1975 c 347 s 144]
- 525.411 [Repealed, 1975 c 347 s 144]
- 525.412 [Repealed, 1975 c 347 s 144]
- 525.413 [Repealed, 1975 c 347 s 144]
- 525.42 [Repealed, 1975 c 347 s 144]
- 525.421 [Repealed, 1975 c 347 s 144]
- 525.43 [Repealed, 1975 c 347 s 144]
- 525.431 [Repealed, 1975 c 347 s 144]
- 525.44 [Repealed, 1975 c 347 s 144]
- 525.441 [Repealed, 1975 c 347 s 144]
- 525.442 [Repealed, 1975 c 347 s 144]
- 525.45 [Repealed, 1975 c 347 s 144]
- 525.46 [Repealed, 1975 c 347 s 144]

## ACCOUNTING, DISTRIBUTION

- 525.47 [Repealed, 1974 c 442 art 8 s 524.8-102]
- 525.475 MS 1974 [Repealed, 1975 c 347 s 144]

### 525.475 DORMANT ESTATE; REMOVAL OF REPRESENTATIVE OR ATTORNEY.

(1) In a supervised administration under sections 524.3-501 to 524.3-505:

(a) If an order of complete settlement of the estate or a decree, as provided in section 524.3-1001, is not entered within 18 months after appointment of the personal representative, the court shall order the personal representative and his attorney to show good cause why an order of complete settlement of the estate or a decree has not been entered.

(b) If good cause is not shown the court shall order the removal of the personal representative, instruct the personal representative to dismiss his attorney and employ another attorney, if necessary, to complete the administration of the estate, or shall order such other or further relief as may be appropriate. In addition, the court may refer a record of the proceeding to the state board of professional responsibility. If removal of the personal representative is ordered, the court shall also direct by order the disposition of the assets remaining in the name of, or under the control of, the personal representative being removed.



(c) If good cause is shown, the court shall order that the time for administration of the estate be extended for an additional period not to exceed one year. If an order of complete settlement of the estate or a decree, as provided in section 524.3-1001, is not entered within such extended period, the court shall again order the personal representative and his attorney to show cause why an order of complete settlement or a decree has not been entered. If good cause is not shown, the provisions of paragraph (b) of this section shall be applicable. If good cause is shown, the court shall order that the time for administration of the estate be again extended for an additional period not to exceed one year and the provisions of this paragraph (c) of this section shall be applicable to such additional extension.

(2) In an administration other than a supervised administration under sections 524.3-501 to 524.3-505:

(a) Upon the petition of an interested person and upon showing of probable cause for relief, the court shall order the personal representative and his attorney to show cause why the estate has not been closed pursuant to the provisions of sections 524.3-1001 to 524.3-1003.

(b) If good cause is not shown, the court shall order the removal of the personal representative, instruct the personal representative to dismiss his attorney and employ another attorney, if necessary, to complete the administration of the estate or shall order such other or further relief as may be appropriate. In addition, the court may refer a record of the proceeding to the state board of professional responsibility. If removal of the personal representative is ordered, the court shall also direct by order the disposition of the assets remaining in the name of, or under the control of, the personal representative being removed.

(c) If good cause is shown, the court shall enter an order so finding. An interested party may thereafter again petition the court for an order directing the personal representative and his attorney to show cause why the estate has not been closed pursuant to the provisions of sections 524.3-1001 to 524.3-1003.

(3) An attorney dismissed pursuant to this section and who is seeking attorney fees for services rendered to the estate has the burden of affirmatively proving that the estate has benefited from his services and that the benefits warrant the payment of the requested fee.

**History:** 1975 c 347 s 104

#### **525.48 FINAL ACCOUNT, ATTORNEY FEES AND REPRESENTATIVE FEES.**

Any full or final account to distributees shall include a statement of attorney fees and representative fees. This statement shall include the total fees charged to date and estimated future fees to be charged.

**History:** 1935 c 72 s 114; 1974 c 442 art 9 s 2; 1975 c 347 s 105 (8992-114)

**525.481** [Repealed, 1974 c 442 art 8 s 524.8-102]

**525.482** [Repealed, 1974 c 442 art 8 s 524.8-102]

#### **525.483 RECORDING DECREE.**

A certified copy of any decree of distribution may be filed for record in the office of the county recorder of any county. It shall not be necessary to pay real estate taxes in order to record such certified copy, but the same shall be first presented to the county auditor for entry upon his transfer record and shall have noted thereon "Transfer entered" over his official signature. Upon request, the court shall furnish a certified copy of any decree of distribution, omitting the

description of any property except that specified in the request, but indicating omissions by the words "other property omitted." Such copy and its record shall have the same force and effect as to property therein described as though the entire decree had been so certified and recorded.

*History: 1935 c 72 s 117; 1976 c 181 s 2 (8992-117)*

**525.484 PROPERTY OF DECEASED PERSONS TO BE TRANSFERRED TO REPRESENTATIVES OF FOREIGN COUNTRIES IN CERTAIN CASES.**

Whenever any person who is entitled to any property in an estate is a citizen of and a resident in any foreign country with the government of which the United States maintains diplomatic relations, the personal representative of the estate may deliver or pay such property to an accredited diplomatic or consular representative of the government of such foreign country for delivery or payment to such person, or, if such property has been deposited with the county treasurer pursuant to section 524.3-914, the court upon application as therein provided shall grant its order authorizing and directing the county auditor to issue his warrant to the county treasurer to pay such money or deliver such property to such accredited diplomatic or consular representative, and the personal representative of such estate or the county treasurer shall be discharged from his trust and all further liability thereunder upon filing the receipt of such diplomatic or consular representative for such property with such court, provided that such diplomatic or consular representative has been licensed by proper federal authority to receive such property of the nationals of such country, where such license is required.

This section shall not apply where such citizen of and resident in any such foreign country has appeared in person or by duly authorized representative other than such diplomatic or consular representative.

*History: 1943 c 477 s 1,2; 1975 c 347 s 106*

**525.485** [Repealed, 1974 c 442 art 8 s 524.8-102]

**525.486** MS 1971 [Repealed, 1974 c 442 art 8 s 524.8-102]

**525.486 TERMINATION OF TRUSTS; DISTRIBUTION.**

In any administration of an estate in probate, wherein the decedent died testate and has established a testamentary trust, and it appears to the court that the operative events have occurred whereby said trust is terminated prior to distribution in whole or in part, the court shall have jurisdiction in its discretion to adjudge and determine that said trust be terminated in whole or in part without further proceedings in any other court of general jurisdiction and may make its decree or order of distribution accordingly to the extent that the trust is no longer operative.

*History: 1975 c 347 s 107*

**525.49** MS 1957 [Repealed, 1961 c 265 s 3]

**525.49** MS 1971 [Repealed, 1974 c 442 art 8 s 524.8-102]

**525.491** MS 1957 [Repealed, 1961 c 265 s 3]

**525.491 ATTORNEY'S LIEN.**

When any attorney at law has been retained to appear for any heir or devisee, such attorney may perfect his lien upon the client's interest in the estate for compensation for such services as he may have rendered respecting such interest, by serving upon the personal representative before distribution is made, a notice of his intent to claim a lien for his agreed compensation, or the reasonable value of his

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services. The perfecting of such a lien, as herein provided, shall have the same effect as the perfecting of a lien as provided in section 481.13, and such lien may be enforced and the amount thereupon determined in the manner therein provided.

*History: 1961 c 265 s.2; 1975 c.347 s 108*

- 525.50 [Repealed, 1974 c 442 art 8 s 524.8-102]
- 525.501 [Repealed, 1974 c 442 art 8 s 524.8-102]
- 525.502 [Repealed, 1974 c 442 art 8 s 524.8-102]
- 525.503 [Repealed, 1974 c 442 art 8 s 524.8-102]
- 525.504 MS 1971 [Repealed, 1974 c 442 art 8 s 524.8-102]
- 525.504 MS 1980 [Repealed, 1981 c 313 s 26]

## 525.51 SUMMARY PROCEEDINGS.

Subdivision 1. Upon petition of an interested person, the court, with or without notice, may determine that the decedent had no estate, or that the property has been destroyed, abandoned, lost, or rendered valueless, and that no recovery has been had nor can be had therefor, or if there be no property except such as has been recovered for death by wrongful act, or such as is exempt from all debts and charges in the probate court, or such as may be appropriated for the payment of the allowances to the spouse and children mentioned in section 525.15, expenses of administration, funeral expenses, expenses of last illness, debts having preference under laws of the United States, and taxes, the personal representative by order of the court may pay the same in the order named. Thereupon the court with or without notice may summarily determine the heirs, legatees, and devisees in its final decree or order of distribution assigning to them their share or part of the property with which the personal representative is charged.

Subd. 2. If upon hearing of a petition for summary assignment or distribution, for special administration, or for any administration, or for the probate of a will, the court determines that there is no need for the appointment of a representative and that the administration should be closed summarily for the reason that all of the property in the estate is exempt from all debts and charges in the probate court, a final decree or order of distribution may be entered, with or without notice, assigning such property to the persons entitled thereto pursuant to the terms of the will, or if there be none, pursuant to the law of intestate succession in force at the time of the decedent's death.

Subd. 3. Summary distribution may be made under this section in any proceeding of any real, personal, or other property in kind in reimbursement or payment of the allowances to the spouse and children mentioned in said section 525.15, expenses of administration, funeral expenses, expenses of last illness, debts having preference under the laws of the United States, and taxes, in the order named, whenever the court is satisfied as to the propriety thereof and as to the valuation, based upon appraisal in the case of real estate other than homestead, of the property being assigned to exhaust the assets of the estate.

Subd. 4. Summary proceedings may be had with or without the appointment of a personal representative. In all summary proceedings wherein no personal representative is appointed, the court may require the petitioner to file a corporate surety bond in an amount fixed and approved by the court. The condition of the bond shall be that the petitioner has made a full, true, and correct disclosure of all the facts related in the petition and will perform the terms of the decree or order of distribution issued pursuant thereto. Any interested person suffering damages as a result of misrepresentation or negligence of the petitioner in stating facts in the petition pursuant to which an improper decree or order of distribution is issued, or

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the terms of the decree or order of distribution are not performed by the petitioner as required, shall have a cause of action against the petitioner and his surety to recover such damages in the court wherein such proceeding was had which is hereby granted jurisdiction thereof.

Subd. 5. In any summary, special, or other administration wherein it appears that the estate will not be exhausted in payment of the priority items enumerated in the foregoing subdivisions, the estate may nevertheless be summarily closed without further notice, and the property assigned to the proper persons, if the gross probate estate, exclusive of any exempt homestead as defined in section 525.145, does not exceed the value of \$30,000. Where such closing and distribution of assets is made pursuant to the terms of a will, no decree shall issue until a hearing has been held for formal probate of the will as provided in sections 524.3-401 to 524.3-413.

No summary closing of an estate shall be made to any distributee under this subdivision, unless a showing is made by the personal representative or the petitioner, that all funeral expenses, expenses of last illness, taxes, debts, and claims have been paid, and provided, further, that a bond shall be filed by the personal representative or the petitioner, conditioned upon the fact that all such obligations have been paid and that all the facts shown on the petition are true, with sufficient surety approved by the court in an amount as may be fixed by the court to cover potential improper distributions. If a personal representative is appointed, his representative's bond shall be sufficient for such purpose unless an additional bond is ordered, and the sureties on his bond shall have the same obligations and liabilities as provided for sureties on a distribution bond.

In the event that an improper distribution or disbursement is made in a summary closing, in that not all of said obligations have been paid or that other facts as shown by the personal representative or the petitioner, are not true, resulting in damage to any party, the court may vacate its summary decree or closing order, and the petitioner or the personal representative, together with his surety, shall be liable for damages to any party determined to be injured thereby as herein provided. The personal representative, petitioner, or his surety, may seek reimbursement for damages so paid or incurred from any distributee or recipient of assets under summary decree or order, who shall be required to make a contribution to cover such damages upon a pro rata basis or as may be equitable to the extent of assets so received. The court is hereby granted complete and plenary jurisdiction of any and all such proceedings and may enter such orders and judgments as may be required to effectuate the purposes of this subdivision.

Any judgment rendered for damages or the recovery of assets in such proceedings shall be upon petition and only after hearing held thereon on 14 days' notice of hearing and a copy of petition served personally upon the personal representative and the surety and upon any distributee or recipient of assets where applicable. Any action for the recovery of moneys or damages under this subdivision shall be subject to the time and other limitations imposed by section 525.02.

**History:** 1935 c 72 s 125; 1937 c 435 s 16; 1967 c 465 s 1; 1969 c 1009 s 1; 1971 c 497 s 6; 1973 c 306 s 1; 1973 c 644 s 1; 1975 c 347 s 110 (8992-125)

## 525.515 BASIS FOR ATTORNEY'S FEES.

(a) Notwithstanding any law to the contrary, an attorney performing services for the estate at the instance of the personal representative, guardian or conservator shall have such compensation therefor out of the estate as shall be just and reasonable. This section shall apply to all probate proceedings.

