

# JUDICIAL PROCEDURE, PROBATE

## CHAPTER 255

SENATE BILL NO. 2266  
(Ringsak, Morgan, Freed, Holand)

### GUARDIANS FOR COMPETENT PERSONS

AN ACT to create and enact section 30-10-02.1 of the North Dakota Century Code, authorizing the appointment of a guardian of the person or estate of a competent person.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1.) Section 30-10-02.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

\*30-10-02.1. GUARDIANSHIP FOR OTHERWISE COMPETENT PERSON.)  
The county court may appoint a guardian for any person who petitions therefor, if the court is satisfied that such appointment would be in the person's best interest, and that the petition was not executed under duress or as the result of undue influence. A petition for appointment of a guardian under this section may contain the name of a suggested appointee, and if it does so, the county court shall honor the suggestion unless the interests of justice require otherwise. An order appointing a guardian under this section shall make no reference to the physical or mental status of the person for whom, or for whose estate, the guardian is appointed. The court may terminate the guardianship upon petition of the person under guardianship, or of any other person. The provisions of this title relating to the powers and duties of a guardian, his bond, his liability, and his reports and accountings shall apply to a guardian appointed under this section except the court may order a bond to be less than prescribed by section 30-11-07 upon the request of the petitioner. A guardian appointed under this section may be of the person, of his estate, or of both the person and his estate.

Approved March 28, 1973

\*NOTE: Section 30-10-02.1 was repealed effective July 1, 1975, by section 82 of House Bill No. 1040, chapter 257.

## CHAPTER 256

SENATE BILL NO. 2317  
(Holand)

## SUMMARY ADMINISTRATION OF ESTATES

AN ACT to amend and reenact subsection 1 of section 30-17-01, the initial paragraph of section 30-17-05, and subsection 1 of section 30-17-07 of the North Dakota Century Code, providing the maximum size of a decedent's estate where summary administration or transfer by probate will be allowed.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Subsection 1 of section 30-17-01 of the 1971 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- \* 1. Upon the return of the inventory of the estate of a deceased person, whether he died testate or intestate, it appears that the value of the whole estate after deduction of expenses of the last illness of decedent, funeral expenses, and expenses of administration, does not exceed the sum of ten thousand dollars.

SECTION 2. AMENDMENT.) The initial paragraph of section 30-17-05 of the 1971 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

\* 30-17-05. ASSIGNMENT OF ESTATE.) If, upon the hearing held pursuant to a petition made as provided in section 30-17-02, or upon the return of an inventory as provided in section 30-17-01, the court finds that the value of the estate after deduction of the expenses of the last illness of the decedent, funeral expenses, and expenses of administration, does not exceed the sum of ten thousand dollars, it, by a decree for that purpose, shall assign the estate, real and personal, after payment of such expenses, as follows:

SECTION 3. AMENDMENT.) Subsection 1 of section 30-17-07 of the 1971 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- \* 1. The value of the entire estate does not exceed the sum of two thousand dollars.

Approved March 15, 1973

\*NOTE: Sections 30-17-01, 30-17-05, and 30-17-07 were repealed effective July 1, 1975, by section 82 of House Bill No. 1040, chapter 257.

## CHAPTER 257

HOUSE BILL NO. 1040  
(Solberg, Herman, Raymond, Rice, Streibel)  
(From Legislative Council Study)

## UNIFORM PROBATE CODE

AN ACT to create and enact title 30.1 and sections 25-04-13.1, 30-26-05.1, and 30-26-26.1 of the North Dakota Century Code, embodying the Uniform Probate Code, and relating to guardianships at the Grafton state school, and appeals in probate cases; to amend and reenact sections 6-03-64, 6-03-67, subsection 4 of section 6-05-08, sections 6-05-13, 6-05-21, 11-21-05, 11-21-06, 11-21-07, 11-21-08, 11-21-13, 14-10-04, 14-10-12, 25-09-02.2, 27-07-02, 27-07-09, 27-07-16, 27-07-19, 27-07-21, 27-07-29, 27-07-30, subsection 3 of section 27-07-36, subsection 2 of section 27-20-47, sections 28-01-26, 28-03-01, 28-03-02, 28-03-04, subsection 2 of section 28-20-06, sections 28-26-21, 30-16-04, 30-16-05, 30-16-08, 31-01-05, 32-16-26, 32-16-32, 32-16-42, 32-16-43, 32-23-04, 34-01-12, 37-15-16, 37-15-18, 38-10-11, 38-10-12, 47-18-26, 47-18-28, subsections 4, 8, and 13 of section 47-24-01, subsection 4 of section 47-24-04, subsections 1, 3, 4, and 5 of section 47-24-07, sections 49-09-05, 50-24-33, 50-24-35, subsections 5 and 18 of section 54-21-13, subdivision i of subsection 2 of section 57-37-11, sections 57-37-14, 57-37-15, subsection 2 of section 57-37-16, sections 57-37-17, 57-37-18, 57-37-20, subdivisions b and c of subsection 3 of section 57-37-21, section 57-37-22, subsections 1, 2, 3, and 4 of section 57-37-23, subsections 1, 5, and 6 of section 57-37-24, sections 57-37-26, 57-37-27, 57-37-32, 59-02-10, 59-02-15, 59-04-02, 59-04-10, 59-04-11, 59-04-15, 59-04-18, 59-04-21, 59-04-22, subsection 1 of section 59-04.1-02, and sections 59-05-23 and 61-10-12 of the North Dakota Century Code, relating to the authority of trustees, personal representatives, guardians, and conservators, to estate tax filing and collection procedures, to payment of deposits by financial institutions, to the powers and duties of public administrators, to minors' rights, to the jurisdiction of county courts, to appointment of guardians or conservators for orphans, to statutes of limitations, to homestead estates, to appeals in probate proceedings, to testimony concerning transactions or conversations with the decedent, and to duties and powers of the soldiers' home commandant regarding deceased members' estates; to repeal chapters 30-01, 30-02, 30-03, 30-04, 30-05, 30-06, 30-07, 30-08, 30-09, 30-10, 30-11, 30-12, 30-13, 30-14, 30-15, 30-17, 30-18, 30-19, 30-20, 30-21, 30-21.1, 30-22, 30-23, 30-24, 30-25, 56-01, 56-02, 56-03, 56-04, 56-05, 56-06, 56-07, and sections 6-03-66, 7-04-07, 25-04-13, 27-07-06, 27-07-07, 27-07-08, 27-07-10,

27-07-38, 30-16-06, 30-16-07, 30-16-10, 30-26-05, 32-16-44, 35-03-12, 38-10-04, 49-09-06, 49-09-07, subsection 7 of section 57-37-24, sections 59-02-06 and 59-04-01, subsection 13 of section 59-04-04, sections 59-04-05, 59-04-06, 59-04-07, 59-04-09, 59-04-12, 59-04-13, and 59-04-14 of the North Dakota Century Code, relating to probate procedures, wills, and trusts, to the jurisdiction of county courts, to disposition of joint deposits by certain financial institutions, to guardians consenting to partition of real property, to satisfaction of real property mortgages, to mineral leasing by personal representatives, and to the acquisition of rights-of-way by public utilities; to provide penalties; and providing an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1.) Title 30.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

## UNIFORM PROBATE CODE

### ARTICLE I

#### Part 1

#### Chapter 30.1-01

30.1-01-01 (1-101). SHORT TITLE.) This title shall be known and may be cited as the Uniform Probate Code.

#### 30.1-01-02 (1-102). PURPOSES - RULE OF CONSTRUCTION.)

1. This title shall be liberally construed and applied to promote its underlying purposes and policies.

2. The underlying purposes and policies of this title are:

- a. To simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors, and incapacitated persons.
- b. To discover and make effective the intent of a decedent in distribution of his property.
- c. To promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to his successors.
- d. To facilitate the use and enforcement of certain trusts.
- e. To make uniform the law among the various jurisdictions.

30.1-01-03 (1-106). EFFECT OF FRAUD AND EVASION.) Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this title, or if fraud is used to avoid or circumvent the provisions or purposes of this title, any person injured thereby may

obtain appropriate relief against the perpetrator of the fraud or restitution from any person, other than a bona fide purchaser, benefitting from the fraud, whether innocent or not. Any proceeding must be commenced within two years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than five years after the time of commission of the fraud. This section has no bearing on remedies relating to fraud practiced on a decedent during his lifetime which affects the succession of his estate.

30.1-01-04 (1-107). EVIDENCE AS TO DEATH OR STATUS.) In proceedings under this title, the rules of evidence in courts of general jurisdiction including any relating to simultaneous deaths, are applicable unless specifically displaced by this title. In addition, the following rules relating to determination of death and status are applicable:

1. A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie proof of the fact, place, date and time of death, and the identity of the decedent.
2. A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that a person is missing, detained, dead, or alive, is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report.
3. A person who is absent for a continuous period of seven years, during which time he has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry, is presumed to be dead. His death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

30.1-01-05 (1-108). ACTS BY HOLDER OF GENERAL POWER.) For the purpose of granting consent or approval with regard to the acts or accounts of a personal representative or trustee, including relief from liability or penalty for failure to post bond, to register a trust, or to perform other duties, and for purposes of consenting to modification or termination of a trust or to deviation from its terms, the sole holder or all co-holders of a presently exercisable general power of appointment, including one in the form of a power of amendment or revocation, are deemed to act for beneficiaries to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.

## Part 2

30.1-01-06 (1-201). GENERAL DEFINITIONS.) Subject to additional definitions contained in the subsequent chapters which are applicable to specific chapters, and unless the context otherwise requires, in this title:

1. "Application" means a written request to the court for an order of informal probate or appointment under chapter 30.1-14.

2. "Augmented estate" means the estate described in section 30.1-05-02 of this title.
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.
4. "Child" includes any individual entitled to take as a child under this title 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.
5. "Claims", in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person whether arising in contract, in tort or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes, demands, or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.
6. "Court" means the court having jurisdiction in matters relating to the affairs of decedents. This court in this state is known as the county court or county court of increased jurisdiction.
7. "Conservator" means a person who is appointed by a court to manage the estate of a protected person.
8. "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.
9. "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 or trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.
10. "Disability" means cause for a protective order as described by section 30.1-29-01.
11. "Distributee" means any person who has received property of a decedent from his personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will to the extent of the devised assets.

12. "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to this title as originally constituted and as it exists from time to time during administration.
13. "Exempt property" means that property of a decedent's estate which is described in section 30.1-07-01.
14. "Fiduciary" includes personal representative, guardian, conservator, and trustee.
15. "Foreign personal representative" means a personal representative of another jurisdiction.
16. "Formal proceedings" means those conducted before a judge with notice to interested persons.
17. "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.
18. "Heirs" means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.
19. "Incapacitated person" is as defined in section 30.1-26-01.
20. "Informal proceedings" mean those conducted by the court for probate of a will or appointment of a personal representative without notice to interested persons.
21. "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative, and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.
22. "Issue" of a person means all his lineal descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in this title.
23. "Lease" includes an oil, gas, or other mineral lease.
24. "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.
25. "Minor" means a person who is under eighteen years of age.

26. "Mortgage" means any conveyance, agreement, or arrangement in which property is used as security.
27. "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of his death.
28. "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal entity.
29. "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this title, by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.
30. "Person" means an individual, a corporation, an organization, or other legal entity.
31. "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.
32. "Petition" means a written request to the court for an order after notice.
33. "Proceeding" includes an action at law, and a suit in equity in a district court or an exercise by the court of equitable powers or an application of equitable principles.
34. "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.
35. "Protected person" is as defined in section 30.1-26-01 of this title.
36. "Protective proceeding" is as defined in section 30.1-26-01 of this title.
37. "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest, or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.



38. "Settlement", in reference to a decedent's estate, includes the full process of administration, distribution, and closing.
39. "Special administrator" means a personal representative as described by sections 30.1-17-14 through 30.1-17-18 of this title.
40. "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.
41. "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.
42. "Successors" mean those persons, other than creditors, who are entitled to property of a decedent under his will or this title.
43. "Supervised administration" refers to the proceedings described in chapter 30.1-16.
44. "Testacy proceeding" means a proceeding to establish a will or determine intestacy.
45. "Trust" includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in custodial arrangements pursuant to chapter 11-22, sections 25-01.1-19 to 25-01.1-21, chapter 32-10, section 32-16-37, chapter 32-26, chapter 47-24, sections 54-23-27 to 54-23-29, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.
46. "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.
47. "Ward" is as defined in section 30.1-26-01.
48. "Will" includes codicil and any testamentary instrument which merely appoints an executor or revokes or revises another will.

## Part 3

## Chapter 30.1-02

30.1-02-01 (1-301). TERRITORIAL APPLICATION.) Except as otherwise provided in this title, this title applies to:

1. The affairs and estates of decedents, missing persons, and persons to be protected, domiciled in this state;
2. The property of nonresidents located in this state or property coming into the control of a fiduciary which is subject to the laws of this state;
3. Incapacitated persons and minors in this state;
4. Survivorship and related accounts in this state; and
5. Trusts subject to administration in this state.

30.1-02-02 (1-302). SUBJECT MATTER JURISDICTION.)

1. To the full extent permitted by the Constitution, the court has jurisdiction over all subject matter relating to guardianship, probate, and testamentary matters, including:

- a. Estates of decedents, including construction of wills and determination of heirs and successors of decedents.
- b. Estates of protected persons.
- c. Protection of minors and incapacitated persons.
- d. Trusts, to the extent necessary for the exercise of the court's jurisdiction over probate and testamentary matters.

2. The district court has subject matter jurisdiction over trusts, except as provided in subsection 1 d of this section, and of all causes at law and equity not inconsistent with the exclusive original jurisdiction vested in the court by the North Dakota Constitution over probate and testamentary matters, the appointment of administrators and guardians, the settlement of accounts of executors, administrators, and guardians, the sale of land by executors, administrators, and guardians, and such other probate jurisdiction as conferred by law. The district court also has appellate jurisdiction over proceedings in the court as provided in chapter 30-26.

30.1-02-03 (1-303). VENUE - MULTIPLE PROCEEDINGS - TRANSFER.) 1. Where a proceeding under this title could be maintained in more than one place in this state, the court in which the proceeding is first commenced has the exclusive right to proceed.

2. If proceedings concerning the same estate, protected person, ward, or trust are commenced in more than one court of this state, the court in which the proceeding was first commenced shall continue

to hear the matter, and the other courts shall hold the matter in abeyance until the question of venue is decided, and if the ruling court determines that venue is properly in another court, it shall transfer the proceeding to the other court.

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

30.1-02-04 (1-304). PRACTICE IN COURT.) Unless specifically provided to the contrary in this title or unless inconsistent with its provisions, the rules of civil procedure, including the rules concerning vacation of orders and appellate review, govern formal proceedings under this title.

30.1-02-05 (1-305). RECORDS AND CERTIFIED COPIES.) The court or clerk of court shall keep a record for each decedent, ward, protected person, or trust involved in any document which may be filed with the court under this title, including petitions and applications, demands for notices or bonds, and of any orders or responses relating thereto by the court, and establish and maintain a system for indexing, filing, or recording which is sufficient to enable users of the records to obtain adequate information. Upon payment of the fees required by law, the clerk must issue certified copies of any probated wills, letters issued to personal representatives, or any other record or paper filed or recorded. Certificates relating to probated wills must indicate whether the decedent was domiciled in this state and whether the probate was formal or informal. Certificates relating to letters must show the date of appointment.

30.1-02-06 (1-307). POWERS.) The acts and orders which this title specifies as performable by the court or district court may be performed either by a judge of the appropriate court or by a person, including the clerk, designated by the appropriate court by a written order filed and recorded in the office of the court.

30.1-02-07 (1-310). OATH OR AFFIRMATION ON FILED DOCUMENTS.) Except as otherwise specifically provided in this title or by rule, every document filed with the district or county court under this title including applications, petitions, and demands for notice, shall be deemed to include an oath, affirmation, or statement to the effect that its representations are true as far as the person executing or filing it knows or is informed, and penalties for perjury may follow deliberate falsification therein.

#### Part 4

#### Chapter 30.1-03

##### 30.1-03-01 (1-401). NOTICE METHOD AND TIME OF GIVING.)

1. If notice of a hearing on any petition is required and except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested person or his attorney if he has appeared by attorney or requested that notice be sent to his attorney. Notice shall be given:

- a. By mailing a copy thereof at least fourteen days before the time set for the hearing by certified or ordinary first-class mail addressed to the person being notified at the post-office address given in his demand for notice, if any, or at his office or place of residence, if known;
- b. By delivering a copy thereof to the person being notified personally at least fourteen days before the time set for the hearing; or
- c. If the address, or identity of any person is not known and cannot be ascertained with reasonable diligence, by publishing at least once a week for three consecutive weeks, a copy thereof in a newspaper having general circulation in the county where the hearing is to be held, the last publication of which is to be at least ten days before the time set for the hearing.

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

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

30.1-03-02 (1-402). NOTICE - WAIVER.) A person, including a guardian ad litem, conservator, or other fiduciary, may waive notice by a writing signed by him or his attorney and filed in the proceeding.

30.1-03-03 (1-403). PLEADINGS - WHEN PARTIES BOUND BY OTHERS - NOTICE.) In formal proceedings involving trusts or estates of decedents, minors, protected persons, or incapacitated persons, and in judicially supervised settlements, the following apply:

1. Interests to be affected shall be described in pleadings which give reasonable information to owners by name or class, by reference to the instrument creating the interests, or in other appropriate manner.
2. Persons are bound by orders binding others in the following cases:
  - a. Orders binding the sole holder or all co-holders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, bind other persons to the extent their interests, as objects, takers in default, or otherwise, are subject to the power.
  - b. To the extent there is no conflict of interest between them or among persons represented, orders binding a conservator bind the person whose estate he controls; orders binding a guardian bind the ward if no conservator of his estate has been appointed; orders binding a trustee bind beneficiaries of the trust in proceedings to probate

a will establishing or adding to a trust, to review the acts or accounts of a prior fiduciary and in proceedings involving creditors or other third parties; and orders binding a personal representative bind persons interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate. If there is no conflict of interest and no conservator or guardian has been appointed, a parent may represent his minor child.

- c. An unborn or unascertained person who is not otherwise represented is bound by an order to the extent his interest is adequately represented by another party having a substantially identical interest in the proceeding.
3. Notice is required as follows:
    - a. Notice as prescribed by section 30.1-03-01 shall be given to every interested person or to one who can bind an interested person as described in subdivisions a or b of subsection 2 of this section. Notice may be given both to a person and to another who may bind him.
    - b. Notice is given to unborn or unascertained persons who are not represented under subdivisions a or b of subsection 2 of this section by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.
  4. At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding.

## ARTICLE II

### Part 1

#### Chapter 30.1-04

30.1-04-01 (2-101). **INTESTATE ESTATE.**) Any part of the estate of a decedent not effectively disposed of by his will passes to his heirs as prescribed in the following sections of this title.

30.1-04-02 (2-102). **SHARE OF THE SPOUSE.**) The intestate share of the surviving spouse is:

1. If there is no surviving issue or parent of the decedent, the entire intestate estate.

2. If there is no surviving issue but the decedent is survived by a parent or parents, the first fifty thousand dollars, plus one-half of the balance of the intestate estate.
3. If there are surviving issue all of whom are issue of the surviving spouse also, the first fifty thousand dollars, plus one-half of the balance of the intestate estate.
4. If there are surviving issue, one or more of whom are not issue of the surviving spouse, one-half of the intestate estate.

30.1-04-03 (2-103). SHARE OF HEIRS OTHER THAN SURVIVING SPOUSE.) The part of the intestate estate not passing to the surviving spouse under section 30.1-04-02, or the entire intestate estate if there is no surviving spouse, passes as follows:

1. To the issue of the decedent.
2. If there is no surviving issue, to his parent or parents equally.
3. If there is no surviving issue or parent, to the issue of the parents or either of them by representation.
4. If there is no surviving issue, parent or issue of a parent, but the decedent is survived by one or more grandparents or issue of grandparents, half of the estate passes to the paternal grandparents if both survive, or to the surviving paternal grandparent, or to the issue of the paternal grandparents if both are deceased, by representation; and the other half passes to the maternal relatives in the same manner; but if there be no surviving grandparent or issue of grandparent on either the paternal or the maternal side, the entire estate passes to the relatives on the other side in the same manner as the half.

30.1-04-04 (2-104). REQUIREMENT THAT HEIR SURVIVE DECEDENT FOR ONE HUNDRED TWENTY HOURS.) Any person who fails to survive the decedent by one hundred twenty hours is deemed to have predeceased the decedent for purposes of homestead allowance, exempt property, and intestate succession, and the decedent's heirs are determined accordingly. If the time of death of the decedent or of the person who would otherwise be an heir, or the times of death of both, cannot be determined, and it cannot be established that the person who would otherwise be an heir has survived the decedent by one hundred twenty hours, it is deemed that the person failed to survive for the required period. This section is not to be applied where its application would result in a taking of intestate estate by the state under section 30.1-04-05.

30.1-04-05 (2-105). NO TAKER.) If there is no taker under the provisions of this title, the intestate estate passes to the state for the support of the common schools and an action for the recovery of such property and to reduce it into the possession of the state or for its sale and conveyance may be brought by the attorney general or

by the state's attorney in the district court of the county in which the property is situated.

30.1-04-06 (2-106). REPRESENTATION.) If representation is called for by this title, the estate is divided into as many shares as there are surviving heirs in the nearest degree of kinship and deceased persons in the same degree who left issue who survive the decedent, each surviving heir in the nearest degree receiving one share and the share of each deceased person in the same degree being divided among his issue in the same manner.

30.1-04-07 (2-107). KINDRED OF HALF BLOOD.) Relatives of the half blood inherit the same share they would inherit if they were of the whole blood.

30.1-04-08 (2-108). AFTERBORN HEIRS.) Relatives of the decedent conceived before his death but born thereafter inherit as if they had been born in the lifetime of the decedent.

30.1-04-09 (2-109). MEANING OF CHILD AND RELATED TERMS.) If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person:

1. An adopted person is the child of an adopting parent and not of the natural parents, except that adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and that natural parent.
2. In cases not covered by subsection 1, a person born out of wedlock is a child of the mother. That person is also a child of the father, if:
  - a. The natural parents participated in a marriage ceremony before or after the birth of the child, even though the attempted marriage is void; or
  - b. The paternity is established by an adjudication before the death of the father or is established thereafter by clear and convincing proof, except that the paternity established under this subdivision is ineffective to qualify the father or his kindred to inherit from or through the child unless the father has openly treated the child as his, and has not refused to support the child.

30.1-04-10 (2-110). ADVANCEMENTS.) If a person dies intestate as to all his estate, property which he gave in his lifetime to an heir is treated as an advancement against the latter's share of the estate only if declared in a contemporaneous writing by the decedent or acknowledged in writing by the heir to be an advancement. For this purpose the property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of death of the decedent, whichever first occurs. If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the

intestate share to be received by the recipient's issue, unless the declaration or acknowledgment provides otherwise.

30.1-04-11 (2-111). DEBTS TO DECEDENT.) A debt owed to the decedent is not charged against the intestate share of any person except the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's issue.

30.1-04-12 (2-112). ALIENAGE.) No person is disqualified to take as an heir because he or a person through whom he claims is or has been an alien.

30.1-04-13 (2-113). DOWER AND CURTESY ABOLISHED.) The estates of dower and curtesy are abolished.

## Part 2

### Chapter 30.1-05

30.1-05-01 (2-201). RIGHT TO ELECTIVE SHARE.) 1. If a married person domiciled in this state dies, the surviving spouse has a right of election to take an elective share of one-third of the augmented estate under the limitations and conditions hereinafter stated.

2. If a married person not domiciled in this state dies, the right, if any, of the surviving spouse to take an elective share in property in this state is governed by the law of the decedent's domicile at death.

30.1-05-02 (2-202). AUGMENTED ESTATE.) The augmented estate means the estate reduced by funeral and administration expenses, homestead as defined in section 47-18-01, family allowances and exemptions, and enforceable claims, to which is added the sum of the following amounts:

1. The value of property transferred by the decedent at any time during marriage, to or for the benefit of any person other than the surviving spouse, to the extent that the decedent did not receive adequate and full consideration in money or money's worth for the transfer, if the transfer is of any of the following types:
  - a. Any transfer under which the decedent retained at the time of his death the possession or enjoyment of, or right to income from, the property.
  - b. Any transfer to the extent that the decedent retained at the time of his death a power, either alone or in conjunction with any other person, to revoke or to consume, invade, or dispose of the principal for his own benefit.
  - c. Any transfer whereby property is held at the time of the decedent's death by decedent and another with right of survivorship.



- d. Any transfer made within two years of death of the decedent to the extent that the aggregate transfers to any one donee in either of the years exceed three thousand dollars.

Any transfer is excluded if made with the written consent or joinder of the surviving spouse. Property is valued as of the decedent's death except that property given irrevocably to a donee during lifetime of the decedent is valued as of the date the donee came into possession or enjoyment if that occurs first. Nothing herein shall cause to be included in the augmented estate any life insurance, accident insurance, joint annuity, or pension payable to a person other than the surviving spouse.

2. The value of property owned by the surviving spouse at the decedent's death, plus the value of property transferred by the spouse at any time during marriage to any person other than the decedent which would have been includable in the spouse's augmented estate if the surviving spouse had predeceased the decedent, to the extent the owned or transferred property is derived from the decedent by any means other than testate or intestate succession without a full consideration in money or money's worth. For purposes of this subsection:
  - a. Property derived from the decedent includes, but is not limited to, any beneficial interest of the surviving spouse in a trust created by the decedent during his lifetime, any property appointed to the spouse by the decedent's exercise of a general or special power of appointment also exercisable in favor of others than the spouse, any proceeds of insurance (including accidental death benefits) on the life of the decedent attributable to premiums paid by him, any lump sum immediately payable and the commuted value of the proceeds of annuity contracts under which the decedent was the primary annuitant attributable to premiums paid by him, the commuted value of amounts payable after the decedent's death under any public or private pension, disability compensation, death benefit or retirement plan, exclusive of the federal social security system, by reason of service performed or disabilities incurred by the decedent, and the value of the share of the surviving spouse resulting from rights in community property in this or any other state formerly owned with the decedent. Premiums paid by the decedent's employer, his partner, a partnership of which he was a member, or his creditors, are deemed to have been paid by the decedent.
  - b. Property owned by the spouse at the decedent's death is valued as of the date of death. Property transferred by the spouse is valued at the time the transfer became irrevocable, or at the decedent's death, whichever occurred first. Income earned by included property prior to the

decedent's death is not treated as property derived from the decedent.

- c. Property owned by the surviving spouse as of the decedent's death, or previously transferred by the surviving spouse, is presumed to have been derived from the decedent except to the extent that the surviving spouse establishes that it was derived from another source.

30.1-05-03 (2-203). RIGHT OF ELECTION PERSONAL TO SURVIVING SPOUSE.) The right of election of the surviving spouse may be exercised only during his lifetime by him. In the case of a protected person, the right of election may be exercised only by order of the court in which protective proceedings as to his property are pending, after finding that exercise is necessary to provide adequate support for the protected person during his probable life expectancy.

30.1-05-04 (2-204). WAIVER OF RIGHT TO ELECT AND OF OTHER RIGHTS.) The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance, exempt property and family allowance, or any of them, may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by the party waiving after fair disclosure. Unless it provides to the contrary, a waiver of "all rights" or equivalent language in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights to elective share, homestead allowance, exempt property, and family allowance by each spouse in the property of the other and a renunciation by each of all benefits which would otherwise pass to him from the other by intestate succession or by virtue of the provisions of any will executed before the waiver or property settlement.

30.1-05-05 (2-205). PROCEEDING FOR ELECTIVE SHARE - TIME LIMIT.) 1. The surviving spouse may elect to take his elective share in the augmented net estate by filing in the court and mailing or delivering to the personal representative a petition for the elective share within six months after the first publication of notice to creditors for filing claims which arose before the death of the decedent. The court may extend the time for election as it sees fit for cause shown by the surviving spouse before the time for election has expired.

2. The surviving spouse shall give notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the augmented net estate whose interests will be adversely affected by the taking of the elective share.

3. The surviving spouse may withdraw his demand for an elective share at any time before entry of a final determination by the court.

4. After notice and hearing, the court shall determine the amount of the elective share and shall order its payment from the assets of the augmented net estate or by contribution as appears appropriate

under section 30.1-05-07. If it appears that a fund or property included in the augmented net estate has not come into the possession of the personal representative, or has been distributed by the personal representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than he would have been if relief had been secured against all persons subject to contribution.

5. The order or judgment of the court may be enforced as necessary in a suit for contribution or payment in other courts of this state or other jurisdictions.

30.1-05-06 (2-206). EFFECT OF ELECTION ON BENEFITS BY WILL OR STATUTE.) 1. The surviving spouse's election of his elective share does not affect the share of the surviving spouse under the provisions of the decedent's will or intestate succession unless the surviving spouse also expressly renounces in the petition for an elective share the benefit of all or any of the provisions. If any provision is so renounced, the property or other benefit which would otherwise have passed to the surviving spouse thereunder is treated, subject to contribution under subsection 2 of section 30.1-05-07, as if the surviving spouse had predeceased the testator.

2. A surviving spouse is entitled to homestead allowance, exempt property, and family allowance whether or not he elects to take an elective share and whether or not he renounces the benefits conferred upon him by the will except that, if it clearly appears from the will that a provision therein made for the surviving spouse was intended to be in lieu of these rights, he is not so entitled if he does not renounce the provision so made for him in the will.

30.1-05-07 (2-207). CHARGING SPOUSE WITH GIFTS RECEIVED - LIABILITY OF OTHERS FOR BALANCE OF ELECTIVE SHARE.) 1. In the proceeding for an elective share, property which is part of the augmented estate which passes or has passed to the surviving spouse by testate or intestate succession or other means and which has not been renounced, including that described in subsection 2 of section 30.1-05-02, is applied first to satisfy the elective share and to reduce the amount due from other recipients of portions of the augmented estate.

2. The remaining property of the augmented estate is to be so applied that liability for the balance of the elective share of the surviving spouse is equitably apportioned among the recipients of the augmented estate in proportion to the value of their interests therein.

3. Only original transferees from, or appointees of, the decedent and their donees, to the extent the donees have the property or its proceeds, are subject to the contribution to make up the elective share of the surviving spouse. A person liable to contribution may choose to give up the property transferred to him or to pay its value as of the time it is considered in computing the augmented estate.

## Part 3

## Chapter 30.1-06

30.1-06-01 (2-301). OMITTED SPOUSE.) 1. If a testator fails to provide by will for his surviving spouse who married the testator after the execution of the will, the omitted spouse shall receive the same share of the estate he would have received if the decedent left no will unless it appears from the will that the omission was intentional or the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

2. In satisfying a share provided by this section, the devises made by the will abate as provided in section 30.1-20-02.

30.1-06-02 (2-302). PRETERMITTED CHILDREN.) 1. If a testator fails to provide in his will for any of his children born or adopted after the execution of his will, the omitted child receives a share in the estate equal in value to that which he would have received if the testator had died intestate unless:

- a. It appears from the will that the omission was intentional;
- b. When the will was executed, the testator had one or more children and devised substantially all his estate to the other parent of the omitted child; or
- c. The testator provided for the child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

2. If at the time of execution of the will the testator fails to provide in his will for a living child solely because he believes the child to be dead, the child receives a share in the estate equal in value to that which he would have received if the testator had died intestate.

3. In satisfying a share provided by this section, the devises made by the will abate as provided in section 30.1-20-02.

## Part 4

## Chapter 30.1-07

30.1-07-01 (2-402). EXEMPT PROPERTY ENTITLEMENT - PERSONAL PROPERTY.) In addition to the homestead defined in section 47-18-01, the surviving spouse of a decedent who was domiciled in this state is entitled to receive from the estate, to a value not exceeding five thousand dollars in excess of any security interests therein, household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse, children of the decedent

are entitled jointly to the same value. If encumbered chattels are selected and if the value in excess of security interests, plus that of other exempt property, is less than five thousand dollars, or if there is not five thousand dollars worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the five thousand dollar value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, except that the right to any assets to make up a deficiency of exempt property shall abate as necessary to permit prior payment of the family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share.

