

CHAPTER 524

UNIFORM PROBATE CODE

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Part 2 DEFINITIONS

524.1-201 GENERAL DEFINITIONS.

Subject to additional definitions contained in the subsequent articles which are applicable to specific articles or parts, and unless the context otherwise requires, in chapters 524 and 525:

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

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

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

(6) "Claims" includes liabilities of the decedent whether arising in contract or otherwise and liabilities of the estate which arise after the death of the decedent including funeral expenses and expenses of administration. The term does not include taxes, demands or disputes regarding title of a decedent to specific assets alleged to be included in the estate, tort claims, foreclosure of mechanic's liens, or to actions pursuant to section 573.02.

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

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

(9) "Descendant" of an individual means all of the individual's descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this section.

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

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

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

(13) "Distributee" means any person who has received or who will receive property of a decedent from the decedent's personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee with respect to property which the trustee has received from a personal representative only to the extent of distributed assets or their increment remaining in the trustee's hands. A beneficiary of a testamentary trust to whom the trustee has

distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

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

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

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

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

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

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

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

(23) "Informal proceedings" means those conducted by the judge, the registrar, or the person or persons designated by the judge for probate of a will or appointment of a personal representative in accordance with sections 524.3-301 to 524.3-311.

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

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

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

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

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

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

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

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

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

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

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

(40) "Protected person" is as described in section 525.54, subdivision 1.

(42) "Registrar" refers to the judge of the court or the person designated by the court to perform the functions of registrar as provided in section 524.1-307.

(43) "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate,

receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.

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

(45) "Special administrator" means a personal representative as described by sections 524.3-614 to 524.3-618.

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

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

(48) "Successors" means those persons, other than creditors, who are entitled to property of a decedent under the decedent's will, this chapter or chapter 525. "Successors" also means a funeral director or county government that provides the funeral and burial of the decedent.

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

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

(53) "Trust" includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in chapter 528, custodial arrangements pursuant to sections 149.11 to 149.14, 318.01 to 318.06, 527.21 to 527.44, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

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

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

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

History: 1995 c 130 s 11; 1995 c 186 s 119

NOTE: The amendments to this section by Laws 1995, chapter 130, section 11, are effective January 1, 1996. See Laws 1995, chapter 130, section 22.

Part 2 ELECTIVE SHARE OF SURVIVING SPOUSE

524.2-210 PERSONAL LIABILITY OF RECIPIENTS.

(a) Only original recipients of the decedent's nonprobate transfers to others, and the donees of the recipients of the decedent's nonprobate transfers to others, to the extent the donees have the property or its proceeds, are liable to make a proportional contribution toward satisfaction of the surviving spouse's elective-share or supplemental elective-share amount. A person liable to make contribution may choose to give up the proportional part that has been received of the decedent's nonprobate transfers or to pay the value of the amount for which the person is liable.

(b) If any section or part of any section of this part is preempted by federal law with respect to a payment, an item of property, or any other benefit included in the decedent's nonprobate transfers to others, a person who is not a bona fide purchaser and who receives the payment, item of property, or any other benefit is obligated to return the payment, item of

property, or benefit, or is personally liable for the amount of the payment or the value of that item of property or benefit, as provided in section 524.2-209, to the person who would have been entitled to it were that section or part of that section not preempted.

History: 1995 c 186 s 96

Part 5 WILLS

524.2-508 REVOCATION BY CHANGES OF CIRCUMSTANCES.

Except as provided in sections 524.2-803 and 524.2-804, a change of circumstances does not revoke a will or any part of it.

History: 1995 c 130 s 12

NOTE: The amendment to this section by Laws 1995, chapter 130, section 12, is effective January 1, 1996. See Laws 1995, chapter 130, section 22.

Part 8 GENERAL PROVISIONS

524.2-803 EFFECT OF HOMICIDE ON INTESTATE SUCCESSION, WILLS, JOINT ASSETS, LIFE INSURANCE AND BENEFICIARY DESIGNATIONS.

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

(b) Any joint tenant who feloniously and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as the decedent's property and the killer has no rights by survivorship. This provision applies to joint tenancies in real and personal property, joint accounts in banks, savings associations, credit unions and other institutions, and any other form of coownership with survivorship incidents.

