HOUSE DOCKET, NO. FILED ON: 1/14/2009

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The Commonwealth of Massachusetts

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PRESENTED BY:

**William N. Brownsberger**

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*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General
 Court assembled:*

 The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act to further regulate the probate laws of the Commonwealth.

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PETITION OF:

|  |  |
| --- | --- |
| Name: | District/Address: |
| William N. Brownsberger | 24th Middlesex |

The Commonwealth of Massachusetts

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**In the Year Two Thousand and Nine**

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An Act to further regulate the probate laws of the Commonwealth.

 *Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. Sections 5 and 5A of chapter 65A of the General Laws are hereby repealed.
SECTION 2.  Chapter 114 of the General Laws is hereby amended by striking out section 32, as appearing in the 2006 Official Edition, and inserting in place thereof the following section:—
Section 32.  A person shall be entitled to a right of interment for his own body in any burial lot or tomb of which his spouse was seized at any time during marriage, which shall be exempt from the operation of the laws relating to conveyance, descent and devise, but may be released by him.
SECTION 3.  Sections 33A and 33B of chapter 184 of the General Laws are hereby repealed.
SECTION 4.  Sections 1 to 4, inclusive, 6 and 11 of chapter 184A of the General Laws are hereby repealed.
SECTION 5.  Section 1 of chapter 186 of the General Laws is hereby repealed.
SECTION 6.  Chapter 189 of the General Laws is hereby repealed.
SECTION 7.  Chapter 190 of the General Laws is hereby repealed.
SECTION 8.  Chapter 190A of the General Laws is hereby repealed.
SECTION 9.  The General Laws are hereby amended by inserting after chapter 190A the following chapter:—

**CHAPTER 190B.
MASSACHUSETTS UNIFORM PROBATE CODE ARTICLE, PART AND SECTION ANALYSIS.**

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Section 1-101.  [Short Title.]
This chapter shall be known and may be cited as the Massachusetts Uniform Probate Code.
Section 1-102.  [Purposes; Rule of Construction.]
(a)  This chapter shall be liberally construed and applied to promote its underlying purposes and policies.
(b)  The underlying purposes and policies of this chapter are:
(1)  to simplify and clarify the law concerning the affairs of decedents and missing persons;
(2)  to discover and make effective the intent of a decedent in distribution of the decedent's property;
(3)  to promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to the decedent's successors;
(4)  to facilitate use and enforcement of certain trusts; and
(5)  to make uniform the law among the various jurisdictions.
Section 1-103.  [Supplementary General Principles of Law Applicable.]
Unless displaced by the particular provisions of this chapter, the principles of law and equity supplement its provisions.
Section 1-104.  [Severability.]
If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.
Section 1-105.  [Construction Against Implied Repeal.]
This chapter is a general act intended as a unified coverage of its subject matter and no part of it shall be deemed impliedly repealed by subsequent legislation if it can reasonably be avoided.
Section 1-106.  [Effect of Fraud and Evasion.]
Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this chapter or if fraud is used to avoid or circumvent the provisions or purposes of this chapter, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud or restitution from any person other than a bona fide purchaser benefiting from the fraud, whether innocent or not.  Any proceeding shall be commenced within 2 years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than 5 years after the time of commission of the fraud.  This section has no bearing on remedies relating to fraud practiced on a decedent during the decedent's lifetime which affects the succession of the decedent's estate.
Section 1-107.  [Evidence of Death or Status.]
In addition to the rules of evidence in courts of general jurisdiction, the following rules relating to a determination of death and status apply:-
(1)  Death occurs when an individual has sustained either (i) irreversible cessation of circulatory and respiratory functions or (ii) irreversible cessation of all functions of the entire brain, including the brain stem.  A determination of death shall be made in accordance with accepted medical standards.
(2)  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 evidence of the fact, place, date, and time of death and the identity of the decedent.
(3)  A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that an individual 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.
(4)  In the absence of prima facie evidence of death under paragraph (2)  or (3), the fact of death may be established by evidence, including circumstantial evidence.
(5)  An individual whose death is not established under the preceding paragraphs who is absent for a continuous period of 5 years, during which the person has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry, is presumed to be dead.  The person's death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.
Section 1-108.  [Act by Holder of General Power.]
For the purpose of granting consent or approval with regard to the acts or accounts of a personal representative or trustee, including relief from liability or penalty for failure to post bond or to perform other duties, and for purposes of consenting to modification or termination of a trust or to deviation from its terms,
(i)  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, or a presently exercisable power to appoint among a class of appointees which is broader than the class of those persons who would take in default of the exercise of such power,
(ii)  if the court so permits in its discretion, the sole holder or all co-holders of a testamentary general power of appointment, or a testamentary power to appoint among a class of appointees which is broader than the class of those persons who would take in default of the exercise of such power,
are deemed to act for beneficiaries to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.
Section 1-109.  [Standard of Proof.]
In contested cases, the standard of proof is a preponderance of the evidence.
PART 2
DEFINITIONS
Section 1-201.  [Definitions and Inclusions.]
Subject to additional definitions contained in the subsequent articles that are applicable to specific articles, parts, or sections, and unless the context otherwise requires, in this chapter:
(1)  “Administration”, includes both formal and informal testate and intestate proceedings under article III.
(2)  “Agent”, includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another's health care in accordance with chapter 201D, and an individual authorized to make decisions for another under a natural death act.
(3)  “Beneficiary”, as it relates to a trust beneficiary, 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; as it relates to a charitable trust, includes any person entitled to enforce the trust; as it relates to a "beneficiary of a beneficiary designation", refers to a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar benefit plan, or other nonprobate transfer at death; and, as it relates to a “beneficiary designated in a governing instrument”, includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, appointee, or taker in default of a power of appointment, or a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.
(4)  “Beneficiary designation”, refers to a governing instrument naming a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar benefit plan, or other nonprobate transfer at death.
(5)  “Child”, includes an individual entitled to take as a child under this chapter by intestate succession from the parent whose relationship is involved and excludes a person who is only a stepchild, a foster child, a grandchild, or any more remote descendant.
(6)  “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 shall not include estate or inheritance taxes, or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.
(7)  “Court”, the probate and family court department of the trial court and includes the district court and juvenile court departments of the trial court in proceedings relating to the appointment of guardians of minors when the subject of the proceeding is a minor and there is proceeding before such district or juvenile court.
(8)  “Conservator”, a person who is appointed by a court to manage the estate of a protected person.
(9)  “Descendant”, of an individual means all of such individual's descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this chapter.
(10)  “Devise”, when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will.
(11)  “Devisee”, a 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.
(12)  “Disability”, cause for appointment of a conservator under section 5-401.
(13)  “Distributee”, any person who has received property of a decedent from the decedent's 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 such trustee's hands.  A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative.  For the purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.
(14)  “Estate”, includes the property of the decedent, trust, or other person whose affairs are subject to this chapter as originally constituted and as it exists from time to time during administration.
(15)  “Exempt property”, that property of a decedent's estate which is described in section 2-403.
(16)  “Fiduciary”, includes a personal representative, guardian, conservator, and trustee.
(17)  “Foreign personal representative”, a personal representative appointed by another jurisdiction.
(18)  “Formal proceedings”, proceedings conducted before a judge with notice to interested persons.
(19)  “Governing instrument”, a deed, will, trust, insurance or annuity policy, account with POD designation, security registered in beneficiary form (TOD), pension, profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or a donative, appointive, or nominative instrument of any other type.
(20)  “Guardian”, a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, but excludes 1 who is a guardian ad litem.
(21)  “Heirs”, except as controlled by section 2-711, are persons, including the surviving spouse and the commonwealth, who are entitled under the statutes of intestate succession to the property of a decedent.
(22)  “Incapacitated person”, an individual for whom a guardian has been appointed under part 3 of article V.
(23)  “Informal proceedings”, those conducted without notice to interested persons by an officer of the court acting as a magistrate for probate of a will or appointment of a personal representative.
(24)  “Interested person”, includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claims against a trust estate or the estate of a decedent, ward, or protected person.  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 shall be determined according to the particular purposes of, and matter involved in, any proceeding.
(25)  “Issue”, means descendant as defined in subsection (9).
(26)  “Joint tenants with the right of survivorship”, includes co-owners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others, but excludes forms of co-ownership registration in which the underlying ownership of each party is in proportion to that party's contribution.
(27)  “Lease”, includes an oil, gas, or other mineral lease.
(28)  “Letters”, includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.
(29)  “Magistrate”, refers to the official of the court designated to perform the function of magistrate as provided in section 1-307.
(30)  “Minor”, a person who is under 18 years of age.
(31)  “Mortgage”, any conveyance, agreement, or arrangement in which property is encumbered or used as security.
(32)  “Nonresident decedent”, a decedent who was domiciled in another jurisdiction at the time of death.
(33)  “Organization”, a corporation, business trust, estate, trust, partnership, joint venture, association, government or governmental subdivision or agency, or any other legal or commercial entity.
(34)  “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 chapter by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.
(35)  “Payor”, a trustee, insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.
(36)  “Person”, an individual or an organization.
(37)  “Personal representative”, includes executor, administrator, successor personal representative, special administrator, special personal representative, and persons who perform substantially the same function under the law governing their status.  "General personal representative" excludes special personal administrator.
(38)  “Petition”, a written request to the court for an order after notice.
(39)  “Proceeding”, includes action at law and suit in equity.
(40)  “Property”, includes both real and personal property or any interest therein and means anything that may be the subject of ownership.
(41)  “Protected person”, a person for whom a conservator has been appointed under part 4 of article V.
(42)  “Protective proceedings”, a proceeding for appointment of a conservator under part 4 of article V.
(43)  “Register”, refers to the official designated in section 4 of chapter 217.
(44)  “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.
(45)  “Settlement”, in reference to a decedent's estate, includes the full process of administration, distribution, and closing.
(46)  “Special personal representative”, a personal representative as described by sections 3-614 to 3-618, inclusive.
(47)  “State”, a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.
(48)  “Successor personal representative”, a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.
(49)  “Successors”, persons, other than creditors, who are entitled to property of a decedent under the decedent's will or this chapter.
(50)  “Supervised administration”, refers to the proceedings described in part 5 of article III.
(51)  “Survive”, except for purposes of part 3 of article VI, means that an individual has neither predeceased an event, including the death of another individual, nor is deemed to have predeceased an event under section 2-104 or 2-702.  The term includes its derivatives, such as “survives”, “survived”, “survivor”, “surviving”.
(52)  “Testacy proceeding”, a proceeding to establish a will or determine intestacy.
(53)  “Testator”, includes an individual of either sex.
(54)  “Trust”, includes an express trust, private or charitable, with additions thereto, wherever and however created.  The term 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.  The term excludes other constructive trusts and excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in article VI, custodial arrangements pursuant to chapter 201A, 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 escrow for another.
(55)  “Trustee”, includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.
(56)  “Ward”, an individual for whom a guardian has been appointed pursuant to part 2 of article V.
(57)  “Will”, includes codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession.
PART 3
SCOPE, JURISDICTION AND COURTS
Section 1-301.  [Territorial Application.]
Except as otherwise provided in this chapter, this chapter applies to: (1) the affairs and estates of decedents, missing persons, and persons to be protected, domiciled in the commonwealth, (2) the property of nonresidents located in the commonwealth or property coming into the control of a fiduciary who is subject to the laws of the commonwealth, (3) incapacitated persons and minors in the commonwealth, (4) survivorship and related accounts in the commonwealth, and (5) trusts subject to administration in the commonwealth.
Section 1-302.  [Subject Matter Jurisdiction.]
(a)  To the full extent permitted by the constitution, the court has jurisdiction over all subject matter relating to: (1) estates of decedents, including construction of wills and determination of heirs and successors of decedents, and estates of protected persons, (2) protection of minors and incapacitated persons, (3) trusts, and (4) any other matters authorized by section 6 of chapter 215.  The district court and the juvenile court shall have concurrent jurisdiction with the probate and family court to appoint guardians of minors when the subject of the petition is a minor and there is a proceeding before such district or juvenile court.  The district and juvenile court shall have continuing jurisdiction over resignation, removal, reporting, and other proceedings related to the guardianship.
(b)  The court has full power to make orders, judgments and decrees and take all other action necessary and proper to administer justice in the matters which come before it.
(c)  The court has jurisdiction over protective proceedings and guardianship proceedings.
(d)  If both guardianship and protective proceedings as to the same person are commenced or pending in the same court, the proceedings may be consolidated.
Section 1-303.  [Venue; Multiple Proceedings; Transfer.]
(a)  Where a proceeding under this chapter could be maintained in more than one place in the commonwealth, the division in which the proceeding is first commenced has the exclusive right to proceed.
(b)  If proceedings concerning the same estate, protected person, ward, or trust are commenced in more than one court of the commonwealth, the court in which the proceeding was first commenced shall continue to hear the matter, and the other courts shall hold the matter in abeyance until the question of venue is decided, and if the ruling court determines that venue is properly in another court, it shall transfer the proceeding to the other court.
(c)  If a court finds that in the interest of justice a proceeding or a file should be located in another court of the commonwealth, the court making the finding may transfer the proceeding or file to the other court.
Section 1-304.  [Reserved.]
Section 1-305.  [Reserved.]
Section 1-306.  [Reserved.]
Section 1-307.  [Magistrate; Powers.]
The acts and orders which this chapter specifies as performable by the magistrate may be performed either by the magistrate or such other official of the court, including a judge or other official of the court, all as designated by the court by a written order filed and recorded in the office of the court.
Section 1-308.  [Reserved.]
Section 1-309.  [Reserved.]
Section 1-310.  [Oath or Affirmation on Filed Documents.]
Except as otherwise specifically provided in this chapter or by rule, every document filed with the court under this chapter including 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
NOTICE, PARTIES AND REPRESENTATION IN ESTATE
LITIGATION AND OTHER MATTERS
            Section 1-401.  [Notice; Method and Timing of Giving.]
            (a) If notice on any matter is required by reference to this section and except for specific notice requirements as otherwise provided, the court shall fix a return date and issue a citation.  The petitioner shall cause notice of the return day of any matter to be given to any interested person or attorney if the appearance is by attorney or the interested person requested that notice be sent to the attorney.  Notice shall be given:
(1)  by mailing a copy of the citation at least 14 days before the return date by certified, registered or ordinary first class mail addressed to all interested persons who have not assented in writing or their attorney if the appearance is by attorney or the interested person requested that notice be sent to the attorney at the person's office or place of residence, if known; or
 (2)  by delivering a copy of the citation to the person being notified personally at least fourteen days before the return date; or
 (3)  by publishing a copy of the citation once in a newspaper designated by the register of probate having general circulation in the county where the proceeding is pending, the publication of which is to be at least 7 days before the return date.

            (b)  The court for good cause shown may provide for a different method or time of giving notice for any return date.  Notice of proceedings for guardianships of minors in the district court and the juvenile court shall be given in accordance with the rules of those courts.

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

            (d) Any party to a formal proceeding who opposes the proceeding for any reason shall before 10:00 A.M. of the return date enter an appearance in writing giving the name of the proceeding, the objecting party's name and the objecting party's address or the name and address of the objecting party's attorney.

            (e) The objecting party shall file a written affidavit of objections to the proceeding, stating the specific facts and grounds upon which the objection is based within 30 days after the return date.

            (f) If an affidavit of objections fails to comply with the requirements of the foregoing section (e), such affidavit of objections and the appearance of the party filing such affidavit of objections may be struck on motion after notice at any time after filing of such affidavit of objections.

            (g) If a proceeding is unopposed, after the time required for any notice has expired, upon proof of notice, the court or the magistrate may enter appropriate orders on the strength of the pleadings if satisfied that all conditions are met, or the court may conduct a hearing and require proof of the matters necessary to support the order sought.