30.1-07-02 (2-403). FAMILY ALLOWANCE.) In addition to homestead rights and exempt property, if the decedent was domiciled in this state, the surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by him are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than one year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments. It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children; otherwise to the minor and dependent children, or persons having their care and custody; but in case any minor child or dependent child is not living with the surviving spouse, the allowance may be made partially to the child or his guardian or other person having his care and custody, and partially to the spouse, as their needs may appear. The family allowance is exempt from and has priority over all claims, but not over the homestead allowance.

The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share. The death of any person entitled to family allowance terminates his right to allowances not yet paid.

30.1-07-03 (2-404). SOURCE, DETERMINATION, AND DOCUMENTATION. If the estate is otherwise sufficient, property specifically devised is not used to satisfy rights to exempt property. Subject to this restriction, the surviving spouse, the guardians of the minor children, or children who are adults may select property of the estate as exempt property. The personal representative may make this selection if the surviving spouse, the children, or the guardians of the minor children are unable or fail to do so within a reasonable time, or if there are no guardians of the minor children. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as exempt property. He may determine the family allowance in a lump sum not exceeding six thousand dollars or periodic installments not exceeding five hundred dollars per month for one year, and may disburse funds of the estate in payment of the family allowance. 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.

Part 5

Chapter 30.1-08

30.1-08-01 (2-501). WHO MAY MAKE A WILL.) Any adult who is of sound mind may make a will.

30.1-08-02 (2-502). EXECUTION.) Except as provided for holographic wills, writings within section 30.1-08-13, and wills within section 30.1-08-06, every will shall be in writing signed by the testator or in the testator's name by some other person in the testator's presence and by his direction, and shall be signed by at least two persons, each of whom witnessed either the signing or the testator's acknowledgment of the signature or of the will.

30.1-08-03 (2-503). HOLOGRAPHIC WILL.) A will which does not comply with section 30.1-08-02 is valid as a holographic will, whether or not witnessed, if the signature and the material provisions are in the handwriting of the testator.

30.1-08-04 (2-504). SELF-PROVED WILL.) An attested will may at the time of its execution or at any subsequent date be made self-proved, by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of this state, and evidenced by the officer's certificate, under official seal, attached or annexed to the will in form and content substantially as follows:

THE STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

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

\_\_\_\_\_  
Testator

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

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

(SEAL)

(Signed) \_\_\_\_\_

\_\_\_\_\_  
(Official capacity of officer)

30.1-08-05 (2-505). WHO MAY WITNESS.) 1. Any person generally competent to be a witness may act as a witness to a will.

2. A will or any provision thereof is not invalid because the will is signed by an interested witness.

30.1-08-06 (2-506). CHOICE OF LAW AS TO EXECUTION.) A written will is valid if executed in compliance with sections 30.1-08-02 or 30.1-08-03 or if its execution complies with the law at the time of execution of the place where the will is executed, or of the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode, or is a national.

30.1-08-07 (2-507). REVOCATION BY WRITING OR BY ACT.)  
A will or any part thereof is revoked:

1. By a subsequent will which revokes the prior will or part expressly or by inconsistency; or
2. By being burned, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking it by the testator or by another person in his presence and by his direction.

30.1-08-08 (2-508). REVOCATION BY DIVORCE - NO REVOCATION BY OTHER CHANGES OF CIRCUMSTANCES.) If after executing a will the testator is divorced or his marriage annulled, the divorce 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 divorce 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 section, divorce or annulment means any divorce or annulment which would exclude the spouse as a surviving spouse within the meaning of section 30.1-10-02. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section. No change of circumstances other than as described in this section revokes a will.

30.1-08-09 (2-509). REVIVAL OF REVOKED WILL.) 1. If a will which, had it remained effective at death, would have revoked a prior will in whole or in part, is thereafter revoked by acts under section 30.1-08-07, the prior will is revoked in whole or in part unless it is evident from the circumstances of the revocation of the will or from testator's contemporary or subsequent declarations that he intended the prior will to take effect as executed.

2. If a will which, had it remained effective at death, would have revoked a prior will in whole or in part, is thereafter revoked by a subsequent will, the prior will is revoked in whole or in part, except to the extent it appears from the terms of the subsequent will that the testator intended the prior will to take effect.

30.1-08-10 (2-510). INCORPORATION BY REFERENCE.) Any writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

30.1-08-11 (2-511). TESTAMENTARY ADDITIONS TO TRUSTS.) A devise or bequest, the validity of which is determinable by the law of this state, may be made by a will to the trustee of a trust established or to be established by the testator or by the testator and some other person or by some other person, 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 is not invalid because the trust is amendable or revocable, 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:

1. Is not deemed to be held under a testamentary trust of the testator but becomes a part of the trust to which it is given; and
2. 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 causes the devise to lapse.

30.1-08-12 (2-512). EVENTS OF INDEPENDENT SIGNIFICANCE.) A will may dispose of property by reference to acts and events which have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of a will of another person is such an event.



30.1-08-13 (2-513). SEPARATE WRITING IDENTIFYING BEQUEST OF TANGIBLE PROPERTY.) Whether or not the provisions relating to holographic wills apply, a will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money, evidences of indebtedness, documents of title, and securities, and property used in trade or business. To be admissible under this section as evidence of the intended disposition, the writing must either be in the handwriting of the testator or be signed by him and must describe the items and the devisees with reasonable certainty. The writing may be referred to as one to be in existence at the time of the testator's death; it may be prepared before or after the execution of the will; it may be altered by the testator after its preparation; and it may be a writing which has no significance apart from its effect upon the dispositions made by the will.

## Part 6

### Chapter 30.1-09

30.1-09-01 (2-601). REQUIREMENT THAT DEVISEE SURVIVE TESTATOR BY ONE HUNDRED TWENTY HOURS.) A devisee who does not survive the testator by one hundred twenty hours is treated as if he predeceased the testator, unless the will of decedent contains some language dealing explicitly with simultaneous deaths or deaths in a common disaster, or requiring that the devisee survive the testator or survive the testator for a stated period in order to take under the will.

30.1-09-02 (2-602). CHOICE OF LAW AS TO MEANING AND EFFECT OF WILLS.) The meaning and legal effect of a disposition in a will shall be determined by the local law of a particular state selected by the testator in his instrument unless the application of that law is contrary to the provisions relating to the elective share described in chapter 30.1-05, the provisions relating to exempt property and allowances described in chapter 30.1-07, or any other public policy of this state otherwise applicable to the disposition.

30.1-09-03 (2-603). RULES OF CONSTRUCTION AND INTENTION.) The intention of a testator as expressed in his will controls the legal effect of his dispositions. The rules of construction expressed in the succeeding sections of this chapter apply unless a contrary intention is indicated by the will.

30.1-09-04 (2-604). CONSTRUCTION THAT WILL PASSES ALL PROPERTY - AFTER-ACQUIRED PROPERTY.) A will is construed to pass all property which the testator owns at his death including property acquired after the execution of the will.

30.1-09-05 (2-605). ANTI-LAPSE - DECEASED DEVISEE - CLASS GIFTS.) If a devisee who is a grandparent or a lineal descendant of a grandparent of the testator is dead at the time of execution of the will, fails to survive the testator, or is treated as if he predeceased

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

**30.1-09-06 (2-606). FAILURE OF TESTAMENTARY PROVISION.)**

1. Except as provided in section 30.1-09-05, if a devise other than a residuary devise fails for any reason, it becomes a part of the residue.

2. Except as provided in section 30.1-09-05, if the residue is devised to two or more persons and the share of one of the residuary devisees fails for any reason, his share passes to the other residuary devisee, or to other residuary devisees in proportion to their interests in the residue.

**30.1-09-07 (2-607). CHANGE IN SECURITIES - ACCESSIONS - NONADEMPTION.)** 1. If the testator intended a specific devise of certain securities rather than the equivalent value thereof, the specific devisee is entitled only to:

- a. As much of the devised securities as is a part of the estate at the time of the testator's death;
- b. Any additional or other securities of the same entity owned by the testator by reason of action initiated by the entity excluding any acquired by exercise of purchase options;
- c. Securities of another entity owned by the testator as a result of a merger, consolidation, reorganization, or other similar action initiated by the entity; and
- d. Any additional securities of the entity owned by the testator as a result of a plan of reinvestment if it is a regulated investment company.

2. Distributions prior to death with respect to a specifically devised security not provided for in subsection 1 of this section are not part of the specific devise.

**30.1-09-08 (2-608). NONADEMPTION OF SPECIFIC DEVISES IN CERTAIN CASES - SALE BY CONSERVATOR - UNPAID PROCEEDS OF SALE, CONDEMNATION, OR INSURANCE.)** 1. If specifically devised property is sold by a conservator, or if a condemnation award or insurance proceeds are paid to a conservator as a result of condemnation, fire, or casualty, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the condemnation award, or the insurance proceeds. This subsection does not apply if, subsequent to the sale, condemnation, or casualty, it is adjudicated that the disability of the testator has ceased and the testator survives the adjudication

by one year. The right of the specific devisee under this subsection is reduced by any right he has under subsection 2 of this section.

2. A specific devisee has the right to the remaining specifically devised property and:

- a. Any balance of the purchase price, together with any security interest, owing from a purchaser to the testator at death by reason of sale of the property;
- b. Any amount of a condemnation award for the taking of the property unpaid at death;
- c. Any proceeds unpaid at death on fire or casualty insurance on the property; and
- d. Property owned by testator at his death as a result of foreclosure, or obtained in lieu of foreclosure, of the security for a specifically devised obligation.

30.1-09-09 (2-609). NONEXONERATION.) A specific devise passes subject to any security interest existing at the date of death, without right of exoneration, regardless of a general directive in the will to pay debts.

30.1-09-10 (2-610). EXERCISE OF POWER OF APPOINTMENT.) A general residuary clause in a will, or a will making general disposition of all of the testator's property, does not exercise a power of appointment held by the testator unless specific reference is made to the power or there is some other indication of intention to include the property subject to the power.

30.1-09-11 (2-611). CONSTRUCTION OF GENERIC TERMS TO ACCORD WITH RELATIONSHIPS AS DEFINED FOR INTESTATE SUCCESSION.) Halfbloods, adopted persons, and persons born out of wedlock are included in class gift terminology and terms of relationship in accordance with rules for determining relationships for purposes of intestate succession, but a person born out of wedlock is not treated as the child of the father unless the person is openly and notoriously so treated by the father.

30.1-09-12 (2-612). ADEMPTION BY SATISFACTION.) Property which a testator gave in his lifetime to a person is treated as a satisfaction of a devise to that person in whole or in part, only if the will provides for deduction of the lifetime gift, or the testator declares in a contemporaneous writing that the gift is to be deducted from the devise or is in satisfaction of the devise, or the devisee acknowledges in writing that the gift is in satisfaction. For the purpose of partial satisfaction, property given during lifetime is valued as of the time the devisee came into possession or enjoyment of the property or as of the time of death of the testator, whichever occurs first.

## Part 7

## 30.1-09-13 (2-701). CONTRACTS CONCERNING SUCCESSION.)

A contract to make a will or devise, or not to revoke a will or devise, or to die intestate, if executed after the effective date of this title, can be established only by:

1. Provisions of a will stating material provisions of the contract;
2. An express reference in a will to a contract and extrinsic evidence proving the terms of the contract; or
3. A writing signed by the decedent evidencing the contract.

The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.

## Part 8

## Chapter 30.1-10

## 30.1-10-01 (2-801). RENUNCIATION OF SUCCESSION.) 1. A

person, or his personal representative, who is an heir, devisee, person succeeding to a renounced interest, beneficiary under a testamentary instrument, or person designated to take pursuant to a power of appointment exercised by a testamentary instrument, may renounce, in whole or in part, the succession to any property or interest therein by filing a written instrument within the time and at the place hereinafter provided. The instrument shall:

- a. Describe the property or part thereof or interest therein renounced;
- b. Be signed by the person renouncing; and
- c. Declare the renunciation and the extent thereof.

2. The writing specified in subsection 1 must be filed within six months after the death of the decedent or the donee of the power, or, if the taker of the property is not then finally ascertained, not later than six months after the event by which the taker or the interest is finally ascertained. The writing must be filed in the court of the county where proceedings concerning the decedent's estate are pending, or where they would be pending if commenced. A copy of the writing also shall be mailed to the personal representative of the decedent.

3. Unless the decedent or donee of the power has otherwise indicated by his will, the interest renounced, and any future interest which is to take effect in possession or enjoyment at or after the termination of the interest renounced, passes as if the person renouncing had predeceased the decedent, or if the person renouncing is one designated to take pursuant to a power of appointment exercised by a testamentary instrument, as if the person renouncing had predeceased the donee of the power. In every case the renunciation relates back for all

purposes to the date of death of the decedent or the donee, as the case may be.

4. Any assignment, conveyance, encumbrance, pledge, or transfer of property therein or any contract therefor; any written waiver of the right to renounce or any acceptance of property by an heir, devisee, person succeeding to a renounced interest, beneficiary, or person designated to take pursuant to a power of appointment exercised by testamentary instrument; or any sale or other disposition of property pursuant to judicial process, made before the expiration of the period in which he is permitted to renounce, bars the right to renounce as to the property.

5. The right to renounce granted by this section exists irrespective of any limitation on the interest of the person renouncing in the nature of a spendthrift provision or similar restriction.

6. This section does not abridge the right of any person to assign, convey, release, or renounce any property arising under any other section of this title or other state.

7. Any interest in property which exists on the effective date of this section, 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 renounced after the effective date of this section as provided herein. An interest which has arisen prior to the effective date of this section in any person other than the person renouncing is not destroyed or diminished by any action of the person renouncing taken under this section.

30.1-10-02 (2-802). EFFECT OF DIVORCE, ANNULMENT, AND DECREE OF SEPARATION.) 1. A person who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, he is married to the decedent at the time of death. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section.

2. For purposes of chapters 30.1-04 through 30.1-07, a surviving spouse does not include:

- a. A person who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless they subsequently participate in a marriage ceremony purporting to marry each to the other, or subsequently live together as man and wife;
- b. A person who, following a decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third person; or
- c. A person who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.

**30.1-10-03 (2-803). EFFECT OF HOMICIDE ON INTTESTATE SUCCESSION, WILLS, JOINT ASSETS, LIFE INSURANCE, AND BENEFICIARY DESIGNATIONS.)**

1. A surviving spouse, heir, or devisee who feloniously and intentionally kills the decedent is not entitled to any benefits under the will or under chapters 30.1-04 through 30.1-11, 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.

2. 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 his property and the killer has no rights by survivorship. This provision applies to joint tenancies in real and personal property, joint accounts in banks, savings and loan associations, credit unions, and other institutions, and any other form of co-ownership with survivorship incidents.

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

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

5. 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.

6. 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.

**Part 9**

**Chapter 30.1-11**

**30.1-11-01 (2-901). DEPOSIT OF WILL WITH COURT IN TESTATOR'S LIFETIME.)** A will may be deposited by the testator or his agent with any court for safekeeping, under rules of the court. The will shall be kept confidential. During the testator's lifetime a deposited will shall be delivered only to him or to a person authorized in a writing signed by him to receive the will. A conservator may be allowed to examine a deposited will of a protected testator under procedures designed

to maintain the confidential character of the document to the extent possible, and to assure that it will be resealed and left on deposit after the examination. Upon being informed of the testator's death, the court shall notify any person designated to receive the will and deliver it to him on request; or the court may deliver the will to the appropriate court.

30.1-11-02. (2-902). DUTY OF CUSTODIAN OF WILL LIABILITY.)

After the death of a testator and on request of an interested person, any person having custody of a will of the testator shall deliver it with reasonable promptness to a person able to secure its probate, and if none is known, to an appropriate court. Any person who wilfully fails to deliver a will is liable to any person aggrieved for the damages which may be sustained by the failure. Any person who wilfully refuses or fails to deliver a will after being ordered by the court in a proceeding brought for the purpose of compelling delivery is subject to penalty for contempt of court.

ARTICLE III

Part 1

Chapter 30.1-12

30.1-12-01 (3-101). DEVOLUTION OF ESTATE AT DEATH - RESTRICTIONS.) The power of a person to leave property by will, and the rights of creditors, devisees, and heirs to his property are subject to the restrictions and limitations contained in this title to facilitate the prompt settlement of estates. Upon the death of a person, his real and personal property devolves to the persons to whom it is devised by his last will or to those indicated as substitutes for them in cases involving lapse, renunciation, or other circumstances affecting the devolution of testate estate, or in the absence of testamentary disposition, to his heirs, or to those indicated as substitutes for them in cases involving renunciation or other circumstances affecting devolution of intestate estates, subject to homestead allowance, exempt property and family allowance, to rights of creditors, elective share of the surviving spouse, and to administration.

30.1-12-02 (3-102). NECESSITY OF ORDER OF PROBATE FOR WILL.) Except as provided in section 30.1-23-01, to be effective to prove the transfer of any property or to nominate an executor, a will must be declared to be valid by an order of informal probate or an adjudication of probate by the court, except that a duly executed and unrevoked will which has not been probated may be admitted as evidence of a devise if:

1. No court proceeding concerning the succession or administration of the estate has occurred; and
2. Either the devisee or his successors and assigned possessed the property devised in accordance with the provisions of the will, or the property devised was not possessed or claimed by anyone by virtue of the decedent's title during the time period for testacy proceedings.

30.1-12-03 (3-103). NECESSITY OF APPOINTMENT FOR ADMINISTRATION.) Except as otherwise provided in chapters 30.1-24 through 30.1-25, to acquire the powers and undertake the duties and liabilities of a personal representative of a decedent, a person must be appointed by order of the court, qualify, and be issued letters. Administration of an estate is commenced by the issuance of letters.

30.1-12-04 (3-104). CLAIMS AGAINST DECEDENT - NECESSITY OF ADMINISTRATION.) No proceeding to enforce a claim against the estate of a decedent or his successors may be revived or commenced before the appointment of a personal representative. After the appointment and until distribution, all proceedings and actions to enforce a claim against the estate are governed by the procedure prescribed by chapters 30.1-12 through 30.1-23. After distribution, a creditor whose claim has not been barred may recover from the distributees as provided in section 30.1-21-04, or from a former personal representative individually liable as provided in section 30.1-21-05. This section has no application to a proceeding by a secured creditor of the decedent to enforce his right to his security except as to any deficiency judgment which might be sought therein.

30.1-12-05 (3-105). PROCEEDINGS AFFECTING DEVOLUTION AND ADMINISTRATION - JURISDICTION OF SUBJECT MATTER.) Persons interested in decedents' estates may apply to the court for determination in the informal proceedings provided in chapters 30.1-12 through 30.1-23, and may petition the court for orders in formal proceedings within the court's jurisdiction including but not limited to those described in chapters 30.1-12 through 30.1-23. The court has exclusive jurisdiction of formal proceedings to determine how decedents' estates subject to the laws of this state are to be administered, expended, and distributed, including actions to determine title to property alleged to belong to the state and of any action or proceeding in which property distributed by a personal representative or its value is sought to be subjected to rights of creditors or successors of the decedent.

30.1-12-06 (3-106). PROCEEDINGS WITHIN THE EXCLUSIVE JURISDICTION OF COURT - SERVICE - JURISDICTION OVER PERSONS.) In proceedings within the exclusive jurisdiction of the court where notice is required by this title or by rule, interested persons may be bound by the orders of the court in respect to property in or subject to the laws of this state by notice in conformity with section 30.1-03-01. An order is binding as to all who are given notice of the proceeding though less than all interested persons are notified.

30.1-12-07 (3-107). SCOPE OF PROCEEDINGS - PROCEEDINGS INDEPENDENT - EXCEPTION.) Unless supervised administration as described in chapter 30.1-16 is involved, each proceeding before the court is independent of any other proceeding involving the same estate; petitions for formal orders of the court may combine various requests for relief in a single proceeding if the orders sought may be finally granted without delay. Except as required for proceedings which are particularly described by other sections of chapters 30.1-12 through 30.1-23, no petition is defective because it fails to embrace all matters which might then be the subject of a final order; proceedings for probate



of wills or adjudications of no will may be combined with proceedings for appointment of personal representatives; and a proceeding for appointment of personal representative is concluded by an order making or declining the appointment.

30.1-12-08 (3-108). PROBATE, TESTACY, AND APPOINTMENT PROCEEDINGS ULTIMATE TIME LIMIT.) No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than three years after the decedent's death, except:

1. If a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment, or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding;
2. Appropriate probate, appointment, or testacy proceedings may be maintained in relation to the estate of an absent, disappeared, or missing person for whose estate a conservator has been appointed, at any time within three years after the conservator becomes able to establish the death of the protected person; and
3. A proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful, may be commenced within the later of twelve months from the informal probate or three years from the decedent's death.

These limitations do not apply to proceedings to construe probated wills or determine heirs of an intestate. In cases under subsections 1 or 2, the date on which a testacy or appointment proceeding is properly commenced shall be deemed to be the date of the decedent's death for purposes of other limitations provisions of this title which relate to the date of death.

30.1-12-09 (3-109). STATUTES OF LIMITATION ON DECEDENT'S CAUSE OF ACTION.) No statute of limitation running on a cause of action belonging to a decedent which had not been barred as of the date of his death, shall apply to bar a cause of action surviving the decedent's death sooner than four months after death. A cause of action which, but for this section, would have been barred less than four months after death, is barred after four months unless tolled.

## Part 2

### Chapter 30.1-13

30.1-13-01 (3-201). VENUE FOR FIRST AND SUBSEQUENT ESTATE PROCEEDINGS - LOCATION OF PROPERTY.) 1. Venue for the first

informal or formal testacy or appointment proceedings after a decedent's death is:

- a. In the county where the decedent had his domicile at the time of his death; or
- b. If the decedent was not domiciled in this state, in any county where property of the decedent was located at the time of his death.

2. Venue for all subsequent proceedings within the exclusive jurisdiction of the court is in the place where the initial proceeding occurred, unless the initial proceeding has been transferred as provided in section 30.1-02-01 or subsection 3 of this section.

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

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

30.1-13-02 (3-202). APPOINTMENT OR TESTACY PROCEEDINGS - CONFLICTING CLAIM OF DOMICILE IN ANOTHER STATE.) If conflicting claims as to the domicile of a decedent are made in a formal testacy or appointment proceeding commenced in this state, and in a testacy or appointment proceeding after notice pending at the same time in another state, the court of this state must stay, dismiss, or permit suitable amendment in the proceeding here unless it is determined that the local proceeding was commenced before the proceeding elsewhere. The determination of domicile in the proceeding first commenced must be accepted as determinative in the proceeding in this state.

30.1-13-03 (3-203). PRIORITY AMONG PERSONS SEEKING APPOINTMENT AS PERSONAL REPRESENTATIVE.) 1. Whether the proceedings are formal or informal, persons who are not disqualified have priority for appointment in the following order:

- a. The person with priority as determined by a probated will including a person nominated by a power conferred in a will.
- b. The surviving spouse of the decedent who is a devisee of the decedent.
- c. Other devisees of the decedent.

- d. The surviving spouse of the decedent.
- e. Other heirs of the decedent.
- f. Forty-five days after the death of the decedent, any creditor.

2. An objection to an appointment can be made only in formal proceedings. In case of objection the priorities stated in subsection 1 apply, except that:

- a. If the estate appears to be more than adequate to meet exemptions and costs of administration but inadequate to discharge anticipated unsecured claims, the court, on petition of creditors, may appoint any qualified person; or
- b. In case of objection to appointment of a person other than one whose priority is determined by will by an heir or devisee appearing to have a substantial interest in the estate, the court may appoint a person who is acceptable to heirs and devisees whose interests in the estate appear to be worth in total more than half of the probable distributable value, or, in default of this accord, any suitable person.

3. A person entitled to letters under subdivisions b through e of subsection 1 may nominate a qualified person to act as personal representative. Any person may renounce his right to nominate or to an appointment by appropriate writing filed with the court. When two or more persons share a priority, those who do not renounce must concur in nominating another to act for them, or in applying for appointment.

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

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

6. No person is qualified to serve as a personal representative who is:

- a. Under the age of eighteen; or
- b. A person whom the court finds unsuitable in formal proceedings.

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

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

30.1-13-04 (3-204). DEMAND FOR NOTICE OF ORDER OR FILING CONCERNING DECEDENT'S ESTATE.) Any person desiring notice of any order or filing pertaining to a decedent's estate in which he has a financial or property interest, may file a demand for notice with the court, at any time after the death of the decedent, stating the name of the decedent, the nature of his interest in the estate, and the demandant's address or that of his attorney. The clerk shall mail a copy of the demand to the personal representative, if one has been appointed. After filing of a demand, no order or filing to which the demand relates shall be made or accepted without notice, as prescribed in section 30.1-03-01, to the demandant or his attorney. The validity of an order which is issued or filing which is accepted without compliance with this requirement shall not be affected by the error, but the petitioner receiving the order or the person making the filing may be liable for any damage caused by the absence of notice. The requirement of notice arising from a demand under this provision may be waived in writing by the demandant and shall cease upon the termination of his interest in the estate.

### Part 3

#### Chapter 30.1-14

30.1-14-01 (3-301). INFORMAL PROBATE OR APPOINTMENT PROCEEDINGS - APPLICATION - CONTENTS.) Applications for informal probate or informal appointment shall be directed to the court, and verified by the applicant to be accurate and complete to the best of his knowledge and belief as to the following information:

1. Every application for informal probate of a will or for informal appointment of a personal representative, other than a special or successor representative, shall contain the following:
  - a. A statement of the interest of the applicant;
  - b. The name and date of death of the decedent, his age, and the county and state of his domicile at the time of death, and the names and addresses of the spouse, children, heirs, and devisees, and the ages of any who are minors so far as known or ascertainable with reasonable diligence by the applicant;

- c. If the decedent was not domiciled in the state at the time of his death, a statement showing venue;
  - d. A statement identifying and indicating the address of any personal representative of the decedent appointed in this state or elsewhere whose appointment has not been terminated; and
  - e. A statement indicating whether the applicant has received a demand for notice, or is aware of any demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere.
2. An application for informal probate of a will shall state the following, in addition to the statements required by subsection 1:
- a. That the original of the decedent's last will is in the possession of the court, or accompanies the application, or that an authenticated copy of a will probated in another jurisdiction accompanies the application;
  - b. That the applicant, to the best of his knowledge, believes the will to have been validly executed;
  - c. That after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the will, and that the applicant believes that the instrument which is the subject of the application is the decedent's last will; and
  - d. That the time limit for informal probate as provided in chapters 30.1-12 through 30.1-23 has not expired either because three years or less have passed since the decedent's death, or, if more than three years from death have passed, that circumstances as described in section 30.1-12-08 authorizing tardy probate have occurred.
3. An application for informal appointment of a personal representative to administer an estate under a will shall describe the will by date of execution and state the time and place of probate or the pending application or petition for probate. The application for appointment shall adopt the statements in the application or petition for probate and state the name, address, and priority for appointment of the person whose appointment is sought.
4. An application for informal appointment of an administrator in intestacy shall state, in addition to the statements required by subsection 1:
- a. That after the exercise of reasonable diligence, the applicant is unaware of any unrevoked testamentary instrument

relating to property having a situs in this state under section 30.1-02-01, or, a statement why any such instrument of which he may be aware is not being probated; and

- b. The priority of the person whose appointment is sought and the names of any other persons having a prior or equal right to the appointment under section 30.1-13-03.
5. An application for appointment of a personal representative to succeed a personal representative appointed under a different testacy status shall refer to the order in the most recent testacy proceeding, state the name and address of the person whose appointment is sought and of the person whose appointment will be terminated if the application is granted, and describe the priority of the applicant.
6. An application for appointment of a personal representative to succeed a personal representative who has tendered a resignation as provided in subsection 3 of section 30.1-17-10, or whose appointment has been terminated by death or removal, shall adopt the statements in the application or petition which led to the appointment of the person being succeeded except as specifically changed or corrected, state the name and address of the person who seeks appointment as successor, and describe the priority of the applicant.

30.1-14-02 (3-302). INFORMAL PROBATE - DUTY OF COURT - EFFECT OF INFORMAL PROBATE.) Upon receipt of an application requesting informal probate of a will, the court, upon making the findings required by section 30.1-14-03, shall issue a written statement of informal probate if at least one hundred twenty hours have elapsed since the decedent's death. Informal probate is conclusive as to all persons until superseded by an order in a formal testacy proceeding. No defect in the application or procedure relating thereto which leads to informal probate of a will renders the probate void.

30.1-14-03 (3-303). INFORMAL PROBATE - PROOF AND FINDINGS REQUIRED.) 1. In an informal proceeding for original probate of a will, the court shall determine whether:

- a. The application is complete;
- b. The applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief;
- c. The applicant appears from the application to be an interested person as defined in subsection 20 of section 30.1-01-06;
- d. On the basis of the statements in the application, venue is proper;
- e. An original, duly executed, and apparently unrevoked will is in the court's possession;

- f. Any notice required by section 30.1-13-04 has been given and that the application is not within section 30.1-14-04; and
- g. It appears from the application that the time limit for original probate has not expired.

2. The application shall be denied if it indicates that a personal representative has been appointed in another county of this state or, except as provided in subsection 4 below, if it appears that this or another will of the decedent has been the subject of a previous probate order.

3. A will which appears to have the required signatures and which contains an attestation clause showing that requirements of execution under sections 30.1-08-02, 30.1-08-03, or 30.1-08-06 have been met shall be probated without further proof. In other cases, the court may assume execution if the will appears to have been properly executed, or he may accept a sworn statement or affidavit of any person having knowledge of the circumstances of execution, whether or not the person was a witness to the will.

4. Informal probate of a will which has been previously probated elsewhere may be granted at any time upon written application by any interested person, together with deposit of an authenticated copy of the will and of the statement probating it from the office or court where it was first probated.

5. A will from a place which does not provide for probate of a will after death and which is not eligible for probate under subsection 1 of this section, may be probated in this state upon receipt by the court of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of the other place.

30.1-14-04 (3-304). INFORMAL PROBATE - UNAVAILABLE IN CERTAIN CASES.) Applications for informal probate which relate to one or more of a known series of testamentary instruments, other than wills and codicils, the latest of which does not expressly revoke the earlier, shall be declined.

30.1-14-05 (3-305). INFORMAL PROBATE - COURT NOT SATISFIED.) If the court is not satisfied that a will is entitled to be probated in informal proceedings because of failure to meet the requirements of sections 30.1-14-03 and 30.1-14-04, or for any other reason, it may decline the application. A declination of informal probate is not an adjudication and does not preclude formal probate proceedings.

30.1-14-06 (3-306). INFORMAL PROBATE - NOTICE REQUIREMENTS.) The moving party must give notice as described in section 30.1-03-01 of his application for informal probate to any person demanding it pursuant to section 30.1-13-04; and to any personal representative of the decedent whose appointment has not been terminated. No other notice of informal probate is required.

**30.1-14-07 (3-307). INFORMAL APPOINTMENT PROCEEDINGS - DELAY IN ORDER - DUTY OF COURT - EFFECT OF APPOINTMENT.)**

1. Upon receipt of an application for informal appointment of a personal representative other than a special administrator as provided in section 30.1-17-14, if at least one hundred twenty hours have elapsed since the decedent's death, the court, after making the findings required by section 30.1-14-08, shall appoint the applicant subject to qualification and acceptance; provided, that if the decedent was a nonresident, the court shall delay the order of appointment until thirty days have elapsed since death unless the personal representative appointed at the decedent's domicile is the applicant, or unless the decedent's will directs that his estate be subject to the laws of this state.

2. The status of personal representative and the powers and duties pertaining to the office are fully established by informal appointment. An appointment, and the office of personal representative created thereby, is subject to termination as provided in sections 30.1-17-08 through 30.1-17-12, but is not subject to retroactive vacation.

**30.1-14-08 (3-308). INFORMAL APPOINTMENT PROCEEDINGS - PROOF AND FINDINGS REQUIRED.)** 1. In informal appointment proceedings, the court must determine whether:

- a. The application for informal appointment of a personal representative is complete;
- b. The applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief;
- c. The applicant appears from the application to be an interested person as defined in subsection 20 of section 30.1-01-06;
- d. On the basis of the statements in the application, venue is proper;
- e. Any will to which the requested appointment relates has been formally or informally probated; but this requirement does not apply to the appointment of a special administrator;
- f. Any notice required by section 30.1-13-04 has been given; and
- g. From the statements in the application, the person whose appointment is sought has priority entitling him to the appointment.