(b) In determining what is a fair and reasonable attorney's fee effect shall be given to a prior agreement in writing by a testator concerning attorney fees. Where

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there is no prior agreement in writing with the testator consideration shall be given to the following factors in determining what is a fair and reasonable attorney's fee:

- (1) The time and labor required;
- (2) The experience and knowledge of the attorney;
- (3) The complexity and novelty of problems involved;
- (4) The extent of the responsibilities assumed and the results obtained; and
- (5) The sufficiency of assets properly available to pay for the services;

(c) An interested person who desires that the court review attorney fees shall seek review of attorney fees in the manner provided in section 524.3-721. In determining the reasonableness of the attorney fees, consideration shall be given to all the factors listed in clause (b) and the value of the estate shall not be the controlling factor.

**History:** 1971 c 497 s 8; Ex1971 c 48 s 50; 1974 c 442 art 9 s 3; 1975 c 347 s 111; 1976 c 2 s 146

**525.52** [Repealed, 1974 c 442 art 8 s 524.8-102]

**525.521** [Repealed, 1975 c 347 s 144]

**525.522** [Repealed, 1975 c 347 s 144]

**525.523** [Repealed, 1975 c 347 s 144]

**525.524** [Repealed, 1975 c 347 s 144]

**525.525** [Repealed, 1975 c 347 s 144]

**525.526** [Repealed, 1975 c 347 s 144]

**525.527** [Repealed, 1975 c 347 s 144]

## **525.528 FEDERAL ESTATE TAX; MARITAL DEDUCTION.**

Whenever the decedent leaves a surviving spouse or by law the spouse is presumed to have survived and the representative of the decedent's estate, and the decedent's trustee or any other fiduciary is permitted or required to exercise a discretion, even though stated as sole, absolute or uncontrolled, to select assets in kind at values other than their values at the date or dates of distribution thereof, including values to be determined in the discretion of the representative, trustee or other fiduciary and even though such discretion is stated as sole, absolute or uncontrolled, to satisfy a bequest or transfer within the meaning of the marital deduction provisions of section 2056 of the United States internal revenue code or such cognate provisions of federal law as may hereafter be applicable, such representative, trustee or other fiduciary shall be subject to the general fiduciary obligation of fairness and pursuant thereto shall select assets fairly representative of appreciation or depreciation in the value of all property available on the date or dates of distribution for selection and distribution in satisfaction of such bequest or transfer, unless other language of the will or trust instrument expressly refers to this section and states that it shall not be applicable. This section shall apply to the estates of decedents dying after May 26, 1965, to trusts created after May 26, 1965, and to trusts, whenever created, which are revocable after May 26, 1965.

**History:** 1965 c 765 s 1

## **ADVANCEMENTS**

**525.53** [Repealed, 1975 c 347 s 144]

**525.531** [Repealed, 1975 c 347 s 144]

**525.532 DISCLAIMER OF INTERESTS PASSING BY WILL, INTESTATE SUCCESSION OR UNDER CERTAIN POWERS OF APPOINTMENT.**

Subdivision 1. As used in this section, unless otherwise clearly required by the context:

(a) "Beneficiary" means and includes any person entitled, but for his disclaimer, to take an interest: by intestate succession; by devise; by legacy or bequest; by succession to a disclaimed interest by will, intestate succession or through the exercise or nonexercise of a testamentary power of appointment; by virtue of a renunciation and election to take against a will; as beneficiary of a testamentary trust; pursuant to the exercise or nonexercise of a testamentary power of appointment; as donee of a power of appointment created by testamentary instrument; or otherwise under a testamentary instrument;

(b) "Interest" means and includes the whole of any property, real or personal, legal or equitable, or any fractional part, share or particular portion or specific assets thereof or any estate in any such property or power to appoint, consume, apply or expend property or any other right, power, privilege or immunity relating thereto;

(c) "Disclaimer" means a written instrument which declines, refuses, releases, renounces or disclaims an interest which would otherwise be succeeded to by a beneficiary, which instrument defines the nature and extent of the interest disclaimed thereby and which must be signed, witnessed and acknowledged by the disclaimant in the manner provided for deeds of real estate.

Subd. 2. A beneficiary may disclaim any interest in whole or in part, or with reference to specific parts, shares or assets thereof, by filing a disclaimer in court in the manner hereinafter provided. A guardian, executor, administrator or other personal representative of the estate of a minor, incompetent or deceased beneficiary, if he deems it in the best interests of those interested in the estate of such beneficiary and of those who take the beneficiary's interest by virtue of the disclaimer and not detrimental to the best interests of the beneficiary, with or without an order of the probate court, may execute and file a disclaimer on behalf of the beneficiary within the time and in the manner in which the beneficiary himself could disclaim if he were living, of legal age and competent. A beneficiary likewise may execute and file a disclaimer by agent or attorney so empowered.

Subd. 3. Such disclaimer shall be filed at any time after the creation of the interest, but in all events within nine months after the death of the person by whom the interest was created or from whom it would have been received, or, if the disclaimant is not finally ascertained as a beneficiary or his interest has not become indefeasibly fixed both in quality and quantity as of the death of such person, then such disclaimer shall be filed not later than nine months after the event which would cause him so to become finally ascertained and his interest to become indefeasibly fixed both in quality and quantity.

Subd. 4. Such disclaimer shall be effective upon being filed in the court in which the estate of the person by whom the interest was created or from whom it would have been received is, or has been, administered or, if no probate administration has been commenced, then in the court where it would be pending if commenced. A copy of the disclaimer shall be delivered or mailed to the personal representative, trustee or other person having legal title to, or possession of, the property in which the interest disclaimed exists, and no such representative, trustee or person shall be liable for any otherwise proper distribution or other disposition made without actual notice of the disclaimer. If an interest in or relating to real estate is disclaimed, the original of the disclaimer, or a copy of the disclaimer certified as true and complete by the clerk of the court wherein the same has been filed, shall be filed in the office of the county recorder or the registrar of titles, as hereinafter provided, in the county or counties where the real estate is situated and

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shall constitute notice to all persons only from and after the time of such filing. If title to such real estate has not been registered under the provisions of chapter 508, such disclaimer or certified copy shall be filed with the county recorder. If title to such real estate has been registered under the provisions of chapter 508, such disclaimer or certified copy shall be filed with the registrar of titles.

Subd. 5. Unless the person by whom the interest was created or from whom it would have been received has otherwise provided by will or other appropriate instrument with reference to the possibility of a disclaimer by the beneficiary, the property in which the interest disclaimed existed shall descend, be distributed or otherwise be disposed of in the same manner as if the disclaimant had died immediately preceding the death or other event which causes him to become finally ascertained as a beneficiary and his interest to become indefeasibly fixed both in quality and quantity, and, in any case, the disclaimer shall relate for all purposes to such date, whether filed before or after such death or other event. However, one disclaiming an interest in a non-residuary gift, devise or bequest shall not be excluded, unless his disclaimer so provides, from sharing in a gift, devise or bequest of the residue even though, through lapse, such residue includes the assets disclaimed. An interest of any nature in or to the estate of an intestate may be declined, refused or disclaimed as herein provided without ever vesting in the disclaimant.

Subd. 6. The right to disclaim otherwise conferred by this section shall be barred if the beneficiary is insolvent at the time of the event giving rise to the right to disclaim. Any voluntary assignment or transfer of, or contract to assign or transfer, an interest in real or personal property, or written waiver of the right to disclaim the succession to an interest in real or personal property, by any beneficiary, or any sale or other disposition of an interest in real or personal property pursuant to judicial process, made before he has filed a disclaimer, as herein provided, bars the right otherwise hereby conferred on such beneficiary to disclaim as to such interest.

Subd. 7. The right to disclaim granted by this section shall exist irrespective of any limitation imposed on the interest of the disclaimant in the nature of an express or implied spendthrift provision or similar restriction. A disclaimer, when filed as provided in this section, or a written waiver of the right to disclaim, shall be binding upon the disclaimant or beneficiary so waiving and all parties thereafter claiming by, through or under him, except that a beneficiary so waiving may thereafter transfer, assign or release his interest if such is not prohibited by an express or implied spendthrift provision. If an interest in real estate is disclaimed and the disclaimer is duly filed in accordance with the provisions of subdivision 4, the spouse of the disclaimant, if such spouse has consented to the disclaimer in writing, shall thereupon be automatically debarred from any spouse's statutory or common law right or estate by curtesy or in dower or otherwise in such real estate to which such spouse, except for such disclaimer, would have been entitled.

Subd. 8. This section shall not abridge the right of any person, apart from this section, under any existing or future statute or rule of law, to disclaim any interest or to assign, convey, release, renounce or otherwise dispose of any interest.

Subd. 9. Any interest which exists on May 22, 1965 but which has not then become indefeasibly fixed both in quality and quantity, or the taker of which has not then become finally ascertained, may be disclaimed after May 22, 1965 in the manner provided herein.

**History:** 1965 c 552 s 1; 1975 c 347 s 112,113; 1976 c 181 s 2; 1980 c 439 s 33

## GUARDIANSHIPS AND CONSERVATORSHIPS

## 525.539 DEFINITIONS.

Subdivision 1. For the purposes of sections 525.54 to 525.5515; 525.56; 525.57 to 525.581; 525.583 to 525.61; 525.62; 525.63; 525.67; and 525.69, the following terms shall have the meanings given them.

Subd. 2. "Guardian" means a person who is appointed by the court to exercise all of the powers and duties designated in section 525.56 for the care of an incapacitated person or his estate, or both.

Subd. 3. "Conservator" means a person appointed by the court to exercise some, but not all, of the powers designated in section 525.56 for the care of an incapacitated person or his estate, or both.

Subd. 4. "Ward" means an incapacitated person for whom the court has appointed a guardian.

Subd. 5. "Conservatee" means an incapacitated person for whom the court has appointed a conservator.

Subd. 6. **Visitor.** "Visitor" means a person who is trained in law, health care, or social work and is an officer, employee, or special appointee of the court with no personal interest in the proceedings.

*History: 1980 c 493 s 1; 1981 c 313 s 1*

**525.54 ADULTS SUBJECT TO GUARDIANSHIP AND CONSERVATORSHIP.**

Subdivision 1. **Adults subject to guardianship and conservatorship.** Upon petition as provided in this chapter, the court, if satisfied of the need therefor, may appoint one or two persons suitable and competent to discharge the trust as guardians of the person or estate or of both or as conservators of the person or the estate or of both, of any incapacitated person.

Subd. 2. **Guardianship or conservatorship of the person.** "Incapacitated person" means, in the case of guardianship or conservatorship of the person, any adult person who is impaired to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person, and who has demonstrated deficits in behavior which evidence his inability to meet his needs for medical care, nutrition, clothing, shelter, or safety.

Subd. 3. **Guardianship or conservatorship of the estate.** Appointment of a guardian or conservator may be made in relation to the estate and financial affairs of an adult person: (a) voluntarily, upon the person's petition or consent in writing if the court is satisfied of the need thereof, or (b) involuntarily, upon the court's determination that (1) the person is unable to manage his property and affairs effectively because he is an incapacitated person, and (2) he has property which will be dissipated unless proper management is provided, or that funds are needed for the support, care and welfare of the person or those entitled to be supported by him and (3) a guardian or conservator is necessary to adequately protect his estate or financial affairs. "Incapacitated person" means, in the case of guardianship or conservatorship of the estate of an adult, any adult person who is impaired to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his estate or financial affairs, and who has demonstrated deficits in behavior which evidence his inability to manage his estate, or who is unable to manage his estate or financial affairs effectively by reason of detention by a foreign power or disappearance.

Subd. 4. **Voting.** The appointment of a conservator shall not deprive the conservatee of the right to vote, unless the right is restricted by court order.



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**Subd. 5. Competency.** Appointment of a guardian is evidence of the incompetency of the incapacitated person. Appointment of a conservator is not evidence of incompetency.

**Subd. 6. Authority to appoint guardian.** Nothing contained in this section shall diminish the power of the court to appoint a guardian to serve or protect the interest of any person under disability in any proceedings therein.

**Subd. 7. Certain protective arrangements.** If it is established in a proper proceeding under section 525.551 that a basis exists for the appointment of a guardian or conservator, the court, instead of appointing a guardian or conservator, may (a) authorize, direct or ratify any transaction necessary or desirable to achieve any security, service, or care arrangement meeting the foreseeable needs of the protected person. Protective arrangements include, but are not limited to: payment, delivery, deposit or retention of funds or property; sale, mortgage, lease or other transfer of property; entry into an annuity contract, a contract for life care, a deposit contract or a contract for training and education; or addition to or establishment of a suitable trust; or (b) authorize, direct or ratify any contract, trust or other transaction relating to the protected person's financial affairs or involving his estate if the court determines that the transaction is in the best interests of the protected person.