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

(d) A named beneficiary of a life insurance policy who feloniously and intentionally kills the person upon whose life the policy is issued is not entitled to any benefit under the policy and the proceeds of the policy shall be paid and distributed by order of the court as hereinafter provided. If a person who feloniously and intentionally kills a person upon whose life a life insurance policy is issued is a beneficial owner as shareholder, partner or beneficiary of a corporation, partnership, trust or association which is the named beneficiary of the life insurance policy, to the extent of the killer's beneficial ownership of the corporation, partnership, trust or association, the proceeds of the policy shall be paid and distributed by order of the court as hereinafter provided.

Upon receipt of written notice by the insurance company at its home office that the insured may have been intentionally and feloniously killed by one or more named beneficiaries or that the insured may have been intentionally and feloniously killed by one or more persons who have a beneficial ownership in a corporation, partnership, trust or association, which is the named beneficiary of the life insurance policy, the insurance company shall, pending court order, withhold payment of the policy proceeds to all beneficiaries. In the event that the notice has not been received by the insurance company before payment of the policy proceeds, the insurance company shall be fully and finally discharged and released from any and all responsibility under the policy to the extent that the policy proceeds have been paid.

The named beneficiary, the insurance company or any other party claiming an interest in the policy proceeds may commence an action in the district court to compel payment of the policy proceeds. The court may order the insurance company to pay the policy proceeds to any person equitably entitled thereto, including the deceased insured's spouse, children, is-

sue, parents, creditors or estate, and may order the insurance company to pay the proceeds of the policy to the court pending the final determination of distribution of the proceeds by the court. The insurance company, upon receipt of a court order, judgment or decree ordering payment of the policy proceeds, shall pay the policy proceeds according to the terms of the order, and upon payment of such proceeds according to the terms of the court order, shall be fully and completely discharged and released from any and all responsibility for payment under the policy.

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

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

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

History: 1995 c 202 art 1 s 25

524.2-804 REVOCATION BY DISSOLUTION OF MARRIAGE; NO REVOCATION BY OTHER CHANGES OF CIRCUMSTANCES.

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

History: 1995 c 130 s 13

NOTE: The section, as added by Laws 1995, chapter 130, section 13, is effective January 1, 1996. See Laws 1995, chapter 130, section 22.

Part 9 SPECIAL PROVISIONS RELATING TO DISTRIBUTION

524.3-914 UNCLAIMED ASSETS.

If any asset of the estate has not been distributed because the person entitled thereto cannot be found or refuses to accept the same, or for any other good and sufficient reason the same has not been paid over, the court may direct the personal representative to deposit the same with the county treasurer, taking duplicate receipts therefor, one of which the personal representative shall file with the county auditor and the other in the court. If the money on hand exceeds the sum of \$5,000, the court may direct the county treasurer to invest the funds, and the county treasurer shall collect the interest on these investments as it becomes due, and the money so collected or deposited shall be credited to the county revenue fund. Upon application to the court within 21 years after such deposit, and upon notice to the county attorney and county treasurer, the court may direct the county auditor to issue to the person entitled thereto the county auditor's warrant for the amount of the money so on deposit includ-

ing the interest collected. No interest shall be allowed or paid thereon, except as herein provided, and if not claimed within such time no recovery thereof shall be had. The county treasurer, with the approval of the court, may make necessary sales, exchanges, substitutions, and transfers of investments and may present the same for redemption and invest the proceeds.

History: 1995 c 130 s 14

NOTE: The amendments to this section by Laws 1995, chapter 130, section 14, are effective January 1, 1996. See Laws 1995, chapter 130, section 22.

524.3-915 DISTRIBUTION TO PERSON UNDER DISABILITY.

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

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

History: 1995 c 202 art 1 s 25

524.3-916 APPORTIONMENT OF ESTATE TAXES AND GENERATION-SKIPPING TAX.