2. Unless section 30.1-17-12 controls, the application must be denied if it indicates that a personal representative who has not filed a written statement of resignation as provided in subsection 3 of section 30.1-17-10 has been appointed in this or another county of this state, that, unless the applicant is the domiciliary personal representative or his nominee, the decedent was not domiciled in this state and that a personal representative whose appointment has not been terminated has been appointed by a court in the state of domicile, or that other requirements of this section have not been met.



30.1-14-09 (3-309). INFORMAL APPOINTMENT PROCEEDINGS - COURT NOT SATISFIED.) If the court is not satisfied that a requested informal appointment of a personal representative should be made because of failure to meet the requirements of sections 30.1-14-07 and 30.1-14-08, or for any other reason, it may decline the application. A declination of informal appointment is not an adjudication and does not preclude appointment in formal proceedings.

30.1-14-10 (3-310). INFORMAL APPOINTMENT PROCEEDINGS - NOTICE REQUIREMENTS.) The moving party must give notice as described by section 30.1-03-01 of his intention to seek an appointment informally:

1. To any person demanding it pursuant to section 30.1-13-04; and
2. To any person having a prior or equal right to appointment not waived in writing and filed with the court.

No other notice of an informal appointment proceeding is required.

30.1-14-11 (3-311). INFORMAL APPOINTMENT UNAVAILABLE IN CERTAIN CASES.) If an application for informal appointment indicates the existence of a possible unrevoked testamentary instrument which may relate to property subject to the laws of this state, and which is not filed for probate in this court, the court shall decline the application.

#### Part 4

#### Chapter 30.1-15

30.1-15-01 (3-401). FORMAL TESTACY PROCEEDINGS - NATURE - WHEN COMMENCED.) 1. A formal testacy proceeding is litigation to determine whether a decedent left a valid will. A formal testacy proceeding may be commenced by an interested person filing a petition as described in subsection 1 of section 30.1-15-02 in which he requests that the court, after notice and hearing, enter an order probating a will, or a petition to set aside an informal probate of a will or to prevent informal probate of a will which is the subject of a pending application, or a petition in accordance with subsection 2 of section 30.1-15-02 for an order that the decedent died intestate.

2. A petition may seek formal probate of a will without regard to whether the same or a conflicting will has been informally probated. A formal testacy proceeding may, but need not, involve a request for appointment of a personal representative.

3. During the pendency of a formal testacy proceeding, the court shall not act upon any application for informal probate of any will of the decedent or any application for informal appointment of a personal representative of the decedent.

4. Unless a petition in a formal testacy proceeding also requests confirmation of the previous informal appointment, a previously appointed personal representative, after receipt of notice of the commencement of a formal probate proceeding, must refrain from exercising his power

to make any further distribution of the estate during the pendency of the formal proceeding. A petitioner who seeks the appointment of a different personal representative in a formal proceeding also may request an order restraining the acting personal representative from exercising any of the powers of his office and requesting the appointment of a special administrator. In the absence of a request, or if the request is denied, the commencement of a formal proceeding has no effect on the powers and duties of a previously appointed personal representative other than those relating to distribution.

30.1-15-02 (3-402). FORMAL TESTACY OR APPOINTMENT PROCEEDINGS - PETITION - CONTENTS.) 1. Petitions for formal probate of a will, or for adjudication of intestacy with or without request for appointment of a personal representative, must be directed to the court, request a judicial order after notice and hearing, and contain further statements as indicated in this section. A petition for formal probate of a will:

- a. Requests an order as to the testacy of the decedent in relation to a particular instrument which may or may not have been informally probated and determining the heirs;
- b. Contains the statements required for informal applications as stated in the five subdivisions under subsection 1 of section 30.1-14-01, the statements required by subdivisions b and c of subsection 2 of section 30.1-14-01; and
- c. States whether the original of the last will of the decedent is in the possession of the court or accompanies the petition.

If the original will is neither in the possession of the court nor accompanies the petition and no authenticated copy of a will probated in another jurisdiction accompanies the petition, the petition also must state the contents of the will, and indicate that it is lost, destroyed, or otherwise unavailable.

2. A petition for adjudication of intestacy and appointment of an administrator in intestacy must request a judicial finding and order that the decedent left no will and determining the heirs, contain the statements required by subsections 1 and 4 of section 30.1-14-01 and indicate whether supervised administration is sought. A petition may request an order determining intestacy and heirs without requesting the appointment of an administrator, in which case the statements required by subdivision b of subsection 4 of section 30.1-14-01 may be omitted.

30.1-15-03 (3-403). FORMAL TESTACY PROCEEDING - NOTICE OF HEARING ON PETITION.) 1. Upon commencement of a formal testacy proceeding, the court shall fix a time and place of hearing. Notice shall be given in the manner prescribed by section 30.1-13-01 by the petitioner to the persons herein enumerated and to any additional person who has filed a demand for notice under section 30.1-13-04.

Notice shall be given to the following persons: the surviving spouse, children, and other heirs of the decedent; the devisees and executors named in any will that is being, or has been, probated,

or offered for informal or formal probate in the county, or that is known by the petitioner to have been probated, or offered for informal or formal probate elsewhere; and any personal representative of the decedent whose appointment has not been terminated. Notice may be given to other persons. In addition, the petitioner shall give notice by publication to all unknown persons and to all known persons whose addresses are unknown who have any interest in the matters being litigated.

2. If it appears by the petition or otherwise that the fact of the death of the alleged decedent may be in doubt, or on the written demand of any interested person, a copy of the notice of the hearing on said petition shall be sent by registered mail to the alleged decedent at his last known address. The court shall direct the petitioner to report the results of, or make and report back concerning, a reasonably diligent search for the alleged decedent in any manner that may seem advisable, including any or all of the following methods:

- a. By inserting in one or more suitable periodicals a notice requesting information from any person having knowledge of the whereabouts of the alleged decedent;
- b. By notifying law enforcement officials and public welfare agencies in appropriate locations of the disappearance of the alleged decedent; or
- c. By engaging the services of an investigator.

The costs of any search so directed shall be paid by the petitioner if there is no administration or by the estate of the decedent in case there is administration.

30.1-15-04 (3-404). FORMAL TESTACY PROCEEDINGS - WRITTEN OBJECTIONS TO PROBATE.) Any party to a formal proceeding who opposes the probate of a will for any reason shall state in his pleadings his objections to probate of the will.

30.1-15-05 (3-405). FORMAL TESTACY PROCEEDINGS - UNCONTESTED CASES - HEARINGS AND PROOF.) If a petition in a testacy proceeding is unopposed, the court may order probate or intestacy on the strength of the pleadings if satisfied that the conditions of section 30.1-15-09 have been met, or conduct a hearing in open court and require proof of the matters necessary to support the order sought. If evidence concerning execution of the will is necessary, the affidavit or testimony of one of any attesting witnesses to the instrument is sufficient. If the affidavit or testimony of an attesting witness is not available, execution of the will may be proved by other evidence or affidavit.

30.1-15-06 (3-406). FORMAL TESTACY PROCEEDINGS - CONTESTED CASES - TESTIMONY OF ATTESTING WITNESSES.) 1. If evidence concerning execution of an attested will which is not self-proved is necessary in contested cases, the testimony of at least one of the attesting witnesses, if within the state, competent, and able to testify, is required. Due execution of an attested or unattested will may be proved by other evidence.

2. If the will is self-proved, compliance with signature requirements for execution is conclusively presumed and other requirements of execution are presumed, subject to rebuttal, without the testimony of any witness upon filing the will and the acknowledgment and affidavits annexed or attached thereto, unless there is proof of fraud or forgery affecting the acknowledgment or affidavit.

30.1-15-07 (3-407). FORMAL TESTACY PROCEEDINGS - BURDENS IN CONTESTED CASES.) In contested cases, petitioners who seek to establish intestacy have the burden of establishing prima facie proof of death, venue, and heirship. Proponents of a will have the burden of establishing prima facie proof of due execution in all cases, and, if they are also petitioners, prima facie proof of death and venue. Contestants of a will have the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake, or revocation. Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof. If a will is opposed by the petition for probate of a later will revoking the former, it shall be determined first whether the later will is entitled to probate, and if a will is opposed by a petition for a declaration of intestacy, it shall be determined first whether the will is entitled to probate.

30.1-15-08 (3-408). FORMAL TESTACY PROCEEDINGS - WILL CONSTRUCTION - EFFECT OF FINAL ORDER IN ANOTHER JURISDICTION.) A final order of a court of another state determining testacy, the validity or construction of a will, made in a proceeding involving notice to and an opportunity for contest by all interested persons must be accepted as determinative by the courts of this state if it includes, or is based upon, a finding that the decedent was domiciled at his death in the state where the order was made.

30.1-15-09 (3-409). FORMAL TESTACY PROCEEDINGS - ORDER - FOREIGN WILL.) After the time required for any notice has expired, upon proof of notice, and after any hearing that may be necessary, if the court finds that the testator is dead, venue is proper, and that the proceeding was commenced within the limitation prescribed in section 30.1-12-08, it shall determine the decedent's domicile at death, his heirs, and his state of testacy. Any will found to be valid and unrevoked shall be formally probated. Termination of any previous informal appointment of a personal representative, which may be appropriate in view of the relief requested and findings, is governed by section 30.1-17-12. The petition shall be dismissed or appropriate amendment allowed if the court is not satisfied that the alleged decedent is dead. A will from a place which does not provide for probate of a will after death, may be proved for probate in this state by a duly authenticated certificate of its legal custodian that the copy introduced is a true copy and that the will has become effective under the law of the other place.

30.1-15-10 (3-410). FORMAL TESTACY PROCEEDINGS - PROBATE OF MORE THAN ONE INSTRUMENT.) If two or more instruments are offered for probate before a final order is entered in a formal testacy proceeding, more than one instrument may be probated if neither expressly revokes the other or contains provisions which work a total revocation by implication. If more than one instrument is probated, the order

shall indicate what provisions control in respect to the nomination of an executor, if any. The order may, but need not, indicate how any provisions of a particular instrument are affected by the other instrument. After a final order in a testacy proceeding has been entered, no petition for probate of any other instrument of the decedent may be entertained, except incident to a petition to vacate or modify a previous probate order and subject to the time limits of section 30.1-15-12.

30.1-15-11 (3-411). FORMAL TESTACY PROCEEDINGS - PARTIAL INTESTACY.) If it becomes evident in the course of a formal testacy proceeding that, though one or more instruments are entitled to be probated, the decedent's estate is or may be partially intestate, the court shall enter an order to that effect.

30.1-15-12 (3-412). FORMAL TESTACY PROCEEDINGS - EFFECT OF ORDER - VACATION.) Subject to appeal and subject to vacation as provided herein and in section 30.1-15-13, a formal testacy order under sections 30.1-15-09 through 30.1-15-11, including an order that the decedent left no valid will and determining heirs, is final as to all persons with respect to all issues concerning the decedent's estate that the court considered or might have considered incident to its rendition relevant to the question of whether the decedent left a valid will, and to the determination of heirs, except that:

1. The court shall entertain a petition for modification or vacation of its order and probate of another will of the decedent if it is shown that the proponents of the later-offered will were unaware of its existence at the time of the earlier proceeding or were unaware of the earlier proceeding and were given no notice thereof, except by publication.
2. If intestacy of all or part of the estate has been ordered, the determination of heirs of the decedent may be reconsidered if it is shown that one or more persons were omitted from the determination and it is also shown that the persons were unaware of their relationship to the decedent, were unaware of his death, or were given no notice of any proceeding concerning his estate, except by publication.
3. A petition for vacation under either subsections 1 or 2 of this section must be filed prior to the earlier of the following time limits:
  - a. If a personal representative has been appointed for the estate, the time of entry of any order approving final distribution of the estate, or, if the estate is closed by statement, six months after the filing of the closing statement.
  - b. Whether or not a personal representative has been appointed for the estate of the decedent, the time prescribed by section 30.1-12-08 when it is no longer possible to initiate an original proceeding to probate a will of the decedent.

- c. Twelve months after the entry of the order sought to be vacated.
4. The order originally rendered in the testacy proceeding may be modified or vacated, if appropriate under the circumstances, by the order of probate of the later-offered will or the order redetermining heirs.
5. The finding of the fact of death is conclusive as to the alleged decedent only if notice of the hearing on the petition in the formal testacy proceeding was sent by registered or certified mail addressed to the alleged decedent at his last known address and the court finds that a search under subsection 2 of section 30.1-15-03 was made.

If the alleged decedent is not dead, even if notice was sent and search was made, he may recover estate assets in the hands of the personal representative. In addition to any remedies available to the alleged decedent by reason of any fraud or intentional wrongdoing, the alleged decedent may recover any of the estate or its proceeds from distributees which is in their hands, or the value of distributions received by them, to the extent that any recovery from distributees is equitable in view of all of the circumstances.

30.1-15-13 (3-413). FORMAL TESTACY PROCEEDINGS - VACATION OF ORDER FOR OTHER CAUSE.) For good cause shown, an order in a formal testacy proceeding may be modified or vacated within the time allowed for appeal.

30.1-15-14 (3-414). FORMAL PROCEEDINGS CONCERNING APPOINTMENT OF PERSONAL REPRESENTATIVE.) 1. A formal proceeding for adjudication regarding the priority or qualification of one who is an applicant for appointment as personal representative, or of one who previously has been appointed personal representative in informal proceedings, if an issue concerning the testacy of the decedent is or may be involved, is governed by section 30.1-15-02, as well as by this section. In other cases, the petition shall contain or adopt the statements required by subsection 1 of section 30.1-14-01 and describe the question relating to priority or qualification of the personal representative which is to be resolved. If the proceeding precedes any appointment of a personal representative, it shall stay any pending informal appointment proceedings as well as any commenced thereafter. If the proceeding is commenced after appointment, the previously appointed personal representative, after receipt of notice thereof, shall refrain from exercising any power of administration except as necessary to preserve the estate or unless the court orders otherwise.

2. After notice to interested persons, including all persons interested in the administration of the estate as successors under the applicable assumption concerning testacy, any previously appointed personal representative and any person having or claiming priority for appointment as personal representative, the court shall determine

who is entitled to appointment under section 30.1-13-03, make a proper appointment and, if appropriate, terminate any prior appointment found to have been improper as provided in cases of removal under section 30.1-17-11.

## Part 5

### Chapter 30.1-16

30.1-16-01 (3-501). SUPERVISED ADMINISTRATION - NATURE OF PROCEEDING.) Supervised administration is a single in rem proceeding to secure complete administration and settlement of a decedent's estate under the continuing authority of the court which extends until entry of an order approving distribution of the estate and discharging the personal representative, or other order terminating the proceeding. A supervised personal representative is responsible to the court, as well as to the interested parties, and is subject to directions concerning the estate made by the court on its own motion or on the motion of any interested party. Except as otherwise provided in this chapter, or as otherwise ordered by the court, a supervised personal representative has the same duties and powers as a personal representative who is not supervised.

30.1-16-02 (3-502). SUPERVISED ADMINISTRATION - PETITION - ORDER.) A petition for supervised administration may be filed by any interested person or by a personal representative at any time or the request for supervised administration may be joined with a petition in a testacy or appointment proceeding. If the testacy of the decedent and the priority and qualification of any personal representative have not been adjudicated previously, the petition for supervised administration shall include the matters required of a petition in a formal testacy proceeding and the notice requirements and procedures applicable to a formal testacy proceeding apply. If not previously adjudicated, the court shall adjudicate the testacy of the decedent and questions relating to the priority and qualifications of the personal representative in any case involving a request for supervised administration, even though the request for supervised administration may be denied. After notice to interested persons, the court shall order supervised administration of a decedent's estate:

1. If the decedent's will directs supervised administration, it shall be ordered unless the court finds that circumstances bearing on the need for supervised administration have changed since the execution of the will and that there is no necessity for supervised administration;
2. If the decedent's will directs unsupervised administration, supervised administration shall be ordered only upon a finding that it is necessary for protection of persons interested in the estate; or
3. In other cases if the court finds that supervised administration is necessary under the circumstances.

30.1-16-03 (3-503). SUPERVISED ADMINISTRATION - EFFECT ON OTHER PROCEEDINGS.) 1. The pendency of a proceeding for supervised administration of a decedent's estate stays action on any informal application then pending or thereafter filed.

2. If a will has been previously probated in informal proceedings, the effect of the filing of a petition for supervised administration is as provided for formal testacy proceedings by section 30.1-15-01.

3. After he has received notice of the filing of a petition for supervised administration, a personal representative who has been appointed previously shall not exercise his power to distribute any estate. The filing of the petition does not affect his other powers and duties unless the court restricts the exercise of any of them pending full hearing on the petition.

30.1-16-04 (3-504). SUPERVISED ADMINISTRATION - POWERS OF PERSONAL REPRESENTATIVE.) Unless restricted by the court, a supervised personal representative has, without interim orders approving exercise of a power, all powers of personal representatives under this title, but he shall not exercise his power to make any distribution of the estate without prior order of the court. Any other restriction on the power of a personal representative which may be ordered by the court must be endorsed on his letters of appointment and, unless so endorsed, is ineffective as to persons dealing in good faith with the personal representative.

30.1-16-05 (3-505). SUPERVISED ADMINISTRATION - INTERIM ORDERS - DISTRIBUTION AND CLOSING ORDERS.) Unless otherwise ordered by the court, supervised administration is terminated by order in accordance with time restrictions, notices, and contents of orders prescribed for proceedings under section 30.1-21-01. Interim orders approving or directing partial distributions or granting other relief may be issued by the court at any time during the pendency of a supervised administration on the application of the personal representative or any interested person.

## Part 6

### Chapter 30.1-17

30.1-17-01 (3-601). QUALIFICATION.) Prior to receiving letters, a personal representative shall qualify by filing with the appointing court any required bond and a statement of acceptance of the duties of the office.

30.1-17-02 (3-602). ACCEPTANCE OF APPOINTMENT - CONSENT TO JURISDICTION.) By accepting appointment, a personal representative submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be delivered to the personal representative, or mailed to him by ordinary first class mail at his address as listed in the application or petition for appointment or as thereafter reported



to the court and to his address as then known to the petitioner.

30.1-17-03 (3-603). BOND NOT REQUIRED WITHOUT COURT ORDER -EXCEPTIONS.) No bond is required of a personal representative appointed in informal proceedings, except:

1. Upon the appointment of a special administrator;
2. When an executor or other personal representative is appointed to administer an estate under a will containing an express requirement of bond; or
3. When bond is required under section 30.1-17-05.

Bond may be required by court order at the time of appointment of a personal representative appointed in any formal proceeding, except that bond is not required of a personal representative appointed in formal proceedings if the will relieves the personal representative of bond, unless bond has been requested by an interested party and the court is satisfied that it is desirable. Bond required by any will may be dispensed with in formal proceedings upon determination by the court that it is not necessary. No bond is required of any personal representative who, pursuant to statute, has deposited cash or collateral with an agency of this state to secure performance of his duties.

30.1-17-04 (3-604). BOND AMOUNT - SECURITY - PROCEDURE - REDUCTION.) If bond is required and the provisions of the will or order do not specify the amount, unless stated in his application or petition, the person qualifying shall file a statement under oath with the court indicating his best estimate of the value of the personal estate of the decedent and of the income expected from the personal and real estate during the next year, and he shall execute and file a bond with the court, or give other suitable security, in an amount not less than the estimate. The court shall determine that the bond is duly executed by a corporate surety, or one or more individual sureties whose performance is secured by pledge of personal property, mortgage on real property or other adequate security. The court may permit the amount of the bond to be reduced by the value of assets of the estate deposited with a domestic financial institution (as defined in section 30.1-31-01) in a manner that prevents their unauthorized disposition. On petition of the personal representative or another interested person the court may excuse a requirement of bond, increase or reduce the amount of the bond, release sureties, or permit the substitution of another bond with the same or different sureties.

30.1-17-05 (3-605). DEMAND FOR BOND BY INTERESTED PERSON.) Any person apparently having an interest in the estate worth in excess of one thousand dollars, or any creditor having a claim in excess of one thousand dollars, may make a written demand that a personal representative give bond. The demand must be filed with the court and a copy mailed to the personal representative if appointment and

qualification have occurred. Thereupon, bond is required, but the requirement ceases if the person demanding bond ceases to be interested in the estate, or if bond is excused as provided in sections 30.1-17-03 or 30.1-17-04. After he has received notice and until the filing of the bond or cessation of the requirement of bond, the personal representative shall refrain from exercising any powers of his office except as necessary to preserve the estate. Failure of the personal representative to meet a requirement of bond by giving suitable bond within thirty days after receipt of notice is cause for his removal and appointment of a successor personal representative.

30.1-17-06 (3-606). TERMS AND CONDITIONS OF BONDS.)

1. The following requirements and provisions apply to any bond required by this chapter:

- a. Bonds shall name the state of North Dakota as obligee for the benefit of the persons interested in the estate and shall be conditioned upon the faithful discharge by the fiduciary of all duties according to law.
- b. Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the personal representative and with each other. The address of sureties shall be stated in the bond.
- c. By executing an approved bond of a personal representative, the surety consents to the jurisdiction of the probate court which issued letters to the primary obligor in any proceedings pertaining to the fiduciary duties of the personal representative and naming the surety as a party. Notice of any proceeding shall be delivered to the surety or mailed to him by registered or certified mail at his address as listed with the court where the bond is filed and to his address as then known to the petitioner.
- d. On petition of a successor personal representative, any other personal representative of the same decedent, or any interested person, a proceeding in the court may be initiated against a surety for breach of the obligation of the bond of the personal representative.
- e. The bond of the personal representative is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

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

30.1-17-07 (3-607). ORDER RESTRAINING PERSONAL REPRESENTATIVE.) 1. On petition of any person who appears to have an interest in the estate, the court, by temporary order, may restrain a personal representative from performing specified acts of administration, disbursement, or distribution, or exercise of any powers or discharge of

any duties of his office, or make any other order to secure proper performance of his duty, if it appears to the court that the personal representative otherwise may take some action which would jeopardize unreasonably the interest of the applicant or of some other interested person. Persons with whom the personal representative may transact business may be made parties.

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

30.1-17-08 (3-608). **TERMINATION OF APPOINTMENT - GENERAL.)** Termination of appointment of a personal representative occurs as indicated in sections 30.1-17-09 through 30.1-17-12. Termination ends the right and power pertaining to the office of personal representative as conferred by this title or any will, except that a personal representative, at any time prior to distribution or until restrained or enjoined by court order, may perform acts necessary to protect the estate and may deliver the assets to a successor representative. Termination does not discharge a personal representative from liability for transactions or omissions occurring before termination, or relieve him of the duty to preserve assets subject to his control, to account therefor and to deliver the assets. Termination does not affect the jurisdiction of the court over the personal representative, but terminates his authority to represent the estate in any pending or future proceeding.

30.1-17-09 (3-609). **TERMINATION OF APPOINTMENT - DEATH OR DISABILITY.)** The death of a personal representative or the appointment of a conservator for the estate of a personal representative, terminates his appointment. Until appointment and qualification of a successor or special representative to replace the deceased or protected representative, the representative of the estate of the deceased or protected personal representative, if any, has the duty to protect the estate possessed and being administered by his decedent or ward at the time his appointment terminates, has the power to perform acts necessary for protection and shall account for and deliver the estate assets to a successor or special personal representative upon his appointment and qualification.

30.1-17-10 (3-610). **TERMINATION OF APPOINTMENT - VOLUNTARY.)**  
1. An appointment of a personal representative terminates as provided in section 30.1-21-03, one year after the filing of a closing statement.

2. An order closing an estate as provided in sections 30.1-21-01 or 30.1-21-02 terminates an appointment of a personal representative.

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

of a successor representative and delivery of the assets to him.

30.1-17-11 (3-611). **TERMINATION OF APPOINTMENT BY REMOVAL - CAUSE - PROCEDURE.)** 1. A person interested in the estate may petition for removal of a personal representative for cause at any time. Upon filing of the petition, the court shall fix a time and place for hearing. Notice shall be given by the petitioner to the personal representative, and to other persons as the court may order. Except as otherwise ordered as provided in section 30.1-17-07, after receipt of notice of removal proceedings, the personal representative shall not act except to account, to correct maladministration or preserve the estate. If removal is ordered, the court also shall direct by order the disposition of the assets remaining in the name of, or under the control of, the personal representative being removed.

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

30.1-17-12 (3-612). **TERMINATION OF APPOINTMENT - CHANGE OF TESTACY STATUS.)** Except as otherwise ordered in formal proceedings, the probate of a will subsequent to the appointment of a personal representative in intestacy or under a will which is superseded by formal probate of another will, or the vacation of an informal probate of a will subsequent to the appointment of the personal representative thereunder, does not terminate the appointment of the personal representative although his powers may be reduced as provided in section 30.1-15-01. Termination occurs upon appointment in informal or formal appointment proceedings of a person entitled to appointment under the later assumption concerning testacy. If no request for new appointment is made within 30 days after expiration of time for appeal from the order in formal testacy proceedings, or from the informal probate, changing the assumption concerning testacy, the previously appointed personal representative upon request may be appointed personal representative under the subsequently probated will, or as in intestacy, as the case may be.

30.1-17-13 (3-613). **SUCCESSOR PERSONAL REPRESENTATIVE.)** Chapters 30.1-14 and 30.1-15 govern proceedings for appointment of a personal representative to succeed one whose appointment has been terminated. After appointment and qualification, a successor personal representative may be substituted in all actions and proceedings to which the former personal representative was a party, and no notice, process, or claim which was given or served upon the former

personal representative need be given to or served upon the successor in order to preserve any position or right the person giving the notice or filing the claim may thereby have obtained or preserved with reference to the former personal representative. Except as otherwise ordered by the court, the successor personal representative has the powers and duties in respect to the continued administration which the former personal representative would have had if his appointment had not been terminated.

**30.1-17-14 (3-614). SPECIAL ADMINISTRATOR - APPOINTMENT.)**

A special administrator may be appointed:

1. Informally by the court on the application of any interested person when necessary to protect the estate of a decedent prior to the appointment of a general personal representative or if a prior appointment has been terminated as provided in section 30.1-17-09; or
2. In a formal proceeding by order of the court on the petition of any interested person and finding, after notice and hearing, that appointment is necessary to preserve the estate or to secure its proper administration including its administration in circumstances where a general personal representative cannot or should not act. If it appears to the court that an emergency exists, appointment may be ordered without notice.

**30.1-17-15 (3-615). SPECIAL ADMINISTRATOR - WHO MAY BE APPOINTED.)** 1. If a special administrator is to be appointed pending the probate of a will which is the subject of a pending application or petition for probate, the person named executor in the will shall be appointed if available and qualified.

2. In other cases, any proper person may be appointed special administrator.

**30.1-17-16 (3-616). SPECIAL ADMINISTRATOR - APPOINTED INFORMALLY - POWERS AND DUTIES.)** A special administrator appointed by the court in informal proceedings pursuant to subsection 1 of section 30.1-17-14 has the duty to collect and manage the assets of the estate, to preserve them, to account therefor, and to deliver them to the general personal representative upon his qualification. The special administrator has the power of a personal representative, under this title, necessary to perform his duties.

**30.1-17-17 (3-617). SPECIAL ADMINISTRATOR - FORMAL PROCEEDINGS - POWER AND DUTIES.)** A special administrator appointed by order of the court in any formal proceeding has the power of a general personal representative, except as limited in the appointment, and duties as prescribed in the order. The appointment may be for a specified time, to perform particular acts, or on other terms as the court may direct.

30.1-17-18 (3-618). **TERMINATION OF APPOINTMENT - SPECIAL ADMINISTRATOR.**) The appointment of a special administrator terminates in accordance with the provisions of the order of appointment or on the appointment of a general personal representative. In other cases, the appointment of a special administrator is subject to termination as provided in sections 30.1-17-08 through 30.1-17-11.

## Part 7

### Chapter 30.1-18

30.1-18-01 (3-701). **TIME OF ACCRUAL OF DUTIES AND POWERS.**) The duties and powers of a personal representative commence upon his appointment. The powers of a personal representative relate back in time to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter. Prior to appointment, a person named executor in a will may carry out written instructions of the decedent relating to his body, funeral, and burial arrangements. A personal representative may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative.

30.1-18-02 (3-702). **PRIORITY AMONG DIFFERENT LETTERS.**) A person to whom general letters are issued first has exclusive authority under the letters until his appointment is terminated or modified. If, through error, general letters are afterwards issued to another, the first appointed representative may recover any property of the estate in the hands of the representative subsequently appointed, but the acts of the latter done in good faith before notice of the first letters are not void for want of validity of appointment.

30.1-18-03 (3-703). **GENERAL DUTIES - RELATION AND LIABILITY TO PERSONS INTERESTED IN ESTATE - STANDING TO SUE.**)

1. A personal representative is a fiduciary who shall observe the standards of care applicable to trustees as described by section 30.1-34-02. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this title, and as expeditiously and efficiently as is consistent with the best interests of the estate. He shall use the authority conferred upon him by this title, the terms of the will, if any, and any order in proceedings to which he is party for the best interests of successors to the estate.

2. A personal representative shall not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration, an informally probated will is authority to administer and distribute the estate according to its terms. An order of appointment of a personal representative, whether issued in informal or formal proceedings, is authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding

questioning his appointment or fitness to continue, or a supervised administration proceeding. Nothing in this section affects the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants, the surviving spouse, any minor and dependent children, and any pretermitted child of the decedent as described elsewhere in this title.

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

30.1-18-04 (3-704). PERSONAL REPRESENTATIVE TO PROCEED WITHOUT COURT ORDER - EXCEPTION.) A personal representative shall proceed expeditiously with the settlement and distribution of a decedent's estate and, except as otherwise specified or ordered in regard to a supervised personal representative, do so without adjudication, order, or direction of the court, but he may invoke the jurisdiction of the court, in proceedings authorized by this title, to resolve questions concerning the estate or its administration.

30.1-18-05 (3-705). DUTY OF PERSONAL REPRESENTATIVE - INFORMATION TO HEIRS AND DEVISEES.) Not later than thirty days after his appointment every personal representative, except any special administrator, shall give information of his appointment to the heirs and devisees, including, if there has been no formal testacy proceeding and if the personal representative was appointed on the assumption that the decedent died intestate, the devisees in any will mentioned in the application for appointment of a personal representative. The information shall be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the personal representative. The duty does not extend to require information to persons who have been adjudicated in a prior formal testacy proceeding to have no interest in the estate. The information shall include the name and address of the personal representative, indicate that it is being sent to persons who have or may have some interest in the estate being administered, indicate whether bond has been filed, and describe the court where papers relating to the estate are on file. The personal representative's failure to give this information is a breach of his duty to the persons concerned but does not affect the validity of his appointment, his powers, or other duties. A personal representative may inform other persons of his appointment by delivery or ordinary first-class mail.

30.1-18-06 (3-706). DUTY OF PERSONAL REPRESENTATIVE - INVENTORY AND APPRAISEMENT.) 1. Within three months after his appointment, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall prepare and file or mail an inventory of property owned by the decedent at the time of his death, listing it with reasonable detail, and indicating as to each listed item, its fair market value as of the date of the decedent's death, and the type and amount of any encumbrance that may exist with reference

to any item.

2. The personal representative shall send a copy of the inventory to interested persons who request it, or he may file the original of the inventory with the court.

30.1-18-07 (3-707). EMPLOYMENT OF APPRAISERS.) The personal representative may employ a qualified and disinterested appraiser to assist him in ascertaining the fair market value as of the date of the decedent's death of any asset the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser shall be indicated on the inventory with the item or items he appraised.

30.1-18-08 (3-708). DUTY OF PERSONAL REPRESENTATIVE - SUPPLEMENTARY INVENTORY.) If any property not included in the original inventory comes to the knowledge of a personal representative or if the personal representative learns that the value or description indicated in the original inventory for any item is erroneous or misleading, he shall make a supplementary inventory or appraisal showing the market value as of the date of the decedent's death of the new item or the revised market value or descriptions, and the appraisers or other data relied upon, if any, and file it with the court if the original inventory was filed, or furnish copies thereof or information thereof to persons interested in the new information.