Section 1-402.  [Notice; Waiver.]
A person, including a guardian ad litem, conservator, or other fiduciary, may waive notice by a writing signed by the person or the person's attorney and filed in the proceeding.  A person for whom a guardianship or other protective order is sought, a ward, incapacitated person or a protected person may not waive notice.
Section 1-403.  [Pleadings; When Parties Bound by Others; Notice.]
In formal proceedings involving trusts or estates of decedents, minors, protected persons, or incapacitated persons, and in judicially supervised settlements, the following apply:
(1)  Interests to be affected shall be described in pleadings which give reasonable information to owners by name or class, by reference to the instrument creating the interests, or in other appropriate manner.
(2)  Persons are bound by orders binding others in the following cases:
(i)  Orders binding the sole holder or all co-holders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, or a presently exercisable power to appoint among a class of appointees which is broader than the class of those persons who would take in default of the exercise of such power, bind other persons to the extent their interests as objects, takers in default, or otherwise are subject to the power.
    (ii)  To the extent there is no conflict of interest between them or among persons represented, orders binding a conservator bind the person whose estate the conservator controls; orders binding a guardian bind the protected person or ward if no conservator 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 a minor child.
(iii)  An unborn or unascertained person who is not otherwise represented is bound by an order to the extent the person's interest is adequately represented by another party having a substantially identical interest in the proceeding.
(3)  Notice is required as follows:
(i)  Notice as prescribed by section 1-401 shall be given to every interested person or to one who can bind an interested person as described in (2)(i)  or (2)(ii)  above.  Notice may be given both to a person and to another who may bind such person.
    (ii)  Notice is given to unborn or unascertained persons, who are not represented under (2)(i)  or (2)(ii), by giving notice to all known persons whose interest in the proceedings are substantially identical to those of the unborn or unascertained persons.
Section 1-404.  [Guardian Ad Litem and Next Friend.]
(a)  If, in a formal proceeding involving trusts or estates of decedents, minors, protected persons, or incapacitated persons, and in judicially supervised settlements, or otherwise, a minor, a mentally retarded person, an autistic person, or person under disability, or a person not ascertained or not in being, may be or may become interested in any property, real or personal, or in the enforcement or defense of any legal rights, the court in which any action, petition or proceeding of any kind relative to or affecting any such estate or legal rights is pending may, upon the representation of any party thereto, or of any person interested, appoint a suitable person to appear and act therein as guardian ad litem or next friend of such minor, mentally retarded person, autistic person, or person under disability or not ascertained or not in being; and a judgment, order or decree in such proceedings, made after such appointment, should be conclusive upon all persons for whom such guardian ad litem or next friend was appointed.
(b)  The reasonable expenses of such guardian ad litem or next friend, including compensation and counsel fees, shall be determined by the court and paid as it may order, either out of the estate or by the plaintiff, petitioner or the commonwealth.  If such expenses are to be paid by the plaintiff or petitioner execution therefor may issue in the name of the guardian ad litem or next friend.
(c)  Nothing in this code shall affect the power of a court to appoint a guardian or conservator to defend the interests of a minor impleaded in such court, or interested in a suit or matter there pending, nor the power of such court to appoint or allow a person, as next friend for a minor, to commence, prosecute or defend a suit in his behalf.
(d)  If it appears in a probate or appointment proceeding that a spouse, heir at law or devisee is an incapacitated or protected person or a minor, notice of all proceedings shall be given to the incapacitated or protected person or minor and to his guardian or conservator.  Unless the spouse, heir or devisee is represented by someone other than the petitioner or is under guardianship or conservatorship, the court shall appoint a guardian ad litem who shall receive notice of all proceedings.
ARTICLE II
INTESTACY, WILLS, AND DONATIVE TRANSFERS
PART 1
INTESTATE SUCCESSION
Section 2-101.  [Intestate Estate.]
(a)  Any part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs as prescribed in this part, except as modified by the decedent's will.
(b)  A decedent by will may expressly exclude or limit the right of an individual or class to succeed to property of the decedent passing by intestate succession.  If that individual or a member of that class survives the decedent, the share of the decedent's intestate estate to which that individual or class would have succeeded passes as if that individual or each member of that class had disclaimed the intestate share.
Section 2-102.  [Share of Spouse.]
The intestate share of a decedent's surviving spouse is:
(1)  the entire intestate estate if:
(i)  no descendant or parent of the decedent survives the decedent; or
            (ii)  all of the decedent's surviving descendants are also descendants of the surviving spouse and there is no other descendant of the surviving spouse who survives the decedent;
(2)  the first $200,000, plus ¾ of any balance of the intestate estate, if no descendant of the decedent survives the decedent, but a parent of the decedent survives the decedent;
(3)  the first $100,000 plus ½ of any balance of the intestate estate, if all of the decedent's surviving descendants are also descendants of the surviving spouse and the surviving spouse has 1 or more surviving descendants who are not descendants of the decedent;
(4)  the first $100,000 plus ½ of any balance of the intestate estate, if 1 or more of the decedent's surviving descendants are not descendants of the surviving spouse.
Section 2-103.  [Share of Heirs Other Than Surviving Spouse.]
Any part of the intestate estate not passing to the decedent's surviving spouse under section 2-102, or the entire intestate estate if there is no surviving spouse, passes in the following order to the individuals designated below who survive the decedent:
(1)  to the decedent's descendants per capita at each generation;
(2)  if there is no surviving descendant, to the decedent's parents equally if both survive, or to the surviving parent;
(3)  if there is no surviving descendant or parent, to the descendants of the decedent's parents or either of them per capita at each generation;
(4)  if there is no surviving descendant, parent, or descendant of a parent, then equally to the decedent's next of kin in equal degree; but if there are 2 or more descendants of deceased ancestors in equal degree claiming through different ancestors, those claiming through the nearest ancestor shall be preferred to those claiming through an ancestor more remote.  Degrees of kindred shall be computed according to the rules of civil law.
Section 2-104.  [Reserved.]
Section 2-105.  [No Taker.]
If there is no taker under the provisions of this article, the intestate estate passes to the commonwealth; provided, however, if such intestate is a veteran who died while a member of the Soldiers' Home in Massachusetts or the Soldiers' Home in Holyoke, the intestate estate shall inure to the benefit of the legacy fund or legacy account of the soldiers' home of which the intestate was a member.
Section 2-106.  (a)  [Representation.]
In this section:
(1)  “Deceased descendant”, “deceased parent”, or “deceased ancestor”, a descendant, parent, or ancestor who predeceased the decedent.
(2)  “Surviving descendant”, a descendant who survived the decedent.
(b)   If, under section 2-103(1), a decedent's intestate estate or a part thereof passes “per capita at each generation” to the decedent's descendants, the estate or part thereof is divided into as many equal shares as there are (i)  surviving descendants in the generation nearest to the decedent that contains 1 or more surviving descendants, and (ii)  deceased descendants in the same generation who left surviving descendants, if any.  Each surviving descendant in the nearest generation is allocated 1 share.  The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants in the nearest generation and their surviving descendants had predeceased the decedent.
(c)   If, under section 2-103(3), a decedent's intestate estate or a part thereof passes “per capita at each generation” to the descendants of the decedent's deceased parents or either of them, the estate or part thereof is divided into as many equal shares as there are (i)  surviving descendants in the generation nearest the deceased parents or either of them that contains 1 or more surviving descendants, and (ii)  deceased descendants in the same generation who left surviving descendants, if any.  Each surviving descendant in the nearest generation is allocated 1 share.  The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants in the nearest generation and their surviving descendants had predeceased the decedent.
Section 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.
Section 2-108.  [Afterborn Heirs.]
An individual in gestation at a particular time is treated as living at that time if the individual lives 120 hours or more after birth.
Section 2-109.  [Advancements.]
(a)  If an individual dies intestate as to all or a portion of the estate, property the decedent gave during the decedent's lifetime to an individual who, at the decedent's death, is an heir is treated as an advancement against the heir's intestate share only if (i) the decedent declared in a contemporaneous writing or the heir acknowledged in writing that the gift is an advancement or (ii) the decedent's contemporaneous writing or the heir's written acknowledgment otherwise indicates that the gift is to be taken into account in computing the division and distribution of the decedent's intestate estate.
(b)  If the value of an advancement is expressed in the conveyance, in the contemporaneous writing, or in the acknowledgment, such value shall be adopted in the division and distribution of the intestate estate; otherwise it shall be determined according to the value when the property was given.
(c)  Property which is advanced by an intestate shall be considered as part of the intestate's estate in the division and distribution of such estate, and shall be taken by the heir who received the advance toward the heir's share of the intestate estate; but the heir shall not be required to restore any part thereof, although it exceeds the intestate share.  A surviving spouse shall be entitled only to a share in the residue after deducting the value of the advancement.
(d)  If a child or other lineal descendant of the intestate who has received an advancement dies before the intestate, leaving descendants who receive a share of the intestate's estate, the advancement shall be considered as part of the intestate's estate in the division and distribution of such estate, and the value thereof shall be taken in equal shares by the representatives of the person who received the advancement toward their share of the intestate estate, as if the advancement had been made directly to them.
(e)  The probate court in which the estate of a decedent is settled may hear and determine all questions of advancements arising relative to such estate.
Section 2-110.  [Debts to Decedent.]
A debt owed to a decedent is not charged against the intestate share of any individual 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 descendants.
Section 2-111.  [Alienage.]
No individual is disqualified to take as an heir because the individual or another individual through whom the individual claims is or has been an alien.
Section 2-112.  [Dower and Curtesy Abolished.]
The estates of dower and curtesy are abolished.
Section 2-113.  [Individuals Related to Decedent Through Two Lines.]
An individual who is related to the decedent through 2 lines of relationship is entitled to only a single share based on the relationship that would entitle the individual to the larger share.
Section 2-114.  [Parent and Child Relationship.]
(a)  Except as provided in subsection (b), for purposes of intestate succession by, through, or from a person, an individual is the child of his natural parents, regardless of their marital status.  The parent and child relationship may be established under applicable state law.
(b)  An adopted individual is the child of his adopting parent or parents and not of his natural parents, but adoption of a child by the spouse of either natural parent has no effect on the right of the child or a descendant of the child to inherit from or through either natural parent.
PART 2
Sections 2-201 to 2-299.  [Reserved]
PART 3
SPOUSE AND CHILDREN UNPROVIDED FOR IN WILLS
Section 2-301.  [Entitlement of Spouse; Premarital Will.]
(a)  If a testator's surviving spouse married the testator after the testator executed a will, the surviving spouse is entitled to receive, as an intestate share, no less than the value of the share of the estate the spouse would have received if the testator had died intestate as to that portion of the testator's estate, if any, that neither is devised to a child of the testator who is born before the testator married the surviving spouse and who is not a child of the surviving spouse nor is devised to a descendant of such a child or passes under section 2-603 or 2-604 to such a child or to a descendant of such a child, unless:
(1)  it appears from the will that the will was made in contemplation of the testator's marriage to the surviving spouse;
(2)  the will expresses the intention that it is to be effective notwithstanding any subsequent marriage; or
(3)  the testator provided for the spouse by transfer outside the will and any intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.
(b)  In satisfying the share provided by this section, devises made by the will to the testator's surviving spouse, if any, are applied first, and other devises, other than a devise to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse or a devise or substitute gift under section 2-603 or 2-604 to a descendant of such a child, abate as provided in section 3-902.
Section 2-302.  [Omitted Children.]
(a)  Except as provided in subsection (b), if a testator fails to provide in a will for any children born or adopted after the execution of the will, the omitted after-born or after-adopted child receives a share in the estate as follows:
(1)  If the testator had no child living when the will was executed, an omitted after-born or after-adopted child receives a share in the estate equal in value to that which the child would have received had the testator died intestate, unless the will devised all or substantially all the estate to the other parent of the omitted child and that other parent survives the testator and is entitled to take under the will.
(2)  If the testator had 1 or more children living when the will was executed, and the will devised property or an interest in property to 1 or more of the then-living children, an omitted after-born or after-adopted child is entitled to share in the testator's estate as follows:
(i)  The portion of the testator's estate in which the omitted after-born or after-adopted child is entitled to share is limited to devises made to the testator's then-living children under the will.
(ii)  The omitted after-born or after-adopted child is entitled to receive the share of the testator's estate, as limited in subparagraph (i), that the child would have received had the testator included all omitted after-born and after-adopted children with the children to whom devises were made under the will and had given an equal share of the estate to each child.
(iii)  To the extent feasible, the interest granted an omitted after-born or after-adopted child under this section shall be of the same character, whether equitable or legal, present or future, as that devised to the testator's then-living children under the will.
(iv)  In satisfying a share provided by this paragraph, devises to the testator's children who were living when the will was executed abate ratably.  In abating the devises of the then-living children, the court shall preserve to the maximum extent possible the character of the testamentary plan adopted by the testator.
(b)  Neither subsection (a)(1) nor subsection (a)(2) applies if:
(1)  It appears from the will that the omission was intentional; or
(2)  The testator provided for the omitted after-born or after-adopted child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.
(c)  If at the time of execution of the will the testator fails to provide in the will for a living child solely because the testator believes the child to be dead, the child is entitled to a share in the estate as if the child were an omitted after-born or after-adopted child.
(d)  In satisfying a share provided by subsection (a)(1), devises made by the will abate under section 3-902.
(e)  No such omitted child shall take any share in real property unless a claim is filed in the registry of probate by or on behalf of such child within 1 year after the death of the decedent.
PART 4
EXEMPT PROPERTY AND ALLOWANCES
Section 2-401.  [Applicable Law.]
This part applies to the estate of a decedent who dies domiciled in the commonwealth.  Rights to exempt property, and discretionary family allowance for a decedent who dies not domiciled in the commonwealth are governed by the law of the decedent's domicile at death.
Section 2-402.  [Reserved.]
Section 2-403.  [Exempt Property.]
(a)  The decedent's surviving spouse is entitled from the estate to a value at date of death, not exceeding $10,000 in excess of any security interests therein, in household furniture, automobiles, furnishings, appliances, and personal effects.  If there is no surviving spouse, the decedent's children are entitled jointly to the same value.  If encumbered chattels are selected and the value in excess of security interests, plus that of other exempt property, is less than $10,000, or if there is not $10,000 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 $10,000 value.  Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all unsecured claims against the estate, but the right to any assets to make up a deficiency of exempt property abates as necessary to permit earlier payment of the discretionary family allowance.  These rights are in addition to any benefit or share passing to the surviving spouse or children by the decedent's will, unless otherwise provided, by intestate succession, or by way of elective share.
(b)  The decedent’s surviving spouse may remain in the house of the decedent for not more than 6 months next succeeding the date of death without being chargeable for rent.
Section 2-404.  [Discretionary Family Allowance.]
(a)  In addition to the right to exempt property, the decedent's surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by the decedent 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 1 year if the estate is inadequate to discharge allowed claims.  This discretionary family 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 children, or persons having their care and custody.  If a minor child or dependent child is not living with the surviving spouse, the discretionary family allowance may be made partially to the child or the child's guardian or other person having the child's care and custody, and partially to the spouse, as their needs may appear.  The discretionary family allowance is exempt from and has priority over all unsecured claims.
(b)  The discretionary 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 a discretionary family allowance terminates the right to allowances not yet paid.
Section 2-405.  [Source, Determination, and Documentation.]
If the estate is otherwise sufficient, property specifically devised may not be used to satisfy rights to exempt property.  Subject to this restriction, the surviving spouse, guardians of minor children, or children who are adults may select property of the estate as exempt property.  The personal representative may make those selections 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 there is no guardian of a minor child.  The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as exempt property.  The personal representative may determine the discretionary family allowance in a lump sum not exceeding $18,000 or periodic installments not exceeding $1,500 per month for 1 year, and may disburse funds of the estate in payment of the discretionary family allowance payable in cash.  The personal representative or an 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 may include a discretionary family allowance other than that which the personal representative determined or could have determined.
PART 5
WILLS, WILL CONTRACTS, AND CUSTODY AND DEPOSIT OF WILLS
Section 2-501.  [Who May Make Will.]
An individual 18 or more years of age who is of sound mind may make a will.
Section 2-502.  [Execution of Wills.]
(a)  Except as provided in subsection (b) and in sections 2-506 and 2-513, a will shall be:
(1)  in writing;
(2)  signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction; and
(3)  signed by at least 2 individuals, each of whom witnessed either the signing of the will as described in paragraph (2)  or the testator's acknowledgment of that signature or acknowledgment of the will.
(b)  Intent that the document constitute the testator's will can be established by extrinsic evidence.
Section 2-503.  [Reserved.]
Section 2-504.  [Self-Proved Will.]
(a)  A will may be simultaneously executed, attested, and made self-proved, by acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal, in substantially the following form:
I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the testator, sign my name to this instrument this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence.
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Testator
We, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as [his] [her] will and that [he] [she] signs it willingly (or willingly directs another to sign for [him] [her]), and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is 18 years of age or older, of sound mind, and under no constraint or undue influence.
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Witness
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Witness
The State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
County of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Subscribed, sworn to and acknowledged before me by \_\_\_\_\_\_\_\_, the testator, and subscribed and sworn to before me by \_\_\_\_\_\_\_\_\_, and \_\_\_\_\_\_\_, witness, this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_.
(Seal)
(Signed)  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
    (Official capacity of officer)
(b)  An attested will may be made self-proved at any time after its execution 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 the state in which the acknowledgment occurs and evidenced by the officer's certificate, under the official seal, attached or annexed to the will in substantially the following form:
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 the testator's will and that [he] [she] had signed willingly (or willingly directed another to sign for [him] [her]), and that [he] [she] executed it as [his] [her] 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] [her] knowledge the testator was at that time 18 years of age or older, 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)
(c)  A signature affixed to a self-proving affidavit attached to a will is considered a signature affixed to the will, if necessary to prove the will's due execution.
Section 2-505.  [Who May Witness.]
(a)  An individual generally competent to be a witness may act as a witness to a will.
(b)  The signing of a will by an interested witness shall not invalidate the will or any provision of it except that a devise to a witness or a spouse of such witness shall be void unless there are 2 other subscribing witnesses to the will who are not similarly benefited thereunder or the interested witness establishes that the bequest was not inserted, and the will was not signed, as a result of fraud or undue influence by the witness.
Section 2-506.  [Choice of Law as to Execution.]
A written will is valid if executed in compliance with section 2-502 or if its execution complies with the law at the time of execution of the place where the will is executed, or of the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode, or is a national.
Section 2-507.  [Revocation by Writing or by Act.]
(a)  A will or any part thereof is revoked:
(1)  by executing a subsequent will that revokes the previous will or part expressly or by inconsistency; or
(2)  by performing a revocatory act on the will, if the testator performed the act with the intent and for the purpose of revoking the will or part or if another individual performed the act in the testator's conscious presence and by the testator's direction.  For purposes of this paragraph, “revocatory act on the will” includes burning, tearing, canceling, obliterating, or destroying the will or any part of it.
(b)  If a subsequent will does not expressly revoke a previous will, the execution of the subsequent will wholly revokes the previous will by inconsistency if the testator intended the subsequent will to replace rather than supplement the previous will.
(c)  The testator is presumed to have intended a subsequent will to replace rather than supplement a previous will if the subsequent will makes a complete disposition of the testator's estate.  If this presumption arises and is not rebutted, the previous will is revoked; only the subsequent will is operative on the testator's death.
(d)  The testator is presumed to have intended a subsequent will to supplement rather than replace a previous will if the subsequent will does not make a complete disposition of the testator's estate.  If this presumption arises and is not rebutted, the subsequent will revokes the previous will only to the extent the subsequent will is inconsistent with the previous will; each will is fully operative on the testator's death to the extent they are not inconsistent.