Before approving a protective arrangement or other transaction under this subdivision, the court shall consider the interests of creditors and dependents of the protected person and, in view of his disability, whether the protected person needs the continuing protection of a guardian or conservator. The court may appoint a special conservator with or without bond to assist in the accomplishment of any protective arrangement or other transaction authorized under this subdivision, who shall have the authority conferred by the order and serve until discharged by order after making a report to the court of all matters done pursuant to the order of appointment.

**History:** 1935 c 72 s 129; 1971 c 588 s 1; 1973 c 618 s 1; 1980 c 493 s 2; 1981 c 313 s 2 (8992-129)

## 525.541 PETITIONERS.

Any person may petition for the appointment of a guardian or conservator or for a protective order for any person believed to be subject to guardianship or conservatorship. The petition of an adult person for the appointment of a guardian or conservator of his own person or estate shall have priority over the petition of any other person.

**History:** 1935 c 72 s 130; 1973 c 618 s 2; 1980 c 493 s 3 1981 c 313 s 3] (8992-130)

## 525.542 CONTENTS OF PETITION.

**Subdivision 1. Information.** The petition shall show (1) the name and address of the person for whom a guardian or conservator, is sought, (2) the date of his birth, (3) the names and addresses of his living parents, children, brothers and sisters, or in the event that none of these persons are living, the names and addresses of his nearest kindred, (4) if he is married, the name and address of his spouse, (5) the grounds for the guardianship or conservatorship, with a statement that the proposed ward or conservatee may demand a written bill of particulars, (6) if conservatorship is requested, the powers the petitioner believes are necessary in order for a conservator to protect and supervise the proposed conservatee's person or property, (7) the probable value and general character of his real and personal

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property and the probable amount of his debts, (8) the names, ages, addresses, and occupations of the proposed guardians or conservators.

Subd. 2. **Bill of particulars.** A bill of particulars may be requested from the petitioner by the proposed ward or conservatee, and when so requested shall be delivered to the proposed ward or conservatee within ten days or prior to the hearing, whichever is sooner. The bill of particulars shall be in writing and shall include specific factual information which the petitioner believes supports the need for appointment of a guardian or conservator, such as mental and physical condition, financial transactions, personal actions, or actual occurrences which are claimed to demonstrate the proposed ward's or conservatee's inability to manage his estate, or to provide for personal needs for food, clothing, shelter or health care.

**History:** 1935 c 72 s 131; 1973 c 618 s 3; 1980 c 493 s 4; 1981 c 313 s 4 (8992-131)

## 525.543 LIS PENDENS.

After the filing of the petition, a certificate of the probate court certified to that fact may be filed for record in the office of the county recorder of any county in which any real estate owned by the proposed ward or conservatee is situated and if a resident of this state, in the county of his residence. The certificate shall state that a petition is pending and the name and address of the person for whom a guardian or conservator is sought. If a guardian or conservator is appointed on the petition, and, in the case of a conservatorship, if the conservatorship order removes or restricts the right of the conservatee to transfer property or to contract, then all contracts except for necessities, and all transfers of real or personal property made by the ward or conservatee after the filing and before the termination of the guardianship or conservatorship shall be void.

**History:** 1935 c 72 s 132; 1961 c 578 s 1; 1973 c 618 s 4; 1976 c 181 s 2; 1980 c 493 s 5; 1981 c 313 s 5 (8992-132)

## 525.544 PLANNING PROVISIONS.

In the petition or in a written instrument executed before or after the petition is filed, the person may, if at the time of signing the same, he has sufficient capacity to form an intelligent preference, nominate a conservator or guardian or give instructions to the conservator or guardian or he may do both. The written instrument shall be executed and attested in the same manner as a will. The court shall appoint the person so nominated as conservator or guardian and shall charge him with the instructions, unless the court finds that the appointment of the nominee or the instructions or both are not in the best interests of the person to be placed under conservatorship or guardianship. When any person lacks capacity or fails to nominate a conservator or guardian, the court may appoint any qualified person. The court shall consider the interest of a prospective guardian or conservator in the welfare of the proposed ward or conservatee. Kinship, while a factor, shall not be conclusive in making the appointment. If the proposed ward or conservatee lacks capacity or fails to give instructions, the court may give such powers as required in accordance with section 525.56.

**History:** 1973 c 618 s 5; 1980 c 348 s 1; 1980 c 493 s 6

## 525.55 NOTICE OF HEARING.

Subdivision 1. **Time of notice; to whom given.** In all cases, upon the filing of the petition the court shall fix the time and place for the hearing and shall order that notice be given of the hearing. At least 14 days prior to the hearing, personal

service of the notice shall be made upon the proposed ward or conservatee. Notice shall also be served on his spouse, parents, adult children, brothers and sisters, and, if none of those are alive or can be located, on his nearest kindred as determined by the court, and on any other persons the court may direct, by mail postmarked at least 14 days prior to the hearing. If he is a patient or resident of any hospital or other institution, notice by mail shall also be given to the administrative head of the institution. If he is a non-resident or if after diligent search he cannot be found in this state, notice shall be given in the manner and to those persons as the court may determine.

**Subd. 2. Form; service.** The notice shall be written in language which can be easily understood. Included with the notice shall be a copy of the petition. The notice shall contain information regarding the nature, purpose and legal effects of the guardianship or conservatorship proceedings on the proposed ward or conservatee. The notice shall state that he may be adjudged incapable of caring for his person or property, and by reason thereof, a guardian or conservator may be appointed for him, and that the adjudication may transfer to the appointed guardian or conservator certain rights, including his right to manage and control property, to enter into contracts and to determine his residence. The notice shall further contain information regarding the rights of the proposed ward or conservatee in the proceeding, including his right to attend the hearing, to be represented by an attorney, to oppose the proceeding, and to present evidence. The notice shall state that if the proposed ward or conservatee wishes to exercise the right to be represented by an attorney, he must either obtain counsel of his own choice, or ask the court to appoint an attorney to represent him, and that the county shall pay a reasonable attorney's fee if he is indigent. The procedure for requesting a court appointed attorney shall be described in the notice.

The process server shall inquire whether the proposed ward or conservatee desires the notice and petition to be read to him, and shall read the notice and petition if requested to do so. In place of a process server, the court may appoint a visitor to deliver the notice and petition and explain them to the proposed ward or conservatee.

**Subd. 3. Defective notice or service.** A defect in the service of notice or process, other than personal service upon the proposed ward or conservatee within the time allowed and the form prescribed in subdivisions 1 and 2, shall not invalidate any guardianship or conservatorship proceedings.

**History:** 1935 c 72 s 133; 1973 c 618 s 6; 1980 c 493 s 7; 1981 c 313 s 6; 1982 c 472 s 2,3 (8992-133)

## **525.551 HEARING; APPOINTMENT; BOND; PROSECUTION; NOTICE.**

**Subdivision 1. Attendance at hearing.** If the proposed ward or conservatee is within the state, he shall be present at the hearing unless in a meeting with a visitor he specifically waives his right to appear in person or he is not able to attend by reason of medical condition as evidenced by a written statement from a licensed physician. The written statement shall be evidence only of the proposed ward's or conservatee's medical inability to attend the hearing, and shall not be considered in determining the issue of his incapacity. In any instance in which a proposed ward or conservatee is absent from the hearing, the court shall specify in its findings of fact the reason for nonattendance.

If a visitor delivered the notice and petition pursuant to section 525.55 and the proposed ward or conservatee has waived the right to attend the hearing, the visitor may testify as to the notice and any waiver of the right to appear in person, and as

to other matters which may assist the court in determining the need for a guardian or conservator and the extent of the power to be granted.

Subd. 2. **Interchangeability of petition.** If the circumstances warrant, the court may treat a petition for guardianship as a petition for conservatorship.

Subd. 3. **Conduct of hearing; proof.** The proposed ward or conservatee has the right to summon and cross-examine witnesses. The rules of evidence apply. In the proceedings, there is a legal presumption of capacity and the burden of proof is on the petitioner. The standard of proof is that of clear and convincing evidence.

Subd. 4. **Record of proceedings.** In all proceedings the court shall take and preserve an accurate stenographic record or tape recording of the proceedings.

Subd. 5. **Findings.** In all cases the court shall find the facts specifically, state separately its conclusions of law thereon, and direct the entry of an appropriate judgment or order.

If upon completion of the hearing and consideration of the record the court finds: (a) that the requirements for the voluntary appointment of a conservator or guardian have been met, or (b) (1) that the proposed ward or conservatee is incapacitated as defined in section 525.54; and (2) in need of the supervision and protection of a guardian or conservator; and (3) that no appropriate alternatives to the guardianship or conservatorship exist which are less restrictive of the person's civil rights and liberties, such as those set forth in section 525.54, subdivision 7, it shall enter its order or judgment granting all of the powers set out in section 525.56, subdivision 3, in the case of a guardian of the person, and section 525.56, subdivision 4, in the case of a guardian of the estate, or specifying the powers of the conservator pursuant to section 525.56. Except as provided in section 525.544, the court shall make a finding that the person to be appointed as guardian or conservator is the most suitable and best qualified person among those who have indicated to the court that they are available and willing to discharge the trust before making the appointment.

The court may enumerate in its findings which legal rights the proposed ward or conservatee is incapable of exercising.

Subd. 6. **Bond.** Upon the filing of a bond by the guardian or conservator of an estate in an amount the court may direct and an oath according to law, or upon the filing of an acceptance of the trust pursuant to section 48.79, letters of guardianship or conservatorship shall issue. If there is no personal property, the court may waive the filing of a bond, but if the guardian or conservator receives or becomes entitled to any property of the ward or conservatee he shall immediately file a report thereof and a bond in an amount the court may direct. In case of breach of a condition of the bond an action thereon may be prosecuted by leave of the court by any interested person or by the court on its own motion.

Subd. 7. **Notification of commissioner of human services.** If the ward or conservatee is a patient of a state hospital for the mentally ill, or committed to the guardianship or conservatorship of the commissioner of human services as mentally retarded or dependent and neglected or is under the temporary custody of the commissioner of human services, the court shall notify the commissioner of human services of the appointment of a guardian, conservator or successor guardian or conservator of the estate of the ward or conservatee.

**History:** 1935 c 72 s 134; 1959 c 525 s 1; 1973 c 618 s 7; 1975 c 347 s 114; 1979 c 43 s 2; 1980 c 493 s 8; 1981 c 313 s 7; 1982 c 424 s 117; 1982 c 472 s 4; 1984 c 654 art 5 s 58 (8992-134)

## 525.5515 LETTERS OF GUARDIANSHIP OR CONSERVATORSHIP.

Subdivision 1. **Copy of order to ward or conservatee.** A copy of the order appointing the guardian or conservator shall be served by mail upon the ward or

conservatee and his counsel, if he was represented at the hearing. The order shall be accompanied by a notice which advises the ward or conservatee of his right to appeal the guardianship or conservatorship appointment within 30 days.

Subd. 2. **Contents of letters.** Letters of guardianship or conservatorship shall issue to the guardian or conservator. They shall contain: (a) the name, address and telephone number of the guardian or conservator; (b) the name, address and telephone number of the ward or conservatee; (c) whether it is of the estate or of the person or both; and (d) the legal limitations, if any, imposed by the court on the guardian or conservator.

Subd. 3. [Repealed, 1982 c 472 s 11]

**History:** 1980 c 493 s 9; 1981 c 313 s 8; 1982 c 472 s 5

### **525.552 REDUCTION OF BOND.**

Any conservator or guardian may deposit money belonging to the conservatee or ward, in a bank or trust company or in a savings and loan association and make the money subject to withdrawal only upon order of the court. Upon such deposit, the court may reduce or waive bond.

**History:** 1973 c 618 s 8

### **525.56 GUARDIAN'S OR CONSERVATOR'S POWERS AND DUTIES.**

Subdivision 1. A guardian or conservator shall be subject to the control and direction of the court at all times and in all things.

Subd. 2. The court shall grant to a guardian or conservator only those powers necessary to provide for the demonstrated needs of the ward or conservatee.

Subd. 3. The court may appoint a guardian of the person if it determines that all the powers and duties listed in this subdivision are needed to provide for the needs of the incapacitated person. The court may appoint a conservator of the person if it determines that a conservator is needed to provide for the needs of the incapacitated person through the exercise of some, but not all, of the powers and duties listed in this subdivision. The duties and powers of a guardian or those which the court may grant to a conservator of the person include, but are not limited to:

(1) The power to have custody of the ward or conservatee and the power to establish his place of abode within or without the state, except as otherwise provided in this clause. The ward or conservatee or any person interested in his welfare may petition the court to prevent or to initiate a change in abode. A ward or conservatee may not be admitted to any state institution by his guardian or conservator except after a hearing pursuant to section 253A.07.