(a) For purposes of this section:

(1) "estate" means the gross estate of a decedent as determined for the purpose of federal estate tax or the estate tax payable to this state;

(2) "decedent's generation-skipping transfers" means all generation-skipping transfers as determined for purposes of the federal generation-skipping tax which occur by reason of the decedent's death which relate to property which is included in the decedent's estate;

(3) "person" means any individual, partnership, association, joint stock company, corporation, limited liability company, government, political subdivision, governmental agency, or local governmental agency;

(4) "person interested in the estate" means any person entitled to receive, or who has received, from a decedent or by reason of the death of a decedent any property or interest therein included in the decedent's estate. It includes a personal representative, guardian, conservator, trustee, and custodian;

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

(6) "estate tax" means the federal estate tax and the state estate tax determined by the commissioner of revenue pursuant to chapter 291 and interest and penalties imposed in addition to the tax;

(7) "decedent's generation-skipping tax" means the federal generation-skipping tax imposed on the decedent's generation-skipping transfers and interest and penalties imposed in addition to the tax;

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

(b) Unless the will or other governing instrument otherwise provides:

(1) the estate tax shall be apportioned among all persons interested in the estate. The apportionment is to be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax are to be used for that purpose; and

(2) the decedent's generation-skipping tax shall be apportioned as provided by federal law. To the extent not provided by federal law, the decedent's generation-skipping tax shall be apportioned among all persons receiving the decedent's generation-skipping transfers whose tax apportionment is not provided by federal law in the proportion that the value of the transfer to each person bears to the total value of all such transfers.

If the decedent's will or other written instrument directs a method of apportionment of estate tax or of the decedent's generation-skipping tax different from the method described in this code, the method described in the will or other written instrument controls.

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

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

(3) If the court finds that the assessment of penalties and interest assessed in relation to the estate tax or the decedent's generation-skipping tax is due to delay caused by the negligence of the fiduciary, the court may charge the fiduciary with the amount of the assessed penalties and interest.

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

(d)(1) The personal representative or other person in possession of the property of the decedent required to pay the estate tax or the decedent's generation-skipping tax may withhold from any property distributable to any person interested in the estate, upon its distribution, the amount of any taxes attributable to the person's interest. If the property in possession of the personal representative or other person required to pay any taxes and distributable to any person interested in the estate is insufficient to satisfy the proportionate amount of the taxes determined to be due from the person, the personal representative or other person required to pay any taxes may recover the deficiency from the person interested in the estate. If the property is not in the possession of the personal representative or the other person required to pay any taxes, the personal representative or the other person required to pay any taxes may recover from any person interested in the estate the amount of any taxes apportioned to the person in accordance with this section.

(2) If property held by the personal representative or other person in possession of the property of the decedent required to pay the estate tax or the decedent's generation-skipping tax is distributed prior to final apportionment of the estate tax or the decedent's generation-skipping tax, the distributee shall provide a bond or other security for the apportionment liability in the form and amount prescribed by the personal representative or other person, as the case may be.

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

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

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

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

(5) To the extent that property passing to or in trust for a surviving spouse or any charitable, public or similar gift or devise is not an allowable deduction for purposes of the estate tax solely by reason of an estate tax imposed upon and deductible from the property, the property is not included in the computation provided for in subsection (b)(1) hereof, and to that extent no apportionment is made against the property. The sentence immediately preceding does not apply to any case if the result would be to deprive the estate of a deduction otherwise allowable under section 2053(d) of the Internal Revenue Code of 1986, as amended, of the United States, relating to deduction for state death taxes on transfers for public, charitable, or religious uses.

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

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

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

History: 1995 c 130 s 15

NOTE: The amendments to this section by Laws 1995, chapter 130, section 15, are effective January 1, 1996. See Laws 1995, chapter 130, section 22.

Part 10 CLOSING ESTATES

524.3-1001 FORMAL PROCEEDINGS TERMINATING ADMINISTRATION; TESTATE OR INTTESTATE; ORDER OF DISTRIBUTION, DECREE, AND GENERAL PROTECTION.

(a)(1) A personal representative or any interested person may petition for an order of complete settlement of the estate. The personal representative may petition at any time, and any other interested person may petition after one year from the appointment of the original personal representative except that no petition under this section may be entertained until the time for presenting claims which arose prior to the death of the decedent has expired. The petition may request the court to determine testacy, if not previously determined, to consider

the final account or compel or approve an accounting and distribution, to construe any will or determine heirs and adjudicate the final settlement and distribution of the estate. After notice to all interested persons and hearing the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate, and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any interested person.