30.1-18-09 (3-709). DUTY OF PERSONAL REPRESENTATIVE - POSSESSION OF ESTATE.) Except as otherwise provided by a decedent's will, every personal representative has a right to, and shall take possession or control of, the decedent's property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled thereto unless or until, in the judgment of the personal representative, possession of the property by him will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by an heir or devisee is conclusive evidence, in any action against the heir or devisee for possession thereof, that the possession of the property by the personal representative is necessary for purposes of administration. The personal representative shall pay taxes on, and take all steps reasonably necessary for the management, protection and preservation of, the estate in his possession. He may maintain an action to recover possession of property or to determine the title thereto.

30.1-18-10 (3-710). POWER TO AVOID TRANSFERS.) The property liable for the payment of unsecured debts of a decedent includes all property transferred by him by any means which is in law void or voidable as against his creditors, and subject to prior liens, the right to recover this property, so far as necessary for the payment of unsecured debts of the decedent, is exclusively in the personal representative.



30.1-18-11 (3-711). **POWERS OF PERSONAL REPRESENTATIVES - IN GENERAL.**) Until termination of his appointment a personal representative has the same power over the title to property of the estate that an absolute owner would have, in trust however, for the benefit of the creditors and others interested in the estate. This power may be exercised without notice, hearing, or order of court.

30.1-18-12 (3-712). **IMPROPER EXERCISE OF POWER - BREACH OF FIDUCIARY DUTY.**) If the exercise of power concerning the estate is improper, the personal representative is liable to interested persons for damage or loss resulting from breach of his fiduciary duty to the same extent as a trustee of an express trust. The rights of purchasers and others dealing with a personal representative shall be determined as provided in sections 30.1-18-13 and 30.1-18-14.

30.1-18-13 (3-713). **SALE, ENCUMBRANCE OR TRANSACTION INVOLVING CONFLICT OF INTEREST - VOIDABLE - EXCEPTIONS.**) Any sale or encumbrance to the personal representative, his spouse, agent or attorney, or any corporation or trust in which he has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest on the part of the personal representative, is voidable by any person interested in the estate except one who has consented after fair disclosure, unless:

1. The will or a contract entered into by the decedent expressly authorized the transaction; or
2. The transaction is approved by the court after notice to interested persons.

30.1-18-14 (3-714). **PERSONS DEALING WITH PERSONAL REPRESENTATIVE - PROTECTION.**) A person who in good faith either assists a personal representative or deals with him for value is protected as if the personal representative properly exercised his power. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise. Except for restrictions on powers of supervised personal representatives which are endorsed on letters as provided in section 30.1-16-04, no provision in any will or order of court purporting to limit the power of a personal representative is effective except as to persons with actual knowledge thereof. A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive. The protection here expressed is not in substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

30.1-18-15 (3-715). TRANSACTIONS AUTHORIZED FOR PERSONAL REPRESENTATIVES - EXCEPTIONS.) Except as restricted or otherwise provided by the will or by an order in a formal proceeding and subject to the priorities stated in section 30.1-20-02, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

1. Retain assets owned by the decedent pending distribution or liquidation including those in which the representative is personally interested or which are otherwise improper for trust investment;
2. Receive assets from fiduciaries, or other sources;
3. Perform, compromise, or refuse performance of the decedent's contracts that continue as obligations of the estate, as he may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:
  - a. Execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or
  - b. Deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement;
4. Satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;
5. If funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including moneys received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements or other prudent investments which would be reasonable for use by trustees generally;
6. Acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale; and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;
7. Make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing or erect new party walls or buildings;

8. Subdivide, develop, or dedicate land to public use, make or obtain the vacation of plats and adjust boundaries, adjust differences in valuation on exchange or partition by giving or receiving considerations, or dedicate easements to public use without consideration;
9. Enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration;
10. Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;
11. Abandon property when, in the opinion of the personal representative, it is valueless, or is so encumbered, or is in condition that it is of no benefit to the estate;
12. Vote stocks or other securities in person or by general or limited proxy;
13. Pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;
14. Hold a security in the name of a nominee or in other form without disclosure of the interest of the estate but the personal representative is liable for any act of the nominee in connection with the security so held;
15. Insure the assets of the estate against damage, loss, and liability and himself against liability as to third persons;
16. Borrow money with or without security to be repaid from the estate assets or otherwise; and advance money for the protection of the estate;
17. Effect a fair and reasonable compromise with any debtor or obligor, or extend, renew, or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge, or other lien upon property of another person, he may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien;
18. Pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate;
19. Sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

20. Allocate items of income or expense to either estate income or principal, as permitted or provided by law;
21. Employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of his administrative duties, and act, without independent investigation, upon their recommendations. Instead of acting personally, he may employ one or more agents to perform any act of administration, whether or not discretionary;
22. Prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of his duties;
23. Sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit, or for part cash and part credit, and with or without security for unpaid balances;
24. Continue any unincorporated business or venture in which the decedent was engaged at the time of his death:
  - a. In the same business form for a period of not more than four months from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business including good will;
  - b. In the same business form for any additional period of time that may be approved by order of the court in a formal proceeding to which the persons interested in the estate are parties; or
  - c. Throughout the period of administration if the business is incorporated by the personal representative and if none of the probable distributees of the business who are competent adults object to its incorporation and retention in the estate;
25. Incorporate any business or venture in which the decedent was engaged at the time of his death;
26. Provide for exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate; and
27. Satisfy and settle claims and distribute the estate as provided in this title.

**30.1-18-16 (3-716). POWERS AND DUTIES OF SUCCESSOR PERSONAL REPRESENTATIVE.)** A successor personal representative has the same power and duty as the original personal representative to complete the administration and distribution of the estate as expeditiously as possible, but he shall not exercise any power expressly made personal to the executor named in the will.

**30.1-18-17 (3-717). CO-REPRESENTATIVES - WHEN JOINT ACTION REQUIRED.)** If two or more persons are appointed co-representatives and unless the will provides otherwise, the concurrence of all is required on all acts connected with the administration and distribution of the estate. This restriction does not apply when any co-representative receives and receipts for property due the estate, when the concurrence of all cannot readily be obtained in the time reasonably available for emergency action necessary to preserve the estate, or when a co-representative has been delegated to act for the others. Persons dealing with a co-representative if actually unaware that another has been appointed to serve with him or if advised by the personal representative with whom they deal that he has authority to act alone for any of the reasons mentioned herein, are as fully protected as if the person with whom they dealt had been the sole personal representative.

**30.1-18-18 (3-718). POWERS OF SURVIVING PERSONAL REPRESENTATIVE.)** Unless the terms of the will otherwise provide, every power exercisable by personal co-representatives may be exercised by the one or more remaining after the appointment of one or more is terminated, and if one of two or more nominated as co-executors is not appointed, those appointed may exercise all the powers incident to the office.

**30.1-18-19 (3-719). COMPENSATION OF PERSONAL REPRESENTATIVE.)** A personal representative is entitled to reasonable compensation for his services. If a will provides for compensation of the personal representative and there is no contract with the decedent regarding compensation, he may renounce the provision before qualifying and be entitled to reasonable compensation. A personal representative also may renounce his right to all or any part of the compensation. A written renunciation of fee may be filed with the court.

**30.1-18-20 (3-720). EXPENSES IN ESTATE LITIGATION.)** If any personal representative or person nominated as personal representative defends or prosecutes any proceeding in good faith, whether successful or not, he is entitled to receive from the estate his necessary expenses and disbursements, including reasonable attorneys' fees incurred.

**30.1-18-21 (3-721). PROCEEDINGS FOR REVIEW OF EMPLOYMENT OF AGENTS AND COMPENSATION OF PERSONAL REPRESENTATIVES AND EMPLOYEES OF ESTATE.)** After notice to all interested persons, or on petition of an interested person, or on appropriate motion if administration is supervised, the propriety of employment of any person by a personal representative including any attorney, auditor,

investment advisor, or other specialized agent or assistant, the reasonableness of the compensation of any person so employed, or the reasonableness of the compensation determined by the personal representative for his own services, may be reviewed by the court. Any person who has received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.

## Part 8

### Chapter 30.1-19

30.1-19-01 (3-801). NOTICE TO CREDITORS.) Unless notice has already been given under this section, a personal representative upon his appointment shall publish a notice once a week for three successive weeks in a newspaper of general circulation in the county announcing his appointment and address and notifying creditors of the estate to present their claims within four months after the date of the first publication of the notice or be forever barred.

30.1-19-02 (3-802). STATUTES OF LIMITATIONS.) Unless an estate is insolvent, the personal representative, with the consent of all successors, may waive any defense of limitations available to the estate. If the defense is not waived, no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid. The running of any statute of limitations measured from some other event than death and advertisement for claims against a decedent is suspended during the four months following the decedent's death but resumes thereafter as to claims not barred pursuant to the sections which follow. For purposes of any statute of limitations, the proper presentation of a claim under section 30.1-19-04 is equivalent to commencement of a proceeding on the claim.

#### 30.1-19-03 (3-803). LIMITATIONS ON PRESENTATION OF CLAIMS.)

1. All claims against a decedent's estate which arose before the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

- a. Within four months after the date of the first publication of notice to creditors if notice is given in compliance with section 30.1-19-01; provided, claims barred by the nonclaim statute at the decedent's domicile before the first publication for claims in this state are also barred in this state.
- b. Within three years after the decedent's death, if notice to creditors has not been published.

2. All claims against a decedent's estate which arise at or after the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

- a. A claim based on a contract with the personal representative, within four months after performance by the personal representative is due; and
  - b. Any other claim, within four months after it arises.
3. Nothing in this section affects or prevents:
- a. Any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate; or
  - b. To the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by liability insurance.

30.1-19-04 (3-804). MANNER OF PRESENTATION OF CLAIMS.)

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

1. The claimant may deliver or mail to the personal representative a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed, or may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court. The claim is deemed presented on the first to occur, either receipt of the written statement of claim by the personal representative, or the filing of the claim with the court. If a claim is not yet due, the date when it will become due shall be stated. If the claim is contingent or unliquidated, the nature of the uncertainty shall be stated. If the claim is secured, the security shall be described. Failure to describe correctly the security, the nature of any uncertainty, and the due date of a claim not yet due does not invalidate the presentation made.
2. The claimant may commence a proceeding against the personal representative in any court where the personal representative may be subjected to jurisdiction, to obtain payment of his claim against the estate, but the commencement of the proceeding must occur within the time limited for presenting the claim. No presentation of claim is required in regard to matters claimed in proceedings against the decedent which were pending at the time of his death.

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

30.1-19-05 (3-805). CLASSIFICATION OF CLAIMS.) 1. If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

- a. Costs and expenses of administration;
- b. Reasonable funeral expenses;
- c. Debts and taxes with preference under federal law;
- d. Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him;
- e. Debts and taxes with preference under other laws of this state; and
- f. All other claims.

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

30.1-19-06 (3-806). ALLOWANCE OF CLAIMS.) 1. As to claims presented in the manner described in section 30.1-19-04 within the time limit prescribed in section 30.1-19-03, the personal representative may mail a notice to any claimant stating that the claim has been disallowed. If, after allowing or disallowing a claim, the personal representative changes his decision concerning the claim, he shall notify the claimant. The personal representative may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run and the claim has been barred. Every claim which is disallowed, in whole or in part, by the personal representative is barred so far as not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than sixty days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar. Failure of the personal representative to mail notice to a claimant of action on his claim for sixty days after the time for original presentation of the claim has expired has the effect of a notice of allowance.



2. Upon the petition of the personal representative or of a claimant in a proceeding for the purpose, the court may allow, in whole or in part, any claim or claims presented to the personal representative or filed with the clerk of the court in due time and not barred by subsection 1 of this section. Notice in this proceeding shall be given to the claimant, the personal representative and those other persons interested in the estate as the court may direct, by order entered at the time the proceeding is commenced.

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

4. Unless otherwise provided in any judgment in another court entered against the personal representative, allowed claims bear interest at the legal rate for the period commencing sixty days after the time for original presentation of the claim has expired unless based on a contract making a provision for interest, in which case they bear interest in accordance with that provision.

30.1-19-07 (3-807). PAYMENT OF CLAIMS.) 1. Upon the expiration of four months from the date of the first publication of the notice to creditors, the personal representative shall proceed to pay the claims allowed against the estate in the order of priority prescribed, after making provision for homestead, family, and support allowances, for claims already presented which have not yet been allowed or whose allowance has been appealed, and for unbarred claims which may yet be presented, including costs and expenses of administration. By petition to the court in a proceeding for the purpose, or by appropriate motion if the administration is supervised, a claimant whose claim has been allowed but not paid as provided herein may secure an order directing the personal representative to pay the claim to the extent that funds of the estate are available for the payment.

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

- a. The payment was made before the expiration of the time limit stated in subsection 1 and the personal representative failed to require the payee to give adequate security for the refund of any of the payment necessary to pay other claimants; or
- b. The payment was made, due to the negligence or wilful fault of the personal representative, in such manner as to deprive the injured claimant of his priority.

30.1-19-08 (3-808). **INDIVIDUAL LIABILITY OF PERSONAL REPRESENTATIVE.)** 1. Unless otherwise provided in the contract, a personal representative is not individually liable on a contract properly entered into in his fiduciary capacity in the course of administration of the estate unless he fails to reveal his representative capacity and identify the estate in the contract.

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

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

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

30.1-19-09 (3-809). **SECURED CLAIMS.)** Payment of a secured claim is upon the basis of the amount allowed if the creditor surrenders his security; otherwise payment is upon the basis of one of the following:

1. If the creditor exhausts his security before receiving payment, unless precluded by other law, upon the amount of the claim allowed less the fair value of the security; or
2. If the creditor does not have the right to exhaust his security or has not done so, upon the amount of the claim allowed less the value of the security determined by converting it into money according to the terms of the agreement pursuant to which the security was delivered to the creditor, or by the creditor and personal representative by agreement, arbitration, compromise, or litigation.

30.1-19-10 (3-810). **CLAIMS NOT DUE AND CONTINGENT OR UNLIQUIDATED CLAIMS.)** 1. If a claim which will become due at a future time or a contingent or unliquidated claim becomes due or certain before the distribution of the estate, and if the claim has been allowed or established by a proceeding, it is paid in the same manner as presently due and absolute claims of the same class.

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

- a. If the claimant consents, he may be paid the present or agreed value of the claim, taking any uncertainty into account; or

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

30.1-19-11 (3-811). COUNTERCLAIMS.) In allowing a claim the personal representative may deduct any counterclaim which the estate has against the claimant. In determining a claim against an estate a court shall reduce the amount allowed by the amount of any counterclaims and, if the counterclaims exceed the claim, render a judgment against the claimant in the amount of the excess. A counterclaim, liquidated or unliquidated, may arise from a transaction other than that upon which the claim is based. A counterclaim may give rise to relief exceeding in amount or different in kind from that sought in the claim.

30.1-19-12 (3-812). EXECUTION AND LEVIES PROHIBITED.) No execution may issue upon nor may any levy be made against any property of the estate under any judgment against a decedent or a personal representative, but this section shall not be construed to prevent the enforcement of mortgages, pledges, or liens upon real or personal property in an appropriate proceeding.

30.1-19-13 (3-813). COMPROMISE OF CLAIMS.) When a claim against the estate has been presented in any manner, the personal representative may, if it appears for the best interest of the estate, compromise the claim, whether due or not due, absolute or contingent, liquidated or unliquidated.

30.1-19-14 (3-814). ENCUMBERED ASSETS.) If any assets of the estate are encumbered by mortgage, pledge, lien, or other security interest, the personal representative may pay the encumbrance or any part thereof, renew or extend any obligation secured by the encumbrance, or convey or transfer the assets to the creditor in satisfaction of his lien, in whole or in part, whether or not the holder of the encumbrance has filed a claim, if it appears to be for the best interest of the estate. Payment of an encumbrance does not increase the share of the distributee entitled to the encumbered assets unless the distributee is entitled to exoneration.

30.1-19-15 (3-815). ADMINISTRATION IN MORE THAN ONE STATE - DUTY OF PERSONAL REPRESENTATIVE.) 1. All assets of estates being administered in this state are subject to all claims, allowances, and charges existing or established against the personal representative wherever appointed.

2. If the estate, either in this state or as a whole, is insufficient to cover all family exemptions and allowances determined by the law of the decedent's domicile, prior charges and claims, after satisfaction of the exemptions, allowances, and charges, each claimant whose claim has been allowed either in this state or elsewhere in administrations of which the personal representative is aware, is entitled to receive payment of an equal proportion of his claim. If a preference

or security in regard to a claim is allowed in another jurisdiction but not in this state, the creditor so benefited is to receive dividends from local assets only upon the balance of his claim after deducting the amount of the benefit.

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

30.1-19-16 (3-816). FINAL DISTRIBUTION TO DOMICILIARY REPRESENTATIVE.) The estate of a nonresident decedent being administered by a personal representative appointed in this state shall, if there is a personal representative of the decedent's domicile willing to receive it, be distributed to the domiciliary personal representative for the benefit of the successors of the decedent unless:

1. By virtue of the decedent's will, if any, and applicable choice of law rules, the successors are identified pursuant to the local law of this state without reference to the local law of the decedent's domicile;
2. The personal representative of this state, after reasonable inquiry, is unaware of the existence or identity of a domiciliary personal representative; or
3. The court orders otherwise in a proceeding for a closing order under section 30.1-21-01 or incident to the closing of a supervised administration.

In other cases, distribution of the estate of a decedent shall be made in the manner provided elsewhere in this title.

#### Part 9

#### Chapter 30.1-20

#### 30.1-20-01 (3-901). SUCCESSORS' RIGHTS IF NO ADMINISTRATION.)

In the absence of administration, the heirs and devisees are entitled to the estate in accordance with the terms of a probated will or the laws of intestate succession. Devisees may establish title to devised property by the probated will. Persons entitled to property by homestead allowance, exemption, or intestacy may establish title thereto by proof of the decedent's ownership, his death, and their relationship to the decedent. Successors take subject to all charges incident

to administration, including the claims of creditors and allowances of surviving spouse and dependent children, and subject to the rights of others resulting from abatement, retainer, advancement, and ademption.

**30.1-20-02 (3-902). DISTRIBUTION - ORDER IN WHICH ASSETS APPROPRIATED - ABATEMENT.)** 1. Except as provided in subsection 2 and except as provided in connection with the share of the surviving spouse who elects to take an elective share, shares of distributees abate, without any preference or priority as between real and personal property, in the following order:

- a. Property not disposed of by the will;
- b. Residuary devises;
- c. General devises;
- d. Specific devises.

For purposes of abatement, a general devise charged on any specific property or fund is a specific devise to the extent of the value of the property on which it is charged, and upon the failure or insufficiency of the property on which it is charged, a general devise to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.

2. If the will expresses an order of abatement, or if the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in subsection 1, the shares of the distributees abate as may be found necessary to give effect to the intention of the testator.

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

**30.1-20-03 (3-903). RIGHT OF RETAINER.)** The amount of a noncontingent indebtedness of a successor to the estate if due, or its present value if not due, shall be offset against the successor's interest. But, the successor has the benefit of any defense which would be available to him in a direct proceeding for recovery of the debt.

**30.1-20-04 (3-904). INTEREST ON GENERAL PECUNIARY DEVISE.)** General pecuniary devises bear interest at the legal rate beginning one year after the first appointment of a personal representative until payment, unless a contrary intent is indicated by the will.

**30.1-20-05 (3-905). PENALTY CLAUSE FOR CONTEST.)** A provision in a will purporting to penalize any interested person for contesting the will or instituting other proceedings relating to the

estate is unenforceable if probable cause exists for instituting proceedings.

30.1-20-06 (3-906). DISTRIBUTION IN KIND - VALUATION - METHOD.) 1. Unless a contrary intention is indicated by the will, the distributable assets of a decedent's estate shall be distributed in kind to the extent possible through application of the following provisions:

- a. A specific devisee is entitled to distribution of the thing devised to him, and a spouse or child who has selected particular assets of an estate as provided in section 30.1-07-01 shall receive the items selected.
- b. Any homestead or family allowance or devise payable in money may be satisfied by value in kind provided:
  - (1) The person entitled to the payment has not demanded payment in cash;
  - (2) The property distributed in kind is valued at fair market value as of the date of its distribution; and
  - (3) No residuary devisee has requested that the asset in question remain a part of the residue of the estate.
- c. For the purpose of valuation under subdivision b, securities regularly traded on recognized exchanges, if distributed in kind, are valued at the price for the last sale of like securities traded on the business day prior to distribution, or if there was no sale on that day, at the median between amounts bid and offered at the close of that day. Assets consisting of sums owed the decedent or the estate by solvent debtors as to which there is no known dispute or defense are valued at the sum due with accrued interest or discounted to the date of distribution. For assets which do not have readily ascertainable values, a valuation as of a date not more than thirty days prior to the date of distribution, if otherwise reasonable, controls. For purposes of facilitating distribution, the personal representative may ascertain the value of the assets as of the time of the proposed distribution in any reasonable way, including the employment of qualified appraisers, even if the assets may have been previously appraised.
- d. The residuary estate shall be distributed in kind if there is no objection to the proposed distribution and it is practicable to distribute undivided interests. In other cases, residuary property may be converted into cash for distribution.

2. After the probable charges against the estate are known, the personal representative may mail or deliver a proposal for distribution to all persons who have a right to object to the proposed distribution.

The right of any distributee to object to the proposed distribution on the basis of the kind or value of asset he is to receive, if not waived earlier in writing, terminates if he fails to object in writing received by the personal representative within thirty days after mailing or delivery of the proposal.

**30.1-20-07 (3-907). DISTRIBUTION IN KIND - EVIDENCE.)**

If distribution in kind is made, the personal representative shall execute an instrument or deed of distribution assigning, transferring, or releasing the assets to the distributee as evidence of the distributee's title to the property.

**30.1-20-08 (3-908). DISTRIBUTION - RIGHT OR TITLE OF DISTRIBUTE.)** Proof that a distributee has received an instrument or deed of distribution of assets in kinds, or payment in distribution, from a personal representative, is conclusive evidence that the distributee has succeeded to the interest of the estate in the distributed assets, as against all persons interested in the estate, except that the personal representative may recover the assets or their value if the distribution was improper.

**30.1-20-09 (3-909). IMPROPER DISTRIBUTION - LIABILITY OF DISTRIBUTE.)** Unless the distribution or payment no longer can be questioned because of adjudication, estoppel, or limitation, a distributee of property improperly distributed or paid, or a claimant who was improperly paid, is liable to return the property improperly received and its income since distribution if he has the property. If he does not have the property, then he is liable to return the value as of the date of disposition of the property improperly received and its income and gain received by him.

**30.1-20-10 (3-910). PURCHASERS FROM DISTRIBUTEES PROTECTED.)** If property distributed in kind or a security interest therein is acquired by a purchaser or lender for value from a distributee who has received an instrument or deed of distribution from the personal representative, the purchaser or lender takes title free of any claims of the estate and incurs no personal liability to the estate, whether or not the distribution was proper. To be protected under this provision, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind.

**30.1-20-11 (3-911). PARTITION FOR PURPOSE OF DISTRIBUTION.)** When two or more heirs or devisees are entitled to distribution of undivided interests in any real or personal property of the estate, the personal representative or one or more of the heirs or devisees may petition the district court prior to the formal or informal closing of the estate, to make partition. After notice to the interested heirs or devisees, the district court shall partition the property in the same manner as provided by chapter 32-16. The district court may direct the personal representative to sell any property which cannot be partitioned without prejudice to the owners and which cannot conveniently be allotted to any one party.

**30.1-20-12 (3-912). PRIVATE AGREEMENTS AMONG SUCCESSORS TO DECEDENT BINDING ON PERSONAL REPRESENTATIVE.)** Subject to the rights of creditors and taxing authorities, competent successors may agree among themselves to alter the interests, shares, or amounts to which they are entitled under the will of the decedent, or under the laws of intestacy, in any way that they provide in a written contract executed by all who are affected by its provisions. The personal representative shall abide by the terms of the agreement subject to his obligation to administer the estate for the benefit of creditors, to pay all taxes and costs of administration, and to carry out the responsibilities of his office for the benefit of any successors of the decedent who are not parties. Personal representatives of decedents' estates are not required to see to the performance of trusts if the trustee thereof is another person who is willing to accept the trust. Accordingly, trustees of a testamentary trust are successors for the purposes of this section. Nothing herein relieves trustees of any duties owed to beneficiaries of trusts.

**30.1-20-13 (3-913). DISTRIBUTIONS TO TRUSTEE.)**

1. Before distributing to a trustee, the personal representative may require that the trust be registered if the state in which it is to be administered provides for registration and that the trustee inform the beneficiaries as provided in section 30.1-34-03.

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

3. No inference of negligence on the part of the personal representative shall be drawn from his failure to exercise the authority conferred by subsections 1 and 2.

**30.1-20-14 (3-914). DISPOSITION OF UNCLAIMED ASSETS.)**

1. If an heir, devisee, or claimant cannot be found, the personal representative shall distribute the share of the missing person to his conservator, if any, otherwise to the state treasurer to become a part of the common school fund.

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



**30.1-20-15 (3-915). DISTRIBUTION TO PERSON UNDER DISABILITY.)**

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

**30.1-20-16 (3-916). APPORTIONMENT OF ESTATE TAXES.)****1. For purposes of this section:**

- a. "Estate" means the gross estate of a decedent as determined for the purpose of federal estate tax and the estate tax payable to this state;
- b. "Person" means any individual, partnership, association, joint stock company, corporation, government, political subdivision, governmental agency, or local governmental agency;
- c. "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, conservator, and trustee;
- d. "State" means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico;
- e. "Tax" means the federal estate tax and the additional estate tax imposed by chapter 57-37 and interest and penalties imposed in addition to the tax;
- f. "Fiduciary" means personal representative or trustee.

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

- 3. a. The court in which venue lies for the administration of the estate of a decedent on petition for the purpose may determine the apportionment of the tax.
- b. If the court finds that it is inequitable to apportion interest and penalties in the manner provided in subsection 2 because of special circumstances, it may direct apportionment thereof in the manner it finds equitable.

- c. If the court finds that the assessment of penalties and interest assessed in relation to the tax is due to delay caused by the negligence of the fiduciary, the court may charge him with the amount of the assessed penalties and interest.
  - d. In any action to recover, from any person interested in the estate, the amount of the tax apportioned to the person in accordance with this title the determination of the court in respect thereto shall be prima facie correct.
4. a. The personal representative or other person in possession of the property of the decedent required to pay the tax may withhold from any property distributable to any person interested in the estate, upon its distribution to him, the amount of tax attributable to his interest. If the property in possession of the personal representative or other person required to pay the tax and distributable to any person interested in the estate is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the personal representative or other person required to pay the tax may recover the deficiency from the person interested in the estate. If the property is not in the possession of the personal representative or the other person required to pay the tax, the personal representative or the other person required to pay the tax may recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this title.
- b. If property held by the personal representative is distributed prior to final apportionment of the tax, the distributee shall provide a bond or other security for the apportionment liability in the form and amount prescribed by the personal representative.
5. a. 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.
- b. Any exemption or deduction allowed by reason of the relationship of any person to the decedent or by reason of the purposes of the gift inures to the benefit of the person bearing such relationship or receiving the gift; but if an interest is subject to a prior present interest which is not allowable as a deduction, the tax apportionable against the present interest shall be paid from principal.

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

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

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

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

## Part 10

### Chapter 30.1-21

30.1-21-01 (3-1001). FORMAL PROCEEDINGS TERMINATING ADMINISTRATION - TESTATE OR INTESATE - ORDER OF GENERAL PROTECTION.) 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. 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.

30.1-21-02 (3-1002). FORMAL PROCEEDINGS TERMINATING TESTATE ADMINISTRATION - ORDER CONSTRUING WILL WITHOUT ADJUDICATING TESTACY.) A personal representative administering an estate under an informally probated will or any devisee under an informally probated will may petition for an order of settlement of the estate which will not adjudicate the testacy status of the decedent. The personal representative may petition at any time, and a devisee may petition after one year, from the appointment of the original personal representative, except that no petition under this section may be entertained until the time for presenting claims which arose prior to the death of the decedent has expired. The petition may request the court to consider the final account or compel or approve an accounting and distribution, to construe the will and adjudicate final settlement and distribution of the estate. After notice to all devisees and the personal representative and hearing, the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate under the will, and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any devisee who is a party to the proceeding and those he represents. If it appears that a part of the estate is intestate, the proceedings shall be dismissed or amendments made to meet the provisions of section 30.1-21-01.

30.1-21-03 (3-1003). CLOSING ESTATES - BY SWORN STATEMENT OF PERSONAL REPRESENTATIVE.) 1. Unless prohibited by order of the court and except for estates being administered in supervised administration proceedings, a personal representative may close an estate by filing with the court no earlier than six months after the date of original appointment of a general personal representative for the estate, a verified statement stating that he, or a prior personal representative whom he has succeeded, has or have:

- a. Published notice to creditors as provided by section 30.1-19-01 and that the first publication occurred more than six months prior to the date of the statement;
- b. Fully administered the estate of the decedent by making payment, settlement, or other disposition of all claims which were presented, expenses of administration and estate, inheritance and other death taxes, except as specified in the statement, and that the assets of the estate have been distributed to the persons entitled. If any claims remain undischarged, the statement shall state whether the personal representative has distributed the estate subject to possible liability with the agreement of the distributees or it shall state in detail other arrangements which have been made to accommodate outstanding liabilities; and
- c. Sent a copy thereof to all distributees of the estate and to all creditors or other claimants of whom he is aware whose claims are neither paid nor barred and has furnished

a full account in writing of his administration to the distributees whose interests are affected thereby.

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

**30.1-21-04 (3-1004). LIABILITY OF DISTRIBUTEES TO CLAIMANTS.)**

After assets of an estate have been distributed and subject to section 30.1-21-06, an undischarged claim, not barred, may be prosecuted in a proceeding against one or more distributees. No distributee shall be liable to claimants for amounts in excess of the value of his distribution as of the time of distribution. As between distributees, each shall bear the cost of satisfaction of unbarred claims as if the claim had been satisfied in the course of administration. Any distributee who shall have failed to notify other distributees of the demand made upon him by the claimant in sufficient time to permit them to join in any proceeding in which the claim was asserted against him loses his right of contribution against other distributees.

**30.1-21-05 (3-1005). LIMITATIONS ON PROCEEDINGS AGAINST PERSONAL REPRESENTATIVE.)** Unless previously barred by adjudication and except as provided in the closing statement, the rights of successors and of creditors whose claims have not otherwise been barred against the personal representative for breach of fiduciary duty are barred unless a proceeding to assert the same is commenced within six months after the filing of the closing statement. The rights thus barred do not include rights to recover from a personal representative for fraud, misrepresentation, or inadequate disclosure related to the settlement of the decedent's estate.

**30.1-21-06 (3-1006). LIMITATIONS ON ACTIONS AND PROCEEDINGS AGAINST DISTRIBUTEES.)** Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling the accounts of a personal representative or unless otherwise barred, the claim of any claimant to recover from a distributee who is liable to pay the claim, and the right of any heir or devisee, or of a successor personal representative acting in their behalf, to recover property improperly distributed or the value thereof from any distributee is forever barred at the later of:

1. Three years after the decedent's death; or
2. One year after the time of distribution thereof.

This section does not bar an action to recover property or value received as the result of fraud.

**30.1-21-07 (3-1007). CERTIFICATE DISCHARGING LIENS SECURING FIDUCIARY PERFORMANCE.)** After his appointment has terminated, the personal representative, his sureties, or any successor of either, upon the filing of a verified application showing, so far as is known by the applicant, that no action concerning the estate is pending

in any court, is entitled to receive a certificate from the court that the personal representative appears to have fully administered the estate in question. The certificate evidences discharge of any lien on any property given to secure the obligation of the personal representative in lieu of bond or any surety, but does not preclude action against the personal representative or the surety.

30.1-21-08 (3-1008). SUBSEQUENT ADMINISTRATION.) If other property of the estate is discovered after an estate has been settled and the personal representative discharged or after one year after a closing statement has been filed, the court, upon petition of any interested person and upon notice as it directs, may appoint the same or a successor personal representative to administer the subsequently discovered estate. If a new appointment is made, unless the court orders otherwise, the provisions of this title apply as appropriate, but no claim previously barred may be asserted in the subsequent administration.