(2) The duty to provide for the ward's or conservatee's care, comfort and maintenance needs, including food, clothing, shelter, health care, social and recreation requirements, and, whenever appropriate, training, education and rehabilitation. The guardian or conservator has no duty to pay for these requirements out of his own funds. Whenever possible and appropriate, the guardian or conservator should meet these requirements through governmental benefits or services to which the ward or conservatee is entitled, rather than from the ward's or conservatee's estate. Failure to satisfy the needs and requirements of this clause shall be grounds for removal, but the guardian or conservator shall have no personal or monetary liability.

(3) The duty to take reasonable care of the ward's or conservatee's clothing, furniture, vehicles and other personal effects, and, if other property requires protection, the power to seek appointment of a guardian or conservator of the estate. The guardian or conservator must give notice in the manner required and to those

persons specified in section 525.55 prior to the disposition of the ward's or conservatee's clothing, furniture, vehicles or other personal effects. The notice must inform the person that he has the right to object to the disposition of the property within ten days and to petition the court for a review of the guardian's or conservator's proposed actions. Notice of the objection must be served by mail or personal service on the guardian or conservator and the ward or conservatee unless he be the objector. If the guardian or conservator is served with notice of an objection to the disposition of the property he may not dispose of the property unless the court approves the disposition after a hearing.

(4) (a) The power to give any necessary consent to enable the ward or conservatee to receive necessary medical or other professional care, counsel, treatment or service, except that no guardian or conservator may give consent for psychosurgery, electroshock, sterilization or experimental treatment of any kind unless the procedure is first approved by order of the court as provided in this clause. The guardian or conservator shall not consent to any medical care for the ward or conservatee which violates the known conscientious, religious, or moral belief of the ward or conservatee.

(b) A guardian or conservator who believes a procedure described in clause (4)(a) requiring prior court approval to be necessary for the proper care of the ward or conservatee shall petition the court for an order. The court shall fix the time and place for the hearing and shall give notice to the ward or conservatee and to the other persons specified in section 525.55, subdivision 1. The notice shall comply with the requirements of, and be served in the manner provided in section 525.55, subdivision 2. The court shall appoint an attorney to represent the ward or conservatee, unless he has counsel of his own choice. In every case the court shall determine if the procedure is in the best interests of the ward or conservatee. In making its determination the court shall consider a written medical report which specifically considers the medical risks of the procedure and whether alternative, less restrictive methods of treatment could be used to protect the best interests of the ward or conservatee.

(c) In the case of a petition for sterilization of a mentally retarded ward or conservatee, the court shall appoint a licensed physician, a psychologist who is qualified in the diagnosis and treatment of mental retardation, and a social worker who is familiar with the ward's or conservatee's social history and adjustment to examine or evaluate the ward or conservatee and to provide written reports to the court. The reports shall indicate whether sterilization is necessary and whether it is in the best interests of the ward or conservatee. The medical report shall specifically consider the medical risks of sterilization and whether alternative methods of contraception could be used to protect the best interests of the ward or conservatee.

(5) The power to approve or withhold approval of any contract, except for necessities, which the ward or conservatee may make or wish to make.

(6) The duty and power to exercise supervisory authority over the ward or conservatee in a manner which limits his civil rights and restricts his personal freedom only to the extent necessary to provide needed care and services.

**Subd. 4. Duties of guardian or conservator of the estate.** The court may appoint a guardian of the estate if it determines that all the powers and duties listed in this subdivision are needed to provide for the needs of the incapacitated person. The court may appoint a conservator of the estate if it determines that a conservator is necessary to provide for the needs of the incapacitated person through the exercise of some, but not all, of the powers and duties listed in this subdivision. The duties and powers of a guardian or those which the court may grant to a conservator include, but are not limited to:

(1) The duty to pay the reasonable charges for the support, maintenance, and education of the ward or conservatee in a manner suitable to his station in life and the value of his estate. Nothing herein contained shall release parents from obligations imposed by law for the support, maintenance, and education of their children. The guardian or conservator has no duty to pay for these requirements out of his own funds. Wherever possible and appropriate, the guardian or conservator should meet these requirements through governmental benefits or services to which the ward or conservatee is entitled, rather than from the ward's or conservatee's estate. Failure to satisfy the needs and requirements of this clause shall be grounds for removal, but the guardian or conservator shall have no personal or monetary liability;

(2) The duty to pay out of the ward's or conservatee's estate all just and lawful debts of the ward or conservatee and the reasonable charges incurred for the support, maintenance, and education of the ward's or conservatee's spouse and dependent children and, upon order of the court, pay such sum as the court may fix as reasonable for the support of any person unable to earn a livelihood who is legally entitled to support from the ward or conservatee;

(3) The duty to possess and manage the estate, collect all debts and claims in favor of the ward or conservatee, or, with the approval of the court, compromise them, institute suit on behalf of the ward or conservatee and represent the ward or conservatee in any court proceedings, and invest all funds not currently needed for the debts and charges named in clauses (1) and (2) and the management of the estate, in accordance with the provisions of sections 48.84 and 501.125, subdivision 1, or as otherwise ordered by the court. The standard of a fiduciary shall be applicable to all investments by a guardian or conservator. A guardian or conservator shall also have the power to purchase certain contracts of insurance as provided in section 50.14, subdivision 14, clause (b);

(4) Where a ward or conservatee has inherited an undivided interest in real estate, the court, on a showing that it is for the best interest of the ward or conservatee, may authorize an exchange or sale of the ward's or conservatee's interest or a purchase by the ward or conservatee of any interest other heirs may have in the real estate.

**History:** 1935 c 72 s 135; 1941 c 395 s 1; 1947 c 209 s 1; 1953 c 457 s 1; 1961 c 288 s 1; 1973 c 618 s 9; 1980 c 493 s 10; 1981 c 313 s 9,10 (8992-135)

#### **525.561. CONTENTS OF INVENTORY.**

Within one month after his appointment, unless a longer time has been granted by the court, every guardian or conservator shall make and exhibit to the court a verified inventory of all the estate of the ward or conservatee which shall have come to his possession or knowledge. Such property shall be classified therein as follows: (1) real estate, with plat or survey description, and if a homestead, designated as such, (2) furniture and household goods, (3) wearing apparel, (4) corporation stocks described by certificate numbers, (5) mortgages, bonds, notes, and other written evidence of debt, described by name of debtor, recording data, or other identification, (6) all other personal property accurately identified. All encumbrances, liens, and other charges on any item shall be stated. The guardian or conservator shall set forth in the inventory the fair market value of all assets listed therein. If appraisers are appointed by the court, the value of assets other than those assets specified in section 525.562, subdivision 1, clause (b) shall be determined by the court appointed appraisers. Such value shall be the value at the date of appointment of the guardian or conservator. Such inventory shall show the net value of each item after

deducting all encumbrances, liens and charges and the total net value of each class of items and of all classes.

**History:** 1975 c 347 s 115

### 525.562 APPRAISAL.

Subdivision 1. For the usual purposes of administration, the inventory filed by the guardian or conservator pursuant to section 525.561 shall be sufficient without any appraisal of assets by court appointed appraisers in the following instances:

(a) Where no sale of assets is to be made, and then an appraisal shall be had only as to assets which are to be sold and which are not included in clause (b) below.

(b) As to the following assets:

(1) Cash or deposits in any financial institution;

(2) Securities, bonds or other obligations of the United States government or agency thereof; and

(3) Securities listed on the New York Stock Exchange or the American Stock Exchange, and such other securities markets as may be designated by a rule of court, if the market value thereof can be readily ascertained.

Subd. 2. In all other instances, and in all instances enumerated under clauses (a) and (b) above where an appraisal is necessary for some special administrative purpose, the court shall appoint two or more disinterested and qualified appraisers who shall appraise the assets required to be appraised and shall set down in figures after each item after deducting the encumbrances, liens and charges, the net value thereof and show the total amount of each class, and of all classes, and forthwith deliver such inventory and appraisal certified by them, to the guardian, or conservator, who shall immediately file the same. Such assets shall be appraised at the fair market value thereof as of the date of the appointment of the guardian or conservator or time of sale of assets as circumstances may require as directed by the court.

Subd. 3. The appraisers shall be allowed such reasonable fees, necessary disbursements and expenses as may be fixed by the court, and be paid by the guardian or conservator as expenses of guardianship or conservatorship. In fixing the fee so allowed, the court shall not give any consideration to items not requiring appraisal by this section, even though such assets be included with other appraisable assets in an inventory and appraisal filed pursuant hereto.

**History:** 1975 c 347 s 116

### 525.57 TRANSFER OF VENUE.

When it is for the best interest of the ward or conservatee or his estate the venue may be transferred to another county. Upon the filing of a petition by any person interested in the ward or conservatee or in his estate the court shall fix the time and place for the hearing thereof, and shall give notice to the persons and in the manner required by section 525.55. Upon proof that a transfer of venue is for the best interest of the ward or conservatee or his estate, and upon the settlement and allowance of the guardian's or conservator's accounts to the time of the hearing, the court shall transmit the entire file to the court of the other county where all subsequent proceedings shall be held.

**History:** 1935 c 72 s 136; 1973 c 618 s 10; 1980 c 493 s 11 (8992-136)



**525.58 FILING OF ACCOUNTS; FILING OF AFFIDAVIT.**

Subdivision 1. **Annual account.** Except where expressly waived or modified by the court, every guardian or conservator of the estate annually shall file with the court within 30 days of the anniversary date of the guardian's or conservator's appointment a verified account covering the period from the date of appointment or his last account. The guardian or conservator of the estate shall give a copy of the annual account to the ward or conservatee except where expressly waived by the court after a finding that the ward or conservatee is so incapacitated as to be unable to understand the account or there is a serious likelihood of harm to the ward or conservatee. The court or its designee shall annually review the court file to insure that the account has been filed and that the account contains the information required by this section. If an account has not been filed or if the account does not contain the information required by this section the court shall order the guardian or conservator to file an appropriate account. The examination and acceptance shall not constitute an adjudication or determination of the merits of the account filed nor shall it constitute the court's approval of the account. At the termination of the guardianship or conservatorship, or upon the guardian's or conservator's removal or resignation, he or his surety, or in the event of his death or disability, his representative or surety shall file a verified final account with a petition for the settlement and allowance thereof. Every account shall show in detail all property received and disbursed, the property on hand, the present address of the ward or conservatee and of the guardian or conservator, and unless the guardian or conservator be a corporation, the amount of the bond, the names and addresses of all sureties thereon, that each unincorporated surety is a resident of this state, is not under disability, and is worth the amount in which he justified.

Subd. 2. **Notice of right to petition for restoration of capacity.** Except where expressly waived by the court after a finding that the ward or conservatee is so incapacitated as to be unable to understand any notice, or there is a serious likelihood of harm to the ward or conservatee, every guardian or conservator shall annually give notice to the ward or conservatee of his right to petition for restoration to capacity, discharge of guardian or conservator, or modification of the orders of guardianship or conservatorship. A waiver shall not be effective for more than two years without a redetermination by the court. The notice shall describe the procedure for preparing and filing such a petition. Notice shall also inform the ward or conservatee that after a petition is filed the court will hold a hearing on the matter and that he has the right to be present and to be represented by counsel at the hearing. The form of the notice shall be approved or supplied by the court.

Subd. 3. **Affidavit.** Except where expressly waived by the court as provided in subdivision 2, every guardian or conservator shall file annually with the court an affidavit stating that he has given the notice required by subdivision 2 to the ward or conservatee and every guardian or conservator of an estate shall file an affidavit stating that a copy of the annual account has been given to the ward or conservatee.

Subd. 4. **Annual report of the guardian of the person.** Except where expressly waived by the court, every guardian or conservator of the person shall annually file a report under oath with the court within 30 days of the anniversary date of the appointment of the guardian or conservator: The report shall contain the guardian's or conservator's good faith evaluation of the following information for the preceding year:

- (a) changes in the medical condition of the ward or conservatee;
- (b) changes in the living conditions of the ward or conservatee;
- (c) changes in the mental and emotional condition of the ward or conservatee;
- (d) a listing of hospitalizations of the ward or conservatee; and

(e) if the ward or conservatee is institutionalized, an evaluation of the care and treatment received by the ward or conservatee.

The court or its designee shall annually review the court file to insure that the report has been filed and that the report contains the information required by this subdivision. If a report has not been filed or if the report does not contain the information required by this subdivision, the court shall order the guardian or conservator to file an appropriate report.

**History:** 1935 c 72 s 137; 1973 c 618 s 11; 1980 c 493 s 12; 1981 c 313 s 11; 1982 c 401 s 1; 1983 c 51 s 1 (8992-137)

#### **525.581 NOTICE OF HEARING ON ACCOUNT.**

The court on its own motion may, or upon the petition of the guardian, conservator, ward, conservatee, or any person interested in the ward or conservatee or his estate shall, fix the time and place for the hearing on any account, notice of which shall be given to the ward or conservatee and to other persons as the court may direct. Wherever any funds have been received from the veterans' administration, notice by mail shall be given to the regional office having charge thereof.