Section 2-508.  [Revocation by Change of Circumstances.]
Except as provided in sections 2-301, 2-803 and 2-804, a change of circumstances shall not revoke a will or any part of it.
Section 2-509.  [Revival of Revoked Will.]
(a)  If a subsequent will that wholly revoked a previous will is thereafter revoked by a revocatory act under section 2-507(a)(2), the previous will remains revoked unless it is revived.  The previous will is revived if it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that the testator intended the previous will to take effect as executed.
(b)  If a subsequent will that partly revoked a previous will is thereafter revoked by a revocatory act under section 2-507(a)(2), a revoked part of the previous will is revived unless it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that the testator did not intend the revoked part to take effect as executed.
(c)  If a subsequent will that revoked a previous will in whole or in part is thereafter revoked by another, later, will, the previous will remains revoked in whole or in part, unless it or its revoked part is revived.  The previous will or its revoked part is revived to the extent it appears from the terms of the later will that the testator intended the previous will to take effect.
Section 2-510.  [Incorporation by Reference.]
A 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.
Section 2-511.  [Testamentary Additions to Trusts.]
(a)  A will may validly devise property to the trustee of a trust established or to be established (i)  during the testator's lifetime by the testator, by the testator and some other person, or by some other person, including a funded or unfunded life insurance trust, although the settler has reserved any or all rights of ownership of the insurance contracts, or (ii)  at the testator's death by the testator's devise to the trustee, 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, or after the execution of the testator's will or in another individual's will if that other individual 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 the testator's death.
(b)  Unless the testator's will provides otherwise, property devised to a trust described in subsection (a) is not held under a testamentary trust of the testator, but it becomes a part of the trust to which it is devised, and shall be administered and disposed of in accordance with the provisions of the governing instrument setting forth the terms of the trust, including any amendments thereto made before or after the testator's death.
(c)  Unless the testator's will provides otherwise, a revocation or termination of the trust before the testator's death causes the devise to lapse.
Section 2-512.  [Events of Independent Significance.]
A will may dispose of property by reference to acts and events that 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 another individual's will is such an event.
Section 2-513.  [Separate Writing Identifying Devise of Certain Types of Tangible Property.]
A will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money.  To be admissible under this section as evidence of the intended disposition, the writing shall be signed by the testator and shall 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 that has no significance apart from its effect on the dispositions made by the will.
Section 2-514.  [Contracts Concerning Succession.]
A contract to make or not to make a will or devise, or to revoke or not to revoke a will or devise, or to die intestate, if executed after the effective date of this article, may be established only by (i) provisions of a will stating material provisions of the contract, (ii) an express reference in a will to a contract and extrinsic evidence proving the terms of the contract, or (iii) a writing signed by the decedent evidencing the contract.  The execution of a joint will or mutual wills shall not create a presumption of a contract not to revoke the will or wills.
Section 2-515.  [Deposit of Will With Court in Testator’s Lifetime.]
A will may be deposited by the testator or the testator's agent with any court for safekeeping, under rules of the court.  The will shall be sealed and kept confidential.  During the testator's lifetime, a deposited will shall be delivered only to the testator or to a person authorized in writing signed by the testator to receive the will.  A guardian of the estate or 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 ensure that it will be resealed and kept 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 that person on request; or the court may deliver the will to the appropriate court.
Section 2-516.  [Duty of Custodian of Will; Liability.]
After the death of a testator a person having custody of a will of the testator shall deliver it within thirty days after notice of the death to a person able to secure its probate and if none is known, to an appropriate court.  A person who willfully fails to deliver a will is liable to any person aggrieved for any damages that may be sustained by the failure.  A person who willfully 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.
Section 2-517.  [Penalty Clause for Contest.]
A provision in a will purporting to penalize an interested person for contesting the will or instituting other proceedings relating to the estate is enforceable.
PART 6
RULES OF CONSTRUCTION APPLICABLE ONLY TO WILLS
Section 2-601.  [Scope.]
In the absence of a finding of a contrary intention shown by the terms of the will, the rules of construction in this part control the construction of a will.
Section 2-602.  [Will May Pass All Property and After-Acquired Property.]
Property owned by the testator at death and any acquired by the testator's estate thereafter passes under the will unless a different intention appears.
            Section 2-603.   [Anti-Lapse; Deceased Devisee; Class Gifts.]
            If a devisee who is a grandparent or a lineal descendant of a grandparent 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 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 than those of more remote degree take by representation.  A person 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.
Section 2-604.  [Failure of Testamentary Provision.]
(a)  Except as provided in section 2-603, a devise, other than a residuary devise, that fails for any reason becomes a part of the residue.
(b)  Except as provided in section 2-603, if the residue is devised to 2 or more persons, the share of a residuary devisee that fails for any reason passes to the other residuary devisee, or to other residuary devisees in proportion to the interest of each in the remaining part of the residue.
Section 2-605.  [Increase in Devised Securities; Accessions.]
(a)  If a testator executes a will that devises securities and the testator then owned securities that meet the description in the will, the devise includes additional securities owned by the testator at death to the extent the additional securities were acquired by the testator after the will was executed as a result of the testator's ownership of the described securities and are securities of any of the following types:
(1)  securities of the same organization acquired by reason of action initiated by the organization or any successor, related, or acquiring organization, excluding any acquired by exercise of purchase options;
(2)  securities of another organization acquired as a result of a merger, consolidation, reorganization, or other distribution by the organization or any successor, related, or acquiring organization; or
(3)  securities of the same organization acquired as a result of a plan of reinvestment.
(b)  Distributions in cash before death with respect to a described security are not part of the devise.
Section 2-606.  [Nonademption of Specific Devises; Unpaid Proceeds of Sale, Condemnation, or Insurance; Sale by Conservator or Agent.]
(a)  A specific devisee has a right to the specifically devised property in the testator's estate at death and:
(1)  any balance of the purchase price, together with any security agreement, owing from a purchaser to the testator at death by reason of sale of the property;
(2)  any amount of a condemnation award for the taking of the property unpaid at death;
(3)  any proceeds unpaid at death on fire or casualty insurance on or other recovery for injury to the property; and
(4)  property owned by the testator at death and acquired as a result of foreclosure, or obtained in lieu of foreclosure, of the security interest for a specifically devised obligation.
(b)  If specifically devised property is sold or mortgaged by a guardian of the estate conservator or by an agent acting within the authority of a durable power of attorney for an incapacitated principal, or if a condemnation award, insurance proceeds, or recovery for injury to the property are paid to a conservator or to an agent acting within the authority of a durable power of attorney for an incapacitated principal, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the amount of the unpaid loan, the condemnation award, the insurance proceeds, or the recovery.
(c)  The right of a specific devisee under subsection (b) is reduced by any right the devisee has under subsection (a).
(d)  For the purposes of the references in subsection (b) to a conservator, subsection (b) shall not apply if after the sale, mortgage, condemnation, casualty, or recovery, it was adjudicated that the testator's incapacity ceased and the testator survived the adjudication by 1 year.
(e)  For the purposes of the references in subsection (b) to an agent acting within the authority of a durable power of attorney for an incapacitated principal, (i) “incapacitated principal” means a principal who is an incapacitated person, (ii) no adjudication of incapacity before death is necessary, and (iii) the acts of an agent within the authority of a durable power of attorney are presumed to be for an incapacitated principal.
Section 2-607.  [Nonexoneration.]
A specific devise passes subject to any mortgage interest existing at the date of death, without right of exoneration, regardless of a general directive in the will to pay debts.
Section 2-608.  [Exercise of Power of Appointment.]
(a)  In the absence of a requirement that a power of appointment be exercised by a reference, or by an express or specific reference, to the power, a general residuary clause in a will, or a will making general disposition of all of the testator's property, expresses an intention to exercise a power of appointment held by the testator only if (i) the power is a general power and the creating instrument does not contain an effective gift if the power is not exercised or (ii) the testator's will manifests an intention to include the property subject to the power.
(b)  Unless a contrary intent is manifested in the terms of an instrument creating or limiting a power of appointment, it shall be presumed that the person so creating or limiting such power intended to authorize the donee thereof, when exercising said power, not only to create absolute interests but also to create less than absolute legal and equitable interests, including interests in trust for the benefit of objects of said power even though the trustees thereof may not be objects of said power and including new powers of appointment, general or more limited, in objects of said power, even though the objects of the new powers may include one or more that are not objects of said power.
Section 2-609.  [Ademption by Satisfaction.]
(a)  Property a testator gave in the testator's lifetime to a person is treated as a satisfaction of a devise in whole or in part, only if (i) the will provides for deduction of the gift, (ii) the testator declared in a contemporaneous writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise, or (iii) the devisee acknowledged in writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise.
(b)  For purposes of partial satisfaction, property given during lifetime shall be valued as expressed in the will or in the contemporaneous writing; if it is not so valued, such property shall be valued as of the time the devisee came into possession or enjoyment of the property or at the testator's death, whichever occurs first.
(c)  If the devisee fails to survive the testator, the gift is treated as a full or partial satisfaction of the devise, as appropriate, in applying sections 2-603 and 2-604, unless the testator's contemporaneous writing provides otherwise.
Section 2-610.  [Annuities.]
(a)  If an annuity, or the use, rent, income or interest of property, real or personal, is given by will or by trust instrument for the benefit of a person for life or until the happening of a contingency, such person shall be entitled to receive and enjoy the same from and after the death of the deceased, unless it is otherwise provided in such will or trust instrument.
PART 7
RULES OF CONSTRUCTION APPLICABLE TO DONATIVE
DISPOSITIONS IN WILLS AND OTHER
GOVERNING INSTRUMENTS
Section 2-701.  [Scope.]
In the absence of a finding of a contrary intention shown by the terms of the will, the rules of construction in this part control the construction of a governing instrument.  The rules of construction in this part apply to a governing instrument of any type, except as the application of a particular section is limited by its terms to a specific type or types of donative disposition or governing instrument.
Section 2-702.  [Requirement of Survival.]
(a)   For the purposes of this code, except for purposes of part 3 of article VI [Uniform TOD Security Registration Act] and except as provided in subsection (d), an individual who is not established to have survived an event, including the death of another individual, is deemed to have predeceased the event.
(b)  Except as provided in subsection (d)  and except for a security registered in  beneficiary form (TOD)  under part 3 of article VI, Uniform TOD Security Registration Act, for purposes of a donative provision of a governing instrument, an individual who is not established to have survived an event, including the death of another individual, is deemed to have predeceased the event.
(c)  Except as provided in subsection (d), if (i)  it is not established that 1 of 2 co-owners with right of survivorship survived the other co-owner, ½ of the property passes as if 1 had survived, and ½ as if the other had survived and (ii)  there are more than 2 co-owners and it is not established that at least 1 of them survived the others, the property passes in the proportion that one bears to the whole number of co-owners.  For the purposes of this subsection, “co-owners with right of survivorship” includes joint tenants, tenants by the entireties, and other co-owners of property or accounts held under circumstances that entitles 1 or more to the whole of the property or account on the death of the other or others.
(d)  This section shall not apply if:
(1)  the governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and that language is operable under the facts of the case;
(2)  the governing instrument expressly indicates that an individual is not required to survive an event, including the death of another individual, by any specified period or expressly requires the individual to survive the event by a specified period;
(3)  the application of this section to multiple governing instruments would result in an unintended failure or duplication of a disposition.
(e)  (1)  A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument who, under this section, is not entitled to the payment or item of property, or for having taken any other action in good faith reliance on the beneficiary's apparent entitlement under the terms of the governing instrument, before the payor or other third party received written notice of a claimed lack of entitlement under this section.  A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed lack of entitlement under this section.
(2)  Written notice of a claimed lack of entitlement under paragraph (1)  shall be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action.  Upon receipt of written notice of a claimed lack of entitlement under this section, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence.  The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement in accordance with the determination.  Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.
(f)  (1)  A person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor is liable under this section for the amount of the payment or the value of the item of property or benefit.  But a person who, not for value, receives a payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.
(2)  If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.
Section 2-703.  [Choice of Law as to Meaning and Effect of Donative Dispositions.]
The meaning and legal effect of a donative disposition is determined by the local law of the state selected by the transferor in the governing instrument, unless the application of that law is contrary to the provisions relating to the elective share described in part 2, the provisions relating to exempt property and allowances described in part 4, or any other public policy of the commonwealth otherwise applicable to the disposition.
Section 2-704.  [Taxes on QTIPS.]
A direction in a will or instrument of trust to pay taxes caused by, resulting from, or imposed by reason of the death of the testator or donor, as the case may be, out of the decedent's probate estate or trust estate or other property, shall not include, unless the will or instrument of trust or a provision of such tax laws specifically provides otherwise, taxes levied or assessed under the tax laws of the United States or of the commonwealth or of any foreign state or commonwealth on any qualified terminable interest property in which the decedent had a qualifying income interest for life.
Section 2-705.  [Class Gifts Construed to Accord with Intestate Succession.]
(a)  Adopted individuals and individuals born out of wedlock, and their respective descendants if appropriate to the class, are included in class gifts and other terms of relationship in accordance with the rules for intestate succession.  Terms of relationship that do not differentiate relationships by blood from those by affinity, such as “uncles”, “aunts”, “nieces”, or “nephews”, are construed to exclude relatives by affinity.  Terms of relationship that do not differentiate relationships by the half blood from those by the whole blood, such as “brothers”, “sisters”, “nieces’, or “nephews”, are construed to include both types of relationships.
(b)  In addition to the requirements of subsection (a), in construing a donative disposition by a transferor who is not the adopting parent, an adopted individual is not considered the child of the adopting parent unless the adoption took place while the person adopted was a minor.
Section 2-706.  [Life Insurance; Retirement Plan; Account With POD Designation; Transfer-on-Death Registration; Deceased Beneficiary.]
(a)   In this section:
(1)  “Alternative beneficiary designation”, a beneficiary designation that is expressly created by the governing instrument and, under the terms of the governing instrument, can take effect instead of another beneficiary designation on the happening of 1 or more events, including survival of the decedent or failure to survive the decedent, whether an event is expressed in condition-precedent, condition-subsequent, or any other form.
(2)  “Beneficiary”, the beneficiary of a beneficiary designation and includes (i)  a class member if the beneficiary designation is in the form of a class gift and (ii)  an individual or class member who was deceased at the time the beneficiary designation was executed as well as an individual or class member who was then living but who failed to survive the decedent.
(3)  “Beneficiary designation”, includes an alternative beneficiary designation and a beneficiary designation in the form of a class gift.
(4)  “Class member”, includes an individual who fails to survive the decedent but who would have taken under a beneficiary designation in the form of a class gift had he or she survived the decedent.
(5)  “Surviving beneficiary” or “surviving descendant”, a beneficiary or a descendant who did not predecease the decedent.
(b)  If a beneficiary fails to survive the decedent and is a grandparent or a descendant of a grandparent, the following apply:
(1)  If the beneficiary designation is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants.  They take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the decedent.
(2)  If the beneficiary designation is in the form of a class gift, other than a beneficiary designation to “issue”, “descendants”, “heirs of the body”, “heirs”, “next of kin”, “relatives”, or “family”, or a class described by language of similar import, a substitute gift is created in the deceased beneficiary or beneficiaries' surviving descendants.  The property to which the beneficiaries would have been entitled had all of them survived the decedent passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries.  Each surviving beneficiary takes the share to which the surviving beneficiary would have been entitled had the deceased beneficiaries survived the decedent.  Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the decedent.  For the purposes of this paragraph, “deceased beneficiary” is a class member who failed to survive the decedent and left 1 or more surviving descendants.
(c)  (1)  A payor is protected from liability in making payments under the terms of the beneficiary designation until the payor has received written notice of a claim to a substitute gift under this section.  Payment made before the receipt of written notice of a claim to a substitute gift under this section discharges the payor, but not the recipient, from all claims for the amounts paid.  A payor is liable for a payment made after the payor has received written notice of the claim.  A recipient is liable for a payment received, whether or not written notice of the claim is given.
(2)  The written notice of the claim shall be mailed to the payor's main office or home by registered or certified mail, return receipt requested, or served upon the payor in the same manner as a summons in a civil action.  Upon receipt of written notice of the claim, a payor may pay any amount owed by it to the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence.  The court shall hold the funds and, upon its determination under this section, shall order disbursement in accordance with the determination.  Payment made to the court discharges the payor from all claims for the amounts paid.
(d)  (1)  A person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor is liable under this section for the amount of the payment or the value of the item of property or benefit.  But a person who, not for value, receives a payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.
(2)  If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the  amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.
Section 2-707.  [Survivorship With Respect to Future Interests Under Terms of Trust; Substitute Takers.]
(a)   In this section:
(1)  “Alternative future interest”, an expressly created future interest that can take effect in possession or enjoyment instead of another future interest on the happening of 1 or more events, including survival of an event or failure to survive an event, whether an event is expressed in condition-precedent, condition-subsequent, or any other form.  A residuary clause in a will shall not create an alternative future interest with respect to a future interest created in a nonresiduary devise in the will, whether or not the will specifically provides that lapsed or failed devises are to pass under the residuary clause.
(2)  “Beneficiary”, the beneficiary of a future interest and includes a class member if the future interest is in the form of a class gift.
(3)  “Class member”, includes an individual who fails to survive the distribution date but who would have taken under a future interest in the form of a class gift had the individual survived the distribution date.
(4)  “Distribution date”, with respect to a future interest, is the time when the future interest is to take effect in possession or enjoyment.  The distribution date need not occur at the beginning or end of a calendar day, but can occur at a time during the course of a day.
(5)  “Future interest”, includes an alternative future interest and a future interest in the form of a class gift.
(6)  “Future interest under the terms of a trust”, a future interest that was created by a transfer  creating a trust or to an existing trust or by an exercise of a power of appointment to an existing trust, directing the continuance of an existing trust, designating a beneficiary of an existing trust, or creating a trust.
(7)  “Surviving beneficiary” or “surviving descendant”, a beneficiary or a descendant who did not predecease the distribution date.
(b)  If an instrument is silent on the requirement of survivorship, a future interest under the terms of a trust is contingent on the beneficiary's surviving the distribution date.  In that case, if a beneficiary of a future interest under the terms of a trust fails to survive the distribution date, the following apply:
(1)  If the future interest is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants.  They take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the distribution date.
(2)  If the future interest is in the form of a class gift, other than a future interest to “issue”, “descendants”, “heirs of the body”, “heirs”, “next of kin”, “relatives”, or “family”, or a class described by language of similar import, a substitute gift is created in the deceased beneficiary or beneficiaries' surviving descendants.  The property to which the beneficiaries would have been entitled had all of them survived the distribution date passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries.  Each surviving beneficiary takes the share to which the surviving beneficiary would have been entitled had the deceased beneficiaries survived the distribution date.  Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the distribution date.  For the purposes of this paragraph, “deceased beneficiary” means a class member who failed to survive the distribution date and left 1 or more surviving descendants.