(2) In such petition for complete settlement of the estate, the petitioner may apply for a decree. Upon the hearing, if in the best interests of interested persons, the court may issue its decree which shall determine the persons entitled to the estate and assign the same to them in lieu of ordering the assignment by the personal representative. The decree shall name the heirs and distributees, state their relationship to the decedent, describe the property, and state the proportions or part thereof to which each is entitled. In the estate of a testate decedent, no heirs shall be named in the decree unless all heirs be ascertained.

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

(4) Where a decree or order for distribution is issued, the personal representative shall not be discharged until all property is paid or transferred to the persons entitled to the property, and the personal representative has otherwise fully discharged the duties of a personal representative. If an order assessing estate tax or request for documents is filed with the court by the commissioner of revenue, no discharge shall be issued until the assessment is paid or the request is complied with. If no order assessing estate tax or request for documents is filed, the court shall have the power to settle and distribute the estate and discharge the personal representative without regard to tax obligations.

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

History: 1995 c 130 s 16

NOTE: The amendments to this section by Laws 1995, chapter 130, section 16, are effective January 1, 1996. See Laws 1995, chapter 130, section 22.

524.3-1008 SUBSEQUENT ADMINISTRATION.

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

History: 1995 c 130 s 17

NOTE: The amendments to this section by Laws 1995, chapter 130, section 17, are effective January 1, 1996. See Laws 1995, chapter 130, section 22.

Part 12
COLLECTION OF PERSONAL PROPERTY
BY AFFIDAVIT AND SUMMARY
ADMINISTRATION PROCEDURE
FOR SMALL ESTATES

524.3-1201 COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT.

(a) Thirty days after the death of a decedent, (i) any person indebted to the decedent, (ii) any person having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent, or (iii) any safe deposit company, as defined in section 55.01, controlling the right of access to decedent's safe deposit box shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action or deliver the entire contents of the safe deposit box to a person claiming to be the successor of the decedent, or a county agency with a claim authorized by section 256B.15, upon being presented a certified death certificate of the decedent and an affidavit, in duplicate, made by or on behalf of the successor stating that:

- (1) the value of the entire probate estate, wherever located, including specifically any contents of a safe deposit box, less liens and encumbrances, does not exceed \$20,000;
- (2) 30 days have elapsed since the death of the decedent or, in the event the property to be delivered is the contents of a safe deposit box, 30 days have elapsed since the filing of an inventory of the contents of the box pursuant to section 55.10, paragraph (h);
- (3) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and
- (4) the claiming successor is entitled to payment or delivery of the property.

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

(c) The claiming successor or county agency shall disburse the proceeds collected under this section to any person with a superior claim under section 524.2-403 or 524.3-805.

(d) A motor vehicle registrar shall issue a new certificate of title in the name of the successor upon the presentation of an affidavit as provided in subsection (a).

(e) The person controlling access to decedent's safe deposit box need not open the box or deliver the contents of the box if:

- (1) the person has received notice of a written or oral objection from any person or has reason to believe that there would be an objection; or
- (2) the lessee's key or combination is not available.

History: 1995 c 130 s 18

NOTE: The amendments to this section by Laws 1995, chapter 130, section 18, are effective January 1, 1996. See Laws 1995, chapter 130, section 22.

524.3-1202 EFFECT OF AFFIDAVIT.

The person paying, delivering, transferring, or issuing personal property or the evidence thereof pursuant to an affidavit meeting the requirements of section 524.3-1201 is discharged and released to the same extent as if the person dealt with a personal representative of the decedent. The person is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit. In particular, the person delivering the contents of a safe deposit box is not required to inquire into the value of the contents of the box and is authorized to rely solely upon the representation in the affidavit concerning the value of the entire probate estate. If any person to whom an affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled thereto. Any person to whom payment, delivery, transfer or issuance is made is answerable

and accountable therefor to any personal representative of the estate or to any other person having a superior right.