## Part 11

### Chapter 30.1-22

30.1-22-01 (3-1101). EFFECT OF APPROVAL OF AGREEMENTS INVOLVING TRUSTS, INALIENABLE INTERESTS, OR INTEREST OF THIRD PERSONS.) A compromise of any controversy as to admission to probate of any instrument offered for formal probate as the will of a decedent, the construction, validity, or effect of any probated will, the rights or interests in the estate of the decedent, of any successor, or the administration of the estate, if approved in a formal proceeding in the court for that purpose, is binding on all the parties thereto including those unborn, unascertained, or who could not be located. An approved compromise is binding even though it may affect a trust or an inalienable interest. A compromise does not impair the rights of creditors or of taxing authorities who are not parties to it.

30.1-22-02 (3-1102). PROCEDURE FOR SECURING COURT APPROVAL OF COMPROMISE.) The procedure for securing court approval of a compromise is as follows:

1. The terms of the compromise shall be set forth in an agreement in writing which shall be executed by all competent persons and parents or guardians acting for any minor children having beneficial interests or having claims which will or may be affected by the compromise. Execution is not required by any person whose identity cannot be ascertained or whose whereabouts is unknown and cannot reasonably be ascertained.
2. Any interested person, including the personal representative or a trustee, then may submit the agreement to the court for its approval and for execution by the personal representative, the trustee of every affected testamentary trust, and other fiduciaries and representatives.

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

## Part 12

### Chapter 30.1-23

30.1-23-01 (3-1201). COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT.) 1. Thirty days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating that:

- a. The value of the entire estate, wherever located, less liens and encumbrances, does not exceed five thousand dollars;
- b. Thirty days have elapsed since the death of the decedent;
- c. No application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and
- d. The claiming successor is entitled to payment or delivery of the property.

2. 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 1.

30.1-23-02 (3-1202). EFFECT OF AFFIDAVIT.) The person paying, delivering, transferring, or issuing personal property or the evidence thereof pursuant to affidavit is discharged and released to the same extent as if he dealt with a personal representative of the decedent. He is not required to see to the application of the



personal property or evidence thereof or to inquire into the truth of any statement in the affidavit. If any person to whom an affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled thereto. Any person to whom payment, delivery, transfer, or issuance is made is answerable and accountable therefor to any personal representative of the estate or to any other person having a superior right.

30.1-23-03 (3-1203). SMALL ESTATES - SUMMARY ADMINISTRATIVE PROCEDURE.) If it appears from the inventory and appraisal that the value of the entire estate, less liens and encumbrances, does not exceed the homestead as defined in section 47-18-01, plus exempt property pursuant to section 30.1-07-01, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent, the personal representative, without giving notice to creditors, may immediately disburse and distribute the estate to the persons entitled thereto and file a closing statement as provided in section 30.1-23-04.

30.1-23-04 (3-1204). SMALL ESTATE - CLOSING BY SWORN STATEMENT OF PERSONAL REPRESENTATIVE.) 1. Unless prohibited by order of the court and except for estates being administered by supervised personal representatives, a personal representative may close an estate administered under the summary procedures of section 30.1-23-03 by filing with the court, at any time after disbursement and distribution of the estate, a verified statement stating that:

- a. To the best knowledge of the personal representative, the value of the entire estate, less liens and encumbrances, did not exceed the homestead as defined in section 47-18-01, plus exempt property, pursuant to section 30.1-07-01, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable, necessary medical and hospital expenses of the last illness of the decedent;
- b. The personal representative has fully administered the estate by disbursing and distributing it to the persons entitled thereto; and
- c. The personal representative has sent a copy of the closing statement to all distributees of the estate and to all creditors or other claimants of whom he is aware whose claims are neither paid nor barred and has furnished a full account in writing of his administration to the distributees whose interests are affected.

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

3. A closing statement filed under this section has the same effect as one filed under section 30.1-21-03.

## ARTICLE IV

### Part 1

#### Chapter 30.1-24

30.1-24-01 (4-101). DEFINITIONS.) In chapters 30.1-24 and 30.1-25:

1. "Local administration" means administration by a personal representative appointed in this state pursuant to appointment proceedings described in chapters 30.1-12 through 30.1-23.
2. "Local personal representative" includes any personal representative appointed in this state pursuant to appointment proceedings described in chapters 30.1-12 through 30.1-23 and excludes foreign personal representatives who acquire the power of a local personal representative pursuant to section 30.1-24-06.
3. "Resident creditor" means a person domiciled in, or doing business in this state, who is, or could be, a claimant against an estate of a nonresident decedent.

### Part 2

30.1-24-02 (4-201). PAYMENT OF DEBT AND DELIVERY OF PROPERTY TO DOMICILIARY FOREIGN PERSONAL REPRESENTATIVE WITHOUT LOCAL ADMINISTRATION.) At any time after the expiration of sixty days from the death of a nonresident decedent, any person indebted to the estate of the nonresident decedent or having possession or control of personal property, or of an instrument evidencing a debt, obligation, stock or chose in action belonging to the estate of the nonresident decedent may pay the debt, deliver the personal property, or the instrument evidencing the debt, obligation, stock or chose in action, to the domiciliary foreign personal representative of the nonresident decedent upon being presented with proof of his appointment and an affidavit made by or on behalf of the representative stating:

1. The date of the death of the nonresident decedent;
2. That no local administration, or application, or petition therefor, is pending in this state; and
3. That the domiciliary foreign personal representative is entitled to payment or delivery.

**30.1-24-03 (4-202). PAYMENT OR DELIVERY DISCHARGES.)**

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

**30.1-24-04 (4-203). RESIDENT CREDITOR NOTICE.)**

Payment or delivery under section 30.1-24-02 may not be made if a resident creditor of the nonresident decedent has notified the debtor of the nonresident decedent or the person having possession of the personal property belonging to the nonresident decedent that the debt should not be paid nor the property delivered to the domiciliary foreign personal representative.

**30.1-24-05 (4-204). PROOF OF AUTHORITY - BOND.)**

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

**30.1-24-06 (4-205). POWERS.)**

A domiciliary foreign personal representative who has complied with section 30.1-24-05 may exercise, as to assets in this state, all powers of a local personal representative and may maintain actions and proceedings in this state subject to any conditions imposed upon nonresident parties generally.

**30.1-24-07 (4-206). POWER OF REPRESENTATIVES IN TRANSITION.)**

The power of a domiciliary foreign personal representative under sections 30.1-24-02 or 30.1-24-06 shall be exercised only if there is no administration or application therefor pending in this state. An application or petition for local administration of the estate terminates the power of the foreign personal representative to act under section 30.1-24-06, but the local court may allow the foreign personal representative to exercise limited powers to preserve the estate. No person who, before receiving actual notice of a pending local administration, has changed his position in reliance upon the powers of a foreign personal representative shall be prejudiced by reason of the application or petition for, or grant of, local administration. The local personal representative is subject to all duties and obligations which have accrued by virtue of the exercise of the powers by the foreign personal representative and may be substituted for him in any action or proceedings in this state.

**30.1-24-08 (4-207). ANCILLARY AND OTHER LOCAL ADMINISTRATIONS - PROVISIONS GOVERNING.)**

In respect to a nonresident decedent, the provisions of chapters 30.1-12 through 30.1-23 of this title:

1. Proceedings, if any, in a court of this state for probate of the will, appointment, removal, supervision, and discharge of the local personal representative, and any other order concerning the estate; and

2. The status, powers, duties, and liabilities of any local personal representative and the rights of claimants, purchasers, distributees, and others in regard to a local administration.

### Part 3

#### Chapter 30.1-25

30.1-25-01 (4-301). JURISDICTION BY ACT OF FOREIGN PERSONAL REPRESENTATIVE.) A foreign personal representative submits personally to the jurisdiction of the courts of this state in any proceeding relating to the estate by:

1. Filing authenticated copies of his appointment as provided in section 30.1-24-05;
2. Receiving payment of money or taking delivery of personal property under section 30.1-24-02; or
3. Doing any act as a personal representative in this state which would have given the state jurisdiction over him as an individual.

Jurisdiction under subsection 2 is limited to the money or value of personal property collected.

30.1-25-02 (4-302). JURISDICTION BY ACT OF DECEDENT.) In addition to jurisdiction conferred by section 30.1-25-01, a foreign personal representative is subject to the jurisdiction of the courts of this state to the same extent that his decedent was subject to jurisdiction immediately prior to death.

30.1-25-03 (4-303). SERVICE ON FOREIGN PERSONAL REPRESENTATIVE.) 1. Service of process may be made upon the foreign personal representative by certified mail, addressed to his last reasonably ascertainable address, requesting a return receipt signed by addressee only. Notice by ordinary first-class mail is sufficient if certified mail service to the addressee is unavailable. Service may be made upon a foreign personal representative in the manner in which service could have been made under other laws of this state on either the foreign personal representative or his decedent immediately prior to death.

2. If service is made upon a foreign personal representative as provided in subsection 1, he shall be allowed at least thirty days within which to appear or respond.

### Part 4

30.1-25-04 (4-401). EFFECT OF ADJUDICATION FOR OR AGAINST PERSONAL REPRESENTATIVE.) An adjudication rendered in any jurisdiction in favor of or against any personal representative of the estate is as binding on the local personal representative as if he were a party to the adjudication.

## ARTICLE V

## Part 1

## Chapter 30.1-26

30.1-26-01 (5-101). DEFINITIONS AND USE OF TERMS.) Unless otherwise apparent from the context, in this title:

1. "Incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person;
2. A "protective proceeding" is a proceeding under the provisions of section 30.1-29-01 to determine that a person cannot effectively manage or apply his estate to necessary ends, either because he lacks the ability or is otherwise inconvenienced, or because he is a minor, and to secure administration of his estate by a conservator or other appropriate relief;
3. A "protected person" is a minor or other person for whom a conservator has been appointed or other protective order has been made;
4. A "ward" is a person for whom a guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority.

30.1-26-02 (5-102). JURISDICTION OF SUBJECT MATTER - CONSOLIDATION OF PROCEEDINGS.) The court has jurisdiction over protective proceedings and the district court over guardianship proceedings.

30.1-26-03 (5-103). FACILITY OF PAYMENT OR DELIVERY.) Any person under a duty to pay or deliver money or personal property to a minor may perform this duty, in amounts not exceeding five thousand dollars per annum, by paying or delivering the money or property to:

1. The minor, if he 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 subsection 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 and 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 thereof.

30.1-26-04 (5-104). DELEGATION OF POWERS BY PARENT OR GUARDIAN.) A parent or a guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding six months, any of his powers regarding care, custody, or property of the minor child or ward, except his power to consent to marriage or adoption of a minor ward.

## Part 2

### Chapter 30.1-27

30.1-27-01 (5-201). 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.

30.1-27-02 (5-202). 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 30.1-27-03, 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 by the guardian to the minor and to the person having his care, or to his nearest adult relation.

30.1-27-03 (5-203). OBJECTION BY MINOR OF FOURTEEN OR OLDER TO TESTAMENTARY APPOINTMENT.) A minor of fourteen or more years 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 thirty days after notice of 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.

30.1-27-04 (5-204). 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 circumstances or prior court order. A guardian appointed by will as provided in section 30.1-27-02 whose appointment has not been prevented or nullified under section 30.1-27-03 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 thirty days after notice of the guardianship proceeding.

30.1-27-05 (5-205). 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.

30.1-27-06 (5-206). COURT APPOINTMENT OF GUARDIAN OF MINOR - QUALIFICATIONS - 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 fourteen years of age or older, unless the court finds the appointment contrary to the best interests of the minor.

30.1-27-07 (5-207). COURT APPOINTMENT OF GUARDIAN OF MINOR - PROCEDURE.) 1. Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor is to be given by the petitioner in the manner prescribed by section 30.1-03-01 to:

- a. The minor, if he is fourteen or more years of age;
- b. The person who has had the principal care and custody of the minor during the sixty days preceding the date of the petition; and
- c. Any living parent of the minor.

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 30.1-27-04 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 interest of the minor.

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.

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 fourteen years of age or older.

30.1-27-08 (5-208). 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 delivered to the guardian, or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to the petitioner. Letters of guardianship must indicate whether the guardian was appointed by will or by court order.

30.1-27-09 (5-209). 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 and is not liable to third persons by reason of the parental relationship for acts of the ward. In particular, and without qualifying the foregoing, a guardian has the following powers and duties:

1. He must take reasonable care of his ward's personal effects and commence protective proceedings if necessary to protect other property of the ward.
2. 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 30.1-26-03. 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 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.
3. 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 guardian is not liable by reason of this 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. A guardian may consent to the marriage or adoption of his ward.



4. 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 court on petition of any person interested in the minor's welfare or as required by court rule.

30.1-27-10 (5-210). **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. 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.

30.1-27-11 (5-211). **PROCEEDINGS SUBSEQUENT TO APPOINTMENT - VENUE.**) 1. 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.

2. 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 interest 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.

30.1-27-12 (5-212). **RESIGNATION OR REMOVAL PROCEEDINGS.**) 1. Any person interested in the welfare of a ward, or the ward, if fourteen or more years of age, may petition for removal of a guardian on the ground that removal would be in the best interest 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.

2. 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.

3. 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 fourteen or more years of age.

## Part 3

## Chapter 30.1-28

30.1-28-01 (5-301). TESTAMENTARY APPOINTMENT OF GUARDIAN FOR INCAPACITATED PERSON.) 1. The parent of an incapacitated person may, by will, appoint a guardian of the incapacitated person. A testamentary appointment by a parent becomes effective when, after having given seven days prior written notice of his intention to do so to the incapacitated person and to the person having his care or to his nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or formally probated, if prior thereto, 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 unless it is terminated by the denial of probate in formal proceedings.

2. The spouse of a married incapacitated person may, by will, appoint a guardian of the incapacitated person. The appointment becomes effective when, after having given seven days prior written notice of his intention to do so to the incapacitated person and to the person having his care or to his nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or formally probated. An effective appointment by a spouse has priority over an appointment by a parent unless it is terminated by the denial of probate in formal proceedings.

3. This state shall recognize a testamentary appointment effected by filing acceptance under a will probated at the testator's domicile in another state.

4. On the filing with the court in which the will was probated of written objection to the appointment by the person for whom a testamentary appointment of guardian has been made, the appointment is terminated. An objection does not prevent appointment by the court in a proper proceeding of the testamentary nominee or any other suitable person upon an adjudication of incapacity in proceedings under the succeeding sections of this chapter.

30.1-28-02 (5-302). VENUE.) The venue for guardianship proceedings for an incapacitated person is in the place where the incapacitated person resides or is present. If the incapacitated person is admitted to an institution pursuant to order of a county mental health board, venue is also in the county in which that mental health board sits.

30.1-28-03 (5-303). PROCEDURE FOR COURT APPOINTMENT OF A GUARDIAN OF AN INCAPACITATED PERSON.) 1. The incapacitated person or any person interested in his welfare may petition for a finding of incapacity and appointment of a guardian.

2. Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity and unless the allegedly incapacitated person has counsel of his own choice, it shall appoint an appropriate

official or attorney to represent him in the proceeding, who shall have the powers and duties of a guardian ad litem. The person alleged to be incapacitated shall be examined by a physician appointed by the court who shall submit his report in writing to the court and shall also be interviewed by a visitor sent by the court. The visitor also shall interview the person seeking appointment as guardian, and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that he will be detained or reside if the requested appointment is made. The visitor shall submit his report in writing to the court. The person alleged to be incapacitated is entitled to be present at the hearing in person, and to see or hear all evidence bearing upon his condition. He is entitled to be present by counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor. The issue may be determined at a closed hearing if the person alleged to be incapacitated or his counsel so requests.

**30.1-28-04 (5-304). FINDINGS - ORDER OF APPOINTMENT.)**

The court may appoint a guardian as requested if it is satisfied that the person for whom a guardian is sought is incapacitated and that the appointment is necessary or desirable as a means of providing continuing care and supervision of the incapacitated person. Alternatively, the court may dismiss the proceeding or enter any other appropriate order.

**30.1-28-05 (5-305). ACCEPTANCE OF APPOINTMENT - CONSENT TO JURISDICTION.)** By accepting appointment, 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 delivered to the guardian or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to the petitioner.

**30.1-28-06 (5-306). TERMINATION OF GUARDIANSHIP FOR INCAPACITATED PERSON.)** The authority and responsibility of a guardian for an incapacitated person terminates upon the death of the guardian or ward, the determination of incapacity of the guardian, or upon removal or resignation as provided in section 30.1-28-07. Testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding. Termination does not affect his liability for prior acts nor his obligation to account for funds and assets of his ward.

**30.1-28-07 (5-307). REMOVAL OR RESIGNATION OF GUARDIAN - TERMINATION OF INCAPACITY.)** 1. On petition of the ward or any person interested in his welfare, the court may remove a guardian and appoint a successor if in the best interests of the ward. On petition of the guardian, the court may accept his resignation and make any other order which may be appropriate.

2. An order adjudicating incapacity may specify a minimum period, not exceeding one year, during which no petition for an adjudication that the ward is no longer incapacitated may be filed

without special leave. Subject to this restriction, the ward or any person interested in his welfare may petition for an order that he is no longer incapacitated, and for removal or resignation of the guardian. A request for this order may be made by informal letter to the court or judge. Any person who knowingly interferes with transmission of this kind of request to the court or judge may be adjudged guilty of contempt of court.

3. Before removing a guardian, accepting the resignation of a guardian, or ordering that a ward's incapacity has terminated, the court, following the same procedures to safeguard the rights of the ward as apply to a petition for appointment of a guardian, may send a visitor to the residence of the present guardian and to the place where the ward resides or is detained, to observe conditions and report in writing to the court.

30.1-28-08 (5-308). VISITOR IN GUARDIANSHIP PROCEEDINGS.) A visitor is, with respect to guardianship proceedings, a person who is trained in law, nursing, or social work and is an officer, employee, or special appointee of the court with no personal interest in the proceedings.

30.1-28-09 (5-309). NOTICES IN GUARDIANSHIP PROCEEDINGS.) 1. In a proceeding for the appointment or removal of a guardian of an incapacitated person other than the appointment of a temporary guardian or temporary suspension of a guardian, notice of hearing shall be given to each of the following:

- a. The ward or the person alleged to be incapacitated and his spouse, parents, and adult children;
- b. Any person who is serving as his guardian, conservator, or who has his care and custody; and
- c. In case no other person is notified under subdivision a, at least one of his closest adult relatives, if any can be found.

2. Notice shall be served personally on the alleged incapacitated person, and his spouse and parents if they can be found within the state. Notice to the spouse and parents, if they cannot be found within the state, and to all other persons except the alleged incapacitated person shall be given as provided in section 30.1-03-01. Waiver of notice by the person alleged to be incapacitated is not effective unless he attends the hearing or his waiver of notice is confirmed in an interview with the visitor. Representation of the alleged incapacitated person by a guardian ad litem is not necessary.

30.1-28-10 (5-310). TEMPORARY GUARDIANS.) If an incapacitated person has no guardian and an emergency exists, the court may exercise the power of a guardian pending notice and hearing. If an appointed guardian is not effectively performing his duties and

the court further finds that the welfare of the incapacitated person requires immediate action, it may, with or without notice, appoint a temporary guardian for the incapacitated person for a specified period not to exceed six months. A temporary guardian is entitled to the care and custody of the ward and the authority of any permanent guardian previously appointed by the court is suspended so long as a temporary guardian has authority. A temporary guardian may be removed at any time. A temporary guardian shall make any report the court requires. In other respects the provisions of this title concerning guardians apply to temporary guardians.

30.1-28-11 (5-311). WHO MAY BE GUARDIAN - PRIORITIES.)

1. Any competent person or a suitable institution may be appointed guardian of an incapacitated person.

2. Persons who are not disqualified have priority for appointment as guardian in the following order:

- a. The spouse of the incapacitated person;
- b. An adult child of the incapacitated person;
- c. A parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent;
- d. Any relative of the incapacitated person with whom he has resided for more than six months prior to the filing of the petition; or
- e. A person nominated by the person who is caring for the incapacitated person or paying benefits to him.

30.1-28-12 (5-312). GENERAL POWERS AND DUTIES OF GUARDIAN.)

1. A guardian of an incapacitated person has the same powers, rights, and duties respecting his ward that a parent has respecting his unemancipated minor child except that a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship. In particular, and without qualifying the foregoing, a guardian has the following powers and duties, except as modified by order of the court:

- a. To the extent that it is consistent with the terms of any order by a court of competent jurisdiction or county mental health board relating to detention or commitment of the ward, he is entitled to custody of the person of his ward and may establish the ward's place of abode within or without this state.
- b. If entitled to custody of his ward, he shall make provision for his care, comfort, and maintenance and, whenever appropriate, arrange for his training and education. Without

regard to custodial rights of the ward's person, he shall take reasonable care of his ward's clothing, furniture, vehicles, and other personal effects and commence protective proceedings if other property of his ward is in need of protection.

- c. A guardian may give any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service.
- d. If no conservator for the estate of the ward has been appointed, he may:
  - (1) Institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform his duty; or
  - (2) Receive money and tangible property deliverable to the ward and apply the money and property for support, care, and education of the ward; but, he may not use funds from his ward's estate for room and board which he, his spouse, parent, or child have furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the incompetent ward, if notice is possible. He must exercise care to conserve any excess for the ward's needs.
- e. A guardian is required to report the condition of his ward and of the estate which has been subject to his possession or control, as required by the court or court rule.
- f. If a conservator has been appointed, all of the ward's estate received by the guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward must be paid to the conservator for management as provided in this title, and the guardian must account to the conservator for funds expended.

2. Any guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward, and is entitled to receive reasonable sums for his services and for room and board furnished to the ward as agreed upon between him and the conservator, provided the amounts agreed upon are reasonable under the circumstances. The guardian may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

30.1-28-13 (5-313). PROCEEDINGS SUBSEQUENT TO APPOINTMENT - VENUE.) 1. 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.

2. 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 may be in the best interest 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.

#### Part 4

#### Chapter 30.1-29

30.1-29-01 (5-401). PROTECTIVE PROCEEDINGS.) Upon petition and after notice and hearing in accordance with the provisions of this chapter, a court, which for purposes of this chapter is the district 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. Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a person if the court determines that:
  - a. The person is unable to manage his property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness, or disability, advanced age, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance; and
  - b. The person has property which will be wasted or 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 that protection is necessary or desirable to obtain or provide funds.

30.1-29-02 (5-402). PROTECTIVE PROCEEDINGS - JURISDICTION OF AFFAIRS OF PROTECTED PERSONS.) After the service of notice in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the court in which the petition is filed has:

1. Exclusive jurisdiction to determine the need for a conservator or other protective order until the proceedings are terminated;
2. Exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this state shall be managed, expended, or distributed to or for the use of the protected person or any of his dependents; and
3. Concurrent jurisdiction to determine the validity of claims against the person or estate of the protected person and his title to any property or claim.

30.1-29-03 (5-403). VENUE.) Venue for proceedings under this chapter is:

1. In the place in this state where the person to be protected resides whether or not a guardian has been appointed in another place; or
2. If the person to be protected does not reside in this state, in any place where he has property.

30.1-29-04 (5-404). ORIGINAL PETITION FOR APPOINTMENT OR PROTECTIVE ORDER.) 1. The person to be protected, any person who is interested in his estate, affairs, or welfare including his parent, guardian, or custodian, or any person who would be adversely affected by lack of effective management of his property and affairs may petition for the appointment of a conservator or for other appropriate protective order.

2. The petition shall set forth, to the extent known, the interest of the petitioner; the name, age, residence, and address of the person to be protected; the name and address of his guardian, if any; the name and address of his nearest relative known to the petitioner; a general statement of his property with an estimate of the value thereof, including any compensation, insurance, pension, or allowance to which he is entitled; and the reason why appointment of a conservator or other protective order is necessary. If the appointment of a conservator is requested, the petition also shall set forth the name and address of the person whose appointment is sought and the basis of his priority for appointment.

30.1-29-05 (5-405). NOTICE.) 1. On a petition for appointment of a conservator or other protective order, the person to be protected and his spouse or, if none, his parents, must be served personally with notice of the proceeding at least fourteen days before the date of hearing if they can be found within the state, or, if they cannot be found within the state, they, any other guardian or conservator and any government agency paying benefits to the person sought to be protected (if the person seeking the appointment has knowledge of the existence of these benefits), must be given notice in accordance with section 30.1-03-01. Waiver by the person to be protected is not effective unless the proceedings are limited to payment of veterans'



administration benefits, he attends the hearing, or, unless minority is the reason for the proceeding, waiver is confirmed in an interview with the visitor.

2. Notice of a petition for appointment of a conservator or other initial protective order, and of any subsequent hearing, must be given to any person who has filed a request for notice under section 30.1-29-06 and to interested persons and other persons as the court may direct. Except as otherwise provided in subsection 1, notice shall be given in accordance with section 30.1-03-01.

30.1-29-06 (5-406). PROTECTIVE PROCEEDINGS - REQUEST FOR NOTICE - INTERESTED PERSON.) Any interested person who desires to be notified before any order is made in a protective proceeding may file with the court a request for notice subsequent to payment of any fee required by statute or court rule. The clerk shall mail a copy of the demand to the conservator if one has been appointed. A request is not effective unless it contains a statement showing the interest of the person making it and his address, or that of his attorney, and is effective only as to matters occurring after the filing. Any governmental agency paying or planning to pay benefits to the person to be protected is an interested person in protective proceedings.

30.1-29-07 (5-407). PROCEDURE CONCERNING HEARING AND ORDER ON ORIGINAL PETITION.) 1. Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. 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 choice of the minor if fourteen years of age or older. A lawyer appointed by the court to represent a minor has the powers and duties of a guardian ad litem.

2. Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected has counsel of his own choice, the court must appoint a lawyer to represent him who then has the powers and duties of a guardian ad litem. If the alleged disability is mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician designated by the court, preferably a physician who is not connected with any institution in which the person is a patient or is detained. The court may send a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer, employee, or special appointee of the court.

3. After hearing, upon finding that a basis for the appointment of a conservator or other protective order has been established, the court shall make an appointment or other appropriate protective order.

30.1-29-08 (5-408). PERMISSIBLE COURT ORDERS.) The court has the following powers which may be exercised directly or through a conservator in respect to the estate and affairs of protected persons:

1. While a petition for appointment of a conservator or other protective order is pending and after preliminary hearing and without notice to others, the court has power to preserve and apply the property of the person to be protected as may be required for his benefit or the benefit of his dependents.
2. After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor without other disability, the court has all those powers over the estate and affairs of the minor which are or might be necessary for the best interests of the minor, his family, and members of his household.
3. After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a person for reasons other than minority, the court has, for the benefit of the person and members of his household, all the powers over his estate and affairs which he could exercise if present and not under disability, except the power to make a will. These powers include, but are not limited to, power to make gifts, to convey or release his contingent and expectant interests in property including marital property rights and any right of survivorship incident to joint tenancy, to exercise or release his powers as trustee, personal representative, custodian for minors, conservator, or donee of a power of appointment; to enter into contracts, to create revocable or irrevocable trusts of property of the estate which may extend beyond his disability or life, to exercise options of the disabled person to purchase securities or other property, to exercise his rights to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value, to exercise his right to an elective share in the estate of his deceased spouse, and to renounce any interest by testate or intestate succession or by inter vivos transfer.
4. The court may exercise or direct the exercise of its authority to exercise or release powers of appointment of which the protected person is donee, to renounce interests, to make gifts in trust or otherwise exceeding twenty percent of any year's income of the estate or to change beneficiaries under insurance and annuity policies, only if satisfied, after notice and hearing, that it is in the best interests of the protected person, and that he either is incapable of consenting or has consented to the proposed exercise of power.

5. An order made pursuant to this section determining that a basis for appointment of a conservator or other protective order exists, has no effect on the capacity of the protected person.

30.1-29-09 (5-409). PROTECTIVE ARRANGEMENTS AND SINGLE TRANSACTIONS AUTHORIZED.) 1. If it is established in a proper proceeding that a basis exists, as described in section 30.1-29-01, for affecting the property and affairs of a person, the court, without appointing a conservator, may 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, a contract for training and education, or addition to or establishment of a suitable trust.

2. When it has been established in a proper proceeding that a basis exists, as described in section 30.1-29-01, for affecting the property and affairs of a person the court, without appointing a conservator, may 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.

3. Before approving a protective arrangement or other transaction under this section, 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 conservator. The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized under this section who shall have the authority conferred by the order and serve until discharged by order, after report to the court of all matters done pursuant to the order of appointment.

30.1-29-10 (5-410). WHO MAY BE APPOINTED CONSERVATOR - PRIORITIES.) 1. The court may appoint an individual, or a corporation with general power to serve as trustee, as conservator of the estate of a protected person. The following are entitled to consideration for appointment in the order listed:

- a. A conservator, guardian of property, or other like fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the protected person resides;
- b. An individual or corporation nominated by the protected person if he is fourteen or more years of age and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice;
- c. The spouse of the protected person;

- d. An adult child of the protected person;
- e. A parent of the protected person, or a person nominated by the will of a deceased parent;
- f. Any relative of the protected person with whom he has resided for more than six months prior to the filing of the petition; or
- g. A person nominated by the person who is caring for the protected person or paying benefits to him.

2. A person denominated in subdivisions a, c, d, e, or f of subsection 1 may nominate, in writing, a person to serve in his stead. With respect to persons having equal priority, the court is to select the one who is best qualified of those willing to serve. The court, for good cause, may pass over a person having priority and appoint a person having less priority or no priority.

30.1-29-11 (5-411). BOND.) The court may require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the trust according to law, with sureties as it shall specify. Unless otherwise directed, the bond shall be in the amount of the aggregate capital value of the property of the estate in his control plus one year's estimated income minus the value of securities deposited under arrangements requiring an order of the court for their removal and the value of any land which the fiduciary, by express limitation of power, lacks power to sell or convey without court authorization. The court in lieu of sureties on a bond, may accept other security for the performance of the bond, including a pledge of securities or a mortgage of land.

30.1-29-12 (5-412). TERMS AND REQUIREMENTS OF BONDS.)

1. The following requirements and provisions apply to any bond required under section 30.1-29-11:
  - a. Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the conservator and with each other;
  - b. By executing an approved bond of a conservator, the surety consents to the jurisdiction of the court which issued letters to the primary obligor, in any proceeding pertaining to the fiduciary duties of the conservator and naming the surety as a party defendant. Notice of any proceeding shall be delivered to the surety or mailed to him by registered or certified mail at his address as listed with the court where the bond is filed and to his address as then known to the petitioner;
  - c. On petition of a successor conservator or any interested person, a proceeding may be initiated against a surety for breach of the obligation of the bond of the conservator;

- d. The bond of the conservator is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

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

30.1-29-13 (5-413). ACCEPTANCE OF APPOINTMENT - CONSENT TO JURISDICTION.) By accepting appointment, a conservator submits personally to the jurisdiction of the court in any proceeding, relating to the estate, that may be instituted by any interested person. Notice of any proceeding shall be delivered to the conservator, or mailed to him by registered or certified mail at his address as listed in the petition for appointment or as thereafter reported to the court and to his address as then known to the petitioner.

30.1-29-14 (5-414). COMPENSATION AND EXPENSES.) If not otherwise compensated for services rendered, any visitor, lawyer, physician, conservator, or special conservator appointed in a protective proceeding is entitled to reasonable compensation from the estate.

30.1-29-15 (5-415). DEATH, RESIGNATION OR REMOVAL OF CONSERVATOR.) The court may remove a conservator for good cause, upon notice and hearing, or accept the resignation of a conservator. After a conservator's death, resignation or removal, the court may appoint another conservator. A conservator so appointed succeeds to the title and powers of his predecessor.

30.1-29-16 (5-416). PETITIONS FOR ORDERS SUBSEQUENT TO APPOINTMENT.) 1. Any person interested in the welfare of a person for whom a conservator has been appointed may file a petition in the appointing court for an order:

- a. Requiring bond or security or additional bond or security, or reducing bond;
- b. Requiring an accounting for the administration of the trust;
- c. Directing distribution;
- d. Removing the conservator and appointing a temporary or successor conservator; or
- e. Granting other appropriate relief.