(c)  If, after the application of subsections (b), there is no surviving taker, the property passes in the following order:
(1)  if the trust was created in a nonresiduary devise in the transferor's will or in a codicil to the transferor's will, the property passes under the residuary clause in the transferor's will; for purposes of this section, the residuary clause is treated as creating a future interest under the terms of a trust.
(2)  if no taker is produced by the application of paragraph (1), the property passes to the transferor's heirs under section 2-711.
Section 2-708.  [Class Gifts to “Descendants”, “Issue”, or “Heirs of the Body”; Form of Distribution If None Specified.]
If a class gift in favor of “descendants”, “issue”, or “heirs of the body” does not specify the manner in which the property is to be distributed among the class members, the property is distributed among the class members who are living when the interest is to take effect in possession or enjoyment, in such shares as they would receive, under the applicable law of intestate succession, if the designated ancestor had then died intestate owning the subject matter of the class gift.
Section 2-709.  [Representation; Per Capita at Each Generation; Per Stirpes.]
(a)  In this section:
(1)  “Deceased child” or “deceased descendant”, a child or a descendant who predeceased the distribution date.
(2)  “Distribution date”, with respect to an interest, is the time when the interest is to take effect in possession or enjoyment.  The distribution date need not occur at the beginning or end of a calendar day, but can occur at a time during the course of a day.
(3)  “Surviving ancestor”, “surviving child”, or ‘surviving descendant”, an ancestor, a child, or a descendant who did not predecease the distribution date.
(b)  If an applicable statute or a governing instrument calls for property to be distributed "per capita at each generation", the property is divided into as many equal shares as there are (i) surviving descendants in the generation nearest to the designated ancestor which contains 1 or more surviving descendants (ii) and deceased descendants in the same generation who left surviving descendants, if any.  Each surviving descendant in the nearest generation is allocated 1 share.  The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the distribution date.
(c)   If a governing instrument calls for property to be distributed “by representation” or “per stirpes”, the property is divided into as many equal shares as there are (i) surviving children of the designated ancestor and (ii) deceased children who left surviving descendants.  Each surviving child is allocated 1 share.  The share of each deceased child with surviving descendants is divided in the same manner, with subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.
(d)  For the purposes of subsections (b) and (c), an individual who is deceased and left no surviving descendant is disregarded, and an individual who leaves a surviving ancestor who is a descendant of the designated ancestor is not entitled to a share.
Section 2-710.  [Worthier Title Doctrine Abolished.]
The doctrine of worthier title shall not exist in the commonwealth either as a rule of law or as a rule of construction.  Language in a governing instrument describing the beneficiaries of a donative disposition as the transferor's “heirs”, “heirs at law”, “next of kin”, “distributes”, “relatives”, or “family”, or language of similar import, shall not create or presumptively create a reversionary interest in the transferor.
Section 2-711.  [Future Interests in “Heirs” and Like.]
If an applicable statute or a governing instrument calls for a future distribution to or creates a future interest in a designated individual's “heirs”, “heirs at law”, “next of kin”, “relatives”, or “family”, or language of similar import, the property passes to those persons, including the commonwealth under section 2-105, and in such shares as would succeed to the designated individual's intestate estate under the intestate succession law of the designated individual's domicile if the designated individual died when the donative disposition is to take effect in possession or enjoyment.  If the designated individual's surviving spouse is living but is remarried at the time the interest is to take effect in possession or enjoyment, the surviving spouse is not an heir of the designated individual.
PART 8
GENERAL PROVISIONS CONCERNING PROBATE
AND NONPROBATE TRANSFERS
Section 2-801. [Disclaimer of Property Interests.]
(a)  The following words as used in this section shall have the following meanings, unless otherwise expressly provided or the context otherwise requires:-
“Beneficiary”, any person to whom, and any estate, trust, corporation or other legal entity to which, an interest in property would pass in any manner described in subsection (b), except for the execution and filing of a disclaimer in accordance with the provisions of this chapter.
An “interest in property” which may be disclaimed shall include:
1.  any legal or equitable interest or estate, whether present, future or contingent, in any real or personal property, or in any fractional part, share, or portion thereof, or in any specific asset or assets thereof;
2.  any power to appoint, consume, apply, or expend property or any other right, power, or privilege, relating thereto;
3.  any fractional part, share or portion of any interest described in clause 1 or 2.
(b)  Unless barred by the provisions of subsection (h), a beneficiary may disclaim any interest in property which, except for the execution and filing of a disclaimer in accordance with the provisions of this section, pass to the beneficiary:
1.  By intestate succession, devise, legacy, bequest, exercise or nonexercise of a power of appointment exercisable by will, or testamentary exercise or nonexercise of a power of appointment exercisable by either deed of trust or will; as beneficiary of a testamentary trust, beneficiary of a testamentary gift to a nontestamentary trust, or donee of a power of appointment created by will; by succession in any manner described in this clause to a disclaimed interest; or in any other manner not specified above under a testamentary instrument or by operation of any statute or rule of law governing devolution or disposition of property upon or after a person's death.
2.  As donee, grantee, beneficiary of an intervivos trust, beneficiary of an insurance or annuity contract, donee of a power of appointment created by a nontestamentary instrument, or as surviving joint tenant or tenant by the entirety, except that a surviving joint tenant or tenant by the entirety may not disclaim that portion of an interest in joint property or property held by the entirety which is allocable to amounts contributed by him to the interest in such property; through exercise or nonexercise of a power of appointment exercisable by deed of trust or will; under any deed, assignment, or other non-testamentary instrument of conveyance or transfer; by succession in any manner described in this clause to a disclaimed interest; or in any other manner not specified above under a non-testamentary instrument or by operation of any statute or rule of law.
Disclaimer may be made for a beneficiary under a legal disability by the duly appointed guardian or conservator of such beneficiary, and for a deceased beneficiary by the legal representative of such beneficiary's estate; provided, in any case, however, that the probate court having jurisdiction of the estate of such beneficiary shall have decreed, upon complaint filed by such guardian, conservator, or legal representative, that such disclaimer is in the best interests of those interested in the estate of such beneficiary and not detrimental to the best interests of the beneficiary or the estate of such beneficiary, and that such guardian, conservator, or legal representative is authorized to execute and file such disclaimer on behalf of such beneficiary in accordance with the provisions of this chapter.
(c)  A disclaimer shall be executed and filed pursuant to the provisions of this section at any time after the creation of the interest in property being disclaimed, but in any event not later than nine months after the event determining that the beneficiary is finally ascertained as the beneficiary of such interest and that such interest is indefeasibly vested and in the case of a beneficiary who is a surviving joint tenant or tenant by the entirety, a disclaimer shall be executed and filed in any event not later than nine months after the death of the other joint tenant or tenants or tenant by the entirety; provided, that any court having jurisdiction of the property, an interest in which  is being disclaimed, may, upon petition filed by the beneficiary, the duly appointed guardian or conservator of a beneficiary under a legal disability, or the legal representative of a deceased beneficiary's estate, permit an extension of time to execute and file a disclaimer, for such further period of time as the court in its discretion deems advisable.
(d)  A disclaimer shall be in writing, shall describe the interest in property being disclaimed, shall declare the disclaimer and the extent thereof, shall be clear and unequivocal, and shall be signed by the beneficiary, the duly appointed guardian or conservator of a beneficiary under a legal disability, or the legal representative of a deceased beneficiary's estate.
(e)  The original of the disclaimer or an attested copy thereof, if filing is required to be made with more than 1 probate court, shall be filed with the probate court, or probate courts, if any, wherein a duly appointed fiduciary, if any, having custody or control of the property, an interest in which is being disclaimed, is required to file periodic accounts.
If the property, an interest in which is being disclaimed, is real property, the disclaimer shall be acknowledged in the manner provided for deeds of real property.  The disclaimer shall not be valid as against any person, except the beneficiary, the heirs and devisees of the beneficiary, and any person, estate, trust, corporation or other legal entity having actual notice of the disclaimer, unless the original thereof or an attested copy thereof if the original is required to be filed with a probate court, is recorded in the registry of deeds for the county or district in which the real property is situated or, in the case of registered real property, is filed and registered in the office of the assistant recorder for the registry district in which the real property is located.
A copy of the disclaimer shall be served by delivering in hand or by mailing by certified mail to the last known address of the person or persons or other legal entity or entities having custody or possession of the property, an interest in which is being disclaimed.  Failure to comply with these requirements of service shall not affect the validity of the disclaimer.
(f)  No person or other legal entity having custody or possession of the property, an interest in which is being or has been disclaimed, shall be liable  for any distribution or other disposition made prior to the delivery to him or it of a copy of the disclaimer, pursuant to the requirements of subsection (e); and no such person or other legal entity shall be liable for any good faith distribution or other disposition made in reliance upon a disclaimer, the form of which is in accordance with the requirements of subsection (d), and a copy of which has been delivered to him or it pursuant to the requirements of subsection (e).
If a disclaimer certifies, with particularity, that none of the contingencies specified in subsection (h), which would result in waiver or bar of the beneficiary's right to disclaim, are applicable, any person or other legal entity having custody or possession of the property, and any third party purchaser of the property, an interest in which is being or has been disclaimed, shall be entitled to rely without further inquiry upon the aforesaid certifications.
(g)  A disclaimer complying with all the applicable requirements of this section shall be effective according to its terms, and shall be irrevocable, upon execution in accordance with the provisions of subsection (d), and filing in accordance with the provisions of subsection (e).
If the interest in property being disclaimed is a power to appoint, consume, apply, or expend property, as described in clause 2 of the second paragraph of subsection (a), or any fractional part, share, or portion thereof, such interest shall be extinguished.
Except as provided in the preceding paragraph, and unless such a result would substantially impair the provisions or intent of any instrument, statute or rule of law relating to the interest in property being disclaimed, such interest shall pass in the same manner as if the beneficiary had died immediately preceding the event determining that he, she or it is the beneficiary of such interest and that such interest is indefeasibly vested.
The interest in property being disclaimed shall never vest in the beneficiary.
Any person or other legal entity having custody or possession of the property, an interest in which is being disclaimed, may file a complaint for instruction or complaint for declaratory judgment seeking a determination of the effect of a disclaimer, in
1.  A probate court, if any, having jurisdiction of such property; or
2.  If no probate court has jurisdiction of such property, any other court having jurisdiction of such property.
(h)  The right to disclaim an interest in property shall be barred by:-
1.  assignment, conveyance, encumbrance, pledge, transfer or other disposition of such interest, or any contract therefor, by the beneficiary or sale or other disposition of such interest pursuant to judicial process made before the beneficiary has disclaimed such interest as herein provided;
2.  insolvency of the beneficiary at the time of attempted disclaimer.  For purposes of this paragraph only, sections 1 to 4, inclusive, and sections 8 to 13, inclusive, of chapter 109A shall be applicable as if the disclaimer were a conveyance;
3.  a written waiver of the right to disclaim such interest pursuant to the provisions of this section, signed by the beneficiary, the duly appointed guardian or conservator of a beneficiary under a legal disability, or the legal representative of a deceased beneficiary's estate;
4.  acceptance of such interest by the beneficiary; if the beneficiary, having knowledge of the existence of such interest, receives without objection a benefit from such interest, receives without objection a benefit from such interest, such receipt shall be deemed to constitute acceptance of such interest.
The assignment, conveyance, encumbrance, pledge, transfer or other disposition or any contract therefor, sale or other disposition pursuant to judicial process, written waiver of the right to disclaim, or acceptance of apart of an interest in property shall not bar the right to disclaim any other part of such interest.
(i)  The right to disclaim pursuant to the provisions of this section shall exist irrespective of any limitation in the nature of an express or implied spendthrift provision or other similar restraint on alienation imposed by any instrument, statute, rule of law or otherwise on the interest in property being disclaimed.
(j)  Except for the provisions of subsection (h), this section shall not abridge the right of any person to disclaim, waive, release, renounce, or abandon any interest in property under section 2-201 or any other statute or rule of law.
Section 2-802.  [Effect of Divorce, Annulment, and Decree of Separation.]
(a)  An individual who is divorced from the decedent is not a surviving spouse unless, by virtue of a subsequent marriage, the individual is married to the decedent at the time of death.  A judgment of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section.
(b)  For purposes of parts 1 to 4, inclusive, of this article, and of section 3-203, a surviving spouse shall not include:
(1)  an individual 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 the commonwealth, unless subsequently they participate in a marriage ceremony purporting to marry each to the other or live together as husband and wife;
(2)  an individual who, following an invalid decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third individual; or
(3)  an individual who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.
Section 2-803.  [Effect of Homicide on Intestate Succession, Wills, Trusts, Joint Assets, Life Insurance, and Beneficiary Designation.]
(a)  In this section:
(1)  “Disposition or appointment of property”, includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.
(2)  “Governing instrument”, a governing instrument executed by the decedent.
(3)  “Revocable”, with respect to a disposition, appointment, provision, or nomination, means one under which the decedent, at the time of or immediately before death, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the killer, whether or not the decedent was then empowered to designate the decedent in place of the killer the decedent then had capacity to exercise the power.
(b)  An individual who feloniously and intentionally kills the decedent forfeits all benefits under this article with respect to the decedent's estate, including an intestate share, an elective share, an omitted spouse's or child's share, exempt property, and a family allowance.  If the decedent died intestate, the decedent's intestate estate passes as if the killer disclaimed the intestate share.
(c)  The felonious and intentional killing of the decedent:
(1)  revokes any revocable (i) disposition or appointment of property made by the decedent to the killer in a governing instrument, (ii) provision in a governing instrument conferring a general or nongeneral power of appointment on the killer, and (iii) nomination of the killer in a governing instrument, nominating or appointing the killer to serve in any fiduciary or representative capacity, including as personal representative, executor, trustee, or agent; and
(2)  severs the interests of the decedent and killer in property held by them at the time of the killing as joint tenants with the right of survivorship, transforming the interests of the decedent and killer into tenancies in common.
(d)  A severance under subsection (c)(2) shall not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the killer unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property which are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.
(e)  Provisions of a governing instrument that are not revoked by this section are given effect as if the killer disclaimed all revoked provisions or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the killer predeceased the decedent.
(f)  A wrongful acquisition of property or interest by a killer not covered by this section shall be treated in accordance with the principle that a killer cannot profit from the wrong.
(g)  After all right to appeal has been exhausted, a judgment of conviction establishing criminal accountability for the felonious and intentional killing of the decedent conclusively establishes the convicted individual as the decedent's killer for purposes of this section.  In the absence of a conviction, the court, upon the petition of an interested person, shall determine whether, under the preponderance of evidence standard, the individual would be found criminally accountable for the felonious and intentional killing of the decedent.  If the court determines that, under that standard, the individual would be found criminally accountable for the felonious and intentional killing of the decedent, the determination conclusively establishes that individual as the decedent's killer for purposes of this section.
(h)  (1)  A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by an intentional and felonious killing, or for having taken any other action in good faith reliance on the validity of the governing instrument, upon request and satisfactory proof of the decedent's death, before the payor or other third party received written notice of a claimed forfeiture or revocation under this section.  A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed forfeiture or revocation under this section.
(2)  Written notice of a claimed forfeiture or revocation under paragraph (1) shall be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action.  Upon receipt of written notice of a claimed forfeiture or revocation under this section, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the probate and family court located in the county of the decedent's residence.  The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement in accordance with the determination.  Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.
(i)  (1)  A person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor is liable under this section for the amount of the payment or the value of the item of property or benefit.  But a person who, not for value, receives a payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.
(2)  If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.
Section 2-804.  [Revocation of Probate and Nonprobate Transfers by Divorce; No Revocation by Other Changes of Circumstances.]
(a)  In this section:
(1)  “Disposition or appointment of property”, includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.
(2)  “Divorce or annulment”, any divorce or annulment, or any dissolution or declaration of invalidity of a marriage, that would exclude the spouse as a surviving spouse within the meaning of section 2-802.  A judgment of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section.
(3)  “Divorced individual”, includes an individual whose marriage has been annulled.
(4)  “Governing instrument”, a governing instrument executed by the divorced individual before the divorce or annulment of the individual's marriage to the individual's former spouse.
(5)  “Relative of the divorced individual's former spouse”, an individual who is related to the divorced individual's former spouse by blood, adoption, or affinity and who, after the divorce or annulment, is not related to the divorced individual by blood, adoption, or affinity.
(6)  “Revocable”, with respect to a disposition, appointment, provision, or nomination, means one under which the divorced individual, at the time of the divorce or annulment, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the former spouse or former spouse's relative, whether or not the divorced individual was then empowered to designate himself in place of the former spouse or in place of the former spouse's relative and whether or not the divorced individual then had the capacity to exercise the power.
(b)  Except as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage:
(1)  revokes any revocable (i) disposition or appointment of property made by a divorced individual to the individual's former spouse in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse, (ii) provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced individual's former spouse or on a relative of the divorced individual's former spouse, and (iii) nomination in a governing instrument, nominating a divorced individual's former spouse or a relative of the divorced individual's former spouse to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, conservator, agent, or guardian; and
(2)  severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship, transforming the interests of the former spouses into tenancies in common.
(c)  A severance under subsection (b)(2) shall not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property which are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.
(d)  Provisions of a governing instrument that are not revoked by this section are given effect as if the former spouse and relatives of the former spouse disclaimed the revoked provisions or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment.
(e)  Provisions revoked solely by this section are revived by the divorced individual's remarriage to the former spouse or by a nullification of the divorce or annulment.
(f)  No change of circumstances other than as described in this section and in section 2-803 effects a revocation.
(g)  (1)  A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by a divorce, annulment, or remarriage, or for having taken any other action in good faith reliance on the validity of the governing instrument, before the payor or other third party received written notice of the divorce, annulment, or remarriage.  A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed forfeiture or revocation under this section.
(2)  Written notice of the divorce, annulment, or remarriage under subsection (g)(2)  shall be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the  payor or other third party in the same manner as a summons in a civil action.  Upon receipt of written notice of the divorce, annulment, or remarriage, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence.  The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement or transfer in accordance with the determination.  Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.
(h)  (1)  A person who purchases property from a former spouse, relative of a former spouse, or any other person for value and without notice, or who receives from a former spouse, relative of a former spouse, or any other person a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor is liable under this section for the amount of the payment or the value of the item of property or benefit.  But a former spouse, relative of a former spouse, or other person who, not for value, received a payment, item of property, or any other benefit to which that person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.
(2)  If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a former spouse, relative of the former spouse, or any other person who, not for value, received a payment, item of property, or any other benefit to which that person is not entitled under this section is obligated to return that payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.
PART 9
STATUTORY RULE AGAINST PERPETUITIES
Section 2-901.  [Statutory Rule Against Perpetuities.]
(a)  A nonvested property interest is invalid unless:
(1)  when the interest is created, it is certain to vest or terminate no later than 21 years after the death of an individual then alive; or
(2)  the interest either vests or terminates within 90 years after its creation.