History: 1995 c 130 s 19

NOTE: The amendments to this section by Laws 1995, chapter 130, section 19, are effective January 1, 1996. See Laws 1995, chapter 130, section 22.

524.3-1203 SUMMARY PROCEEDINGS.

Subdivision 1. Petition and payment. 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 for it, or if there is no property except property recovered for death by wrongful act, property that is exempt from all debts and charges in the probate court, or property that may be appropriated for the payment of the property selection as provided in section 524.2-403, the allowances to the spouse and children mentioned in section 524.2-404, and the expenses and claims provided in section 524.3-805, paragraph (a), clauses (1) to (6), inclusive, the personal representative by order of the court may pay the estate in the order named. The court may then, with or without notice, 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. Final decree or order. 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 that property to the persons entitled to it under the terms of the will, or if there is no will, under the law of intestate succession in force at the time of the decedent's death.

Subd. 3. Summary distribution. 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 property selection as provided in section 524.2-403, the allowances to the spouse and children mentioned in section 524.2-404, and the expenses and claims provided in section 524.3-805, paragraph (a), clauses (1) to (6), inclusive, in the order named, if the court is satisfied as to the propriety of the distribution 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. Personal representative. Summary proceedings may be had with or without the appointment of a personal representative. In all summary proceedings in which 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 must 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 to the petition. 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 the terms of the decree or order of distribution are not performed by the petitioner as required, has a cause of action against the petitioner and the surety to recover those damages in the court in which the proceeding took place. That court has jurisdiction of the cause of action.

Subd. 5. Exhaustion of estate. In any summary, special, or other administration in which it appears that the estate will not be exhausted in payment of the priority items enumerated in subdivisions 1 to 4, 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 524.2-402, does not exceed the value of \$30,000. If the 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 property

selected by and allowances to the spouse and children as provided in section 524.2-403 and the expenses and claims provided in section 524.3-805 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, the representative's bond shall be sufficient for such purpose unless an additional bond is ordered, and the sureties on the 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 the surety, shall be liable for damages to any party determined to be injured thereby as herein provided. The personal representative, petitioner, or the 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 money or damages under this subdivision is subject to the time and other limitations imposed by section 525.02.

History: 1995 c 130 s 20

NOTE: The amendments to this section by Laws 1995, chapter 130, section 20, are effective January 1, 1996. See Laws 1995, chapter 130, section 22.

Article 6

Part 2

PROVISIONS RELATING TO EFFECT OF DEATH

524.6-201 DEFINITIONS.

[For text of subs 1 and 2, see M.S.1994]

Subd. 3. "Financial institution" means any organization authorized to do business under state or federal laws relating to financial institutions, including, without limitation, banks and trust companies, savings banks, savings associations, and credit unions.

[For text of subs 4 to 14, see M.S.1994]

History: 1995 c 202 art 1 s 25

524.6-207 RIGHTS OF CREDITORS.

No multiple-party account will be effective against an estate of a deceased party to transfer to a survivor sums needed to pay debts, taxes, and expenses of administration, including statutory allowances to the surviving spouse, minor children and dependent children or against a county agency with a claim authorized by section 256B.15, if other assets of the estate are insufficient, to the extent the deceased party is the source of the funds or beneficial owner. A surviving party or P.O.D. payee who receives payment from a multiple-party account after the death of a deceased party shall be liable to account to the deceased party's personal representative or a county agency with a claim authorized by section 256B.15 for amounts the decedent owned beneficially immediately before death to the extent necessary

to discharge any such claims and charges remaining unpaid after the application of the assets of the decedent's estate. No proceeding to assert this liability shall be commenced by the personal representative unless the personal representative has received a written demand by a surviving spouse, a creditor or one acting for a minor dependent child of the decedent, and no proceeding shall be commenced later than two years following the death of the decedent. Sums recovered by the personal representative shall be administered as part of the decedent's estate. This section shall not affect the right of a financial institution to make payment on multiple-party accounts according to the terms thereof, or make it liable to the estate of a deceased party unless, before payment, the institution has been served with process in a proceeding by the personal representative or a county agency with a claim authorized by section 256B.15.

History: 1995 c 207 art 2 s 35