**History:** 1935 c 72 s 138; 1973 c 618 s 12; 1980 c 493 s 13 (8992-138)

#### **525.582 ADJUDICATION ON ACCOUNT.**

(a) Unless otherwise ordered, the guardian or conservator shall, and other persons may, be examined on the hearing. If the account be correct, it shall be settled and allowed; if incorrect, it shall be corrected and then settled and allowed. The order of settlement and allowance shall show the amount of the personal property remaining. Upon settlement of the final account, and upon delivery of the property on hand to the person entitled thereto, the court shall discharge the guardian or conservator and his sureties. Any person for whom a guardian or conservator has been appointed and who has become of age or has been restored to capacity may show to the court that he has settled with his guardian or conservator and may petition for the guardian's or conservator's discharge without further hearing. Upon such petition, the court may discharge the guardian or conservator and his sureties.

(b) If, after hearing on notice as the court may require to the guardian, conservator and any surety, there is determined to be mismanagement, a shortage of funds, or other misconduct for which the guardian, conservator or a surety is liable, the court shall settle the account and enter judgment against the guardian, conservator or any surety as may be appropriate. The judgment may be filed, docketed and enforced in the same manner as any other judgment. This remedy is in addition to any other remedy available for breach of any condition of the bond.

(c) The resignation of a guardian or conservator shall not take effect until the court examines and allows his final account and makes an order accepting his resignation.

(d) If a guardian or conservator becomes unsuitable, incapacitated or disabled, or violates his trust or fails to perform any duty imposed on him by law or the lawful order of the court, the court upon petition or the courts' own motion may remove him after notice.

**History:** 1935 c 72 s 139; 1973 c 618 s 13; 1977 c 153 s 1 (8992-139)

#### **525.583 ALLOWANCE AND WAGES OF CONSERVATEE; LIMITED ACCOUNTABILITY OF CONSERVATOR.**

The court, upon its own motion or upon petition of the conservator or conservatee, may authorize or direct the conservator to pay to the conservatee out of

the conservatorship estate a reasonable allowance for the personal use of the conservatee in the amount the court may determine to be for the best interests of the conservatee. Unless otherwise ordered by the court, if the conservatee shall at any time during the continuance of the conservatorship be employed, his wages or salary for employment shall not be a part of the conservatorship estate and the wages and salaries shall be paid to the conservatee and shall be subject to his control to the same extent as if the conservatorship did not exist. The conservator shall not be accountable for the allowances or wages and salary.

**History:** 1973 c 618 s 14; 1980 c 493 s 14

#### **525.59 SUCCEEDING GUARDIAN OR CONSERVATOR.**

If a guardian or conservator dies, resigns, or is removed, the court may appoint a successor with at least 14 days prior notice to the ward or conservatee, his spouse, parents, adult children and siblings, and to other persons as the court may direct. If the ward or conservatee has capacity to do so, he may nominate a person to serve as successor or may give instructions to the succeeding guardian or conservator or he may do both. The court shall appoint the person so nominated and shall charge him with the instructions, unless the court finds that the appointment of the nominee or the instructions or both are not in the best interests of the ward or conservatee.

**History:** 1935 c 72 s 140; 1973 c 618 s 15; 1980 c 493 s 15 (8992-140)

#### **525.591 SPECIAL GUARDIAN OR CONSERVATOR.**

Subdivision 1. Any person may file a verified petition for a special guardian or conservator. The petition shall contain: (a) all of the information required in section 525.542; (b) the reasons that the petitioner believes the proposed ward or conservatee is in need of a special guardian or conservator; and (c) the reasons why the regular procedure for obtaining guardianship or conservatorship is not appropriate.

Subd. 2. **Special guardian or conservator.** Upon a clear showing of necessity, the court with notice may appoint a special guardian or conservator of the person or estate or both of any adult person designated in section 525.54, whether a petition for general guardianship or conservatorship has been filed or not. Notice shall be given in language which can be easily understood at least 24 hours prior to the hearing, and shall contain the information required by section 525.55, subdivision 2, regarding the purpose of the hearing and the rights of the proposed ward or conservatee. A copy of the petition shall be served with the notice. The court may waive the 24 hour notice requirement upon a showing that immediate and reasonably foreseeable harm to the person or his estate will result from the 24 hour delay. Notice of the court's order shall be given to the proposed ward or conservatee.

Subd. 3. **No appeal.** There shall be no appeal from any order appointing or refusing to appoint a special guardian or conservator.

Subd. 4. The court shall grant to a special guardian or conservator only those powers necessary to provide for the demonstrated needs of the ward or conservatee. Subject to this limitation the court may grant any of the powers specified in section 525.56.

Subd. 5. Within 14 days after appointment, a special guardian or conservator of the estate shall file an inventory and appraisal of the personal property according to the requirements of sections 525.561 and 525.562. The court shall specify in its order the duration of the special guardianship or conservatorship. At the expiration of the time specified in the court's order, or upon the granting of letters of general guardianship or conservatorship, the power of a special guardian or conservator shall cease, and he shall proceed forthwith to a final accounting. When a special

guardian or conservator has been appointed to protect the ward's or conservatee's interest in any matter wherein the interest of the general guardian or conservator appears to conflict with that of the ward or conservatee, or to protect the ward's or conservatee's interest upon suspension of an order of removal of a general guardian or conservator by appeal, the power of the special guardian or conservator shall not cease until terminated by the court.

**History:** 1935 c 72 s 141; 1973 c 618 s 16; 1975 c 347 s 117; 1980 c 493 s 16; 1981 c 313 s 12,13 (8992-141)

### 525.60 TERMINATION.

Subdivision 1. The guardianship or conservatorship of an adult ward or conservatee shall terminate upon his death or upon the ward's or conservatee's restoration to capacity. When there is no further need for any guardianship or conservatorship, the court may terminate the same upon notice as it may direct. Termination does not affect a guardian's or conservator's liability for prior acts, nor his obligation to account for funds and assets of his ward or conservatee.

Subd. 2. [Repealed, 1980 c 493 s 40]

**History:** 1935 c 72 s 142; 1967 c 508 s 1; 1973 c 618 s 17; 1980 c 493 s 17 (8992-142)

### 525.61 RESTORATION TO CAPACITY; MODIFICATION OF GUARDIANSHIP OR CONSERVATORSHIP.

Any adult person who is under guardianship or conservatorship or his guardian or conservator, or any other person may petition the court in which he was so adjudicated to be restored to capacity or to have a guardianship transferred to a conservatorship or to modify the guardianship or conservatorship. Upon the filing of the petition, the court shall fix the time and place for the hearing thereof, notice of which shall be given to the ward or conservatee, guardian or conservator, and to those other persons and in a manner provided in section 525.55.

To obtain an order of restoration to capacity the petitioner must prove by a preponderance of the evidence that the ward or conservatee is no longer incapacitated as defined in section 525.54, and is able to make provisions for his care or manage his property. If a ward or conservatee has the functional ability to care for himself or for his property, or to make provisions for his care or the care of his property, the fact that he may be impaired to some extent by a mental condition shall not preclude his restoration to capacity. In any proceedings for restoration, the court may appoint one person duly licensed by a health related licensing board and one accredited social worker with expertise in evaluating persons who have the disabilities similar to those found to be the reason for the ward's or conservatee's incapacity, to assist in the determination of his mental condition and functional ability to care for himself or his property. The court shall allow and order paid to each health professional and social worker a reasonable sum for his services. Upon the order, the county auditor shall issue a warrant on the county treasurer for the payment thereof.

**History:** 1935 c 72 s 143; 1939 c 270 s 8; 1959 c 267 s 3; 1973 c 618 s 18; 1979 c 43 s 3; 1980 c 493 s 18 (8992-143)

**525.611** MS1980 [Repealed, 1980 c 493 s 40]

**525.612** MS1980 [Repealed, 1980 c 493 s 40]

**525.613** MS1980 [Repealed, 1980 c 493 s 40]

**525.614** MS1980 [Repealed, 1980 c 493 s 40]

**525.615 STATUS OF GUARDIAN OF MINOR; GENERAL.**

A person becomes a guardian of a minor by acceptance of a testamentary appointment or upon appointment by the court. The guardianship status continues until terminated, without regard to the location from time to time of the guardian and minor ward.

**History:** 1980 c 493 s 26

**525.6155 TESTAMENTARY APPOINTMENT OF GUARDIAN OF MINOR.**

The parent of a minor may appoint by will a guardian of an unmarried minor. Subject to the right of the minor under section 525.616, a testamentary appointment becomes effective upon filing the guardian's acceptance in the court in which the will is probated, if before acceptance, both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority. This state recognizes a testamentary appointment effected by filing the guardian's acceptance under a will probated in another state which is the testator's domicile. Upon acceptance of appointment, written notice of acceptance must be given within five days by the guardian to the minor, to the person having his care, to his adult siblings, his grandparents, aunts and uncles. Notice shall state that any person interested in the welfare of the minor, or the minor, if 14 or more years of age, may file with the court a written objection to the appointment in accordance with section 525.616.

**History:** 1980 c 493 s 27

**525.616 OBJECTION BY MINOR OF 14 OR OLDER OR INTERESTED ADULT TO TESTAMENTARY APPOINTMENT.**

A minor of 14 or more years or any adult interested in his welfare may prevent an appointment of his testamentary guardian from becoming effective, or may cause a previously accepted appointment to terminate, by filing with the court in which the will is probated a written objection to the appointment before it is accepted or within 30 days after its acceptance. An objection may be withdrawn. An objection does not preclude appointment by the court in a proper proceeding of the testamentary nominee, or any other suitable person.

**History:** 1980 c 493 s 28

**525.6165 COURT APPOINTMENT OF GUARDIAN OF MINOR; CONDITIONS FOR APPOINTMENT.**

The court may appoint a guardian for an unmarried minor if all parental rights of custody have been terminated or suspended by prior court order. A guardian appointed by will as provided in section 525.6155 whose appointment has not been prevented or nullified under section 525.616 has priority over any guardian who may be appointed by the court but the court may proceed with an appointment upon a finding that the testamentary guardian has failed to accept the testamentary appointment within 30 days after notice of the guardianship proceeding.

**History:** 1980 c 493 s 29; 1982 c 472 s 6

**525.617 COURT APPOINTMENT OF GUARDIAN OF MINOR; VENUE.**

The venue for guardianship proceedings for a minor is in the place where the minor resides or is present.

**History:** 1980 c 493 s 30

**525.6175 COURT APPOINTMENT OF GUARDIAN OF MINOR; QUALIFICATION; PRIORITY OF MINOR'S NOMINEE.**

The court may appoint as guardian any person whose appointment would be in the best interests of the minor. The court shall appoint a person nominated by the minor, if the minor is 14 years of age or older, unless the court finds the appointment contrary to the best interests of the minor.

*History: 1980 c 493 s 31*

**525.618 COURT APPOINTMENT OF GUARDIAN OF MINOR; PROCEDURE.**

Subdivision 1. **Time of notice; to whom.** Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor shall be given by the petitioner in the following manner and to the following persons:

(a) The minor, if he is 14 or more years of age, by personal service at least 14 days prior to the date of hearing;

(b) The person who has had the principal care and custody of the minor during the 60 days preceding the date of the petition by personal service, at least 14 days prior to the date of hearing;

(c) Any living parent of the minor residing in Minnesota by personal service, at least 14 days prior to the date of hearing;

(d) Any living parent of the minor residing outside of Minnesota, and any adult brothers and sisters of the minor, service by mail, at least 14 days prior to the date of hearing; and

(e) To any other persons that the court may direct.

Subd. 2. Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of section 525.6165 have been met, and the welfare and best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases the court may dismiss the proceedings, or make any other disposition of the matter that will best serve the interests of the minor.

Subd. 3. If necessary, the court may appoint a temporary guardian, with the status of an ordinary guardian of a minor, but the authority of a temporary guardian shall not last longer than six months.

Subd. 4. If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is 14 years of age or older.

Subd. 5. **Copy of order to ward or conservatee.** A copy of an order appointing a guardian or conservator of a minor shall be served by mail upon the ward or conservatee and his counsel, if he was represented at the hearing. The order shall be accompanied by a notice which advises the ward or conservatee of his right to appeal the guardianship or conservatorship appointment within 30 days.

Subd. 6. **Contents of letters.** Letters of guardianship or conservatorship shall issue to the guardian or conservator. They shall contain: (a) the name, address, and telephone number of the guardian or conservator; (b) the name, address, and telephone number of the ward or conservatee; (c) whether it is a guardianship or conservatorship or both; and (d) the legal limitations, if any, imposed by the court on the guardian or conservator.

*History: 1980 c 493 s 32; 1981 c 313 s 14; 1982 c 472 s 7,8*

**525.6185 CONSENT TO SERVICE BY ACCEPTANCE OF APPOINTMENT; NOTICE.**

By accepting a testamentary or court appointment as guardian, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. Notice of any proceeding shall be given by mail or personal service upon the guardian at least 14 days prior to the date of the hearing.