(b)  A general power of appointment not presently exercisable because of a condition precedent is invalid unless:
(1)  when the power is created, the condition precedent is certain to be satisfied or becomes impossible to satisfy no later than 21 years after the death of an individual then alive; or
(2)  the condition precedent either is satisfied or becomes impossible to satisfy within 90 years after its creation.
(c)  A nongeneral power of appointment or a general testamentary power of appointment is invalid unless:
(1)  when the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than 21 years after the death of an individual then alive; or
(2)  the power is irrevocably exercised or otherwise terminates within 90 years after its creation.
(d)  In determining whether a nonvested property interest or a power of appointment is valid under subsection (a)(1), (b)(1), or (c)(1), the possibility that a child will be born to an individual after the individual's death is disregarded.
(e)  If, in measuring a period from the creation of a trust or other property arrangement, language in a governing instrument (i) seeks to disallow the vesting or termination of any interest or trust beyond, (ii) seeks to postpone the vesting or termination of any interest or trust until, or (iii) seeks to operate in effect in any similar fashion upon, the later of (A) the expiration of a period of time not exceeding 21 years after the death of the survivor of specified lives in being at the creation of the trust or other property arrangement or (B) the expiration of a period of time that exceeds or might exceed 21 years after the death of the survivor of lives in being at the creation of the trust or other property arrangement, that language is inoperative to the extent it produces a period of time that exceeds 21 years after the death of the survivor of the specified lives.
Section 2-902.  [When Nonvested Property Interest or Power of Attorney Appointment Created.]
(a)  Except as provided in subsections (b) and (c) and in section 2-905(a), the time of creation of a nonvested property interest or a power of appointment is determined under general principles of property law.
(b)  For purposes of this part, if there is a person who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of (i) a nonvested property interest or (ii) a property interest subject to a power of appointment described in section 2-901(b) or (c), the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates.
(c)  For purposes of this part, a nonvested property interest or a power of appointment arising from a transfer of property to a previously funded trust or other existing property arrangement is created when the nonvested property interest or power of appointment in the original contribution was created.
Section 2-903.  [Reformation.]
Upon the petition of an interested person, a court shall reform a disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the 90 years allowed by section 2-901(a)(2), 2-901(b)(2), or 2-901(c)(2)  if:
(1)  a nonvested property interest or a power of appointment becomes invalid under section 2-901 (statutory rule  against perpetuities);
(2)  a class gift is not but might become invalid under section 2-901 (statutory rule against perpetuities)  and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or
(3)  a nonvested property interest that is not validated by section 2-901(a)(1)  can vest but not within 90 years after its creation.
Section 2-904.  [Exclusions from Statutory Rule Against Perpetuities.]
Section 2-901 shall not apply to:
(1)  a nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of (i) a premarital or postmarital agreement, (ii) a separation or divorce settlement, (iii) a spouse's election, (iv) a similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties, (v) a contract to make or not to revoke a will or trust, (vi) a contract to exercise or not to exercise a power of appointment, (vii) a transfer in satisfaction of a duty of support, or (viii) a reciprocal transfer;
(2)  a fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease, or mortgage property, and the power of a fiduciary to determine principal and income;
(3)  a power to appoint a fiduciary;
(4)  a discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal;
(5)  a nonvested property interest held by a charity, government, or governmental agency or subdivision, if the nonvested property interest is preceded by an interest held by another charity, government, or governmental agency or subdivision;
(6)  a nonvested property interest in or a power of appointment with respect to a trust or other property arrangement forming part of a pension, profit-sharing, stock bonus, health, disability, death benefit, income deferral, or other current or deferred benefit plan for 1 or more employees, independent contractors, or their beneficiaries or spouses, to which contributions are made for the purpose of distributing to or for the benefit of the participants or their beneficiaries or spouses the property, income, or principal in the trust or other property arrangement, except a nonvested property interest or a power of appointment that is created by an election of a participant or a beneficiary or spouse; or
(7)  a property interest, power of appointment, or arrangement that was not subject to the common-law rule against perpetuities or is excluded by another statute of the commonwealth.
Section 2-905.  [Prospective Application.]
(a)  Except as extended by subsection (b), this part applies to a nonvested property interest or a power of appointment that is created on or after the effective date of this part.  For purposes of this section, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.
(b)  If a nonvested property interest or a power of appointment was created before the effective date of this part and is determined in a judicial proceeding, commenced on or after the effective date of this part, to violate the commonwealth's rule against perpetuities as that rule existed before the effective date of this part, a court upon the petition of an interested person may reform the disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created.
Section 2-906.  [Supersession.]  This part supersedes the rule of the common law known as the rule against perpetuities.
ARTICLE III
PROBATE OF WILLS AND ADMINISTRATION
PART 1
GENERAL PROVISIONS
Section 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 property are subject to the restrictions and limitations contained in this chapter to facilitate the prompt settlement of estates.  Upon the death of a person, the decedent's real and personal property devolves to the persons to whom it is devised by the decedent's 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 the decedent's heirs, or to those indicated as substitutes for them in cases involving renunciation or other circumstances affecting devolution of intestate estates, subject to allowances and  exempt property, to rights of creditors, elective share of the surviving spouse, and to administration.
Section 3-102.  [Necessity of Order of Probate for Will.]
Except as provided in section 3-1201, to be effective to prove the transfer of any property or to nominate an executor, a will shall be declared to be valid by an order of informal probate by a magistrate 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 the devisee's successors and assigns possessed the property devised in accordance with the provisions of the will, or the property devised was not possessed or claimed by anyone by virtue of the decedent's title during the time period for testacy proceedings.
Section 3-103.  [Necessity of Appointment for Administration.]
Except as otherwise provided in article IV, to acquire the powers and undertake the duties and liabilities of a personal representative of a decedent, a person shall be appointed by order of the court or a magistrate, qualify and be issued letters.  Administration of an estate is commenced by the issuance of letters.
Section 3-104.  [Claims Against Decedent; Necessity of Administration.]
No proceeding to enforce a claim against the estate of a decedent or a decedent's 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 this article.  After distribution a creditor whose claim has not been barred may recover from the distributees as provided in section 3-1004 or from a former personal representative individually liable as provided in section 3-1005.  This section has no application to a proceeding by a secured creditor of the decedent to enforce a right to the security except as to any deficiency judgment which might be sought therein.
Section 3-105.  [Proceedings Affecting Devolution and Administration.]
Persons interested in decedents' estates may petition the magistrate for determination in the informal proceedings provided in this article, and may petition the court for orders in formal proceedings within the court's jurisdiction including but not limited to those described in this article.
Section 3-106.  [Proceedings Within the Exclusive Jurisdiction of Court; Service; Jurisdiction Over Persons.]
In proceedings within the exclusive jurisdiction of the court where notice is required by this chapter or by rule, and in proceedings to construe probated wills or determine heirs which concern estates that have not been and cannot now be open for administration, interested persons may be bound by the orders of the court in respect to property in or subject to the laws of the commonwealth by notice in conformity with section 1-401.  An order is binding as to all who are given notice of the proceeding though less than all interested persons are notified.
Section 3-107.  [Scope of Proceedings; Proceedings Independent; Exception.]
Unless supervised administration as described in part 5 is involved, (1) each proceeding before the court or a magistrate is independent of any other proceeding involving the same estate; (2) petitions for formal orders of the court may combine various requests for relief in a single proceeding if the orders sought may be finally granted without delay.  Except as required for proceedings which are particularly described by other sections of this article, no petition is defective because it fails to embrace all matters which might then be the subject of a final order; (3) proceedings for probate of wills or adjudications of no will may be combined with proceedings for appointment of personal representatives; and (4) a proceeding for appointment of a personal representative is concluded by an order making or declining the appointment.
Section 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 3 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 at any time within 3 years after the death of the person can be established; and (3) a proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful, may be commenced within the later of 12 months from the informal probate or 3 years from the decedent's death; and (4) if no proceeding concerning the succession or administration of the estate has occurred within 3 years after decedent's death, a formal testacy proceeding may be commenced at any time thereafter for the sole purpose of establishing a devise of property which the devisee or the devisee's successors and assigns possessed in accordance with the will or property which was not possessed or claimed by anyone by virtue of the decedent's title during the 3-year period, and the order of the court shall be limited to that property.  These limitations shall not apply to proceedings to construe probated wills or determine heirs of an intestate.  In cases under (1) or (2)  above, the date on which a testacy or appointment proceeding is properly commenced shall be deemed to be the date of the decedent's death for purposes of other limitations provisions of this chapter which relate to the date of death.
Section 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 death, shall apply to bar a cause of action surviving the decedent's death sooner than 4 months after death.  A cause of action which, but for this section, would have been barred less than 4 months after death, is barred after 4 months unless tolled.
PART 2
VENUE FOR PROBATE AND ADMINISTRATION;
PRIORITY TO ADMINISTER
Section 3-201.  [Venue for First and Subsequent Estate Proceedings; Location of Property.]
(a)  Venue for the first informal or formal testacy or appointment proceedings after a decedent's death is:
(1)  in the county where the decedent was domiciled at the time of death; or
(2)  if the decedent was not domiciled in the commonwealth, in any county where property of the decedent was located at the time of death.
(b)  Venue for all subsequent proceedings within the exclusive jurisdiction of the court is in the place where the initial proceeding occurred, unless the initial proceeding has been transferred as provided in section 1-303 or (c) of this section.
(c)  If the first proceeding was informal, on application of an interested person and after notice to the proponent in the first proceeding, the court, upon finding that venue is elsewhere, may transfer the proceeding and the file to the other court.
(d)  For the purpose of aiding determinations concerning location of assets which may be relevant in cases involving non-domiciliaries, a debt, other than one evidenced by investment or commercial paper or other instrument in favor of a non-domiciliary is located where the debtor resides or, if the debtor is a person other than an individual, at the place where it has its principal office.  Commercial paper, investment paper and other instruments are located where the instrument is.  An interest in property held in trust is located where the trustee may be sued.
Section 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 the commonwealth, and in a testacy or appointment proceeding after notice pending at the same time in another state, the court of the commonwealth shall 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 shall be accepted as determinative in the proceeding in the commonwealth.
Section 3-203.  [Priority Among Persons Seeking Appointment as Personal Representative.]
(a)  Whether the proceedings are formal or informal, persons have priority for appointment in the following order:
(1)  the person with priority as determined by a probated will including a person nominated by a power conferred in a will;
(2)  the surviving spouse of the decedent who is a devisee of the decedent;
(3)  other devisees of the decedent;
(4)  the surviving spouse of the decedent;
(5)  other heirs of the decedent;
(6)  if there is no known spouse or next of kin, a public administrator appointed pursuant to chapter 194.
(b)  An objection to an appointment can be made only in formal proceedings.  In case of objection the priorities stated in (a) apply except that
(1)  if the estate appears to be more than adequate to meet exemptions and costs of administration but inadequate to discharge anticipated unsecured claims, the court, on petition of creditors, may appoint any qualified person;
(2)  in case of objection to appointment of a person other than one whose priority is determined by will by an heir or devisee appearing to have a substantial interest in the estate, the court may appoint a person who is acceptable to the heirs and devisees or, in default of agreement any suitable person.
(c)  A person entitled to letters under (2) through (5) of (a)  above, may nominate a qualified person to act as personal representative.  Any person may renounce the right to nominate or to an appointment by appropriate writing filed with the court.  When 2 or more persons share a priority, those of them who do not renounce shall concur in nominating another to act for them, or in applying for appointment.
(d)  Conservators of the estates of protected persons, or if there is no conservator, any guardian except a guardian ad litem of a minor or incapacitated person, may exercise the same right to nominate, to object to another's appointment, or to participate in determining the preference of a majority in interest of the heirs and devisees that the protected person or ward would have if qualified for appointment.
(e)  Appointment of one who does not have priority, including priority resulting from renunciation or nomination determined pursuant to this section, may be made only in formal proceedings.  Before appointing one without priority, the court shall determine that those having priority, although given notice of the proceedings, have failed to request appointment or to nominate another for appointment, and that administration is necessary.
(f)  No person is qualified to serve as a personal representative:
(1)  who is under the age of 18;
(2)  whose appointment the court finds in formal proceedings to be contrary to the best interests of the estate.
(g)  A personal representative appointed by a court of the decedent's domicile has priority over all other persons except where the decedent's will nominates different persons to be personal representative in the commonwealth and in the state of domicile.  The domiciliary personal representative may nominate another, who shall have the same priority as the domiciliary personal representative.
(h)  This section governs priority for appointment of a successor personal representative but shall not apply to the selection of a special personal representative.
Section 3-204.  [Reserved.]
Section 3-205.  [Judge or Register as Personal Representative.]
If a judge or register desires to be appointed personal representative of the estate of his spouse, child or parent who at the time of their decease was domiciled in his county, such appointment may be made and all subsequent proceedings relative to the estate may be had in the court of any adjoining county, and the register thereof shall forthwith transmit to the register of the county where the decedent was domiciled, a true and attested copy of all papers relating thereto filed and entered on the docket, which shall be recorded by the register to whom they are transmitted.
PART 3
INFORMAL PROBATE AND APPOINTMENT PROCEEDINGS
Section 3-301.  [Informal Probate or Appointment Proceedings; Petition; Contents.]
(a)  Petitions for informal probate or informal appointment shall be directed to the court, and verified by the petitioner to be accurate and complete to the best of the petitioner's knowledge and belief as to the following information:
(1)  Every petition for informal probate of a will or for informal appointment of a personal representative, other than a special or successor representative, shall contain the following:
(i)  a statement of the interest of the petitioner;
(ii)  the name, date of death, age and address of the decedent at the time of death, and the names and addresses of the spouse, children, heirs and devisees and the ages of any who are minors so far as known or ascertainable with reasonable diligence by the applicant;
(iii)  a statement identifying any heir or surviving spouse who may be an incapacitated person;
(iv)  if the decedent was not domiciled in the commonwealth at the time of death, a statement showing venue;
(v)  a statement identifying and indicating the address of any personal representative of the decedent appointed in the commonwealth or elsewhere whose appointment has not been terminated;
(vi)  a statement that a copy of the petition and the death certificate have been sent to the division of medical assistance by certified mail; and
(vii)  a statement that the time limit for informal probate or appointment as provided in this article has not expired either because 3 years or less have passed since the decedent's death, or, if more than 3 years from death have passed, circumstances as described by section 3-108 authorizing tardy probate or appointment have occurred.
(2)  A petition for informal probate of a will shall state the following in addition to the statements required by (1):
(i)  that the original of the decedent's last will is in the possession of the court, or accompanies the petition, or that an authenticated copy of a will probated in another jurisdiction accompanies the petition;
(ii)  that the petitioner, to the best of the petitioner's knowledge, believes the will to have been validly executed;
(iii)  that after the exercise of reasonable diligence, the petitioner is unaware of any instrument revoking the will, and that the petitioner believes that the instrument which is the subject of the petition is the decedent's last will.
(iv)  a statement that a death certificate issued by a public officer is in the possession of the court, or accompanies the petition.
(3)  A petition 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 petition for probate.  The petition for appointment shall adopt the statements in the petition for probate and state the name, address and priority for appointment of the person whose appointment is sought.
(4)  A petition for informal appointment of a personal representative in intestacy shall state in addition to the statements required by (1):
(i)  that after the exercise of reasonable diligence, the petitioner is unaware of any unrevoked testamentary instrument relating to property having a situs in the commonwealth under section 1-301, or, a statement why any such instrument of which the petitioner may be aware is not being probated;
(ii)  the priority of the person whose appointment is sought and the names of any other persons having a prior or equal right to the appointment under section 3-203.
(iii)  a statement that a death certificate issued by a public officer is in the possession of the court, or accompanies the petition.
(5)  A petition 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 petition is granted, and describe the priority of the petitioner.
(6)  A petition for appointment of a personal representative to succeed a personal representative who has tendered a resignation as provided in section 3-610(c), or whose appointment has been terminated by death or removal, shall adopt the statements in the 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 petitioner.
(b)  By verifying a petition for informal probate, or informal appointment, the petitioner submits personally to the jurisdiction of the court in any proceeding for relief from fraud relating to the petition, or for perjury, that may be instituted against the petitioner.
Section 3-302.  [Informal Probate; Duty of Magistrate; Effect of Informal Probate.]
Upon receipt of a petition requesting informal probate of a will, the court or a magistrate, upon making the findings required by section 3-303 shall issue a written statement of informal probate if at least 7 days 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 petition or procedure relating thereto which leads to informal probate of a will renders the probate void.
Section 3-303.  [Informal Probate; Proof and Findings Required.]
(a)  In an informal proceeding for original probate of a will, the court or a magistrate shall determine whether:
(1)  the petition is complete;
(2)  the petitioner has made oath or affirmation that the statements contained in the petition are true to the best of the petitioner's knowledge and belief;
(3)  the petitioner appears from the petition to be an interested person as defined in section 1-201(24);
(4)  on the basis of the statements in the petition, venue is proper;
(5)  an original, duly executed and apparently unrevoked will is in the court's possession;
(6)  on the basis of the statements in the petition any notice required by section 3-306 has been given and that the petition is not within section 3-304;
(7)  it appears from the petition that the time limit for original probate has not expired;
(8)  on the basis of statements in the petition, the spouse and heirs are not incapacitated persons or minors; or if they are incapacitated persons or minors they are represented by guardians or conservators; and
(9)  a death certificate issued by a public officer is in the court's possession.
(b)  The petition shall be denied if it indicates that a personal representative has been appointed in another county of the commonwealth or except as provided in subsection (d) below, if it appears that this or another will of the decedent has been the subject of a previous probate order.
(c)  A will which appears to have the required signatures and which contains an attestation clause showing that requirements of execution under section 2-502 have been met shall be probated without further proof.  In other cases, a magistrate may assume execution if the will appears to have been properly executed.
(d)  Informal probate of a will which has been previously probated in another state or country may be granted at any time upon written petition by any interested person, together with deposit of an authenticated copy of the will and of the statement probating it from the office or court where it was first probated.
(e)  A will from a place which does not provide for probate of a will after death and which is not eligible for probate under subsection (a) above, may be probated in the commonwealth 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.
Section 3-304.  [Informal Probate; Unavailable in Certain Cases.]
Petitions for informal probate which relate to 1 or more of a known series of testamentary instruments, other than a will and 1 or more codicils thereto, the latest of which does not expressly revoke the earlier, shall be declined.
Section 3-305.  [Informal Probate; Magistrate Not Satisfied.]
(a)  If the magistrate is not satisfied that a will is entitled to be probated in informal proceedings because of failure to meet the requirements of sections 3-303 and 3-304 or any other reason, the magistrate may decline the petition.  A declination of informal probate is not an adjudication and shall not preclude formal probate proceedings.
   Section 3-306.  [Informal Probate; Notice Requirements.]
            (a) The petitioner shall give written notice seven days prior to petitioning for informal probate or appointment by delivery or by mail: (1) to all heirs and devisees; (2) to any person having a prior or equal right to appointment not waived in writing and filed with the court;  and (3) to any personal representative of the decedent whose appointment has not been terminated.  The notice shall be delivered or sent by ordinary mail to each of the heirs and devisees.  A certificate that such notice has been given, setting forth the names and addresses of those to whom notice has been given shall be prima facie evidence thereof.  No other prior notice of an informal probate or appointment proceeding is required.