2. A conservator may petition the appointing court for instructions concerning his fiduciary responsibility.

3. Upon notice and hearing, the court may give appropriate instructions or make any appropriate order.

30.1-29-17 (5-417). GENERAL DUTY OF CONSERVATOR.) In the exercise of his powers, a conservator is to act as a fiduciary

and shall observe the standards of care applicable to trustees as described by section 30.1-34-02.

30.1-29-18 (5-418). INVENTORY AND RECORDS.) Within ninety days after his appointment, every conservator shall prepare and file with the appointing court a complete inventory of the estate of the protected person together with his oath or affirmation that it is complete and accurate so far as he is informed. The conservator shall provide a copy thereof to the protected person if he can be located, has attained the age of fourteen years, and has sufficient mental capacity to understand these matters, and to any parent or guardian with whom the protected person resides. The conservator shall keep suitable records of his administration and exhibit the same on request of any interested person.

30.1-29-19 (5-419). ACCOUNTS.) Every conservator must account to the court for his administration of the trust upon his resignation or removal, and at other times as the court may direct. On termination of the protected person's minority or disability, a conservator may account to the court, or he may account to the former protected person or his personal representative. Subject to appeal or vacation within the time permitted, an order, made upon notice and hearing, allowing an intermediate account of a conservator, adjudicates as to his liabilities concerning the matters considered in connection therewith. An order, made upon notice and hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected person or his successors relating to the conservatorship. In connection with any account, the court may require a conservator to submit to a physical check of the estate in his control, to be made in any manner the court may specify.

30.1-29-20 (5-420). CONSERVATORS - TITLE BY APPOINTMENT.) The appointment of a conservator vests in him title as trustee to all property of the protected person, presently held or thereafter acquired, including title to any property theretofore held for the protected person by custodians or attorneys in fact. The appointment of a conservator is not a transfer or alienation within the meaning of general provisions of any federal or state statute or regulation, insurance policy, pension plan, contract, will or trust instrument, imposing restrictions upon or penalties for transfer or alienation by the protected person of his rights or interest, but this section does not restrict the ability of persons to make specific provision by contract or dispositive instrument relating to a conservator.

30.1-29-21 (5-421). RECORDING OF CONSERVATOR'S LETTERS.) Letters of conservatorship are evidence of transfer of all assets of a protected person to the conservator. An order terminating a conservatorship is evidence of transfer of all assets of the estate from the conservator to the protected person or his successors. Subject to the requirements of general statutes governing the filing or recordation of documents of title to land or other property, letters of conservatorship,

and orders terminating conservatorships, may be filed or recorded to give record notice of title as between the conservator and the protected person.

30.1-29-22 (5-422). SALE, ENCUMBRANCE OR TRANSACTION INVOLVING CONFLICT OF INTEREST - VOIDABLE EXCEPTIONS.) Any sale or encumbrance to a conservator, his spouse, agent, or attorney, or any corporation or trust in which he has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest is voidable unless the transaction is approved by the court, after notice to interested persons and others as directed by the court.

30.1-29-23 (5-423). PERSONS DEALING WITH CONSERVATORS - PROTECTION.) A person who in good faith either assists a conservator or deals with him for value in any transaction other than those requiring a court order as provided in section 30.1-29-08, is protected as if the conservator properly exercised the power. The fact that a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise, except that restrictions on powers of conservators which are endorsed on letters as provided in section 30.1-29-26 are effective as to third persons. A person is not bound to see to the proper application of estate assets paid or delivered to a conservator. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

30.1-29-24 (5-424). POWERS OF CONSERVATOR IN ADMINISTRATION.) 1. A conservator has all of the powers conferred herein and any additional powers conferred by law on trustees in this state. In addition, a conservator of the estate of an unmarried minor, as to whom no one has parental rights, has the duties and powers of a guardian of a minor described in section 30.1-27-09 until the minor marries, but the parental rights so conferred on a conservator do not preclude appointment of a guardian as provided by chapter 30.1-27.

2. A conservator has power, without court authorization or confirmation, to invest and reinvest funds of the estate as would a trustee.

3. A conservator, acting reasonably in efforts to accomplish the purpose for which he was appointed, may act without court authorization or confirmation, to:

- a. Collect, hold, and retain assets of the estate including land in another state, until, in his judgment, disposition of the assets should be made, and the assets may be retained even though they include an asset in which he is personally interested;

- b. Receive additions to the estate;
- c. Continue or participate in the operation of any business or other enterprise;
- d. Acquire an undivided interest in an estate asset in which the conservator, in any fiduciary capacity, holds an undivided interest;
- e. Invest and reinvest estate assets in accordance with subsection 2;
- f. Deposit estate funds in a bank including a bank operated by the conservator;
- g. Acquire or dispose of an estate asset including land in another state for cash or on credit, at public or private sale, and to manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset for a term asset;
- h. Make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings;
- i. Subdivide, develop, or dedicate land to public use, to make or obtain the vacation of plats and adjust boundaries, to adjust differences in valuation on exchange or to partition by giving or receiving considerations, and to dedicate easements to public use without consideration;
- j. Enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the conservatorship;
- k. Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;
- l. Grant an option involving disposition of an estate asset, to take an option for the acquisition of any asset;
- m. Vote a security, in person or by general or limited proxy;
- n. Pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;
- o. Sell or exercise stock subscription or conversion rights, to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;



- p. Hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery, but the conservator is liable for any act of the nominee in connection with the stock so held;
- q. Insure the assets of the estate against damage or loss, and the conservator against liability with respect to third persons;
- r. Borrow money to be repaid from estate assets or otherwise, to advance money for the protection of the estate or the protected person, and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of any estate assets and the conservator has a lien on the estate as against the protected person for advances so made;
- s. Pay or contest any claim, to settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise, and to release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectable;
- t. Pay taxes, assessments, compensation of the conservator, and other expenses incurred in the collection, care, administration, and protection of the estate;
- u. Allocate items of income or expense to either estate income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties;
- v. Pay any sum distributable to a protected person or his dependent without liability to the conservator, by paying the sum to the distributee or by paying the sum for the use of the distributee either to his guardian or, if none, to a relative or other person with custody of his person;
- w. Employ persons, including attorneys, auditors, investment advisors, or agents, even though they are associated with the conservator to advise or assist him in the performance of his administrative duties, to act upon their recommendation without independent investigation, and instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary;
- x. Prosecute or defend actions, claims or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of his duties; and

- y. Execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the conservator.

30.1-29-25 (5-425). DISTRIBUTIVE DUTIES AND POWERS OF CONSERVATOR.) 1. A conservator may expend or distribute income or principal of the estate without court authorization or confirmation for the support, education, care, or benefit of the protected person and his dependents in accordance with the following principles:

- a. The conservator is to consider recommendations relating to the appropriate standard of support, education, and benefit for the protected person made by a parent or guardian, if any. He may not be surcharged for sums paid to persons or organizations actually furnishing support, education, or care to the protected person pursuant to the recommendations of a parent or guardian of the protected person unless he knows that the parent or guardian is deriving personal financial benefit therefrom, including relief from any personal duty of support, or unless the recommendations are clearly not in the best interests of the protected person.
- b. The conservator is to expend or distribute sums reasonably necessary for the support, education, care, or benefit of the protected person with due regard to:
  - (1) The size of the estate, the probable duration of the conservatorship and the likelihood that the protected person, at some future time, may be fully able to manage his affairs and the estate which has been conserved for him;
  - (2) The accustomed standard of living of the protected person and members of his household; and
  - (3) Other funds or sources used for the support of the protected person.
- c. The conservator may expend funds of the estate for the support of persons legally dependent on the protected person and others who are members of the protected person's household, who are unable to support themselves, and who are in need of support.
- d. Funds expended under this subsection may be paid by the conservator to any person, including the protected person to reimburse for expenditures which the conservator might have made, or in advance for services to be rendered to the protected person when it is reasonable to expect that they will be performed and where advance payments are customary or reasonably necessary under the circumstances.

2. If the estate is ample to provide for the purposes implicit in the distributions authorized by the preceding subsections, a conservator

for a protected person other than a minor has power to make gifts to charity and other objects as the protected person might have been expected to make, in amounts which do not exceed in total for any year twenty percent of the income from the estate.

3. When a minor who has not been adjudged disabled under subsection 2 of section 30.1-29-01 attains his majority, his conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.

4. When the conservator is satisfied that a protected person's disability (other than minority) has ceased, the conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.

5. If a protected person dies, the conservator shall deliver to the court for safekeeping any will of the deceased protected person which may have come into his possession, inform the executor or a beneficiary named therein that he has done so, and retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled thereto. If after forty days from the death of the protected person no other person has been appointed personal representative and no application or petition for appointment is before the court, the conservator may apply to exercise the powers and duties of a personal representative so that he may proceed to administer and distribute the decedent's estate without additional or further appointment. Upon application for an order granting the powers of a personal representative to a conservator, after notice to any person demanding notice under section 30.1-13-04 and to any person nominated executor in any will of which the applicant is aware, the court may order the conferral of the power upon determining that there is no objection, and endorse the letters of the conservator to note that the formerly protected person is deceased and that the conservator has acquired all of the powers and duties of a personal representative. The making and entry of an order under this section shall have the effect of an order of appointment of a personal representative as provided in section 30.1-14-08 and chapters 30.1-17 through 30.1-21, except that estate in the name of the conservator, after administration, may be distributed to the decedent's successors without prior retransfer to the conservator as personal representative.

30.1-29-26 (5-426). ENLARGEMENT OR LIMITATION OF POWERS OF CONSERVATOR.) Subject to the restrictions in subsection 4 of section 30.1-29-08, the court may confer on a conservator at the time of appointment or later, in addition to the powers conferred on him by sections 30.1-29-24 and 30.1-24-25, any power which the court itself could exercise under subsections 2 and 3 of section 30.1-29-08. The court may, at the time of appointment or later, limit the powers of a conservator otherwise conferred by sections 30.1-29-24 and 30.1-29-25, or previously conferred by the court,

and may at any time relieve him of any limitation. If the court limits any power conferred on the conservator by sections 30.1-29-24 and 30.1-29-25, the limitation shall be endorsed upon his letters of appointment.

30.1-29-27 (5-427). PRESERVATION OF ESTATE PLAN.) In investing the estate, and in selecting assets of the estate for distribution under subsections 1 and 2 of section 30.1-29-25, in utilizing powers of revocation or withdrawal available for the support of the protected person, and exercisable by the conservator or the court, the conservator and the court should take into account any known estate plan of the protected person, including his will, any revocable trust of which he is settlor, and any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of benefits or interests at his death to another or others which he may have originated. The conservator may examine the will of the protected person.

30.1-29-28 (5-428). CLAIMS AGAINST PROTECTED PERSON - ENFORCEMENT.) 1. A conservator must pay from the estate all just claims against the estate and against the protected person arising before or after the conservatorship upon their presentation and allowance. A claim may be presented by either of the following methods:

- a. The claimant may deliver or mail to the conservator a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed; or
- b. The claimant may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court and deliver or mail a copy of the statement to the conservator.

A claim is deemed presented on the first to occur of receipt of the written statement of claim by the conservator, or the filing of the claim with the court. A presented claim is allowed if it is not disallowed by written statement mailed by the conservator to the claimant within sixty days after its presentation. The presentation of a claim tolls any statute of limitation relating to the claim until thirty days after its disallowance.

2. A claimant whose claim has not been paid may petition the court for determination of his claim at any time before it is barred by the applicable statute of limitation, and, upon due proof, procure an order for its allowance and payment from the estate. If a proceeding is pending against a protected person at the time of appointment of a conservator or is initiated against the protected person thereafter, the moving party must give notice of the proceeding to the conservator if the outcome is to constitute a claim against the estate.

3. If it appears that the estate in conservatorship is likely to be exhausted before all existing claims are paid, preference is to be given to prior claims for the care, maintenance, and education of the protected person or his dependents and existing claims for expenses of administration.

**30.1-29-29 (5-429). INDIVIDUAL LIABILITY OF CONSERVATOR.)**

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

2. The conservator is individually liable for obligations arising from ownership or control of property of the estate or for torts committed in the course of administration of the estate only if he is personally at fault.

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

4. Any question of liability between the estate and the conservator individually may be determined in a proceeding for accounting, surcharge, or indemnification, or other appropriate proceeding or action.

**30.1-29-30 (5-430). TERMINATION OF PROCEEDING.)** The protected person, his personal representative, the conservator, or any other interested person may petition the court to terminate the conservatorship. A protected person seeking termination is entitled to the same rights and procedures as in an original proceeding for a protective order. The court, upon determining, after notice and hearing, that the minority or disability of the protected person has ceased, may terminate the conservatorship. Upon termination, title to assets of the estate passes to the former protected person or to his successors subject to provision in the order for expenses of administration or to conveyances from the conservator to the former protected persons or his successors to evidence the transfer.

**30.1-29-31 (5-431). PAYMENT OF DEBT AND DELIVERY OF PROPERTY TO FOREIGN CONSERVATOR WITHOUT LOCAL PROCEEDINGS.)**

Any person indebted to a protected person, or having possession of property or of an instrument evidencing a debt, stock, or chose in action belonging to a protected person may pay or deliver to a conservator, guardian of the estate, or other like fiduciary appointed by a court of the state or residence of the protected person, upon being presented with proof of his appointment and an affidavit made by him or on his behalf stating:

1. That no protective proceeding relating to the protected person is pending in this state; and
2. That the foreign conservator is entitled to payment or to receive delivery.

If the person to whom the affidavit is presented is not aware of any protective proceeding pending in this state, payment or delivery in response to the demand and affidavit discharges the debtor or possessor.

**30.1-29-32 (5-432). DELIVERY TO FOREIGN CONSERVATOR.)**

If no local conservator has been appointed and no petition in a protective proceeding is pending in this state, a domiciliary foreign conservator may file with a court in this state in a county in which property belonging to the protected person is located, authenticated copies of his appointment and of any official bond he has given. Thereafter, he may exercise as to assets in this state all powers of a local conservator and may maintain actions and proceedings in this state subject to any conditions imposed upon nonresident parties generally.

**Part 5**

**Chapter 30.1-30**

**30.1-30-01 (5-501). WHEN POWER OF ATTORNEY NOT AFFECTED BY DISABILITY.)** Whenever a principal designates another his attorney in fact or agent by a power of attorney in writing and the writing contains the words "This power of attorney shall not be affected by disability of the principal," or "This power of attorney shall become effective upon the disability of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding his disability, the authority of the attorney in fact or agent is exercisable by him as provided in the power on behalf of the principal notwithstanding later disability or incapacity of the principal at law or later uncertainty as to whether the principal is dead or alive. All acts done by the attorney in fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or his heirs, devisees, and personal representative as if the principal were alive, competent, and not disabled. If a conservator thereafter is appointed for the principal, the attorney in fact or agent, during the continuance of the appointment, shall account to the conservator rather than the principal. The conservator has the same power as the principal would have and if he were not disabled or incompetent to revoke, suspend, or terminate all or any part of the power of attorney or agency.

**30.1-30-02 (5-502). OTHER POWERS OF ATTORNEY NOT REVOKED UNTIL NOTICE OF DEATH OR DISABILITY.)** 1. The death, disability, or incompetence of any principal who has executed a power of attorney in writing other than a power as described by section 30.1-30-01, does not revoke or terminate the agency as to the attorney in fact, agent, or other person who, without actual knowledge of the death, disability, or incompetence of the principal, acts in good faith under the power of attorney or agency. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and his heirs, devisees, and personal representatives.

2. An affidavit, executed by the attorney in fact or agent stating that he did not have, at the time of doing an act pursuant to the power of attorney, actual knowledge of the revocation or termination of the power of attorney by death, disability, or incompetence, is, in the absence of fraud, conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power requires execution and delivery of any instrument which is recordable, the affidavit when authenticated for record is likewise recordable.

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

## ARTICLE VI

### Part 1

#### Chapter 30.1-31

30.1-31-01 (6-101). DEFINITIONS.) In this chapter, unless the context otherwise requires:

1. "Account" means a contract of deposit of funds between a depositor and a financial institution, and includes a checking account, savings account, certificate of deposit, share account, and other like arrangement;
2. "Beneficiary" means a person named in a trust account as one for whom a party to the account is named as trustee;
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, building and loan associations, savings and loan companies or associations, and credit unions;
4. "Joint account" means an account payable on request to one or more of two or more parties whether or not mention is made of any right of survivorship;
5. A "multiple-party account" is any of the following types of account:
  - a. A joint account;
  - b. A P.O.D. account; or
  - c. A trust account.

It does not include accounts established for deposit of funds of a partnership, joint venture, or other association for business purposes, or accounts controlled by one or more persons as the duly authorized agent or trustee for a corporation, unincorporated association, charitable or civic organization, or a regular fiduciary or trust account where the relationship is established other than by deposit agreement;

6. "Net contribution" of a party to a joint account as of any given time is the sum of all deposits thereto made by or for him, less all withdrawals made by or for him which have not been paid to or applied to the use of any other party, plus a pro rata share of any interest or dividends included in the current balance. The term includes, in addition, any proceeds of deposit life insurance added to the account by reason of the death of the party whose net contribution is in question;
7. "Party" means a person who, by the terms of the account, has a present right, subject to request, to payment from a multiple-party account. A P.O.D. payee or beneficiary of a trust account is a party only after the account becomes payable to him by reason of his surviving the original payee or trustee. Unless the context otherwise requires, it includes a guardian, conservator, personal representative, or assignee, including an attaching creditor, of a party. It also includes a person identified as a trustee of an account for another whether or not a beneficiary is named, but it does not include any named beneficiary unless he has a present right of withdrawal;
8. "Payment" of sums on deposit includes withdrawal, payment on check or other directive of a party, and any pledge of sums on deposit by a party and any set-off or reduction or other disposition of all or part of an account pursuant to a pledge;
9. "Proof of death" includes a death certificate or record or report which is prima facie proof of death under section 30.1-01-04;
10. "P.O.D. account" means an account payable on request to one person during lifetime and on his death to one or more P.O.D. payees, or to one or more persons during their lifetimes and on the death of all of them to one or more P.O.D. payees;
11. "P.O.D. payee" means a person designated on a P.O.D. account as one to whom the account is payable on request after the death of one or more persons;



12. "Request" means a proper request for withdrawal, or a check or order for payment, which complies with all conditions of the account, including special requirements concerning necessary signatures and regulations of the financial institution; but if the financial institution conditions withdrawal or payment on advance notice, for purposes of this chapter the request for withdrawal or payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for withdrawal;
13. "Sums on deposit" means the balance payable on a multiple-party account including interest, dividends, and, in addition, any deposit of life insurance proceeds added to the account by reason of the death of a party;
14. "Trust account" means an account in the name of one or more parties as trustee for one or more beneficiaries where the relationship is established by the form of the account and the deposit agreement with the financial institution and there is no subject of the trust other than the sums on deposit in the account. It is not essential that payment to the beneficiary be mentioned in the deposit agreement. A trust account does not include a regular trust account under a testamentary trust or a trust agreement which has significance apart from the account, or a fiduciary account arising from a fiduciary relation such as attorney-client;
15. "Withdrawal" includes payment to a third person pursuant to check or other directive of a party.

30.1-31-02 (6-102). OWNERSHIP AS BETWEEN PARTIES, AND OTHERS - PROTECTION OF FINANCIAL INSTITUTIONS.) The provisions of sections 30.1-31-03 to 30.1-31-05 concerning beneficial ownership as between parties, or as between parties and P.O.D. payees or beneficiaries of multiple-party accounts, are relevant only to controversies between these persons and their creditors and other successors, and have no bearing on the power of withdrawal of these persons as determined by the terms of account contracts. The provisions of sections 30.1-31-08 to 30.1-31-13 govern the liability of financial institutions who make payments pursuant thereto, and their set-off rights.

30.1-31-03 (6-103). OWNERSHIP DURING LIFETIME.) 1. A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent.

2. A P.O.D. account belongs to the original payee during his lifetime and not to the P.O.D. payee or payees. If two or more parties are named as original payees, rights as between them during their lifetimes are governed by subsection 1 of this section.

3. Unless a contrary intent is manifested by the terms of the account or the deposit agreement or there is other clear and convincing evidence of an irrevocable trust, a trust account belongs beneficially to the trustee during his lifetime, and if two or more parties are named as trustee on the account, during their lifetimes beneficial rights as between them are governed by subsection 1 of this section. If there is an irrevocable trust, the account belongs beneficially to the beneficiary.

30.1-31-04 (6-104). RIGHT OF SURVIVORSHIP.) 1. Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties as against the estate of the decedent unless there is clear and convincing evidence of a different intention at the time the account is created. If there are two or more surviving parties, their respective ownerships during lifetime shall be in proportion to their previous ownership interests under section 30.1-31-03 augmented by an equal share for each survivor of any interest the decedent may have owned in the account immediately before his death; and the right of survivorship continues between the surviving parties.

2. If the account is a P.O.D. account, on death of the original payee or of the survivor of two or more original payees, any sums remaining on deposit belong to the P.O.D. payee or payees if surviving, or to the survivor of them if one or more die before the original payee; if two or more P.O.D. payees survive, there is no right of survivorship in event of death of a P.O.D. payee thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

3. If the account is a trust account, on death of the trustee or the survivor of two or more trustees, any sums remaining on deposit belong to the person or persons named as beneficiaries, if surviving, or to the survivor of them if one or more die before the trustee, unless there is clear and convincing evidence of a contrary intent. If two or more beneficiaries survive, there is no right of survivorship in event of death of any beneficiary thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

4. In other cases, the death of any party to a multiple-party account has no effect on beneficial ownership of the account other than to transfer the rights of the decedent as part of his estate.

5. A right of survivorship arising from the express terms of the account or under this section, a beneficiary designation in a trust account, or a P.O.D. payee designation, cannot be changed by will.

30.1-31-05 (6-105). EFFECT OF WRITTEN NOTICE TO FINANCIAL INSTITUTION.) The provisions of section 30.1-31-04 as to rights of survivorship are determined by the form of the account at the death of a party. This form may be altered by written order given

by a party to the financial institution to change the form of the account or to stop or vary payment under the terms of the account. The order or request must be signed by a party, received by the financial institution during the party's lifetime, and not countermanded by other written order of the same party during his lifetime.

30.1-31-06 (6-106). ACCOUNTS AND TRANSFERS NONTESTAMENTARY.) Any transfers resulting from the application of section 30.1-31-04 are effective by reason of the account contracts involved and this statute and are not to be considered as testamentary or subject to chapters 30.1-01 through 30.1-25.

30.1-31-07 (6-107). 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, if other assets of the estate are insufficient. A surviving party, P.O.D. payee, or beneficiary who receives payment from a multiple-party account after the death of a deceased party shall be liable to account to his personal representative for amounts the decedent owned beneficially immediately before his death to the extent necessary to discharge the claims and charges mentioned above remaining unpaid after application of the decedent's estate. No proceeding to assert this liability shall be commenced unless the personal representative has received a written demand by a surviving spouse, a creditor or one acting for a minor or 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.

30.1-31-08 (6-108). FINANCIAL INSTITUTION PROTECTION - PAYMENT ON SIGNATURE OF ONE PARTY.) Financial institutions may enter into multiple-party accounts to the same extent that they may enter into single-party accounts. Any multiple-party account may be paid, on request, to any one or more of the parties. A financial institution shall not be required to inquire as to the source of funds received for deposit to a multiple-party account, or to inquire as to the proposed application of any sum withdrawn from an account, for purposes of establishing net contributions.

30.1-31-09 (6-109). FINANCIAL INSTITUTION PROTECTION - PAYMENT AFTER DEATH OR DISABILITY - JOINT ACCOUNT.) Any sums in a joint account may be paid, on request, to any party without regard to whether any other party is incapacitated or deceased at the time the payment is demanded; but payment may not be made to the personal representative or heirs of a deceased party unless

proofs of death are presented to the financial institution showing that the decedent was the last surviving party or unless there is no right of survivorship under section 30.1-31-04.

30.1-31-10 (6-110). FINANCIAL INSTITUTION PROTECTION - PAYMENT OF P.O.D. ACCOUNT.) Any P.O.D. account may be paid, on request, to any original party to the account. Payment may be made, on request, to the P.O.D. payee or to the personal representative or heirs of a deceased P.O.D. payee upon presentation to the financial institution of proof of death showing that the P.O.D. payee survived all persons named as original payees. Payment may be made to the personal representative or heirs of a deceased original payee if proof of death is presented to the financial institution showing that his decedent was the survivor of all other persons named on the account either as an original payee or as P.O.D. payee.

30.1-31-11 (6-111). FINANCIAL INSTITUTION PROTECTION - PAYMENT OF TRUST ACCOUNT.) Any trust account may be paid, on request, to any trustee. Unless the financial institution has received written notice that the beneficiary has a vested interest not dependent upon his surviving the trustee, payment may be made to the personal representative or heirs of a deceased trustee if proof of death is presented to the financial institution showing that his decedent was the survivor of all other persons named on the account either as trustee or beneficiary. Payment may be made, on request, to the beneficiary upon presentation to the financial institution of proof of death showing that the beneficiary or beneficiaries survived all persons named as trustees.

30.1-31-12 (6-112). FINANCIAL INSTITUTION PROTECTION - DISCHARGE.) Payment made pursuant to sections 30.1-31-08 through 30.1-31-11 discharges the financial institution from all claims for amounts so paid whether or not the payment is consistent with the beneficial ownership of the account as between parties, P.O.D. payees, or beneficiaries, or their successors. The protection here given does not extend to payments made after a financial institution has received written notice from any party able to request present payment to the effect that withdrawals in accordance with the terms of the account should not be permitted. Unless the notice is withdrawn by the person giving it, the successor of any deceased party must concur in any demand for withdrawal if the financial institution is to be protected under this section. No other notice or any other information shown to have been available to a financial institution shall affect its right to the protection provided here. The protection here provided shall have no bearing on the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of funds in, or withdrawn from, multiple-party accounts.

30.1-31-13 (6-113). FINANCIAL INSTITUTION PROTECTION - SET-OFF.) Without qualifying any other statutory right to set-off or lien and subject to any contractual provision, if a party to a multiple-party account is indebted to a financial institution, the financial institution has a right to set-off against the account in which the

party has or had immediately before his death a present right of withdrawal. The amount of the account subject to set-off is that proportion to which the debtor is, or was immediately before his death, beneficially entitled, and in the absence of proof of net contributions, to an equal share with all parties having present rights of withdrawal.

## Part 2

30.1-31-14 (6-201). PROVISIONS FOR PAYMENT OR TRANSFER AT DEATH.) 1. Any of the following provisions in an insurance policy, contract of employment, bond, mortgage, promissory note, deposit agreement, pension plan, trust agreement, conveyance or any other written instrument effective as a contract, gift, conveyance, or trust is deemed to be nontestamentary, and this title does not invalidate the instrument or any provision:

- a. That money or other benefits theretofore due to, controlled or owned by a decedent shall be paid after his death to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently;
  - b. That any money due or to become due under the instrument shall cease to be payable in event of the death of the promisee or the promisor before payment or demand; or
  - c. That any property which is the subject of the instrument shall pass to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently.
2. Nothing in this section limits the rights of creditors under other laws of this state.

## ARTICLE VII

### Part 1

#### Chapter 30.1-32

30.1-32-01 (7-101). DUTY TO REGISTER TRUSTS.) The trustee of a trust having its principal place of administration in this state shall register the trust in the district court of this state for the district encompassing the principal place of administration. Unless otherwise designated in the trust instrument, the principal place of administration of a trust is the trustee's usual place of business where the records pertaining to the trust are kept, or at the trustee's residence if he has no such place of business. In the case of co-trustees, the principal place of administration, if not otherwise designated in the trust instrument, is:

1. The usual place of business of the corporate trustee if there is but one corporate co-trustee; or
2. The usual place of business or residence of the individual trustee who is a professional fiduciary if there is but one such person and no corporate co-trustee; and otherwise
3. The usual place of business or residence of any of the co-trustees as agreed upon by them.

The duty to register under this chapter does not apply to the trustee of a trust if registration would be inconsistent with the retained jurisdiction of a foreign court from which the trustee cannot obtain release. The clerk of the district court shall keep a record of all trust registrations in the district and of any orders or responses relating thereto by the district court, and shall establish and maintain a system for indexing, filing, or recording which is sufficient to enable users of the records to obtain adequate information.

30.1-32-02 (7-102). REGISTRATION PROCEDURES.) Registration shall be accomplished by filing a statement indicating the name and address of the trustee in which it acknowledges the trusteeship. The statement shall indicate whether the trust has been registered elsewhere. The statement shall identify the trust:

1. In the case of a testamentary trust, by the name of the testator and the date and place of domiciliary probate;
2. In the case of a written inter vivos trust, by the name of each settlor and the original trustee and the date of the trust instrument; or
3. In the case of an oral trust, by information identifying the settlor or other source of funds and describing the time and manner of the trust's creation and the terms of the trust, including the subject matter, beneficiaries and time of performance.

If a trust has been registered elsewhere, registration in this state is ineffective until the earlier registration is released by order of the court where prior registration occurred, or an instrument executed by the trustee and all beneficiaries, is filed with the registration in this state.

30.1-32-03 (7-103). EFFECT OF REGISTRATION.) 1. By registering a trust, or accepting the trusteeship of a registered trust, the trustee submits personally to the jurisdiction of the district court in any proceeding under section 30.1-33-01 relating to the trust that may be initiated by any interested person while the trust remains registered. Notice of any proceeding shall be delivered to the trustee, or mailed to him by ordinary first-class mail, at his address as listed in the registration or as thereafter reported to the district court and to his address as then known to the petitioner.

2. To the extent of their interests in the trust, all beneficiaries of a trust properly registered in this state are subject to the jurisdiction of the district court of registration for the purposes of proceedings under section 30.1-33-01, provided notice is given pursuant to section 30.1-03-01.

30.1-32-04 (7-104). EFFECT OF FAILURE TO REGISTER.)

A trustee who fails to register a trust in a proper place as required by this chapter, for purposes of any proceedings initiated by a beneficiary of the trust prior to registration, is subject to the personal jurisdiction of any district court in which the trust could have been registered. In addition, any trustee who, within thirty days after receipt of a written demand by a settlor or beneficiary of the trust, fails to register a trust as required by this chapter is subject to removal and denial of compensation or to surcharge as the district court may direct. A provision in the terms of the trust purporting to excuse the trustee from the duty to register, or directing that the trust or trustee shall not be subject to the jurisdiction of the district court, is ineffective.

30.1-32-05 (7-105). REGISTRATION, QUALIFICATION OF FOREIGN TRUSTEE.) A foreign corporate trustee is required to qualify as a foreign corporation doing business in this state if it maintains the principal place of administration of any trust within the state. A foreign co-trustee is not required to qualify in this state solely because its co-trustee maintains the principal place of administration in this state. Unless otherwise doing business in this state, local qualification by a foreign trustee, corporate or individual, is not required in order for the trustee to receive distribution from a local estate or to hold, invest in, manage, or acquire property located in this state, or maintain litigation. Nothing in this section affects a determination of what other acts require qualification as doing business in this state.

Part 2

Chapter 30.1-33

30.1-33-01 (7-201). DISTRICT COURT EXCLUSIVE JURISDICTION OF TRUSTS.) 1. The district court has exclusive jurisdiction of proceedings initiated by interested parties concerning the internal affairs of trusts. Proceedings which may be maintained under this section are those concerning the administration and distribution of trusts, the declaration of rights, and the determination of other matters involving trustees and beneficiaries of trust, except for the proceedings over which the court has jurisdiction as provided in section 30.1-02-02. These include, but are not limited to, proceedings to:

- a. Appoint or remove a trustee;
- b. Review trustees' fees and to review and settle interim or final accounts;

- c. Ascertain beneficiaries, determine any question arising in the administration or distribution of any trust including questions of construction of trust instruments, to instruct trustees, and determine the existence or nonexistence of any immunity, power, privilege, duty, or right; and
- d. Release registration of a trust.

2. Neither registration of a trust nor a proceeding under this section result in continuing supervisory proceedings. The management and distribution of a trust estate, submission of accounts and reports to beneficiaries, payment of trustee's fees and other obligations of a trust, acceptance and change of trusteeship, and other aspects of the administration of a trust shall proceed expeditiously consistent with the terms of the trust, free of judicial intervention and without order, approval or other action of any court, subject to the jurisdiction of the district court as invoked by interested parties or as otherwise exercised as provided by law.