**History:** 1980 c 493 s 33; 1981 c 313 s 15

**525.619 POWERS AND DUTIES OF GUARDIAN OF MINOR.**

A guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of his minor and unemancipated child, except that a guardian is not legally obligated to provide from his own funds for the ward. In particular, and without qualifying the foregoing, a guardian has the following powers and duties:

(a) He must take reasonable care of his ward's personal effects and commence protective proceedings if necessary to protect other property of the ward.

(b) He may receive money payable for the support of the ward to the ward's parent, guardian or custodian under the terms of any statutory benefit or insurance system, or any private contract, devise, trust, conservatorship or custodianship. He also may receive money or property of the ward paid or delivered by virtue of section 525.6196. Any sums so received shall be applied to the ward's current needs for support, care and education. He must exercise due care to conserve any excess for the ward's future needs unless a conservator has been appointed for the estate of the ward, in which case the excess shall be paid over at least annually to the conservator. Sums so received by the guardian are not to be used for compensation for his services except as approved by order of court or as determined by a duly appointed conservator other than the guardian. A guardian may institute proceedings to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward.

(c) The guardian is empowered to facilitate the ward's education, social, or other activities and to authorize medical or other professional care, treatment or advice. A ward who is less than 16 years of age may be admitted to a treatment facility as an informal patient according to section 253B.04 but may not be committed to any state institution except pursuant to chapter 253B. No guardian may give consent for psychosurgery, electroshock, sterilization or experimental treatment of any kind unless the procedure is first approved by the order of the court, after a hearing as prescribed by section 525.56, subdivision 2.

A guardian is not liable by reason of his consent for injury to the ward resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have consented, or unless he fails to comply with the requirements of this section which provide that a court order is necessary for commitment and for certain types of medical procedures. A guardian may consent to the marriage or adoption of his ward.

(d) A guardian must report the condition of his ward and of the ward's estate which has been subject to his possession or control, as ordered by the court on its own motion or on petition of any person interested in the minor's welfare and as required by court rule.

**History:** 1980 c 493 s 34; 1981 c 313 s 16; 1983 c 216 art 1 s 75; 1984 c 623 s

**525.6192 TERMINATION OF APPOINTMENT OF GUARDIAN; GENERAL.**

A guardian's authority and responsibility terminates upon the death, resignation or removal of the guardian or upon the minor's death, adoption, marriage or attainment of majority, but termination does not affect his liability for prior acts, nor his obligation to account for funds and assets of his ward. A guardian may be discharged without notice or hearing on petition and acceptance of the guardian's accounts by the ward after the ward marries or attains majority, or, in the case of the ward's death, by the personal representative of the ward's estate. In other cases the court may discharge the guardian upon approval of his accounts after notice and a hearing. Resignation of a guardian does not terminate the guardianship until it has been approved by the court. A testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding.

*History: 1980 c 493 s 35; 1981 c 313 s 17*

**525.6194 PROCEEDINGS SUBSEQUENT TO APPOINTMENT; VENUE.**

(a) The court where the ward resides has concurrent jurisdiction with the court which appointed the guardian, or in which acceptance of a testamentary appointment was filed, over resignation, removal, accounting and other proceedings relating to the guardianship.

(b) If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever is in the best interests of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed.

*History: 1980 c 493 s 36*

**525.6195 RESIGNATION OR REMOVAL PROCEEDINGS.**

(a) Any person interested in the welfare of a ward, or the ward, if 14 or more years of age, may petition for removal of a guardian on the ground that removal would be in the best interests of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may, but need not, include a request for appointment of a successor guardian.

(b) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

(c) If, at any time in the proceeding, the court determines that the interests of the ward are, or may be, inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is 14 or more years of age.

*History: 1980 c 493 s 37*

**525.6196 FACILITY OF PAYMENT OR DELIVERY.**

Any person other than a personal representative subject to section 524.3-915, clause (b), who is under a duty to pay or deliver money or personal property to a minor may perform this duty, in amounts not exceeding \$5,000 per annum, by paying or delivering the money or property to, (1) the minor, if he has attained the age of 16 years or is married; (2) any person having the care and custody of the minor with whom the minor resides; (3) a guardian of the minor; or (4) a financial institution incident to a deposit in a federally insured savings account in the sole



name of the minor and giving notice of the deposit to the minor. This section does not apply if the person making payment or delivery has actual knowledge that a conservator has been appointed or proceedings for appointment of a conservator of the estate of the minor are pending. The persons, other than the minor or any financial institution under clause (4) above, receiving money or property for a minor, are obligated to apply the money to the support and education of the minor, but may not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the minor's support. Any excess sums shall be preserved for future support of the minor. Any balance not so used and any property received for the minor must be turned over to the minor when he attains majority. Persons who pay or deliver in accordance with provisions of this section are not responsible for the proper application of it.

**History:** 1980 c 493 s 38; 1981 c 313 s 18; 1982 c 472 s 9

#### **525.6197 DISCHARGE OF GUARDIAN OR CONSERVATOR; PROPERTY OF A MINOR.**

When a minor receives or is entitled to personal property, the court may order a guardian or conservator to make payment of up to \$2,000 of the property 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 or may direct the investment of the whole or any part of that amount 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. When so invested the savings account passbook, savings certificate, certificate of deposit, or other acknowledgment of receipt of the deposit by the depository is to be kept as provided by the court. The depository shall be instructed not to allow the investment to be withdrawn, except by order of the court. The court may authorize the use of any part or all of that amount to purchase United States government savings bonds in the minor's name. The bonds shall be kept as provided by the court and retained until the minor reaches majority unless otherwise authorized by an order of the court.

**History:** 1982 c 472 s 10

#### **525.6198 PROTECTIVE PROCEEDINGS; APPOINTMENT OF CONSERVATOR OF ESTATE OF MINOR.**

Upon petition and after notice and hearing in accordance with the provisions of section 525.618 the court may appoint a conservator or make other protective order for cause as follows:

(1) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a minor if the court determines that a minor owns money or property that requires management or protection which cannot otherwise be provided, has or may have business affairs which may be jeopardized or prevented by his minority, or that funds are needed for his support and education and that protection is necessary or desirable to obtain or provide funds.

(2) The court may grant to the conservator of the estate of a minor any or all of the powers and duties enumerated in section 525.56, subdivision 4, and the conservator shall be subject to the requirements of sections 525.58, subdivision 1, 525.581 and 525.582 regarding an inventory and accounting, except that the court may waive the requirement that the annual account be served on the ward. The conservator shall file a bond with the court in such amount as the court may direct.

**History:** 1980 c 493 s 39; 1981 c 313 s 19; 1982 c 424 s 118

## REALTY; SALES, LEASES, MORTGAGES

**525.62 MORTGAGE AND LEASE.**

Sections 525.62 to 525.702 shall be applicable only to guardianships and conservatorships and not to decedents' estates. As used in sections 525.62 to 525.702, the word "mortgage" includes an extension of an existing mortgage, subject to the provisions of section 525.691, and the word "lease" means a lease for one or more years, unless the context indicates otherwise.

**History:** 1935 c 72 s 144; 1975 c 347 s 118; 1980 c 493 s 19; 1981 c 313 s 20 (8992-144)

**525.621 MS1980** [Repealed, 1980 c 493 s 40]

**525.63 REASONS FOR SALE, MORTGAGE, LEASE.**

The court may direct a sale, mortgage, or lease of any real estate of a ward or conservatee when the personal property is insufficient to pay his debts and other charges against his estate, or to provide for the support, maintenance, and education of the ward or conservatee, his spouse, and dependent children, or when it shall determine the sale, mortgage, or lease to be for the best interest of the ward or conservatee.

The homestead of a ward or conservatee shall not be sold, mortgaged, or leased unless the written consent of the spouse has been filed.

**History:** 1935 c 72 s 146; 1975 c 347 s 119; 1980 c 493 s 20 (8992-146)

**525.64 PETITION, NOTICE, HEARING.**

A guardian or conservator may file a petition to sell, mortgage, or lease alleging briefly the facts constituting the reasons for the application and describing the real estate involved therein. The petition may include all the real estate of the ward or conservatee or any part or parts thereof. It may apply for different authority as to separate parcels. It may apply in the alternative for authority to sell, mortgage, or lease. Upon the filing of such petition, the court shall fix the time and place for the hearing thereof. Notice of the hearing shall state briefly the nature of the application made by the petition and shall be given pursuant to section 525.83 except that no publication is required unless otherwise ordered. Upon the hearing, the court shall have full power to direct the sale, mortgage, or lease of all the real estate described in the petition, or to direct the sale, mortgage, or lease of any one or more parcels thereof, provided that any such direction shall be within the terms of the application made by the petition.

**History:** 1935 c 72 s 147; 1937 c 435 s 17; 1969 c 943 s 1; 1973 c 405 s 1; 1975 c 347 s 120 (8992-147)

**525.641 ORDER FOR SALE, MORTGAGE, LEASE.**

The order shall describe the real estate to be sold, mortgaged, or leased, and may designate the sequence in which the several parcels shall be sold, mortgaged, or leased. If the order be for a sale, it shall direct whether the real estate shall be sold at private sale or public auction. An order to mortgage shall fix the maximum amount of the principal and the maximum rate of interest and shall direct the purpose for which the proceeds shall be used. An order for sale, mortgage, or lease shall remain in force until terminated by the court, but no private sale shall be made

after one year from the date of the order unless the real estate shall have been reappraised under order of the court within three months preceding the sale.

**History:** 1935 c 72 s 148; 1937 c 435 s 18; 1975 c 347 s 121 (8992-148)

#### **525.642 TERMS OF SALE.**

The court may order a sale of real estate for cash, part cash and a purchase-money mortgage of not more than 50 percent of the purchase price, or on contract for deed. The initial payment under a sale on contract shall not be less than ten percent of the total purchase price, and the unpaid purchase price shall bear interest at a rate of not less than four percent per annum and shall be payable in reasonable monthly, quarterly, semiannual, or annual payments, and the final instalment shall become due and payable not later than ten years from the date of the contract. Such contract shall provide for conveyance by quitclaim deed, which deed shall be executed and delivered upon full performance of the contract without further order of the court. In the event of termination of the interest of the purchaser and his assigns in such contract, the real estate may be resold under the original order and a reappraisal within three months preceding the sale. A sale of the vendor's interest in real estate sold by the guardian or conservator on contract may be made under order of the court, with or without notice, upon an appraisal of such interest within three months preceding the sale; no such sale shall be made for less than its value as fixed by such appraisal.

**History:** 1935 c 72 s 149; 1937 c 435 s 19; 1975 c 347 s 122 (8992-149)

#### **525.65 PUBLIC SALE.**

If a sale at public auction be ordered, three weeks' published notice of the time and place of sale shall be given. Proof of publication shall be filed before the confirmation of the sale. Such publication and sale may be made in the county where the real estate is situated or in the county of the proceedings. If the parcels to be sold are contiguous and lie in more than one county, notice may be given and the sale may be made in either of such counties or in the county of the proceedings. The guardian or conservator may adjourn the sale from time to time, if for the best interests of the estate and the persons concerned, but not exceeding three months in all. Every adjournment shall be announced publicly at the time and place fixed for the sale and, if for more than one day, further notice thereof shall be given as the court may direct.

**History:** 1935 c 72 s 150; 1975 c 347 s 123 (8992-150)

#### **525.651 PRIVATE SALE.**

If a private sale be ordered, the real estate shall be reappraised by two or more disinterested persons under order of the court unless a prior appraisal of the real estate has been made by two or more disinterested persons not more than three months before the sale, which reappraisal shall be filed before the confirmation of the sale. No real estate shall be sold at private sale for less than its value as fixed by such appraisal.

**History:** 1935 c 72 s 151; 1980 c 493 s 21 (8992-151)

#### **525.652 ADDITIONAL BOND.**

If the bond of the guardian or conservator be insufficient, before confirmation of a sale or lease, or before execution of a mortgage, he shall file an additional bond in such amount as the court may require.

**History:** 1935 c 72 s 152; 1975 c 347 s 124 (8992-152)

**525.66 SALE OF CONTRACT INTEREST.**

When a ward or conservatee is entitled under contract of purchase to any interest in real estate, such interest may be sold for the same reasons and in the same manner as other real estate of a ward or conservatee. Before confirmation, the court may require the filing of a bond conditioned to save the estate harmless. Upon confirmation, the guardian or conservator shall assign the contract and convey by quitclaim deed.

*History: 1935 c 72 s 153; 1975 c 347 s 125 (8992-153)*

**525.661 SALE SUBJECT TO CHARGE.**

When the estate of a ward or conservatee is liable for any charge, mortgage, lien, or other encumbrance upon the real estate therein, the court may refuse to confirm the sale or lease until after the filing of a bond in such amount as the court may direct conditioned to save the estate harmless.