            (b) The petitioner shall publish a notice once in a newspaper designated by the register of probate having general circulation in the county where the proceeding is pending, the publication of which is to be not more than thirty days after informal probate or appointment.  The court or magistrate for good cause shown may provide for a different method or time of giving notice.

            (c) The notice shall include the name and address of the petitioner and personal representative, indicate that it is provided to persons who have or may have some interest in the estate being administered, indicate whether bond with or without surety will be filed, and describe the court where papers relating to the estate are on file.  The notice shall state that the estate is being administered under informal procedure by the personal representative under the Massachusetts uniform probate code without supervision by the court, that inventory and accounts are not required to be filed with the court, but that interested parties are entitled to notice regarding the administration from the personal representative and can petition the court in any matter relating to the estate, including distribution of assets and expenses of administration.  The notice shall state that interested parties are entitled to petition the court to institute formal proceedings and to obtain orders terminating or restricting the powers of personal representatives appointed under informal procedure.

            (d) If it appears from the petition that there is no spouse or heir of the decedent or that any devisee is a charity, the petitioner shall give notice to the attorney general of the commonwealth.

            (e) If it appears from the petition that a spouse, heir or devisee is a minor or an incapacitated person, the petitioner shall give notice to that person and that person's guardian or conservator.

            (f) The duty shall not extend to require notice to persons who have been adjudicated in a prior formal testacy proceeding to have no interest in the estate.  The petitioner's failure to give this notice is a breach of duty to the persons concerned but shall not affect the validity of the probate, appointment, powers or other duties.  A petitioner may inform other persons of the petition by delivery or ordinary first class mail.