30.1-33-02 (7-202). TRUST PROCEEDINGS - VENUE.) Venue for proceedings under section 30.1-33-01 involving registered trusts is in the place of registration. Venue for proceedings under section 30.1-33-01 involving trusts not registered in this state is in any place where the trust properly could have been registered, and otherwise by the rules of civil procedure.

30.1-33-03 (7-203). TRUST PROCEEDINGS - DISMISSAL OF MATTERS RELATING TO FOREIGN TRUSTS.) The district court will not, over the objection of a party, entertain proceedings under section 30.1-33-01 involving a trust registered or having its principal place of administration in another state, unless:

1. All appropriate parties could not be bound by litigation in the courts of the state where the trust is registered or has its principal place of administration; or
2. The interests of justice otherwise would seriously be impaired.

The district court may condition a stay or dismissal of a proceeding under this section on the consent of any party to jurisdiction of the state in which the trust is registered or has its principal place of business, or the district court may grant a continuance or enter any other appropriate order.

30.1-33-04 (7-204). DISTRICT COURT - CONCURRENT JURISDICTION OF LITIGATION INVOLVING TRUSTS AND THIRD PARTIES.) The district court of the place in which the trust is registered has concurrent jurisdiction with other courts of this state of actions and proceedings to determine the existence or nonexistence of trusts created other than by will, of actions by or against creditors or debtors of trusts, and of other actions and proceedings involving trustees and third parties. Venue is determined by the rules generally applicable to civil actions.



30.1-33-05 (7-205). PROCEEDINGS FOR REVIEW OF EMPLOYMENT OF AGENTS AND REVIEW OF COMPENSATION OF TRUSTEE AND EMPLOYEES OF TRUST.) On petition of an interested person, after notice to all interested persons, the district court may review the propriety of employment of any person by a trustee, including any attorney, auditor, investment advisor, or other specialized agent or assistant, and the reasonableness of the compensation of any person so employed, and the reasonableness of the compensation determined by the trustee for his own services. Any person who has received excessive compensation from a trust may be ordered to make appropriate refunds.

30.1-33-06 (7-206). TRUST PROCEEDINGS - INITIATION BY NOTICE - NECESSARY PARTIES.) Proceedings under section 30.1-33-01 are initiated by filing a petition in the district court and giving notice pursuant to section 30.1-03-01 to interested parties. The district court may order notification of additional persons. A decree is valid as to all who are given notice of the proceeding though fewer than all interested parties are notified.

### Part 3

#### Chapter 30.1-34

30.1-34-01 (7-301). GENERAL DUTIES NOT LIMITED.) Except as specifically provided, the general duty of the trustee to administer a trust expeditiously for the benefit of the beneficiaries is not altered by this title.

30.1-34-02 (7-302). TRUSTEE'S STANDARD OF CARE AND PERFORMANCE.) Except as otherwise provided by the terms of the trust, the trustee shall observe the standards in dealing with the trust assets that would be observed by a prudent man dealing with the property of another, and if the trustee has special skills or is named trustee on the basis of representations of special skills or expertise, he is under a duty to use those skills.

30.1-34-03 (7-303). DUTY TO INFORM AND ACCOUNT TO BENEFICIARIES.) The trustee shall keep the beneficiaries of the trust reasonably informed of the trust and its administration. In addition:

1. Within thirty days after his acceptance of the trust, the trustee shall inform, in writing, the current beneficiaries and if possible, one or more persons who under section 30.1-03-04 may represent beneficiaries with future interests, of the district court in which the trust is registered and of his name and address.
2. Upon reasonable request, the trustee shall provide the beneficiary with a copy of the terms of the trust which describe or affect his interest and with relevant information about the assets of the trust and the particulars relating to the administration.

3. Upon reasonable request, a beneficiary is entitled to a statement of the accounts of the trust annually and on termination of the trust or change of the trustee.

30.1-34-04 (7-304). DUTY TO PROVIDE BOND.) A trustee need not provide bond to secure performance of his duties unless required by the terms of the trust, reasonably requested by a beneficiary or found by the district court to be necessary to protect the interest of the beneficiaries who are not able to protect themselves and whose interests otherwise are not adequately represented. On petition of the trustee or other interested person the district court may excuse a requirement of bond, reduce the amount of the bond, release the surety, or permit the substitution of another bond with the same or different sureties. If bond is required, it shall be filed in the court of registration or other appropriate court in amounts and with sureties and liabilities as provided in sections 30.1-17-04 and 30.1-17-06 relating to bonds or personal representatives.

30.1-34-05 (7-305). TRUSTEE'S DUTIES - APPROPRIATE PLACE OF ADMINISTRATION - DEVIATION.) A trustee is under a continuing duty to administer the trust at a place appropriate to the purposes of the trust and to its sound, efficient management. If the principal place of administration becomes inappropriate for any reason, the district court may enter any order furthering efficient administration and the interests of beneficiaries, including, if appropriate, release of registration, removal of the trustee, and appointment of a trustee in another state. Trust provisions relating to the place of administration and to changes in the place of administration or of trustee control unless compliance would be contrary to efficient administration or the purposes of the trust. Views of adult beneficiaries shall be given weight in determining the suitability of the trustee and the place of administration.

30.1-34-06 (7-306). PERSONAL LIABILITY OF TRUSTEE TO THIRD PARTIES.) 1. Unless otherwise provided in the contract, a trustee is not personally liable on contracts properly entered into in his fiduciary capacity in the course of administration of the trust estate unless he fails to reveal his representative capacity and identify the trust estate in the contract.

2. A trustee is personally liable for obligations arising from ownership or control of property of the trust estate or for torts committed in the course of administration of the trust estate only if he is personally at fault.

3. Claims based on contracts entered into by a trustee in his fiduciary capacity, on obligations arising from ownership or control of the trust estate, or on torts committed in the course of trust administration, may be asserted against the trust estate by proceeding against the trustee in his fiduciary capacity, whether or not the trustee is personally liable therefor.

4. The question of liability as between the trust estate and the trustee individually may be determined in a proceeding for accounting, surcharge or indemnification, or other appropriate proceeding.

30.1-34-07 (7-307). LIMITATIONS ON PROCEEDINGS AGAINST TRUSTEES AFTER FINAL ACCOUNT.) Unless previously barred by adjudication, consent or limitation, any claim against a trustee for breach of trust is barred as to any beneficiary who has received a final account or other statement fully disclosing the matter and showing termination of the trust relationship between the trustee and the beneficiary unless a proceeding to assert the claim is commenced within six months after receipt of the final account or statement. In any event, and notwithstanding lack of full disclosure, a trustee who has issued a final account or statement received by the beneficiary and has informed the beneficiary of the location and availability of records for his examination is protected after three years. A beneficiary is deemed to have received a final account or statement if, being an adult, it is received by him personally or if, being a minor or disabled person, it is received by his representative as described in subsections 1 and 2 of section 30.1-03-04.

## ARTICLE VIII

### Chapter 30.1-35

30.1-35-01 (8-101). TIME OF TAKING EFFECT - PROVISIONS FOR TRANSITION.) 1. This title takes effect on July 1, 1975.

2. Except as provided elsewhere in this title, on the effective date of this title:

- a. It applies to any wills of decedents dying thereafter. No provision of this title, however, shall be effective to invalidate any will executed prior to July 1, 1975, when that will would be valid under the laws of this state in effect at the time of its execution;
- b. The title applies to any proceedings in court then pending or thereafter commenced regardless of the time of the death of decedent except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this title;
- c. Every personal representative including a person administering an estate of a minor or incompetent holding an appointment on that date, continues to hold the appointment but has only the powers conferred by this title and is subject to the duties imposed with respect to any act occurring or done thereafter;

- d. An act done before the effective date in any proceeding and any accrued right is not impaired by this title. If a right is acquired, extinguished or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before the effective date, the provisions shall remain in force with respect to that right;
- e. Any rule of construction or presumption provided in this title applies to instruments executed and multiple-party accounts opened before the effective date unless there is a clear indication of a contrary intent;
- f. A person holding office as judge of the court on the effective date of this title may continue the office of judge of this court and may be selected for additional terms after the effective date of this title.

SECTION 2. AMENDMENT.) Section 6-03-64 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-03-64. PAYMENT OF DEPOSITS MADE BY FIDUCIARIES, OFFICERS, MINORS, AND ASSOCIATIONS.) Deposits made by a person as executor, administrator, guardian, conservator, or in any other representative capacity or official position, with any banking association, shall be payable to him as such officer, or if made personally by a minor, shall be paid to him although he has no guardian or conservator or if he has a guardian or conservator, it shall not be necessary to obtain the consent of the guardian or conservator to such payment, but a check or receipt or acquittance signed by such minor therefor shall be valid and binding. Deposits made by any corporation, association, or society shall be payable to any person authorized by its board of directors or trustees to receive the same.

SECTION 3. AMENDMENT.) Section 6-03-67 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-03-67. APPROPRIATION OF DEPOSITS UNLAWFUL - EXCEPTION - LIABILITY THEREFOR.) Except as provided in section 30.1-31-13, it shall be unlawful for any banking association to charge any claim which it might have, or the claim of any other person, against a deposit made with the association, or to appropriate a deposit or any part thereof to the payment of any debt to such association, without legal process or the consent of the depositor. Any banking association which violates this section shall be liable to the party aggrieved for any damages caused by such violation.

SECTION 4. AMENDMENT.) Subsection 4 of section 6-05-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- 4. To act as assignee, receiver, administrator, executor, guardian, conservator;

SECTION 5. AMENDMENT.) Section 6-05-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-05-13. TRANSFER OF TRUST TO CORPORATION.) Any executor, administrator, guardian, conservator, trustee, assignee, or receiver may resign his trust in favor of a corporation organized, acting, and qualified under this chapter, and thereupon, such corporation may be appointed as trustee by any court having jurisdiction of the subject matter of such trust upon such terms and conditions as such court may prescribe.

SECTION 6. AMENDMENT.) Section 6-05-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-05-21. COST OF BOND ALLOWABLE AS EXPENSE AND TAXABLE AS COSTS IN SUIT.) Any receiver, assignee, guardian, conservator, trustee, committee, personal representative, or other fiduciary required by law or ordered by any court or judge to give a bond or other obligation as such, may include as a part of the expense of executing his trust a reasonable sum, to be allowed by the court in which he is required to account, paid or to be paid to a corporation authorized under this chapter so to do, for acting as surety on such bond. A party entitled to recover disbursements in any action or proceeding shall be allowed, and may tax and recover as part of his disbursements, the sum paid such corporation for executing any bond, recognizance, or undertaking therein. Such expense shall not be allowed or taxed in an amount exceeding one percent per annum, or fraction thereof, on the amount of the penalty or liability in such bond, recognizance, or undertaking while the same has been in force, but an allowance of not less than five dollars shall be made for each bond.

SECTION 7. AMENDMENT.) Section 11-21-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-21-05. DUTIES AND POWERS OF PUBLIC ADMINISTRATOR.) The public administrator shall be ex officio public special administrator, guardian, and conservator in and for his county and shall take into his charge, without application to any appropriate court or special appointment, the estates of all deceased persons, and the persons and estates of all minors, and the estates or persons and estates of all incapacitated persons, in the following cases:

1. When a person dies intestate in the county without relatives or known heirs;
2. When a person dies testate and the executor named in the will is absent or fails to qualify and there is no heir, legatee, or devisee available to act as personal representative;
3. When an unknown person dies or is found dead in the county;

4. When money, property, papers, or other estate is left in a situation exposed to loss or damage, and no other person administers the estate;
5. When any estate of any person who dies intestate in the county or elsewhere, is left in the county and is liable to be injured, wasted, or lost, and the intestate does not leave a known spouse or heirs in this state;
6. When a minor is under the age of fourteen years and his parents are dead and he has no guardian or conservator;
7. When any estate is left in the county belonging to a minor whose parents are dead, or whose parents, if living, refuse or neglect to qualify as guardian or conservator, or who, having qualified, have been removed as guardians or conservators, or from any cause incompetent to act as guardians or conservators, where such minor has no one authorized by law to take care of and manage his estate;
8. When the estate or person and estate of an incapacitated person shall be left in his county and there is no legal guardian or conservator for such incapacitated person and no competent person who will qualify to take charge of such estate or to act as guardian or conservator known to the court having jurisdiction; and
9. When for any other good cause, the court shall order him to take possession of an estate to prevent its being injured, wasted, stolen, or lost.

SECTION 8. AMENDMENT.) Section 11-21-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-21-06. MAY ACT AS GENERAL AND SPECIAL ADMINISTRATOR, GUARDIAN, AND CONSERVATOR.) The public administrator shall have the same powers as are conferred upon special administrators, guardians, and conservators, and shall be subject to the same duties, penalties, provisions, and proceedings as are enjoined upon or authorized against special administrators, guardians, and conservators by the laws of this state so far as the same may be applicable. He may be appointed in proper cases as general administrator without giving additional bond, except that the court may require additional security, and when so appointed, he shall continue the administration until it is finally settled unless he resigns, dies, is discharged in the ordinary course of law as the administrator, or is removed for cause as public administrator or as administrator of such estate.

SECTION 9. AMENDMENT.) Section 11-21-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-21-07. PUBLIC ADMINISTRATOR TO PROSECUTE NECESSARY SUITS.) The public administrator shall institute all manner of suits and prosecutions that may be necessary to recover the property, debts, papers, or other estate of any deceased person or of any minor or incapacitated person when such estate or person is in his charge or custody.

SECTION 10. AMENDMENT.) Section 11-21-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-21-08. COMPENSATION OF PUBLIC ADMINISTRATOR.) The public administrator shall receive the same compensation for his services as is allowed by law to executors, administrators, guardians, and conservators unless the court, for special reasons, allows a higher compensation.

SECTION 11. AMENDMENT.) Section 11-21-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-21-13. COURT MAY ORDER PUBLIC ADMINISTRATOR TO ACCOUNT TO SUCCESSORS.) The county court, at any time and for good cause shown, may order the public administrator to account for and deliver all money, property, or papers belonging to an estate in his hands, to his successor in office, to the heirs of the estate, or to any personal representative or conservator regularly appointed as provided by law.

SECTION 12. AMENDMENT.) Section 14-10-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-10-04. MINOR'S RIGHTS OF ACTION.) A minor may enforce his rights by civil action or other legal proceedings in the same manner as an adult, except that a guardian ad litem shall be appointed to conduct the same.

SECTION 13. AMENDMENT.) Section 14-10-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-10-12. MINOR CANNOT DISAFFIRM CONTRACTS FOR NECESSARIES.) A minor cannot disaffirm a contract, otherwise valid, to pay the reasonable value of things necessary for his support or that of his family, if such contract is entered into by him when not under the care of a parent, guardian, or conservator able to provide for such minor or his family.

SECTION 14.) Section 25-04-13.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

25-04-13.1. GUARDIANSHIP AND CONSERVATORSHIP - SUPERINTENDENT TO ACT AS GUARDIAN AND DIRECTOR OF INSTITUTIONS AUTHORIZED TO SEEK PROTECTIVE PROCEEDINGS IN LIEU OF COURT APPOINTMENT OR RETENTION BY PARENT.) 1. The superintendent of the Grafton state school shall be the guardian of any resident of the Grafton state school who does not otherwise have a guardian duly appointed by a court of competent jurisdiction, or whose parents do not elect to retain their natural guardianship as herein provided. Such guardianship by the superintendent shall continue until the resident obtains a court-appointed guardian, or is permanently discharged from the Grafton state school pursuant to section 25-04-08.

2. The guardianship provided for by this section is in lieu of court appointment as provided in chapters 30.1-26 through 30.1-30, but carries the same powers and duties. Within ninety days following admission of a resident to the Grafton state school, his parents or responsible relatives may file an action in writing stating their intention to retain their natural guardianship over the resident. If an election to retain guardianship is not filed, the superintendent becomes the resident's guardian ninety days following admission and without court appointment. A full explanation of the legal effects of the statutory guardianship and of the optional procedures available under chapters 30.1-26 through 30.1-30 shall be furnished to the parents or responsible relatives of any resident admitted to the Grafton state school at the time of admission or as soon thereafter as possible.

3. Nothing contained in this section shall affect any parental financial responsibility for the resident as may otherwise be provided by law. The superintendent, in his capacity as guardian of a resident of the Grafton state school, shall not consent to any sterilization operation of such resident except as may otherwise be provided for by law.

SECTION 15. AMENDMENT.) Section 25-09-02.2 of the 1971 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-09-02.2. FILING OF CLAIMS - NOTICE TO DEPARTMENT.) Claims for expenses incurred by the state for care and treatment of a patient at the state hospital or state school may be filed against the personal representative or conservator of such patient after his death or against the estate of a responsible relative after his death, at any time prior to final distribution thereof, by the supervising department with the same priority as claims of general creditors which are filed against estates of decedents. Any claim denied or rejected by a personal representative or conservator shall clearly state the reason or cause for such denial or rejection, written notice of which shall be served upon the supervising department. Every personal representative upon the granting of letters of administration or testamentary shall, at the same time that publication of notice to creditors is required, forward to the supervising department a copy of the petition or application commencing probate, heirship proceedings, or joint tenancy tax clearance proceedings in the respective



county court, together with a copy or list of the names of the legatees, devisees, surviving joint tenants, and heirs at law of such estate. If no notice to creditors is required by the proceedings, such administrator, executor, or other petitioning party shall forward to the supervising department a copy of the petition or application commencing such proceedings, together with a list of the names of the legatees, devisees, surviving joint tenants, and heirs at law of such estate.

SECTION 16. AMENDMENT.) Section 27-07-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-07-02. JURISDICTION OF COUNTY COURTS.) The county court of each county shall have exclusive original jurisdiction in probate and testamentary matters, including the appointment of administrators, and guardians, the settlement of the accounts of executors, administrators, and guardians, and the sale of lands by executors, administrators, and guardians, and it shall have such other probate jurisdiction as may be conferred by law including, without limitation, that conferred by title 30.1. In a county not having a county court of increased jurisdiction, the jurisdiction and powers formerly vested in the justices of the peace are hereby conferred concurrently upon the county court, unless and until a county justice is appointed.

SECTION 17. AMENDMENT.) Section 27-07-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-07-09. POWERS OF THE COUNTY COURTS.) In the exercise of its jurisdiction, the county court of each county shall have power:

1. To make orders, judgments, and decrees and take all other action necessary and proper to administer justice in the matters which come before it;
2. To administer justice in all matters within its jurisdiction according to the provisions of the statutes relating thereto;
3. To issue citations, subpoenas, and other process under the seal of the court to any part of the state and to enforce obedience thereto or return thereof according to law;
4. To postpone from time to time for proper cause a hearing or other proceeding;
5. To compel the attendance of a party or other person whenever his presence is lawfully required;
6. To restrain by order an executor, administrator, guardian, or conservator to whom a citation or other process has been duly issued from acting as such until the further order of the court;

7. To require by order a personal representative, guardian, conservator, or other person subject to the jurisdiction of the court to perform any duty imposed on him by statute or by the court under the authority of a statute;
8. To maintain order and decorum during the sittings of the court and to punish any person for a contempt of court where the district court might punish him for a similar contempt and in like manner;
9. To open, vacate, or modify a decree or order of the court for fraud, mistake, newly discovered evidence, or other sufficient cause;
10. To enter as of a former time a decree or order of the court for the purpose of correcting a mistake or supplying an omission;
11. To complete all unfinished business, and to certify and sign with the date of so doing all papers or other records previously left uncompleted or unsigned, and to make and certify transcripts of all records of the court; and
12. With respect to any matter not expressly provided for in this Code, to act as nearly as may be according to the provisions of title 28 and title 30.1, and to exercise such other incidental powers as are necessary to carry into effect the powers expressly conferred.

SECTION 18. AMENDMENT.) Section 27-07-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-07-16. JUDGE OF COUNTY COURT NOT TO ACT AS ATTORNEY.) A county judge shall not act as an attorney either for or against a surviving husband or wife, heir, devisee, executor, administrator, guardian or ward, conservator, protected person, debtor, creditor, or other person in any civil or criminal action or other judicial proceeding which involves or relates to an estate, or to any part thereof, or to any other matter over which he has or may obtain jurisdiction. He shall not counsel or advise as to any such action or proceeding, or contemplated action or proceeding, nor shall he draft or aid in drafting any document or paper relating thereto which he is or may be required by law to pass upon.

SECTION 19. AMENDMENT.) Section 27-07-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-07-19. WHEN COUNTY JUDGE DISQUALIFIED.) A county judge shall not be qualified to admit a will to probate nor to grant letters, if he is:

1. Financially interested therein;
2. A next of kin of the decedent;
3. A legatee or devisee under the will;
4. Named as executor or trustee in the will;
5. A witness to the will; or
6. In any other manner interested or disqualified from acting.

SECTION 20. AMENDMENT.) Section 27-07-21 of the 1971 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-07-21. RIGHT TO LETTERS TESTAMENTARY OR OF ADMINISTRATION NOT AFFECTED BY TRANSFER OF PROCEEDING.) The transfer of a proceeding from one county court to another, as provided for in section 27-07-20, shall not affect the right of any person to letters on the estate transferred but the same persons shall be entitled to such letters as if no transfer had been made.

SECTION 21. AMENDMENT.) Section 27-07-29 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-07-29. DOCKETS TO BE KEPT BY COUNTY COURTS - CONTENTS.) In each county court of this state, there shall be kept a docket in which there shall be set apart at least two pages for each case by entering thereon its title and number. Underneath such title and number and on the first page there shall be entered the name of each party to such proceeding, the name of each guardian or conservator or other person having the custody of a party who is under any legal disability, the name of each guardian ad litem appointed for a party, the name of each attorney appearing for a party, the post-office address of each of such persons, and a word or words describing his relation to the case, if a party, as for example "heir," "devisee" or "ward," or his relation to a party as "attorney," or otherwise, according to the fact. The name of the attorney, guardian, conservator, or custodian immediately shall follow that of the party whom he represents and there shall be left sufficient space below the name of each party to admit of such entries from time to time as occasion requires. New parties, including persons to whom letters are issued, shall be registered in like manner. In the margin on the left there shall be entered opposite the name of each guardian ad litem or attorney the date of his appointment or appearance, and opposite the name of each new party the date on which he became a party. When the relation of a party, attorney, or other person ceases, a minute to that effect shall be made in the margin on the right. On the page following, there shall be entered a chronological index or minute of all the proceedings in such case from the beginning until the final disposition thereof. Such index or minute shall include a brief statement

of the object of each proceeding and a minute of the filing of each document, of each preliminary act of the court, of the issuance and return of each citation or other process, of each hearing or postponement, of each intermediate or final order or decree, and of each act done to carry such order or decree into effect. There shall be entered on the left hand margin the date of each transaction and in the margin on the right a reference to the book and page of the record where the same appears. There shall be appended to each docket a numerical and an alphabetical index thereto. Such numerical index shall refer to each case by number and title and shall contain the number of each case progressively, its title, and the number of the page on which it is docketed. Such alphabetical index shall be arranged with reference to the first letter of the family name in the title of each case and shall contain, in addition to each title, the number of the page on which the docket entries begin.

SECTION 22. AMENDMENT.) Section 27-07-30 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-07-30. FORM OF DOCKET TO BE KEPT BY COUNTY COURTS.) The docket of each county court of this state shall be substantially in the following form:

	Estate of Richard Roe.		
	Register.		
June 20, 1972.	Jane Roe, wife, Athens, N.D.		Revoked
	Mary Roe, minor heir, Athens, N.D.		Sept. 1,
Aug. 2, 1972.	John Bates, custodian, Athens, N.D.		1972.
	Chitty, guardian, Athens, N.D.		
	Coke, guardian ad litem, Rome, N.D.		

	Estate of Richard Roe.		
	Proceedings.		
June 20, 1972.	Proceeding for appointment of administrator in intestacy.		
	John Chitty, Esq., is appointed guardian for Mary Roe, minor, at her nomination.		
June 21, 1972.	Mary Roe, by her guardian ad litem, filed petition for administration of said estate.		J.185.
	Citation issued returnable Aug. 20, 1972.		

SECTION 23. AMENDMENT.) Subsection 3 of section 27-07-36 of the 1971 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. All receipts, canceled checks, or vouchers filed in support of any report and account rendered by any executor, administrator, or conservator if the filing date of the report and account is at least six years old. When these are destroyed, the clerk of court shall make a record of the destruction and the destruction date in the margin or elsewhere on the report and account affected.

**SECTION 24. AMENDMENT.)** Subsection 2 of section 27-20-47 of the 1971 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. If the child is not adopted within two years after the date of the order and a guardian or conservator of the child has not been appointed by the county court, the child shall be returned to the court for entry of further orders for the care, custody, and control of the child.

**SECTION 25. AMENDMENT.)** Section 28-01-26 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**28-01-26. LIMITATION IN CASE OF DEATH.)** If a person entitled to bring an action dies before the expiration of the time limited for the commencement thereof and the cause of action survives, an action may be commenced by his representatives after the expiration of that time and within one year from his death. If a person against whom an action may be brought dies before the expiration of the time limited for the commencement thereof and the cause of action survives and is not one based upon a claim which may be filed proceeding under title 30.1, an action may be commenced against his personal representative after the expiration of that time and within one year after the issuing of letters.

**SECTION 26. AMENDMENT.)** Section 28-03-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**28-03-01. APPOINTMENT OF GUARDIAN AD LITEM FOR INFANT PLAINTIFF.)** When an infant is plaintiff, a guardian ad litem may be appointed upon the application of the infant if he is at least fourteen years of age. If the infant is under that age, the application may be made by his guardian or conservator, if he has one, or by a relative or friend of the infant. If the application is made by a relative or friend, notice thereof must be given to the guardian or conservator, if there is one, and if not, then to the person with whom the infant resides.

**SECTION 27. AMENDMENT.)** Section 28-03-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**28-03-02. APPOINTMENT OF GUARDIAN AD LITEM FOR INFANT DEFENDANT - RESIDENT.)** When an infant is defendant and resides in this state, a guardian ad litem may be appointed upon the application of the infant if he is at least fourteen years of age and applies within twenty days after the service of the summons. If he is under the age of fourteen years or neglects so to apply, then the application may be made by any other party to the action or by a relative or friend of the infant. If the application is not made by the infant,

notice thereof must be given to his guardian or conservator, if he has either, and if not, then to the infant himself if he is at least fourteen years of age, and if he is under that age, then to the person with whom such infant resides.

SECTION 28. AMENDMENT.) Section 28-03-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-03-04. APPOINTMENT OF GUARDIAN AD LITEM FOR PERSON OF UNSOUND MIND.) When the defendant, at the time the action is commenced, is a person of unsound mind, and no guardian or conservator has been appointed, the court shall appoint a guardian for him for the purposes of the action. If during the pendency of an action either party shall become or prove to be of unsound mind, the action may be prosecuted or defended by his guardian or conservator in like manner as if it had been commenced after the appointment of the guardian or conservator, or the court may appoint a guardian for the action as the case may require. Such guardian for the action may be appointed upon the application of any party thereto or any relative or friend of the person of unsound mind after at least five days' notice of such application first shall have been given to such person personally, if a resident of this state, and if not a resident, in such manner as the court shall direct. Upon the hearing of such application the court, if deemed desirable and practicable, may order such person of unsound mind to appear personally or to be brought in by the sheriff.

SECTION 29. AMENDMENT.) Subsection 2 of section 28-20-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. If execution was actually levied prior to his death upon personal property, such property may be sold to satisfy the execution, and the officer making the sale shall account to the personal representative for any surplus remaining in his hands;

SECTION 30. AMENDMENT.) Section 28-26-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-26-21. PAYMENT OF COSTS FROM TRUST FUNDS.) In an action prosecuted or defended by a personal representative, trustee of an express trust, or a person expressly authorized by statute, costs shall be recovered as in an action by and against a person prosecuting or defending in his own right, but such costs, by the judgment, must be chargeable only upon or collected of the estate, fund, or party represented, unless the court shall direct the same to be paid by the plaintiff or defendant personally for mismanagement or bad faith in such action or defense.

SECTION 31. AMENDMENT.) Section 30-16-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30-16-04. DESCENT AND DISTRIBUTION OF REAL PROPERTY SUBJECT TO HOMESTEAD ESTATE.) The real property subjected to the homestead estate shall descend, subject to the full satisfaction of such estate, exempt from decedent's debts except claims in favor of the county for poor relief and also for claims of the state of North Dakota for repayment of old age assistance and aid to the permanently and totally disabled and as otherwise provided in section 47-18-04, and shall be distributed in the manner in which real property not subjected to a homestead estate is distributed or as directed in the decedent's will, but in no case shall the real property constituting the homestead of a decedent, or any part thereof descend or be distributed to any person other than the surviving husband or wife and decedent's heirs in the direct descending line as prescribed in title 30.1 until all the decedent's debts are fully paid.

SECTION 32. AMENDMENT.) Section 30-16-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30-16-05. PERSONAL REPRESENTATIVE TO VALUE HOMESTEAD.) The personal representative of an estate must procure from the person or persons to whom real property subjected to a homestead estate has descended a description of such property and must appraise the same at its value at the time of the death of the decedent. If necessary, he shall cause the boundaries thereof to be ascertained and marked in his presence by a competent surveyor. If he finds that it has been selected in such form as will materially diminish the value of any remaining part of the property, he may modify its boundaries so as to avoid such injury if it can be done without material injury to the homestead property. Should he find that the property selected as a homestead exceeds in value any limitation in value fixed by law, he in like manner shall set off the homestead in such form as to exclude the excess unless he further finds that the property cannot be divided without material injury. He shall make a full report of all his findings in relation to the homestead and annex the same to the inventory.

SECTION 33. AMENDMENT.) Section 30-16-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30-16-08. DECREE SETTING APART HOMESTEAD ESTATE.) In its decree made in proceedings to set apart the homestead estate the court must set apart the homestead estate, and set forth the name of and the date on which each minor will attain majority and shall direct that in case the surviving husband or wife dies before the last of such dates is reached the minor child or children then surviving, from the time of such death, shall succeed to such homestead estate until the youngest child attains majority.

SECTION 34.) Section 30-26-05.1 is hereby created and enacted to read as follows:

30-26-05.1. APPEAL BY PERSONAL REPRESENTATIVE OR GUARDIAN.) In a case in which a personal representative or guardian has given a bond, he may appeal from a decree or order made in any proceeding in a county court or county court of increased jurisdiction without filing an undertaking. Whenever he appeals in that manner the bond stands in place of such undertaking.

SECTION 35.) Section 30-26-26.1 is hereby created and enacted to read as follows:

30-26-26.1. COSTS - HOW PAYABLE.) The costs of an appeal taken under section 30-26-01 shall be settled and determined by the district court as in other cases in that court. The amount of costs allowed shall be stated in the order or decision which determines the appeal, with a direction specifying the party in whose favor and the party against whom the same shall be awarded by the county court. If the appellant is required to pay costs, the amount thereof shall be awarded by the county court jointly against him and the sureties on his undertaking as is prescribed in section 30-26-27 without an express direction to that effect.

SECTION 36. AMENDMENT.) Section 31-01-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

31-01-05. WHEN TRANSACTIONS OR CONVERSATIONS WITH DECEDENT MAY BE TESTIFIED TO BY PARTY TO ACTION.) If the testimony of a party to any civil action or proceeding has been taken and afterwards he shall die and after his death the testimony so taken shall be used upon any trial or hearing in behalf of his personal representative, heirs at law, or next of kin, the other party to the action shall be a competent witness as to any and all matters to which the testimony so taken relates.

SECTION 37. AMENDMENT.) Section 32-16-26 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-16-26. SECURITY FOR PURCHASE MONEY.) The referees may take separate mortgages and other securities for the whole or convenient portions of the purchase money, on such parts of the property as are directed by the court to be sold on credit for the shares of any known owner of full age, in the name of such owner, and for the shares of an infant, in the name of the guardian or conservator, if any, of such infant, and for other shares, in the name of the clerk of the district court, and his successors in office.