*History: 1935 c 72 s 154; 1975 c 347 s 126 (8992-154)*

**525.662 CONFIRMATION.**

Upon making a sale or lease, the guardian or conservator shall file his report thereof. Upon proof of compliance with the terms of the order, the court may confirm the sale or lease and order the guardian or conservator to execute and deliver the proper instrument.

*History: 1935 c 72 s 155; 1975 c 347 s 127 (8992-155)*

**525.67 AGREEMENT AND SALE FOR PUBLIC PURPOSE.**

When any real estate of a ward or conservatee is desired by any person, firm, association, corporation, or governmental agency having the power of eminent domain, the guardian or conservator may agree, in writing, upon the compensation to be made for the taking, injuring, damaging, or destroying thereof, subject to the approval of the court. When the agreement has been made, the guardian or conservator shall file a petition, of which the agreement shall be a part, setting forth the facts relative to the transaction. The court, with notice as provided in section 525.83, except that no publication is required unless it is ordered by the court, shall hear, determine, and act upon the petition. If the court approves the agreement, the guardian or conservator, upon payment of the agreed compensation, shall convey the real estate sought to be acquired and execute any release which may be authorized.

*History: 1935 c 72 s 156; 1975 c 347 s 128; 1980 c 493 s 22; 1981 c 313 s 21 (8992-156)*

**525.68 PLATTING.**

When it is for the best interests of the estate of a ward or conservatee, real estate may be platted by the guardian or conservator under such conditions and upon such notice as the court may order.

*History: 1935 c 72 s 157; 1975 c 347 s 129 (8992-157)*

**525.69 CONVEYANCE OF VENDOR'S TITLE.**

When any ward or conservatee is legally bound to make a conveyance or lease, the court, without further notice, may direct the guardian or conservator to make the conveyance or lease to the person entitled thereto. The petition may be made by any person claiming to be entitled to the conveyance or lease, or by the guardian or conservator, or by any person interested in the estate or claiming an interest in the

real estate or contract, and shall show the description of the land and the facts upon which the claim for conveyance or lease is based. Upon proof of the petition, the court may order the guardian or conservator to execute and deliver an instrument of conveyance or lease upon performance of the contract.

**History:** 1935 c 72 s 158; 1937 c 435 s 20; 1975 c 347 s 130; 1980 c 493 s 23; 1981 c 313 s 22 (8992-158)

#### **525.691 MORTGAGE EXTENSION.**

A guardian or conservator without order of the court may make an extension of an existing mortgage for a period of five years or less, if the extension agreement contains the same prepayment privileges and the rate of interest does not exceed the lowest rate in the mortgage extended.

**History:** 1935 c 72 s 159; 1975 c 347 s 131 (8992-159)

#### **525.692 LIABILITY ON MORTGAGE NOTE.**

No guardian or conservator shall be liable personally on any mortgage note or by reason of the covenants in any instrument or conveyance executed by him in his capacity as guardian or conservator.

**History:** 1935 c 72 s 160; 1975 c 347 s 132 (8992-160)

**525.693** [Repealed, 1975 c 347 s 144]

#### **525.70 VALIDITY OF PROCEEDINGS.**

No sale, mortgage, lease, or conveyance by a guardian or conservator shall be subject to collateral attack on account of any irregularity in the proceedings if the court which ordered the same had jurisdiction of the estate.

**History:** 1935 c 72 s 162; 1975 c 347 s 133 (8992-162)

**525.701** [Repealed, 1975 c 347 s 144]

#### **525.702 LIMITATION OF ACTION.**

No proceeding to have declared invalid the sale, mortgage, lease, or conveyance by a guardian or conservator shall be maintained by any person claiming under or through the ward or conservatee unless such proceeding is begun within five years immediately succeeding the date of such sale, mortgage, lease, or conveyance, provided, that in case of real estate sold by a guardian or conservator, no action for its recovery shall be maintained by or under the ward or conservatee unless it is begun within five years next after the termination of the guardianship or conservatorship; and that, in cases of fraud, minors and others under legal disability to sue when the right of action first accrues may begin such action at any time within five years after the disability is removed.

**History:** 1935 c 72 s 163; 1975 c 347 s 134 (8992-163)

#### **525.703 COSTS.**

In proceedings under sections 525.54 to 525.702 a lawyer or health professional rendering necessary services with regard to the appointment of a guardian or conservator, the administration of the ward's or conservatee's estate or personal affairs or the restoration of his capacity, shall be entitled to reasonable compensation from the estate of the ward or conservatee or from the county having jurisdiction over the proceedings if the ward or conservatee is indigent. When the court

determines that other necessary services have been provided for the benefit of the ward or conservatee, the court may order reasonable fees to be paid from the estate of the ward or conservatee or from the county having jurisdiction over the proceedings if the ward or conservatee is indigent. If, however, the court determines that a petitioner, guardian or conservator has not acted in good faith, the court shall order some or all of the fees or costs incurred in the proceedings to be borne by those not acting in good faith.

**History:** 1980 c 493 s 24; 1981 c 313 s 23

#### **525.705 PRE-EXISTING GUARDIANSHIPS AND CONSERVATORSHIPS.**

All guardians and conservators serving prior to August 1, 1981, shall have all powers and duties of section 525.56, subdivision 3, as to the person and section 525.56, subdivision 4, as to the estate, unless restricted by any existing court order, until those powers or duties are restricted or changed by court order.

**History:** 1981 c 313 s 24

### **APPEALS**

#### **525.71 APPEALABLE ORDERS.**

Appeals to the court of appeals may be taken from any of the following orders, judgments, and decrees issued by a judge of the court under chapters 524 or 525:

- (1) an order admitting, or refusing to admit, a will to probate;
- (2) an order appointing, or refusing to appoint, or removing, or refusing to remove, a representative other than a special administrator or special guardian;
- (3) an order authorizing, or refusing to authorize, the sale, mortgage, or lease of real estate, or confirming, or refusing to confirm, the sale or lease of real estate;
- (4) an order directing, or refusing to direct, a conveyance or lease of real estate under contract;
- (5) an order permitting, or refusing to permit, the filing of a claim, or allowing or disallowing a claim or counterclaim, in whole or in part, when the amount in controversy exceeds \$100;
- (6) an order setting apart, or refusing to set apart, property, or making, or refusing to make, an allowance for the spouse or children;
- (7) an order determining, or refusing to determine, venue; an order transferring, or refusing to transfer, venue;
- (8) an order directing, or refusing to direct, the payment of a bequest or distributive share when the amount in controversy exceeds \$100;
- (9) an order allowing, or refusing to allow, an account of a representative or any part of it when the amount in controversy exceeds \$100;
- (10) an order adjudging a person in contempt;
- (11) an order vacating, or refusing to vacate, a previous appealable order, judgment, or decree alleged to have been procured by fraud or misrepresentation, or through surprise or excusable inadvertence or neglect;
- (12) a judgment or decree of partial or final distribution or an order determining or confirming distribution or any order of general protection;
- (13) an order entered pursuant to section 576.142;
- (14) an order granting or denying restoration to capacity;
- (15) an order made directing, or refusing to direct, the payment of representative's fees or attorneys' fees, and in such case the representative and the attorney shall each be deemed an aggrieved party and entitled to appeal;

(16) an order, judgment, or decree relating to or affecting estate taxes or refusing to amend, modify, or vacate such an order, judgment, or decree; and

(17) an order extending the time for the settlement of the estate beyond five years from the date of the appointment of the representative.

**History:** 1935 c 72 s 164; 1939 c 270 s 9; 1941 c 411 s 1; 1963 c 740 s 24; 1974 c 447 s 4; 1975 c 347 s 135; 1979 c 303 art 3 s 38; 1983 c 247 s 186 (8992-164)

**525.711** [Repealed, 1983 c 247 s 219]

#### **525.712 REQUISITES.**

The appeal may be taken by any person aggrieved within 30 days after service of notice of the filing of the order, judgment, or decree appealed from, or if no notice be served, within six months after the filing of the order, judgment, or decree. Except as provided in this section, the appeal shall be perfected and determined upon the record as provided in sections 484.63 and 487.39.

**History:** 1935 c 72 s 166; 1937 c 435 s 21; 1953 c 476 s 1; 1980 c 344 s 1 (8992-166)

**525.713** [Repealed, 1980 c 344 s 2]

#### **525.714 SUSPENSION BY APPEAL.**

The appeal shall suspend the operation of the order, judgment, or decree appealed from until the appeal is determined or the court of appeals orders otherwise. The court of appeals may require the appellant to give additional bond for the payment of damages which may be awarded against him in consequence of the suspension, in case he fails to obtain a reversal of the order, judgment, or decree appealed from. Nothing herein contained shall prevent the probate court from appointing special representatives nor prevent special representatives from continuing to act as such.

**History:** 1935 c 72 s 168; 1983 c 247 s 187 (8992-168)

**525.72** [Repealed, 1980 c 344 s 2]

#### **525.73 AFFIRMANCE; REVERSAL.**

When the appellant fails to prosecute his appeal, or the order, judgment, or decree appealed from or reviewed is sustained, judgment shall be entered in the court of appeals affirming the decision of the probate court. Upon the filing in the probate court of a certified transcript of the judgment, the probate court shall proceed as if no appeal had been taken. If the order, judgment, or decree reviewed is reversed or modified, the court of appeals shall remand the case to the probate court with directions to proceed in conformity with its decision. Upon the filing in the probate court of a certified transcript of the judgment, it shall proceed as directed by the court of appeals.

**History:** 1935 c 72 s 170; 1983 c 247 s 188 (8992-170)

#### **525.731 JUDGMENT; EXECUTION.**

The party prevailing on the appeal shall be entitled to costs and disbursements to be taxed as in a civil action. If judgment be rendered against the estate, they shall be an adjudicated claim against it. If judgment be rendered against an appellant other than the state, the veterans' administration, or representative appeal-

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ing on behalf of the estate, judgment shall be entered against the appellant and the sureties on his appeal bond and execution may issue thereon.

*History: 1935 c 72 s 171 (8992-171)*

- 525.74 [Repealed, 1982 c 501 s 26; 1983 c 247 s 219]
- 525.749 [Repealed, 1967 c 638 s 22]
- 525.75 [Repealed, 1967 c 638 s 22]
- 525.751 [Repealed, 1967 c 638 s 22]
- 525.752 [Repealed, 1967 c 638 s 22]
- 525.753 [Repealed, 1967 c 638 s 22]
- 525.754 [Repealed, 1967 c 638 s 22]
- 525.76 [Repealed, 1967 c 638 s 22]
- 525.761 [Repealed, 1967 c 638 s 22]
- 525.762 [Repealed, 1967 c 638 s 22]
- 525.763 [Repealed, 1967 c 638 s 22]
- 525.77 [Repealed, 1967 c 638 s 22]
- 525.78 [Repealed, 1967 c 638 s 22]
- 525.79 [Repealed, 1967 c 638 s 22]

## GENERAL PROVISIONS

525.80 MS 1971 [Repealed, 1974 c 442 art 8 s 524.8-102]

### 525.80 REPRESENTATIVE.

As used in this chapter, the word "representative", unless the context otherwise indicates, includes personal representatives as that term is defined in chapter 524, guardians, and conservators.

*History: 1975 c 347 s 136*

- 525.805 [Repealed, 1974 c 442 art 8 s 524.8-102]
- 525.81 [Repealed, 1974 c 442 art 8 s 524.8-102]
- 525.82 [Repealed, 1974 c 442 art 8 s 524.8-102]

### 525.83 NOTICE.

When notice of hearing is required by any provision of this chapter by reference to this section, the notice shall be given once a week for three consecutive weeks in a legal newspaper designated by the petitioner in the county wherein the proceedings are pending; or, if no such designation be made, in any legal newspaper in the county; or, if the city of the decedent's residence is situated in more than one county, in any legal newspaper in the city. The first publication shall be had within two weeks after the date of the order fixing the time and place for the hearing.

At least 14 days prior to the date fixed for hearing the petitioner, his attorney or agent, shall in guardianship or conservatorship mail a copy of the notice to the ward or conservatee, and other persons as the court may direct and in decedents' estates shall mail a copy of the notice to each heir, devisee, and legatee whose name and address are known to him.



Proof of publication and mailing shall be filed before the hearing. No defect in any notice nor in the publication or service thereof shall invalidate any proceedings.

**History:** 1935 c 72 s 188; 1941 c 422 s 1; 1957 c 30 s 1; 1971 c 497 s 7; 1973 c 123 art 5 s 7; 1973 c 404 s 1; 1975 c 347 s 137; 1980 c 493 s 25 (8992-188)

### **525.831 NOTICE TO ATTORNEY GENERAL OF DEVISES FOR CHARITABLE PURPOSES.**

Whenever a will provides for a devise for a charitable purpose, as defined in section 501.73, subdivision 2, the personal representative shall provide the attorney general with the notices or documents, if any, required by section 501.79, subdivision 5.