Section 3-307.  [Informal Appointment Proceedings; Delay in Order; Duty of Magistrate; Effect of Appointment.]
(a)  Upon receipt of a petition for informal appointment of a personal representative other than a special personal representative as provided in section 3-614, if at least 7 days have elapsed since the decedent's death, the court or a magistrate, after making the findings required by section 3-308, shall appoint the petitioner subject to qualification and acceptance; provided, that if the decedent was a non-resident, the court or a magistrate shall delay the order of appointment until 30 days have elapsed since death unless the personal representative appointed at the decedent's domicile is the petitioner, or unless the decedent's will directs that the decedent's estate be subject to the laws of the commonwealth.
(b)  The status of personal representative and the powers and duties pertaining to the office are fully established by informal appointment.  An appointment, and the office of personal representative created thereby, is subject to termination as provided in sections 3-608 through 3-612, but is not subject to retroactive vacation.
Section 3-308.  [Informal Appointment Proceedings; Proof and Findings Required.]
(a)  In informal appointment proceedings, the court or a magistrate shall determine whether:
(1)  the petition for informal appointment of a personal representative is complete;
(2)  the petitioner has made oath or affirmation that the statements contained in the petition are true to the best of the petitioner's knowledge and belief;
(3)  the petitioner appears from the petition to be an interested person as defined in section 1-201(24);
(4)  on the basis of the statements in the petition, venue is proper;
(5)  any will to which the requested appointment relates has been formally or informally probated; but this requirement shall not apply to the appointment of a special personal representative;
(6)  any notice required by section 3-306 has been given; and
(7)  from the statements in the petition, the person whose appointment is sought has priority entitling that person to the appointment;
(8)  on the basis of the statements in the petition, the spouse and heirs are not incapacitated persons or minors; or if any are incapacitated persons or minors they are represented by guardians or conservators; and
(9)  a death certificate issued by a public officer is in the court's possession.
(b)  Unless section 3-612 controls, the petition shall be denied if it indicates that: a personal representative who has not filed a written statement of resignation has been appointed in this or another county of the commonwealth; unless the petitioner is the domiciliary personal representative or the domiciliary representative's nominee, the decedent was not domiciled in the commonwealth; and 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.
Section 3-309.  [Informal Appointment Proceedings; Magistrate Not Satisfied.]
If the magistrate is not satisfied that a requested informal appointment of a personal representative should be made because of failure to meet the requirements of sections 3-307 and 3-308, or for any other reason, the magistrate may decline the petition.  A declination of informal appointment is not an adjudication and shall not preclude appointment in formal proceedings.
Section 3-310.  [Reserved.]
Section 3-311.  [Informal Appointment Unavailable in Certain Cases.]
If a petition for informal appointment indicates the existence of a possible unrevoked testamentary instrument which may relate to property subject to the laws of the commonwealth, and which is not filed for probate in this court, the magistrate shall decline the petition.
PART 4
FORMAL TESTACY AND APPOINTMENT PROCEEDINGS
Section 3-401.  [Formal Testacy Proceedings; Nature; When Commenced.]
A formal testacy proceeding is litigation to determine whether a decedent left a valid will.  A formal testacy proceeding may be commenced by an interested person filing a petition as described in section 3-402(a) in which that person requests that the court 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 petition, or a petition in accordance with section 3-402(b)  for an order that the decedent died intestate.
A petition may seek formal probate of a will without regard to whether the same or a conflicting will has been informally probated.  A formal testacy proceeding may, but need not, involve a request for appointment of a personal representative.
During the pendency of a formal testacy proceeding, the magistrate shall not act upon any petition for informal probate of any will of the decedent or any petition for informal appointment of a personal representative of the decedent.
Unless a petition in a formal testacy proceeding also requests confirmation of the previous informal appointment, a previously appointed personal representative, after receipt of notice of the commencement of a formal probate proceeding, shall refrain from exercising the 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 office and requesting the appointment of a special personal representative.  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.
Section 3-402.  [Formal Testacy or Appointment Proceedings; Petition; Contents.]
(a)  Petitions for formal probate of a will, or for adjudication of intestacy with or without request for appointment of a personal representative, shall be directed to the court, request a judicial order and contain further statements as indicated in this section.  A petition for formal probate of a will
(1)  requests an order as to the testacy of the decedent in relation to a particular instrument which may or may not have been informally probated and determining the heirs,
(2)  contains the statements required for informal petitions as stated in section 3-301(a)(1), the statements required by subparagraphs (ii) and (iii) of section 3-301(a)(2), and
(3)  states whether the original of the last will of the decedent is in the possession of the court or accompanies the petition.
If the original will is neither in the possession of the court nor accompanies the petition and no authenticated copy of a will probated in another jurisdiction accompanies the petition, the petition also shall state the contents of the will, and indicate that it is lost, destroyed, or otherwise unavailable.
(b)  If a death certificate issued by a public officer is not filed with the petition, the court may 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.
(c)  A petition for adjudication of intestacy and appointment of a personal representative in intestacy shall request a judicial finding and order that the decedent left no will and determining the heirs, contain the statements required by clauses (1) and (4) of section 3-301(a) and indicate whether supervised administration is sought.  A petition may request an order determining intestacy and heirs without requesting the appointment of a personal representative, in which case, the statements required by subparagraph (ii) of section 3-301(a)(4) above may be omitted.
Section 3-403.  [Formal Testacy Proceedings; Notice of Hearing on Petition.]
(a)  Upon commencement of a formal testacy proceeding, notice shall be given in the manner prescribed by section 1-401 by the petitioner to the persons herein enumerated.
(b)  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.
(c)  The notice shall include the name and address of the petitioner and 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 with or without surety will be filed, and describe the court where papers relating to the estate are on file.  The notice shall state that the estate is being administered under formal procedure by the personal representative under the Massachusetts Uniform Probate Code without supervision by the court, that inventory and accounts are not required to be filed with the court, but that recipients are entitled to notice regarding the administration from the personal representative and can petition the court in any matter relating to the estate, including distribution of assets and expenses of administration.
(d)  If it appears from the petition that there is no spouse or heir of the decedent or that any devisee is a charity, the petitioner shall give notice to the attorney general.
(e)  If it appears from the petition that a spouse, heir or devisee is a minor or an incapacitated person, the petitioner shall give notice to that person and that person's guardian or conservator.
(f)  The duty shall not extend to require notice to persons who have been adjudicated in a prior formal testacy proceeding to have no interest in the estate.  The petitioner's failure to give this notice is a breach of duty to the persons concerned but shall not affect the validity of the probate, appointment, powers or other duties.  A petitioner may inform other persons of the petition by delivery or ordinary first class mail.
Section 3-404.  [Reserved.]
Section 3-405.  [Formal Testacy Proceedings; Uncontested Cases; Hearings and Proof.]
If evidence concerning execution of the will is necessary, the affidavit or testimony of 1 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.
Section 3-406.  [Formal Testacy Proceedings; Contested Cases; Testimony of Attesting Witnesses.]
(a)  If evidence concerning execution of an attested will which is not self-proved is necessary in contested cases, the testimony of at least 1 of the attesting witnesses, if within the commonwealth, competent and able to testify, is required.  Due execution of a will may be proved by other evidence.
(b)  If the will is self-proved, compliance with signature and other requirements of execution shall be 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.
Section 3-407.  [Reserved.]
Section 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 shall be accepted as determinative by the courts of the commonwealth if it includes, or is based upon, a finding that the decedent was domiciled at death in the state where the order was made.
Section 3-409.  [Formal Testacy Proceedings; Order; Foreign Will.]
After the time required for any notice has expired, upon proof of notice, and after any hearing that may be necessary, if the court finds that the testator is dead, venue is proper and that the proceeding was commenced within the limitation prescribed by section 3-108, it shall determine the decedent's domicile at death, the heirs and the status 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, shall be governed by section 3-612.  The petition shall be dismissed or appropriate amendment allowed if the court is not satisfied that the alleged decedent is dead.  A will from a place which does not provide for probate of a will after death, may be proved for probate in the commonwealth 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.
Section 3-410.  [Formal Testacy Proceedings; Probate of More Than One Instrument.]
If 2 or more instruments are offered for probate before a final order is entered in a formal testacy proceeding, more than 1 instrument may be probated if neither expressly revokes the other or contains provisions which work a total revocation by implication.  If more than 1 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 formal 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 a previous probate order and subject to the time limits of section 3-412.
Section 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.
Section 3-412.  [Formal Testacy Proceedings; Effect of Order; Vacation.]
Subject to appeal and subject to vacation as provided herein and in section 3-413, a formal testacy order under sections 3-409 to 3-411, including an order that the decedent left no valid will and determining heirs, is final as to all persons with respect to all issues concerning the decedent's estate that the court considered or might have considered incident to its rendition relevant to the question of whether the decedent left a valid will, and to the determination of heirs, except that:
(1)  The court shall entertain a petition for 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 1 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 the death or were given no notice of any proceeding concerning the estate, except by publication.
(3)  A petition for vacation under either clause (1) or clause (2) shall be filed prior to the earlier of the following time limits:
(i)  If a personal representative has been appointed for the estate, the time of entry of any order approving final distribution of the estate, or, if the estate is closed by statement, 6 months after the filing of the closing statement.
(ii)  Whether or not a personal representative has been appointed for the estate of the decedent, the time prescribed by section 3-108 when it is no longer possible to initiate an original proceeding to probate a will of the decedent.
(iii)  Twelve months after the entry of the order sought to be vacated.
(4)  The order originally rendered in the testacy proceeding may be vacated, if appropriate under the circumstances, by the order of probate of the later-offered will or the order redetermining heirs.
(5)  If the alleged decedent is not dead, the alleged decedent may recover estate assets in the hands of the personal representative.  In addition to any remedies available to the alleged decedent by reason of any fraud or intentional wrongdoing, the alleged decedent may recover any estate or its proceeds from distributees that is in their hands, or the value of distributions received by them, to the extent that any recovery from distributees is equitable in view of all of the circumstances.
Section 3-413.  [Formal Testacy Proceedings; Vacation of Order For Other Cause.]
For good cause shown, an order in a formal testacy proceeding may be vacated within the time allowed for appeal.
Section 3-414.  [Formal Proceedings Concerning Appointment of Personal Representative.]
(a)  A formal proceeding for adjudication regarding the priority or qualification of one who is a petitioner 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 3-402, as well as by this section.  In other cases, the petition shall contain or adopt the statements required by section 3-301(a)(1)  and describe the question relating to priority or qualification of the personal representative which is to be resolved.  If the proceeding precedes any appointment of a personal representative, it shall stay any pending informal appointment proceedings as well as any commenced thereafter.  If the proceeding is commenced after appointment, the previously appointed personal representative, after receipt of notice thereof, shall refrain from exercising any power of administration except as necessary to preserve the estate or unless the court orders otherwise.
(b)  After notice as prescribed in section 3-403 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 3-203, make a proper appointment and, if appropriate, terminate any prior appointment found to have been improper as provided in cases of removal under section 3-611.
PART 5
SUPERVISED ADMINISTRATION
Section 3-501.  [Supervised Administration; Nature of Proceeding.]
Supervised administration is a single in rem proceeding to secure complete administration and settlement of a decedent's estate under the continuing authority of the court which extends until entry of an order approving distribution of the estate and discharging the personal representative or other order terminating the proceeding.  A supervised personal representative is responsible to the court, as well as to the interested parties, and is subject to directions concerning the estate made by the court on its own motion or on the motion of any interested party.  Except as otherwise provided in this Part, or as otherwise ordered by the court, a supervised personal representative has the same duties and powers as a personal representative who is not supervised.
Section 3-502.  [Supervised Administration; Petition; Order.]
A petition for supervised administration may be filed by any interested person or by a personal representative at any time or the prayer for supervised administration may be joined with a petition in a testacy or appointment proceeding.  If the testacy of the decedent and the priority and qualification of any personal representative have not been adjudicated previously, the petition for supervised administration shall include the matters required of a petition in a formal testacy proceeding and the notice requirements and procedures applicable to a formal testacy proceeding apply.  If not previously adjudicated, the court shall adjudicate the testacy of the decedent and questions relating to the priority and qualifications of the personal representative in any case involving a request for supervised administration, even though the request for supervised administration may be denied.  After notice to interested persons, the court shall order supervised administration of a decedent's estate:  (1) if the decedent's will directs supervised administration, it shall be ordered unless the court finds that circumstances bearing on the need for supervised administration have changed since the execution of the will and that there is no necessity for supervised administration; (2) if the decedent's will directs unsupervised administration, supervised administration shall be ordered only upon a finding that it is necessary for protection of persons interested in the estate; or (3) in other cases if the court finds that supervised administration is necessary under the circumstances.
Section 3-503.  [Supervised Administration; Effect on Other Proceedings.]
(a)  The pendency of a proceeding for supervised administration of a decedent's estate stays action on any informal petition then pending or thereafter filed.
(b)  If a will has been previously probated in informal proceedings, the effect of the filing of a petition for supervised administration is as provided for formal testacy proceedings by section 3-401.
(c)  After receiving notice of the filing of a petition for supervised administration, a personal representative who has been appointed previously shall not exercise the power to distribute any estate.  The filing of the petition shall not affect other powers and duties unless the court restricts the exercise of any of them pending full hearing on the petition.
Section 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 code, but the personal representative shall not exercise 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 shall be endorsed on the personal representative's letters of appointment and, unless so endorsed, is ineffective as to persons dealing in good faith with the personal representative.
Section 3-505.  [Supervised Administration; Interim Orders; Distribution and Closing Orders.]
Unless otherwise ordered by the court, supervised administration shall be terminated by order in accordance with time restrictions, notices and contents of orders prescribed for proceedings under section 3-1001.  Interim orders approving or directing partial distributions or granting other relief may be issued by the court at any time during the pendency of a supervised administration on the petition of the personal representative or any interested person.  Unless otherwise required by order, notice of interim orders in supervised administration need be given only to interested persons who request notice of all orders entered in the proceeding.
PART 6
PERSONAL REPRESENTATIVE; APPOINTMENT, CONTROL AND
TERMINATION OF AUTHORITY
Section 3-601.  [Qualification.]
Prior to receiving letters, a personal representative shall accept appointment and qualify by filing a bond with the appointing court.
Section 3-602.  [Acceptance of Appointment; Consent to Jurisdiction.]
By accepting appointment, a personal representative submits personally to the jurisdiction of any court of the commonwealth in any proceeding relating to the estate that may be instituted by any interested person.  Notice of any proceeding in the probate and family court shall be delivered to the personal representative, or mailed by ordinary first class mail at the address listed in the petition for appointment or as thereafter reported to the court and to the address as then known to the petitioner.  Service in a proceeding in any other court shall be delivered in accordance with the rules of that court.
Section 3-603.  [Bond Without Sureties.]
(a)  Sureties shall be required on the bond of a personal representative unless:  (i) the will directs that there be no bond or waives the requirement of surety thereon; (ii) all of the heirs, if no will has been probated, or all of the devisees named in a will file a written waiver of sureties; (iii) the personal representative is a bank or trust company qualified to do trust business or exercise trust powers in this state; or (iv) the court concludes that sureties are not in the best interests of the estate.  In any formal proceeding the court, on its own motion, may require sureties or additional sureties.
 (b)  No surety shall be required upon bonds filed by national banks or trust companies located in the commonwealth and duly permitted to act in a fiduciary capacity as personal representative or trustee, except that the court appointing such bank or trust company as a personal representative, other than as trustee, may upon application of any interested person require the bank or trust company so appointed to give such security, in addition to any lien or security provided by the laws of the United States, as the court may consider proper, and upon failure of such bank or trust company to give the security required may revoke such appointment and remove such bank or trust company.
Section 3-604.  [Bond With Sureties; Procedure; Reduction.]
(a) If a bond is required and the provisions of the will or order do not specify the amount, unless stated in the petition, the person qualifying shall file a statement under oath with the court indicating the best estimate of the value of the personal estate of the decedent and shall file a bond with the court in an amount equal to the estimate.  The court may permit the amount of the bond to be reduced by the value of assets of the estate deposited with a domestic financial institution in a manner that prevents their unauthorized disposition.  On petition of the personal representative or another interested person the court may increase or reduce the amount of the bond, release the surety, or permit the substitution of another bond with the same or different surety.
(b)  In this section, “financial institution” means an organization authorized to do business under state or federal laws relating to financial institutions, and includes a bank, trust company, savings bank, building and loan association, savings and loan company or association, credit union and any corporation authorized to do business as a banking company under chapter 172A.
Section 3-605.  [Demand For Sureties by Interested Person.]
Any person apparently having an interest in the estate worth in excess of $5000, or any creditor having a claim in excess of $5000, may make a written demand that a personal representative give bond.  The demand shall be filed with the court and a copy mailed to the personal representative, if appointment and qualification have occurred.  Thereupon, bond shall be required, but the requirement ceases if the person demanding bond ceases to be interested in the estate, or if the bond is excused as provided in section 3-604.  After receiving notice and until the provision of sureties or cessation of the requirement of sureties, the personal representative shall refrain from exercising any powers of office except as necessary to preserve the estate.  Failure of the personal representative to meet a requirement of sureties by providing suitable sureties within 30 days after receipt of notice shall be cause for removal and appointment of a successor personal representative.
Section 3-606.  [Terms and Conditions of Bonds.]
 (a) The following requirements and provisions shall apply to any bond required by this part:
(1)  Bonds shall name the first justice of the court making the appointment and his successors as obligee for the benefit of the persons interested in the estate and shall be conditioned upon the faithful discharge by the fiduciary of all duties according to law.
(2)  Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the personal representative and with each other.  The address of sureties shall be stated in the bond.
(3)  By executing an approved bond of a personal representative, the surety consents to the jurisdiction of the 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 the surety by registered or certified mail at the address as listed with the court where the bond is filed and to the address as then known to the petitioner.
(4)  On petition of a successor personal representative, any other personal representative of the same decedent, or any interested person, a proceeding in the court may be initiated against a surety for breach of the obligation of the bond of the personal representative.
(5)  The bond of the personal representative shall not be void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.
(6)  If a new bond is required, the sureties on the prior bond shall be liable for all breaches of the conditions thereof committed before the new bond is approved and filed.
(7) In no event shall any surety be liable for any claim or cause of action arising out of or in any way connected with acts or omissions of the personal representative occurring prior to the appointment of such person as personal representative.  As provided in section 7-304, this section shall also apply to bonds of trustees.
 (b)  No action or proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.
Section 3-607.  [Order Restraining Personal Representative.]
(a)  On complaint in equity 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 petitioner or of some other interested person.  Persons with whom the personal representative may transact business may be made parties.
(b)  The matter shall be set for hearing within 10 days unless the parties otherwise agree.  Notice as the court directs shall be given to the personal representative and the attorney of record, if any, and to any other parties named a defendant in the petition.
Section 3-608.  [Termination of Appointment; General.]
Termination of appointment of a personal representative occurs as indicated in sections 3-609 to 3-612, inclusive.  Termination ends the right and power pertaining to the office of personal representative as conferred by this code 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 shall not discharge a personal representative from liability for transactions or omissions occurring before termination, or relieve the personal representative of the duty to preserve assets subject to the personal representative's control, to account therefor and to deliver the assets.  Termination shall not affect the jurisdiction of the court over the personal representative, but shall terminate the authority to represent the estate in any pending or future proceeding.
Section 3-609.  [Termination of Appointment; Death or Disability.]
The death of a personal representative or the appointment of a guardian or conservator for the estate of a personal representative, terminates his appointment.  Until appointment and qualification of a successor or special personal representative to replace the deceased or protected representative, the representative of the estate of the deceased or protected personal representative, if any, shall have the duty to protect the estate possessed and being administered by the decedent or ward at the time the appointment terminates, the power to perform acts necessary for protection of the estate and shall account for and deliver the estate assets to a successor or special personal representative upon appointment and qualification.
Section 3-610.  [Reserved.]
Section 3-611.  [Termination of Appointment by Removal; Cause; Procedure.]
(a)  A person interested in the estate may petition for removal of a personal representative for cause at any time.  Notice shall be given in the manner prescribed by section 1-401 by the petitioner to the personal representative, and to other persons as the court may order.  The court may suspend the personal representative's authority in any manner during the pendency of the proceeding.  If removal is ordered, the court also shall direct by order the disposition of the assets remaining in the name of, or under the control of, the personal representative being removed.
(b)  Cause for removal exists if it is shown that a personal representative, or the person seeking appointment, intentionally misrepresented material facts in the proceedings leading to appointment, or that the personal representative has disregarded an order of the court, has become incapable of discharging the duties of the 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 his appointment or his nominee as ancillary personal representative, may obtain removal of another who was appointed personal representative in the commonwealth to administer local assets.
Section 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, shall not terminate the appointment of the personal representative although the personal representative's powers may be reduced as provided in section 3-401.  Termination shall occur 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.
Section 3-613.  [Successor Personal Representative.]
Parts 3 and 4 of this article 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 shall have the powers and duties in respect to the continued administration which the former personal representative would have had if the appointment had not been terminated.
Section 3-614.  [Special Representative; Appointment.]
A special personal representative may be appointed in a 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.  A special personal representative shall continue to act during appeal of his appointment unless the court orders otherwise.
Section 3-615.  [Special Representative; Who May Be Appointed.]
Any suitable person may be appointed special personal representative.
Section 3-616.  [Reserved.]
Section 3-617.  [Special Representative; Formal Proceedings; Power and Duties.]
(a)  A special personal representative appointed by order of the court in any formal proceeding has the power of a general personal representative except as limited by section 3-715(b) and in the appointment and duties as prescribed in the order.  The appointment may be for a period of up to 90 days except in extraordinary circumstances, in which case the court may order an appointment for a longer period.  The court may, for good cause shown, extend the appointment for additional period, of up to 90 days.
(b)  A special personal representative shall have authority to distribute only pursuant to part 7 of article III, and pursuant to specific orders of the court.
Section 3-618.  [Termination of Appointment; Special Representative.]
The appointment of a special representative 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 personal representative is subject to termination as provided in sections 3-608 to 3-611, inclusive.
PART 7
DUTIES AND POWERS OF PERSONAL REPRESENTATIVES
Section 3-701.  [Time of Accrual of Duties and Powers.]
The duties and powers of a personal representative commence upon 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 the decedent's body, funeral and burial arrangements.  A personal representative may ratify and accept acts on behalf of the estate done by others if the acts would have been proper for a personal representative.
Section 3-702.  [Priority Among Different Letters.]
A person to whom general letters are issued first has exclusive authority under the letters until the 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.
Section 3-703.  [General Duties; Relation and Liability to Persons Interested in Estate; Standing to Sue.]
(a)  A personal representative is a fiduciary who shall observe the standards of care applicable to trustees as described by chapter 203C.  A personal representative shall have the duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this code, and as expeditiously and efficiently as is consistent with the best interests of the estate.  The personal representative shall use the authority conferred by this code, by the terms of the will, if any, and by any order in proceedings to which the personal representative is party for the best interests of successors to the estate.
(b)  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 appointment or fitness to continue, or a supervised administration proceeding.  Nothing in this section shall affect 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 code.