**SECTION 38. AMENDMENT.)** Section 32-16-32 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**32-16-32. WHO CAN PURCHASE.)** No referee, nor any person for the benefit of any referee, can be interested in the purchase of any real property which is the subject of the action. Neither can any guardian or conservator of an infant party to such action be interested in the purchase of such property except for the benefit of the infant. All sales contrary to the provisions of this section are void.

**SECTION 39. AMENDMENT.)** Section 32-16-42 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**32-16-42. TO WHOM INFANT'S SHARE PAID.)** When the share of an infant is sold, the proceeds of the sale may be paid by the referees making the sale to his guardian or conservator, if he has one, or as provided in section 30.1-26-03, or to the guardian ad litem appointed for him in the action, upon his giving the security required by law or directed by order of the court.

**SECTION 40. AMENDMENT.)** Section 32-16-43 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**32-16-43. SHARE OF INSANE AND INCOMPETENT.)** The guardian or conservator who may be entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, whose interest in real property has been sold, may receive in behalf of such person his share of the proceeds of such real property from the referees, on executing, with sufficient sureties, an undertaking approved by a judge of the court, that he will discharge faithfully the trust imposed in him, and will render a true and just account to the person entitled thereto or to his legal representative.

**SECTION 41. AMENDMENT.)** Section 32-23-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**32-23-04. RIGHTS IN TRUST OR ESTATE DETERMINED.)** Any person interested as or through a personal representative, trustee, guardian, conservator, or other fiduciary, creditor, devisee, heir, next of kin, or cestui que trust, in the administration of a trust, or of the estate of a decedent, an infant, a mentally ill or deficient person, or an insolvent, may have a declaration of rights or legal relations in respect thereto:

1. To ascertain any class of creditors, devisees, heirs, next of kin or others;

2. To direct the personal representatives, or trustees to do or abstain from doing any particular act in their fiduciary capacity; or
3. To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.

SECTION 42. AMENDMENT.) Section 34-01-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

34-01-12. EMPLOYER TO PAY SURVIVING SPOUSE WAGES DUE.) For the purposes of this section, the word "employer" shall include every person, firm, partnership, corporation, the state of North Dakota, and all municipal corporations. If at the time of the death of any person, his employer is indebted to him for work, labor, or services performed, and no personal representative of his estate has been appointed, such employer, upon the request of the surviving spouse, forthwith shall pay said indebtedness to such an amount as may be due, but not exceeding the sum of twelve hundred dollars, to the said surviving spouse. The employer shall require proof of the claimant's relationship to the decedent by affidavit and shall require claimant to acknowledge receipt of such payment in writing. Any payments made by an employer pursuant to the provisions of this section shall operate as a full and complete discharge of the employer's indebtedness to the extent of such payment, and no employer thereafter shall be liable therefor to the decedent's estate or the decedent's executor or administrator thereafter appointed. Any amount so received by a spouse shall be considered in diminution of the allowance provided for by section 30.1-07-02.

SECTION 43. AMENDMENT.) Section 37-15-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-15-16. COMMANDANT SHALL TAKE CHARGE OF UNCLAIMED ESTATES OF SMALL VALUE.) If a member of the soldiers' home shall die leaving property of the value of three hundred dollars or less, the commandant immediately shall take charge of such property. If within one year of the date of death of such member no valid claim of any heir or devisee is made for the property and no application or petition has been filed for issuance of letters of administration, the commandant shall convert the property into cash without probate or other proceedings and shall deposit the cash with the state treasurer who shall credit it to the soldiers' home operating fund. The commandant shall make a report of his action to the administrative committee on veterans' affairs, which report shall be audited by, and spread upon the records of, the committee.

SECTION 44. AMENDMENT.) Section 37-15-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-15-18. COMMANDANT AS ADMINISTRATOR - BOND NOT REQUIRED -FEES - ALLOWANCE OF FEES BY COUNTY COURT.) Upon becoming administrator of any estate as provided in section 37-15-17, the commandant shall not be required to give bond, and he shall not be entitled to charge or receive any compensation for his services as administrator. The county court of the county where the administration proceedings are had shall not make nor allow any charge or fee in connection with the administration proceedings other than the actual disbursements of the administrator.

SECTION 45. AMENDMENT.) Section 38-10-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-10-11. PROPERTY DIRECTED BY WILL TO BE DISPOSED OF - DUTY OF EXECUTOR.) If property is directed by a will to be sold or if authority is given in a will to sell property, the executor may sell the whole or any fractional part of the oil, gas, or other minerals in or under, or that may be produced from, land belonging to the estate in the same manner as he may sell the property under title 30.1.

SECTION 46. AMENDMENT.) Section 38-10-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-10-12. APPOINTMENT OF TRUSTEE TO EXECUTE MINERAL LEASE WHERE CONTINGENT FUTURE INTERESTS ARE INVOLVED.) Where lands, or any estate or interest therein, are subject to any contingent future interest, legal or equitable, by way of remainder, reversion, or possibility of reverter, upon the happening of a condition subsequent, or otherwise, created by deed, will, or otherwise, and whether a trust is involved or not, and it is made to appear that it will be advantageous to the present and ultimate owners of said lands or estate or interest therein, the district court of the county in which the land or a portion thereof is situated shall have the power, pending the happening of any contingency and the vesting of such future interest or interests, to declare a trust in said lands or estate or interest therein, appoint a trustee therefor, and to authorize such trustee to sell, on such terms and containing such conditions as the court may prescribe, execute and deliver a valid oil, gas, coal or other mineral lease covering said lands or estate or interest therein. Where a trust is in existence and there is a trustee serving under the trust, the trustee appointed by the court under this section shall be the same trustee or trustees as are serving under the existing trust. All proceedings shall substantially comply with that provided for the administration of trusts in chapter 59-04, chapter 30.1-33, and chapter 30.1-34.

SECTION 47. AMENDMENT.) Section 47-18-26 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-18-26. SALE OF HOMESTEAD - COURT MAY DIRECT DISPOSITION OF FUNDS.) On granting an order authorizing a sale of homestead, the court may direct that a part of the funds derived from such sale, not to exceed one-third thereof, be set aside, and may direct the investment of such funds for the use and benefit of the mentally ill husband or wife. If such husband or wife dies while mentally ill, the sum so set aside reverts to the surviving husband or wife. If the mentally ill husband or wife survives, then such sum shall descend in accordance with the laws of succession as provided in title 30.1.

SECTION 48. AMENDMENT.) Section 47-18-28 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-18-28. APPEAL FROM ORDER OF DISTRICT COURT.) On the hearing of an application, such as is provided in section 47-18-23, any of the kindred of the mentally ill person may appear and be heard in the premises and may appeal from any order made on the subject to the district court for the county in which the land is situated in the manner provided for appeals in chapter 30-26.

SECTION 49. AMENDMENT.) Subsections 4, 8, and 13 of section 47-24-01 of the 1971 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

4. "Court" means the county court, unless a protective proceeding under chapter 30.1-29 has been commenced to protect the minor's estate and is not yet terminated, in which case "court" means the district court;

8. "Guardian" of a minor means the general guardian, guardian, conservator, tutor, or curator of his property or estate appointed or qualified by a court of this state or another state;

\* 13. "Minor" is a person who has not attained the age of eighteen years;

SECTION 50. AMENDMENT.) Subsection 4 of section 47-24-04 of the 1971 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. To the extent that the custodial property is not so expended, the custodian shall deliver or pay it over to the minor on his attaining the age of eighteen years, or, if the minor dies before attaining the age of eighteen years, he shall thereupon deliver or pay it over to the estate of the minor.

SECTION 51. AMENDMENT.) Subsections 1, 3, 4, and 5 of section 47-24-07 of the 1971 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

\*NOTE: Subsection 13 of section 47-24-01 was also amended by section 57 of House Bill No. 1420, chapter 120.

47-24-07. RESIGNATION, DEATH OR REMOVAL OF CUSTODIAN - BOND - DESIGNATION OF SUCCESSOR CUSTODIAN.) 1. Only an adult member of the minor's family, a guardian or conservator of the minor or a trust company is eligible to become successor custodian. A custodian may designate his successor by executing and dating an instrument of designation before a subscribing witness other than the successor; the instrument of designation may but need not contain the resignation of the custodian. If the custodian does not so designate his successor before he dies or become legally incapacitated, and the minor has attained the age of fourteen years, the minor may designate a successor custodian by executing an instrument of designation before a subscribing witness other than the successor. A successor custodian has all the rights, powers, duties, and immunities of a custodian designated in a manner prescribed by this chapter;

3. A custodian who executes an instrument of designation of his successor containing the custodian's resignation as provided in subsection 1 shall promptly do all things within his power to put each item of the custodial property in the possession and control of the successor custodian named in the instrument. The legal representative of a custodian who dies or becomes legally incapacitated shall promptly do all things within his power to put each item of the custodial property in the possession and control of the successor custodian named in an instrument of designation executed as provided in subsection 1 by the custodian or, if none, by the minor if he has no guardian or conservator and has attained the age of fourteen years, or in the possession and control of the guardian or conservator of the minor, if any. If the custodian has executed as provided in subsection 1 more than one instrument of designation, his legal representative shall treat the instrument dated on an earlier date as having been revoked by the instrument dated on a later date;

4. If a person designated as custodian or as successor custodian by the custodian as provided in subsection 1 is not eligible, dies, or becomes legally incapacitated before the minor attains the age of eighteen years and if the minor has a guardian or conservator, the guardian or conservator of the minor shall be successor custodian. If the minor has no guardian or conservator and if no successor custodian who is eligible and has not died or become legally incapacitated has been designated as provided in subsection 1, a donor, his legal representative, the legal representative of the custodian or an adult member of the minor's family may petition the court for the designation of a successor custodian;

5. A donor, the legal representative of a donor, a successor custodian, an adult member of the minor's family, a guardian or conservator of the minor or the minor, if he has attained the age of fourteen years, may petition the court that, for cause shown in the petition, the custodian be removed and a successor custodian be designated or, in the alternative, that the custodian be required to give bond for the performance of his duties;

SECTION 52. AMENDMENT.) Section 49-09-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-09-05. SECURING RIGHT-OF-WAY OVER LAND OF DECEDENT OR WARD.) Whenever any railroad company has located the line of its road upon or contiguous to any land belonging to any decedent or protected person or in which the decedent or protected person may have any interest, it shall be lawful for the personal representative, court, or conservator, as the case may be, to agree in writing and to settle and adjust the damages to said land with the railroad corporation by reason of the location of said railroad, and the personal representative, court, or conservator, as the case may be, in such agreement may grant to the railroad corporation such right-of-way as shall be necessary and required by it, and upon such terms and conditions as may be agreed upon between the personal representative, court, or conservator, as the case may be, and said railroad corporation.

SECTION 53. AMENDMENT.) Section 50-24-33 of the 1971 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-24-33. RECOVERY FROM ESTATE OF RECIPIENT OF ASSISTANCE TO THE AGED, BLIND, OR DISABLED.) On the death of any recipient of assistance to the aged, blind, or disabled under the provisions of this chapter the total amount of assistance paid under this chapter shall be allowed as a preferred claim against the estate of such person in favor of the state pursuant to subdivision e of subsection 1 of section 30.1-19-05. No claim shall be enforced against the following:

1. Real estate of a recipient for the support, maintenance or comfort of the surviving spouse or a dependent;
2. Personal property necessary for the support, maintenance or comfort of the surviving spouse or a dependent; or
3. Any real or personal property of a recipient which is held in trust for him by the federal government.

SECTION 54. AMENDMENT.) Section 50-24-35 of the 1971 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-24-35. GUARDIAN APPOINTED - PAYMENTS TO GUARDIAN.) Whenever a guardian or conservator shall have been appointed for any recipient by a court of competent jurisdiction, the payment of aid shall be made to such guardian or conservator. The guardian or conservator shall file a report at the end of each calendar year with the county agency, showing the disbursement of the money received by him for the benefit of such recipient.

SECTION 55. AMENDMENT.) Subsections 5 and 18 of section 54-21-13 of the 1971 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

5. To accept the guardianship of children who may be committed to his care by courts of competent jurisdiction as neglected, delinquent, dependent, or defective;
18. To take the initiative in protecting and conserving the rights and interests of neglected, dependent, delinquent, illegitimate, and defective children including initiation of protective proceedings under chapter 30.1-29;

SECTION 56. AMENDMENT.) Subdivision i of subsection 2 of section 57-37-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- i. For the purposes of this subsection, an interest in property shall be considered as passing from the decedent to any person if and only if (1) such interest is bequeathed or devised to such person by the decedent, or (2) such interest is inherited by such person from the decedent, or (3), such interest has been transferred to such person by the decedent at any time, or (4) such interest was, at the time of the decedent's death, held by such person and the decedent, or by them and any other person, in joint ownership with right of survivorship, or (5) the decedent had a power, either alone or in conjunction with any person, to appoint such interest and if he appoints or has appointed such interest to such person, or if such person takes such interest in default upon the release or nonexercise of such power, or (6) such interest consists of proceeds of insurance upon the life of the decedent receivable by such person, or (7) such interest passed by way of exemption pursuant to chapter 30-16 or sections 30.1-07-01 or 30.1-07-02, provided that such interest is not one which would be disqualified under subdivision b of this subsection and provided that such interest is not otherwise deductible under this section. Except as provided in subdivision f or in subdivision g of this subsection, where at the time of the decedent's death it is not possible to ascertain the particular person or persons to whom an interest in property may pass from the decedent, such interest shall, for the purposes of clauses (1) and (2) of subdivision b of this subsection, be considered as passing from the decedent to a person other than the surviving spouse.

SECTION 57. AMENDMENT.) Section 57-37-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-37-14. TAX COMMISSIONER TO ASSESS TAX AND COURT TO APPORTION FEDERAL AND STATE ESTATE TAXES.) The personal representative of an estate shall file the estate tax return required by this chapter. The tax commissioner shall make the determination of the tax and furnish the court and the personal representative with a statement thereof. The federal and state estate taxes shall be apportioned as provided in section 30.1-20-16.

SECTION 58. AMENDMENT.) Section 57-37-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-37-15. CONTENTS OF RETURN TO BE FILED WITH TAX COMMISSIONER BY PERSONAL REPRESENTATIVE.) The personal representative shall furnish to the tax commissioner:

1. A copy of the inventory and appraisalment;
2. A statement of all taxable transfers made by the decedent that have come to his knowledge;
3. A copy of the decedent's will, if any;
4. Such other information contained in the records of the estate as the tax commissioner shall require; and
5. A copy of the federal return when the gross estate of a decedent is such as to require the filing of an estate tax return for the decedent's estate pursuant to the provisions of the United States Internal Revenue Code of 1954, as amended.

SECTION 59. AMENDMENT.) Subsection 2 of section 57-37-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. In an estate tax determination where the amount of the estate tax due is in contention before the tax commissioner the estate may petition the tax commissioner for an order allowing the payment of a portion of the tax so that the interest imposed by this section shall cease to accrue on that portion of the tax until the determination of the correct amount of tax has been made. The state treasurer shall deposit the tax paid into a separate account established for payments made under this subsection, and shall refrain from making any distribution of the tax until the records of the tax commissioner reveal that the proper amount of estate tax due has been determined.

SECTION 60. AMENDMENT.) Section 57-37-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:



**57-37-17. PRELIMINARY APPRAISAL WHERE NO PROBATE COMMENCED.)**

In all cases wherein the tax commissioner has reason to believe that a decedent's estate may be subject to assessment under the provisions of this chapter, and no probate proceeding has been instituted within sixty days following the death of the decedent, he shall cite one or more of the probable beneficiaries to appear and show cause why estate taxes should not be imposed under the provisions of this chapter, and, if not satisfied by them that no tax should be imposed, may initiate proceedings for the appointment of a personal representative under title 30.1.

**SECTION 61. AMENDMENT.)** Section 57-37-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**57-37-18. ORDER TO BE MADE FOR EXEMPT ESTATES.)**

In any estate which under the provision of this chapter is exempt from the payment of any estate tax, the tax commissioner shall issue his order exempting such estate from the payment of such tax. Such order shall contain the total appraised valuation of said estate, together with the names and relationship of the beneficiaries thereunder. A copy or copies of such order shall be sent to the court and the personal representative.

**SECTION 62. AMENDMENT.)** Section 57-37-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**57-37-20. PROCEEDINGS TO REVIEW TAX COMMISSIONER'S DETERMINATION.)** The appraisals and values set forth in the tax return shall be subject to the approval of the tax commissioner. If the personal representative is not satisfied with the determination of the tax commissioner, he, within thirty days from such decision, may exercise such right of appeal to any court of competent jurisdiction in the manner provided for appeals from other decisions of the tax commissioner.

**SECTION 63. AMENDMENT.)** Subdivisions b and c of subsection 3 of section 57-37-21 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

- \* b. Special rules for valuing property under the alternate method are: No deduction under this chapter of any item shall be allowed if allowance for such item is in effect given by the alternate valuation provided by this section. Wherever in any other subsection or section of this chapter reference is made to the value of property at the time of the decedent's death, such reference shall be deemed to refer to the value of such property used in determining the value of the gross estate. In case of an election made by the personal representative under this section, then

\*NOTE: Subsection 3 of section 57-37-21 was also amended by section 1 of House Bill No. 1334, chapter 463.

- (1) for the purposes of the deductions provided in subsection 3 of section 57-37-11, any bequest, legacy, devise, or transfer enumerated therein, and
  - (2) for the purpose of the marital deduction, the exemption provided in subsection 2 of section 57-37-11, any interest in property passing to the surviving spouse shall be valued as of the date of the decedent's death with adjustment for any difference in value, not due to mere lapse of time or the occurrence or nonoccurrence of a contingency, of the property as of the date one year after the decedent's death, substituting, in the case of property distributed by the personal representative, or trustee, or sold, exchanged, or otherwise disposed of, during such one year period, the date thereof.
- c. The election provided for in this subsection shall be exercised by the personal representative, trustee, or other person responsible for obtaining a determination of the tax imposed by this chapter, on his return if filed within fifteen months after the date of the decedent's death.

SECTION 64. AMENDMENT.) Section 57-37-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-37-22. REPORTS, INVENTORIES, ESTATE TAX APPLICATIONS AND SUPPLEMENTS.) It shall be the duty of the personal representative, trustee, or other interested person of competent legal capacity to file an estate tax return and, before the final settlement of an estate, to furnish a supplemental or amended inventory and amended estate tax return listing all property and taxable transfers or other events that have come to his knowledge since the first inventory or estate tax return was made which would result in a change in either the amount of the estate tax initially determined or the statements made by the affiant therein. He also shall furnish copies of any documents or records, and any other information pertaining to the estate, or the value thereof, upon request of the tax commissioner.

It shall be the further duty of the personal representatives, trustee, or other interested person of competent legal capacity, to file an amended estate tax return within ninety days after any amended estate tax return is filed pursuant to the provisions of the United States Internal Revenue Code. If no amended federal estate tax return is filed but the federal estate tax return is changed or corrected, such change or correction shall be reported to the state tax commissioner within ninety days after the final determination of such change or correction is made and the tax commissioner shall reassess the estate tax thereon. Upon receipt of an amended estate tax return or, upon notification of any change or correction made on the federal estate tax return, the tax commissioner shall reassess the estate tax.

SECTION 65. AMENDMENT.) Subsections 1, 2, 3, and 4 of section 57-37-23 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

57-37-23. LIEN FOR TAXES - BENEFICIARIES TO SHARE BURDEN OF TAX.) 1. Any taxes imposed by this chapter shall be and shall remain a lien upon the property transferred, and upon all property acquired by the executor, administrator, or trustee in substitution therefor, for a period of ten years from the date of death of the decedent or until the taxes are paid or a bond is given for their payment, whichever occurs first, but such lien shall not affect any tangible or intangible personal property after it has passed to a bona fide purchaser for value; except that nothing herein contained shall give the owner of any securities the right to have the same transferred to him by the corporation, association, company, or trust issuing the same, until a permit from the tax commissioner shall have been issued.

2. The lien charged upon any real estate or separate parcel thereof may be discharged by the payment of all taxes due and to become due on said real estate or separate parcel, or by the filing and acceptance of a bond for their payment, or by an order of the tax commissioner transferring such lien to other real estate owned by the person to whom said real estate or any separate parcel thereof passes.

3. The beneficiaries shall be personally liable for their respective share of the tax imposed by this chapter, as well as the personal representative or trustee, and if the personal representative or trustee pays such tax, he shall have the right to recover the tax from the beneficiaries in accordance with the provisions of section 30.1-20-16. No general statutes of limitation shall be considered as a bar to the collection of the respective share of the estate tax from each beneficiary. For the purposes of this chapter, the term "beneficiaries" shall mean any persons receiving an interest in property of a decedent which is subject to inclusion in the decedent's gross estate for estate tax purposes pursuant to the provisions of this chapter.

4. Any unpaid taxes imposed by this chapter shall be and remain a lien upon the property transferred, and upon all property acquired by the personal representative or trustee in substitution therefor, for a period of ten years from the date of death of the decedent.

SECTION 66. AMENDMENT.) Subsections 1, 5, and 6 of section 57-37-24 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

57-37-24. COLLECTION AND DISTRIBUTION OF TAX - REFUNDS.)

1. The county treasurer in the county where the estate is administered, pursuant to section 30.1-13-01, shall collect the tax levied under this chapter, and shall certify the same to the county auditor at the end of each calendar month.

5. No personal representative or trustee shall be entitled to a final discharge in an estate in settlement of which taxes are due, unless he shall produce a receipt showing the payment of such tax.

6. In case an overpayment of such tax has been made, such overpayment shall be repaid out of any estate tax funds in the hands of the county treasurer, upon an order of the tax commissioner. The county treasurer shall thereupon present and file with the state treasurer a verified claim for thirty-five percent of such overpayment of estate taxes accompanied by a certified copy of the order of the tax commissioner for such refund and a copy of the receipt of such refund by the person or persons to whom such refund was paid. The state treasurer shall present such verified claim to the department of accounts and purchases and the same shall be paid upon approval by the state auditing board. In addition, if a portion of the tax has been distributed to another county or city, and a refund has been made, the county treasurer making the refund shall file with the treasurer of the county or city to which such distribution has been made a copy of the tax commissioner's order for such refund and a verified claim for such portion of the amount refunded as is attributable to property located in such other county or city.

SECTION 67. AMENDMENT.) Section 57-37-26 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-37-26. FORMS AND RECORDS.) The tax commissioner may prescribe such forms, application blanks, and printed matter as may be necessary for the carrying out and enforcement of this chapter. He also shall keep such records as are indicated by good accounting practice in such manner as to furnish to the legislative assembly intelligent information upon which to base further legislation in regard to these taxes.

SECTION 68. AMENDMENT.) Section 57-37-27 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-37-27. DETERMINATION OF TAX ON ESTATE WHEN THERE IS NO PROBATE PROCEEDING WITHIN THE STATE.) In the absence of administration in this state upon the estate of a nonresident, the tax commissioner, upon his own motion, or at the request of a personal representative duly appointed and qualified in the state of the decedent's domicile, or of a grantee under a conveyance made during the grantor's lifetime, and upon satisfactory evidence furnished by such a personal representative or grantee, or otherwise, may determine whether or not any property of said decedent within this state is subject to taxation under the provisions of this chapter, and if so, may determine the amount of the tax payable and may adjust the same with such a personal representative or grantee. For that purpose the tax commissioner may appoint an appraiser to appraise said property and the expenses of such appraisal shall

be charged against such property in addition to the taxes. The tax commissioner's certificate as to the amount of such tax and his receipt for the amount therein certified may be filed in the probate office in the county where the property is located, and when so filed shall be conclusive evidence of the payment of the tax upon the said property. Whenever in such case the tax is not adjusted within four months after the death of the decedent, the proper county court, upon application of the tax commissioner, shall appoint a personal representative in this state. Where the tax commissioner determines the estate tax, as provided in this subsection, the tax commissioner shall apportion the federal and state estate taxes among all persons interested in the estate in the manner provided by section 30.1-20-16 unless the decedent's will provided otherwise.

SECTION 69. AMENDMENT.) Section 57-37-32 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-37-32. PENALTY FOR FALSE STATEMENTS OR REPORTS.) Every person who willfully and knowingly subscribes or makes any false statement of facts, or knowingly subscribes or exhibits any false paper or false report with intent to deceive the tax commissioner or any appraiser appointed pursuant to the provisions of this chapter, or title 30.1, shall be punished by a fine of not more than five thousand dollars or by imprisonment for not more than one year, or by both such fine and imprisonment.

SECTION 70. AMENDMENT.) Section 59-02-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

59-02-10. AUTHORITY OF TRUSTEE.) A trustee is a general agent for the trust property. His authority is such as is conferred upon him by the declaration of trust, by this title, and by title 30.1. His acts, within the scope of his authority, bind the trust property to the same extent as the acts of a general agent bind his principal.

SECTION 71. AMENDMENT.) Section 59-02-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

59-02-15. COMPENSATION OF TRUSTEE.) A trustee is entitled to reasonable compensation for his services. If the declaration of trust provides for compensation of the trustee and there is no contract with the settlor regarding compensation, he may renounce the provision before he voluntarily assumes the relation of personal confidence with another deeming him a trustee or before accepting appointment under the provisions of chapter 59-04 and be entitled to reasonable compensation. A trustee also may renounce his right to all or any part of the compensation. A written renunciation of fee may be filed with the district court in which the trust is registered.

SECTION 72. AMENDMENT.) Section 59-04-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

59-04-02. COMMENCEMENT OF TRUST PROCEEDINGS.) Any trustee, beneficiary, or person interested in a trust may file a petition with the clerk of the district court praying that the administration of the trust be supervised. The form of said petition in substance shall be as is provided in sections 59-04-03 and 59-04-04 and notice of hearing thereon shall be given to interested parties as provided by sections 30.1-03-01 and 30.1-33-06, and such further notice shall be given as may be prescribed by court rules. The court, upon hearing, may enter its order that all further proceedings in the supervision of the administration of such trust shall be had in said court. The district court of the county where any portion of the trust property is located, upon petition of any interested person and upon like notice and hearing, may adopt and confirm as the act of such district court any order or decree of a foreign court with respect to the sale, mortgaging, leasing, or other disposition of the real property of a trust within this state. In all cases of public or charitable trusts, the attorney general and the state's attorney of the county where the trust is established shall be deemed persons interested in the trust estate.

SECTION 73. AMENDMENT.) Section 59-04-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

59-04-10. ORDERS OF DISTRICT COURT - EFFECT.) Every order entered in trust proceedings, upon the notice prescribed in section 30.1-03-01, shall have the force and effect of a judgment. It shall be subject to appeal as provided by the terms of section 59-04-25 and shall be binding upon all persons in interest resident within or without the state, known or unknown, ascertained and in being, or otherwise.

SECTION 74. AMENDMENT.) Section 59-04-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

59-04-11. REPRESENTATION OF MINORS AND INCOMPETENTS.) A guardian ad litem shall qualify by filing an acceptance of appointment and an oath faithfully to perform the duties of said special guardianship. Such guardian shall represent his ward at the hearing or throughout the whole or any portion of the proceedings, as the court by its order shall direct. The guardian shall not receive for the ward any money, funds, or property unless a good and sufficient bond is furnished and filed in court in an amount ordered and fixed by the court in the order of appointment. Any money, funds, or property so received shall be subject to the further orders of the court as to the disposition and turning over of the same to any guardian or conservator, as the case may be of any ward or protected person.

SECTION 75. AMENDMENT.) Section 59-04-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

59-04-15. POWERS AND DUTIES OF TRUSTEE.) Every act of the trustee in contravention of the terms of the trust and statute shall be absolutely void except where the district court having jurisdiction and supervision of the administration of such trust, by order, on notice and hearing as provided in this chapter, shall authorize any such trustee to sell, mortgage, pledge, lease, or otherwise dispose of or invest trust property in such manner as best may accomplish the object and purpose of the trust, where it is made to appear to the satisfaction of the court that such order is necessary and for the best interests or benefit of the trust estate or person or persons beneficially interested therein, or who thereafter may acquire an interest therein, and where it is further established to the satisfaction of the court that the trust instrument is lacking in specific and adequate directions as to the disposition or investment of trust property, or that strict compliance with the terms of such instrument will tend to destroy the trust estate or create losses of principal or income.

SECTION 76. AMENDMENT.) Section 59-04-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

59-04-18. REMOVAL OF TRUSTEE.) Upon a verified petition of any interested person, showing upon its face good cause for removal of a trustee, the court shall require the trustee to show cause why he should not be removed. Notice of hearing shall be given as is provided by this chapter. The court on its own motion may remove any trustee and appoint a temporary trustee to take charge of the trust estate and to act as such trustee until the petition for the removal of the trustee has been heard and determined and a new trustee has been appointed to fill any vacancy in the trust, or until the proceedings for the removal of the trustee have been concluded.

SECTION 77. AMENDMENT.) Section 59-04-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

59-04-21. EXPENSES AND ATTORNEY'S FEES ALLOWED.) The trustee shall be allowed all necessary expenses in the care, management, and settlement of the trust estate. No compensation shall be allowed for attorney's services rendered to such trustee unless the same were performed by or under the direction of an attorney at law who is a resident of and admitted to practice in this state.

SECTION 78. AMENDMENT.) Section 59-04-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**59-04-22. SUBSEQUENT NOTICES AND HEARINGS - PROCEDURE.)**

No order approving a trustee's account, or directing or approving the disposition or investment of trust property or funds, shall be entered except on hearing after service of notice pursuant to section 30.1-32-03.

**SECTION 79. AMENDMENT.)** Subsection 1 of section 59-04.1-02 of the 1971 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

**59-04.1-02. DUTY OF TRUSTEE AS TO RECEIPTS AND EXPENDITURES.)**

1. A trust shall be administered with due regard to the respective interests of income beneficiaries and remaindermen. A trust is so administered with respect to the allocation of receipts and expenditures if a receipt is credited or an expenditure is charged to income or principal or partly to each:
  - a. In accordance with the terms of the trust instrument, notwithstanding contrary provisions of this chapter;
  - b. In the absence of any contrary terms of the trust instrument, in accordance with the provisions of this chapter; or
  - c. If neither of the preceding rules of administration is applicable, in accordance with what is reasonable and equitable in view of the interests of those entitled to income as well as of those entitled to principal, and in view of the standards set forth in section 30.1-34-02.

**SECTION 80. AMENDMENT.)** Section 59-05-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**59-05-23. EXECUTION BY WILL.)** When a power to dispose of real property is confined to a disposition by devise or will, the instrument of execution must be a will duly executed according to the provisions of chapter 30.1-08.

**SECTION 81. AMENDMENT.)** Section 61-10-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**61-10-12. AUTHORITY OF GUARDIANS, PERSONAL REPRESENTATIVES, AND CONSERVATORS ON PROPOSAL TO CHANGE BOUNDARIES OF DISTRICT.)** A guardian, conservator, or personal representative who is appointed as such under the laws of this state, and who, is thereby entitled to the possession of the lands belonging to the estate which he represents, on behalf of his ward or the estate which he represents, upon being authorized by the proper court, may sign



and acknowledge the petition provided in this chapter, and may show cause, as mentioned in this chapter, why the boundaries of the district should not be changed.

SECTION 82. REPEAL.) Chapters 30-01, 30-02, 30-03, 30-04, 30-05, 30-06, 30-07, 30-08, 30-09, 30-10, 30-11, 30-12, 30-13, 30-14, 30-15, 30-17, 30-18, 30-19, 30-20, 30-21, 30-21.1, 30-22, 30-23, 30-24, 30-25, 56-01, 56-02, 56-03, 56-04, 56-05, 56-06, 56-07, and sections 7-04-07, 25-04-13, 27-07-06, 27-07-07, 27-07-08, 27-07-10, 27-07-38, 30-16-07, 30-16-10, 30-26-05, 32-16-44, 35-03-12, 38-10-04, 49-09-06, 49-09-07, subsection 7 of section 57-37-24, 59-02-06, 59-04-01, subsection 13 of section 59-04-04, sections 59-04-05, 59-04-06, 59-04-07, 59-04-09, 59-04-12, 59-04-13, and 59-04-14 of the North Dakota Century Code, and sections 6-03-66 and 30-16-06 of the 1971 Supplement to the North Dakota Century Code are hereby repealed.

SECTION 83. EFFECTIVE DATE.) The provisions of this Act shall become effective on July 1, 1975.

Approved March 26, 1973