**History:** 1978 c 601 s 28

### **525.84 ERRONEOUS ESCHEAT.**

When any property has escheated to the state because the decedent left surviving no spouse nor kindred or because of the failure of a devisee or legatee to receive under a will admitted to probate, or when application is made to prove a will disposing of property escheated to the state, upon the petition of the representative or any person interested in the estate and upon 20 days' notice to the attorney general and to such other persons as the court may direct, the court may admit the will to probate as provided by law, or make its determination of heirship and enter its order assigning the escheated property to the persons entitled thereto.

**History:** 1935 c 72 s 189; 1975 c 347 s 138 (8992-189)

### **525.841 ESCHEAT RETURNED.**

In all such cases the commissioner of finance shall be furnished with a certified copy of the court's order assigning the escheated property to the persons entitled thereto, and upon notification of payment of the estate tax, the commissioner of finance shall draw his warrant on the state treasurer, or execute a proper conveyance to the persons designated in such order. In the event any escheated property has been sold pursuant to sections 11A.04, clause (9) and 11A.10, subdivision 2 or 94.09 to 94.16, then the warrant shall be for the appraised value as established during the administration of the decedent's estate. There is hereby annually appropriated from any moneys in the state treasury not otherwise appropriated an amount sufficient to make payment to all such designated persons. No interest shall be allowed on any amount paid to such persons.

**History:** 1935 c 72 s 190; 1957 c 861 s 8; 1973 c 492 s 14; 1975 c 347 s 139; 1979 c 303 art 3 s 40; 1980 c 607 art 14 s 46 (8992-190)

### **525.85 DISCLOSURE PROCEEDINGS.**

Upon the filing of a petition by the representative or any person interested in the estate, alleging that any person has concealed, converted, embezzled, or disposed of any property belonging to the estate of a decedent or that any person has possession or knowledge of any will or codicil of such decedent, or of any instruments in writing relating to such property, the court, upon such notice as it may direct may order such person to appear before it for disclosure. Refusal to appear or submit to examination, or failure to obey any lawful order based thereon shall constitute contempt of court.

**History:** 1935 c 72 s 191 (8992-191)

525.86 [Repealed, 1975 c 347 s 144]

525.87 [Repealed, 1975 c 347 s 144]

### 525.88 STATE PATENTS.

Where patents for public lands have been or may be issued, in pursuance of any law of this state, to a person who has died before the date of such patent, the title to the land designated therein shall inure to and become vested in the heirs, devisees, or assignees of such deceased patentees as if the patent had been issued to the deceased person during life.

*History: 1935 c 72 s 194 (8992-194)*

### 525.881 FEDERAL PATENTS.

When any person holding a homestead or tree claim entry under the laws of the United States has died before making final proof and final proof has afterwards been made by his heirs, devisees, or representatives, and a patent has been granted to his "heirs" or "devisees," the district court of the county in which the real estate so patented is situated, may determine who are such heirs or devisees, and may determine their respective shares in such homestead or tree claim. The provisions of the code of civil procedure relating to the determination of adverse claims to real estate in so far as the same may be applicable, shall pertain to and govern the procedure in the action provided for in this section.

*History: 1921 c 36 s 2; 1935 c 72 s 195 (8992-195)*

525.89 [Repealed, 1974 c 442 art 8 s 524.8-102]

### 525.90 UNIFORM SIMULTANEOUS DEATH ACT.

Subdivision 1. **Title.** Where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise in this section.

Subd. 2. **Division of property.** Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived.

Subd. 3. **Division of property.** Where there is no sufficient evidence that two joint tenants or tenants by the entirety have died otherwise than simultaneously the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than two joint tenants and all of them have so died the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

Subd. 4. **Division of property.** Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

Subd. 5. **Not retroactive.** This section shall not apply to the distribution of the property of a person who has died before it takes effect.

Subd. 6. **Application.** This section shall not apply in the case of wills, living trusts, deeds, or contracts of insurance wherein provision has been made for distribution of property different from the provisions of this section.

Subd. 7. **Citation.** This section may be cited as the Uniform Simultaneous Death Act.

**History:** 1943 c 248 s 1-7

**525.91** MS 1971 [Repealed, 1974 c 442 art 8 s 524.8-102]

### **525.91 LETTERS, CONTENTS.**

All letters issued by the courts to representatives of estates of deceased persons shall state the date of death of the deceased.

**History:** 1975 c 347 s 140

## **UNIFORM ANATOMICAL GIFT ACT**

### **525.921 DEFINITIONS.**

Subdivision 1. For the purposes of sections 525.921 to 525.93 the terms defined in this section have the meanings given them.

Subd. 2. "Bank or storage facility" means a facility licensed, accredited, or approved under the laws of any state for storage of human bodies or parts thereof.

Subd. 3. "Decedent" means a deceased individual and includes a stillborn infant or fetus.

Subd. 4. "Donor" means an individual who makes a gift of all or part of his body.

Subd. 5. "Hospital" means a hospital licensed, accredited, or approved under the laws of any state; includes a hospital operated by the United States government, a state, or a subdivision thereof, although not required to be licensed under state laws.

Subd. 6. "Part" means organs, tissues, eyes, bones, arteries, blood, other fluids and any other portions of a human body.

Subd. 7. "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

Subd. 8. "Physician" or "surgeon" means a physician or surgeon licensed or authorized to practice medicine under the laws of any state.

Subd. 9. "State" includes any state, district, commonwealth, territory, insular possession, and any other area subject to the legislative authority of the United States of America.

**History:** 1969 c 79 s 1

### **525.922 PERSONS WHO MAY EXECUTE AN ANATOMICAL GIFT.**

Subdivision 1. Any individual of sound mind and 18 years of age or more may give all or any part of his body for any purpose specified in section 525.923, the gift to take effect upon death.

Subd. 2. Any of the following persons, in order of priority stated, when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class, may give all or any part of the decedent's body for any purpose specified in section 525.923:

- (a) the spouse,
- (b) an adult son or daughter,
- (c) either parent,
- (d) an adult brother or sister,
- (e) a guardian of the person of the decedent at the time of his death,
- (f) any other person authorized or under obligation to dispose of the body.

Subd. 3. If the donee has actual notice of contrary indications by the decedent or that a gift by a member of a class is opposed by a member of the same or a prior class, the donee shall not accept the gift. The persons authorized by subdivision 2 may make the gift after or immediately before death.

Subd. 4. A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended.

Subd. 5. The rights of the donee created by the gift are paramount to the rights of others except as provided by Minnesota Statutes 1967, Section 390.11.

**History:** 1969 c 79 s 2

### **525.923 PERSONS WHO MAY BECOME DONEES; PURPOSES FOR WHICH ANATOMICAL GIFTS MAY BE MADE.**

The following persons may become donees of gifts of bodies or parts thereof for the purposes stated:

- (1) any hospital, surgeon, or physician, for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation; or
- (2) any accredited medical or dental school, college or university for education, research, advancement of medical or dental science, therapy, or transplantation; or
- (3) any bank or storage facility, for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation; or
- (4) any specified individual for therapy or transplantation needed by him; or
- (5) any approved chiropractic college for education, research or advancement of chiropractic science.

**History:** 1969 c 79 s 3; 1976 c 200 s 2

### **525.924 MANNER OF EXECUTING ANATOMICAL GIFTS.**

Subdivision 1. A gift of all or part of the body under section 525.922, subdivision 1, may be made by will. The gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated, or if it is declared invalid for testamentary purposes, the gift, to the extent that it has been acted upon in good faith, is nevertheless valid and effective.

Subd. 2. A gift of all or part of the body under section 525.922, subdivision 1, may also be made by document other than a will. The gift becomes effective upon the death of the donor. The document, which may be a card designed to be carried on the person, must be signed by the donor in the presence of two witnesses who must sign the document in his presence. If the donor cannot sign, the document may be signed for him at his direction and in his presence in the presence of two witnesses who must sign the document in his presence. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid.

Subd. 3. The gift may be made to a specified donee or without specifying a donee. If the latter, the gift may be accepted by the attending physician as donee upon or following death. If the gift is made to a specified donee who is not available at the time and place of death, the attending physician upon or following death, in the absence of any expressed indication that the donor desired otherwise, may accept

the gift as donee. The physician who becomes a donee under this subdivision shall not participate in the procedures for removing or transplanting a part.

Subd. 4. Notwithstanding section 525.927, subdivision 2, the donor may designate in his will, card, or other document of gift the surgeon or physician to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the gift may employ or authorize any surgeon or physician for the purpose.

Subd. 5. Any gift by a person designated in section 525.922, subdivision 2, shall be made by a document signed by him or made by his telegraphic, recorded telephonic, or other recorded message.

Subd. 6. In respect to a gift of an eye, a person licensed to practice mortuary science under chapter 149, or any other person who has completed a course in eye enucleation conducted and certified by the department of ophthalmology of any accredited college of medicine, and holds a valid certificate of competence for completing the course, may enucleate eyes for a gift after pronouncement of death by a physician. A written release authorizing the enucleation must be obtained prior to the performance of the procedure. The release shall be obtained from a relative or other person in the order of priority stated in section 525.922, subdivision 2. A mortician or other person acting in accordance with the provisions of this subdivision shall not have any liability, civil or criminal, for the eye enucleation.

Subd. 7. The designation "donor" on the front side of a donor's driver's license or nonqualification certificate, pursuant to the provisions of section 171.07, subdivision 5, shall constitute sufficient legal authority for the removal of all body organs or parts, upon the death of the donor for the purpose of transplantation.

**History:** 1969 c 79 s 4; 1975 c 198 s 1; 1975 c 393 s 3; 1976 c 90 s 1

#### **525.925 DELIVERY OF DOCUMENT OF GIFT.**

Subdivision 1. If the gift is made by the donor to a specified donee, the will, card, or other document, or an executed copy thereof, may be delivered to the donee to expedite the appropriate procedures immediately after death. Delivery is not necessary to the validity of the gift. The will, card, or other document, or an executed copy thereof, may be deposited in any hospital, bank or storage facility, or registry office that accepts it for safekeeping or for facilitation of procedures after death. On request of any interested party upon or after the donor's death, the person in possession shall produce the document for examination.

Subd. 2. A card, or other document, or an executed copy thereof, may be filed with the local registrar of vital statistics in the city or county of the donor's residence. The local registrar upon filing or recording the same shall transmit to the state registrar of vital statistics on or before the tenth of each month a copy thereof. The applicable provisions of the uniform vital statistics act shall apply to the filing and recording of the instrument referred to in this subdivision.

**History:** 1969 c 79 s 5

#### **525.926 AMENDMENT OR REVOCATION OF THE GIFT.**

Subdivision 1. If the will, card, or other document or executed copy thereof, has been delivered to a specified donee, the donor may amend or revoke the gift by:

- (a) the execution and delivery to the donee of a signed statement, or
- (b) an oral statement made in the presence of two persons and communicated to the donee, or
- (c) a statement during a terminal illness or injury addressed to an attending physician and communicated to the donee, or

(d) a signed card or document found on his person or in his effects.

Subd. 2. Any document of gift which has not been delivered to the donee may be revoked by the donor in the manner set out in subdivision 1 or by destruction, cancellation, or mutilation of the document and all executed copies thereof.

Subd. 3. Any gift made by a will may also be amended or revoked in the manner provided for amendment or revocation of wills or as provided in subdivision 1. If an amendment or revocation of the gift is made in conformity with subdivision 1, such amendment or revocation shall not affect any other part of the will.

**History:** 1969 c 79 s 6

#### **525.927 RIGHTS AND DUTIES AT DEATH.**

Subdivision 1. The donee may accept or reject the gift. If the donee accepts a gift of the entire body, he may, subject to the terms of the gift, authorize embalming and the use of the body in funeral services. If the gift is of a part of the body, the donee, upon the death of the donor and prior to embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the surviving spouse, next of kin, or other persons under obligation to dispose of the body.

Subd. 2. The time of death shall be determined by a physician who attends the donor at his death, or, if none, the physician who certifies the death. The physician shall not participate in the procedures for removing or transplanting a part.

Subd. 3. A person who acts in good faith in accord with the terms of sections 171.07, subdivision 5; 171.12, subdivision 5; and 525.921 to 525.93, or the anatomical gift laws of another state or a foreign country is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for his act.

**History:** 1969 c 79 s 7; 1975 c 393 s 4

#### **525.928 PARTS FOR TRANSPLANTATION.**

The use of any part of a body for the purpose of transplantation in the human body shall be construed, for all purposes whatsoever, as a rendition of a service by each and every person participating therein and shall not be construed as a sale of such part for any purpose whatsoever.

**History:** 1969 c 79 s 8

#### **525.929 UNIFORMITY OF INTERPRETATION.**

Sections 525.921 to 525.93 shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

**History:** 1969 c 79 s 9

#### **525.93 SHORT TITLE.**

Sections 525.921 to 525.93 may be cited as the Uniform Anatomical Gift Act.

**History:** 1969 c 79 s 10