(c)  Except as to proceedings which do not survive the death of the decedent, a personal representative of a decedent domiciled in the commonwealth at death has the same standing to sue and be sued in the courts of the commonwealth and the courts of any other jurisdiction as the decedent had immediately prior to death.
Section 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 the personal representative may invoke the jurisdiction of the court, in proceedings authorized by this code, to resolve questions concerning the estate or its administration.
Section 3-705.  [Reserved.]
Section 3-706.  [Duty of Personal Representative; Inventory and Appraisement.]
Within 3 months after appointment, a personal representative, who is not a successor to another representative who has previously discharged this duty, shall prepare an inventory of property owned by the decedent at the time of death, listing it with reasonable detail, and indicating as to each listed item, its fair market value as of the date of the decedent's death, and the type and amount of any encumbrance that may exist with reference to any item.
The personal representative shall file with the court or mail to all interested persons whose addresses are reasonably available a copy of the inventory.  The personal representative may also file the original of the inventory with the court.
Section 3-707.  [Employment of Appraisers.]
The personal representative may employ 1 or more qualified and disinterested appraisers to assist 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.
Section 3-708.  [Reserved]
Section 3-709.  [Duty of Personal Representative; Possession of Estate.]
(a)  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 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 the personal representative's possession.  The personal representative may maintain an action to recover possession of property or to determine the title thereto.
(b)  Whoever injuriously intermeddles with any personal property of a deceased person, without being thereto authorized by law, shall be liable as a personal representative in his own wrong to the person aggrieved.
(c)  A personal representative in his own wrong shall be liable to the rightful personal representative for the full value of the personal property of the deceased taken by him and for all damages caused to the estate by his acts; and he or she shall not be allowed to retain or deduct any part of such estate, except for funeral expenses or debts of the deceased or other charges actually paid by him and which the rightful personal representative might have been compelled to pay.
Section 3-710.  [Power to Avoid Transfers.]
The property liable for the payment of unsecured debts of a decedent includes all property transferred by the decedent by any means which is in law void or voidable as against 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.
Section 3-711.  [Reserved.]
Section 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 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 3-713 and 3-714.
Section 3-713.  [Sale, Encumbrance or Transaction Involving Conflict of Interest; Voidable; Exceptions.]
Any sale or encumbrance to the personal representative, the personal representative's spouse, agent or attorney, or any corporation or trust in which the personal representative 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 transactions in general; or
(2)  the transaction is approved by the court after notice to interested persons.
Section 3-714.  [Persons Dealing with Personal Representative; Protection.]
A person who in good faith either assists a personal representative or deals with a personal representative for value is protected as if the personal representative properly exercised power.  The fact that a person knowingly deals with a personal representative shall 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 3-504, no provision in any will or order of court purporting to limit the power of a personal representative is effective except as to persons with actual knowledge thereof.  A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative.  The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive.  The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.
Section 3-715.  [Transactions Authorized for Personal Representatives; Exceptions.]
(a)  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 3-902, a personal representative other than a special personal representative, acting reasonably for the benefit of the interested persons, may properly:
(1)  retain assets owned by the decedent pending distribution or liquidation including those in which the representative is personally interested or which are otherwise improper for trust investment;
(2)  receive assets from fiduciaries, or other sources;
(3)  perform, compromise or refuse performance of the decedent's contracts that continue as obligations of the estate, as he may determine under the circumstances.  In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:
(i)  execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or
(ii)  deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement;
(4)  satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;
(5)  if funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including moneys received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements or other prudent investments which would be reasonable for use by trustees generally;
(6)  acquire or dispose of tangible and intangible personal property for cash or on credit, at public or private sale; and manage, develop, improve, exchange, change the character of, or abandon an estate asset;
(7)  make repairs or alterations in buildings or other structures, demolish any improvements, structures, raze existing or erect new party walls or buildings;
(8)  subdivide, develop or dedicate land to public use; adjust boundaries; or adjust differences in valuation 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 the personal representative 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, the personal representative 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 a personal representative other than a special 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  administrative duties; act without independent investigation upon their recommendations; and instead of acting personally, employ 1 or more agents to perform any act of administration, whether or not discretionary;
(22)  defend and prosecute claims, or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of duties;
(23)  sell, or lease any 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 death (i) in the same business form for a period of not more than 4 months from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business including good will, (ii) in the same business form for any additional period of time that may be approved by order of the court in a formal proceeding to which the persons interested in the estate are parties; or (iii) throughout the period of administration if the business is incorporated by the personal representative and if none of the probable distributees of the business who are competent adults object to its incorporation and retention in the estate;
(25)  incorporate any business or venture in which the decedent was engaged at the time of death;
(26)  provide for exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate;
(27)  satisfy and settle claims and distribute the estate as provided in this code.
(b)  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 3-902, a special personal representative acting reasonably for the benefit of the interested persons, may properly exercise only those powers set forth in subsections (1), (2), (3), (5), (7), (12), (15), (18), (19), (20), (21), (22), (24)  and (26)  of paragraph (a).
Section 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 shall not exercise any power expressly made personal to the executor named in the will.
Section 3-717.  [Co-representatives; When Joint Action Required.]
If 2 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 shall 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 or if advised by the personal representative with whom they deal that the personal representative 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.
Section 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 1 or more remaining after the appointment of 1 or more is terminated, and if 1 of 2 or more nominated as co-representatives is not appointed, those appointed may exercise all the powers incident to the office.
Section 3-719.  [Compensation of Personal Representative.]
A personal representative is entitled to reasonable compensation for services.  If a will provides for compensation of the personal representative and there is no contract with the decedent regarding compensation, the personal representative may renounce the provision before qualifying and be entitled to reasonable compensation.  A personal representative also may renounce the right to all or any part of the compensation.  A written renunciation of fee may be filed with the court.
Section 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 that personal representative or person is entitled to receive from the estate necessary expenses and disbursements including reasonable attorneys' fees incurred.
Section 3-721.  [Reserved]
PART 8
CREDITORS' CLAIMS
Section 3-801.  [Reserved]
Section 3-802.  [Statutes of Limitations.]
Unless an estate is insolvent, the personal representative, with the consent of all successors whose interests would be affected, may waive any defense of limitations available to the estate.  If the defense is not waived, no claim barred by a statute of limitations at the time of the decedent's death may be allowed or paid.
Only those successors who would be affected thereby shall agree to a waiver of a defense of limitations available to an estate.
Section 3-803.  [Limitations on Presentation of Claims.]
(a)  Except as provided in this chapter, a personal representative shall not be held to answer to an action by a creditor of the deceased unless such action is commenced within 1 year after the date of death of the deceased and unless, before the expiration of such period, the process in such action has been served by delivery in hand upon such personal representative or service thereof accepted by him or a notice stating the name of the estate, the name and address of the creditor, the amount of the claim and the court in which the action has been brought has been filed with the register.
(b)  A trustee of a trust, the assets of which are subject as a matter of substantive law to being reached by creditors of the deceased shall not be held to answer to an action by a creditor of the deceased unless such action is commenced against such trustee or against the personal representative of the deceased within the time and in the manner provided in subsection (a).  Such trustee shall have immunity from personal liability to a creditor or the deceased in the same manner as a personal representative has, pursuant to section 3-807.
(c)  A claim described in subsections (a) or (b) which is barred by statute of the decedent's domicile before the limitation in the commonwealth is barred in the commonwealth.
(d)  Nothing in this section affects or prevents:
(1)  any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate;
(2)  an action for personal injuries or death, if commenced more than one year after the date of death of the deceased, brought against the personal representative, provided that such action is commenced within three years next after the cause of action accrues, and provided further that any judgment recovered in any action so brought may be satisfied only from the proceeds of a policy of insurance or bond, if any, and not from the general assets of the estate.
(3)  collection of compensation for services rendered and reimbursement for expenses advanced by the personal representative or by the attorney or accountant for the personal representative of the estate.
(e)  If the supreme judicial court, upon a complaint in equity filed by a creditor whose claim has not been prosecuted within the time limited by subsections (a) or (b), deems that justice and equity require it and that such creditor is not chargeable with culpable neglect in not prosecuting his claim within the time so limited, it may give him judgment for the amount of his claim against the estate of the deceased person, provided forthwith upon the filing of the complaint a notice such as provided in subsection (a) has been filed in the proper registry of probate; but such judgment shall not affect any payment or distribution made before the filing of such complaint and notice.
(f) If a deceased received medical assistance under chapter 118E when such deceased was 55 years of age or older or while an inpatient in a nursing facility or other medical institution, section 32 of chapter 118E shall govern the notice to be given to the division of medical assistance and such division’s claim for recovery under section 31 of said chapter 118E if the division so chooses.
Section 3-804.  [Manner of Commencement of Claims.]
(1)  A personal representative shall not be held to answer to an action by a creditor of the deceased which is commenced within any other or additional period of limitation for bringing such action provided by or under this chapter unless before the expiration of such period the process in such action has been served by delivery in hand upon the personal representative or service thereof accepted by the personal representative or a notice as aforesaid has been filed with the register.
(2)  Claims against a decedent's estate shall be commenced by 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 shall 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)  A special personal representative shall be liable to an action by a creditor of the deceased brought within the period of limitation provided in section 3-803; provided, however, that any such action shall be stayed by the court in which it is brought until such time as a general personal representative has been appointed and said general personal representative has been substituted for said special personal representative as the party defendant.
Section 3-805.  [Classification of Claims.]
(a)  If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:
(1)  costs and expenses of administration;
(2)  reasonable funeral expenses;
(3)  debts and taxes with preference under federal law;
(4)  reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending the decedent;
(5)  debts and taxes with preference under other laws of the commonwealth;
(6)  debts due to the division of medical assistance;
(7)  all other claims.
(b)  No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due.
Section 3-806.  [Allowance of Claims.]
(a)  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.
(b)  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 with the date of judgment unless based on a contract making a provision for interest, in which case they bear interest in accordance with that provision.
Section 3-807.  [Payment of Claims.]
(a)  Upon the expiration of the time limitation provided in section 3-803 for the presentation of claims, the personal representative shall proceed to pay the claims allowed against the estate in the order of priority prescribed, after making provision for family allowances, for claims already presented that have not yet been allowed or whose allowance has been appealed, and for unbarred claims that 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 may secure an order directing the personal representative to pay the claim to the extent funds of the estate are available to pay it.
(b)  If a personal representative finds that the estate of the deceased will probably be insufficient for the payment of his debts the personal representative shall represent the estate to be insolvent to the court, and shall, pursuant to court order, after notice to all persons interested, divide and pay over what remains in the personal representative's hands among the creditors who prove their debts.  No action shall be maintained against a personal representative after an estate has been represented insolvent, unless for a claim entitled to a preference which would not be affected by the insolvency of the estate or unless the assets prove more than sufficient to pay all the debts allowed.  If the estate is represented insolvent while an action is pending for a claim which is not entitled to such preference, the action may be stayed without costs until it appears whether the estate is insolvent, and if it is not insolvent, the plaintiff may prosecute the action as if no such representation had been made.
(c)  If a personal representative shall not within 6 months after the date of death of the deceased have had notice of demands against the estate of the deceased sufficient to warrant him to represent such estate to be insolvent, he or she may, after the expiration of said 6 months, pay the debts due from the estate and shall not be personally liable to any creditor in consequence for such payments made before notice of such creditor's demand; and if such a personal representative shall be in doubt as to the validity of any debt which, if valid, the personal representative would have a right to pay under this section, the personal representative may, with the approval of the court, after notice to all persons interested, pay such debt or so much thereof as the court may authorize.
(d)  If a personal representative pays under subsection (c), before notice of the demand of any other creditor, the whole of the estate and effects of the deceased, the personal representative shall not be required in consequence of such notice to represent the estate insolvent, but in an action against the personal representative shall be discharged upon proving such payments.
(e)  If a personal representative pays, under subsection (c), so much of the estate and effects of the deceased that the remainder is insufficient to satisfy a demand of which the personal representative afterward has notice, the personal representative shall be liable on such last mentioned demand for only so much as may then remain.  If 2 or more such demands are exhibited, which together exceed the amount of assets remaining in his hands, the personal representative may represent the estate insolvent, and shall, pursuant to court order, after notice to all persons interested, divide and pay over what remains in the personal representative's hands among the creditors who prove their debts; but the creditors of the deceased who have been previously paid shall not be liable to repay any part of the amount received by them.
(f)  If it appears, upon the settlement of the account of a personal representative, that the whole estate and effects which have come to the personal representative's hands have been exhausted in paying the charges of administration and debts or claims entitled by law to a preference over the common creditors of the deceased, such settlement shall be a bar to an action brought against the personal representative by a creditor who is not entitled to such preference, although the estate has not been represented insolvent.
(g)  The personal representative at any time may pay any just claim that has not been barred, with or without formal presentation, but, except as provided in subsections (c), (d), (e)  and (f), is personally liable to any other claimant whose claim is allowed and who is injured by its payment if:
(1)  payment was made before the expiration of the time limit stated in subsection (a) and the personal representative failed to require the payee to give adequate security for the refund of any of the payment necessary to pay other claimants; or
(2)  payment was made, due to negligence or willful fault of the personal representative, in such manner as to deprive the injured claimant of priority.
Section 3-808.  [Individual Liability of Personal Representative.]
(a)  Unless otherwise provided in the contract, a personal representative is not individually liable on a contract properly entered into in his fiduciary capacity in the course of administration of the estate unless he fails to reveal his representative capacity and identify the estate in the contract.
(b)  A personal representative is individually liable only if he or she is personally at fault for (1) obligations arising from ownership or control of the estate or (2)  for torts committed in the course of administration of the estate.
(c)  Claims based on contracts entered into by a personal representative in his fiduciary capacity, on obligations arising from ownership or control of the estate or on torts committed in the course of estate administration may be asserted against the estate by proceeding against the personal representative in his fiduciary capacity, whether or not the personal representative is individually liable therefor.
(d)  Issues of liability as between the estate and the personal representative individually may be determined in a proceeding for accounting, surcharge or indemnification or other appropriate proceeding.
Section 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 1 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.
Section 3-810.  [Claims Not Due and Contingent or Unliquidated Claims.]
(a)  If a claim which will become due at a future time or a contingent or unliquidated claim becomes due or certain before the distribution of the estate, and if the claim has been allowed or established by a proceeding, it is paid in the same manner as presently due and absolute claims of the same class.
(b)  In other cases the personal representative or, on petition of the personal representative or the claimant in a special proceeding for the purpose, the court may provide for payment as follows:
(1)  if the claimant consents, he may be paid the present or agreed value of the claim, taking any uncertainty into account;
(2)  arrangement for future payment, or possible payment, on the happening of the contingency or on liquidation may be made by creating a trust, giving a mortgage, obtaining a bond or security from a distributee, or otherwise.
Section 3-811.  [Counterclaims.]
In paying 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.
Section 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.
Section 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.
Section 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 presented a claim, if it appears to be for the best interest of the estate.  Payment of an encumbrance shall not increase the share of the distributee entitled to the encumbered assets unless the distributee is entitled to exoneration.
Section 3-815.  [Administration in More Than One State; Duty of Personal Representative.]
(a)  All assets of estates being administered in the commonwealth are subject to all claims, allowances and charges existing or established against the personal representative wherever appointed.
(b)  If the estate either in the commonwealth 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, each claimant whose claim has been allowed either in the commonwealth or elsewhere in administrations of which the personal representative is aware, is entitled to receive payment of an equal proportion of his claim, after satisfaction of the exemptions, allowances and charges.  If a preference or security in regard to a claim is allowed in another jurisdiction but not in the commonwealth, the creditor so benefited is to receive dividends from local assets only upon the balance of his claim after deducting the amount of the benefit.
(c)  In case the family exemptions and allowances, prior charges and claims of the entire estate exceed the total value of the portions of the estate being administered separately and the commonwealth is not the state of the decedent's last domicile, the claims allowed in the commonwealth shall be paid their proportionate share of total assets 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 the commonwealth the amount to which they are entitled, local assets shall be marshalled so that each claim allowed in the commonwealth is paid its proportion as far as possible, after taking into account all dividends on claims allowed in the commonwealth from assets in other jurisdictions.
Section 3-816.  [Final Distribution to Domiciliary Representative.]
The estate of a non-resident decedent being administered by a personal representative appointed in the commonwealth 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 the commonwealth without reference to the local law of the decedent's domicile; (2) the personal representative of the commonwealth, 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 3-1001 or incident to the closing of a supervised administration.  In other cases, distribution of the estate of a decedent shall be made in accordance with the other parts of this article.
PART 9
SPECIAL PROVISIONS RELATING TO DISTRIBUTION
Section 3-901.  [Successors' Rights if No Administration.]
In the absence of administration, the heirs and devisees are entitled to the estate in accordance with the terms of a probated will or the laws of intestate succession.  Devisees may establish title by the probated will to devised property.  Persons entitled to property by family 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.
Section 3-902.  [Distribution; Order in Which Assets Appropriated; Abatement.]
(a)  Except as provided in subsection (b) and except as provided in connection with the share of the surviving spouse who elects to take an elective share, shares of distributees abate, without any preference or priority as between real and personal property, in the following order: (1) property passing by intestacy; (2) residuary devises; (3) general devises; (4) specific devises.  For purposes of abatement, a general devise charged on any specific property or fund is a specific devise to the extent of the value of the property on which it is charged, and upon the failure or insufficiency of the property on which it is charged, a general devise to the extent of the failure or insufficiency.  Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.
(b)  If the will expresses an order of abatement, or if the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in subsection (a), the shares of the distributees abate as may be found necessary to give effect to the intention of the testator.
(c)  If the subject of a preferred devise is sold or used incident to administration, abatement shall be achieved by appropriate adjustments in, or contribution from, other interests in the remaining assets.
Section 3-903.  [Right of Retainer.]
The amount of a non-contingent indebtedness of a successor to the estate if due, or its present value if not due, shall be offset against the successor's interest; but the successor has the benefit of any defense which would be available to him in a direct proceeding for recovery of the debt.
Section 3-904.  [Interest on General Pecuniary Devise.]
The rate of interest upon general pecuniary devises or pecuniary distribution under a trust instrument, unless otherwise provided in the will or trust instrument, shall be such as the supreme judicial court may by general rules establish, and in absence of any such rules the rate shall be 4 per cent per annum.  Unless otherwise provided in the will or trust instrument, interest shall be payable from the date of the expiration of the period within which creditors may bring actions against a personal representative as provided in section 3-803.
Section 3-905.  [Reserved]
Section 3-906.  [Distribution in Kind; Valuation; Method.]
(a)  Except as restricted or otherwise provided for by will or order of the court, a personal representative may distribute assets of the estate in kind or partly in cash and partly in kind and pro rata or not pro rata at then current values as between distributees.
(b)  After the probable charges against the estate are known, the personal representative may mail or deliver a proposal for distribution to all persons who have a right to object to the proposed distribution.  The right of any distributee to object to the proposed distribution on the basis of the kind or value of asset he is to receive, if not waived earlier in writing, terminates if he fails to object in writing received by the personal representative within 30 days after mailing or delivery of the proposal.
Section 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.
Section 3-908.  [Distribution; Right or Title of Distributee.]
Proof that a distributee has received an instrument or deed of distribution of assets in kind, or payment in distribution, from a personal representative, is conclusive evidence that the distributee has succeeded to the interest of the estate in the distributed assets, as against all persons interested in the estate, except that the personal representative may recover the assets or their value if the distribution was improper.
Section 3-909.  [Improper Distribution; Liability of Distributee.]
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.
Section 3-910.  [Reserved.]
Section 3-911.  [Reserved.]
Section 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.
Section 3-913.  [Distributions to Trustee.]
(a)  If a trust instrument does not excuse the trustee from giving bond, before distributing to a trustee a personal representative may petition the appropriate court to require that the trustee post bond with sureties if the personal representative apprehends that distribution might jeopardize the interests of persons who are not able to protect themselves, and the personal representative may withhold distribution until the court has acted.
(b)  No inference of negligence on the part of the personal representative shall be drawn from his failure to exercise the authority conferred by subsection (a).
Section 3-914.  [Disposition of Unclaimed Assets.]
(a) If a personal representative has money which the personal representative considers it advisable to deposit in a savings bank, or in savings accounts in a trust company, or in paid-up shares and accounts of and in a co-operative bank, or with which the personal representative considers it advisable to purchase shares or make deposits in a credit union located in the commonwealth or to purchase share accounts of a federal savings and loan association located in the commonwealth, in the name of the judge of probate, for the benefit of any person, the personal representative may apply to the court by which he or she was appointed for leave so to do, and the court may in its discretion, without notice, direct such money to be so deposited.  When the deposit is made the deposit book or certificates of the bank shall be filed in court.  When the person entitled to such money satisfies the court of his right to receive it, the court shall by decree direct that it be transferred to him.
(b)(1)  If a personal representative holds property the disposition of which depends upon the death of an absentee whose death has not been determined under paragraph (1), (2) or (3) of section 1-107, on or after the day 5 years after the date of the absentee's disappearance the personal representative, or any person who would be interested in the property were the absentee dead, may petition the court having jurisdiction of the estate for an order that the property be disposed of to the persons to whom and in the shares or proportions in which it would be distributed if the absentee had died on the day 5 years after the date of the absentee's disappearance.
(2)  The court may direct the petitioner to report the results of, or make and report back concerning, a reasonably diligent search for the absentee in any manner that may seem advisable, including any or all of the following methods:
(i)  by inserting in 1 or more suitable periodicals a notice requesting information from any person having knowledge of the whereabouts of the absentee;
(ii)  by notifying law enforceable officials, public welfare agencies and registers of deaths in appropriate locations of the disappearance of the absentee;
(iii)  by engaging the services of an investigator.
The costs of any search so directed shall be paid from estate property.
(3)  After any such report directed by the court under paragraph (2)  above has been completed to the satisfaction of the court, notice of the hearing on the petition shall be given as provided in section 1-401.
(4)  If after the hearing the court finds that the facts warrant a presumption of death under paragraph (4) of section 1-107, it shall enter an appropriate order of disposition of the trust property and any undistributed net income.
Section 3-915.  [Distribution to Person Under Disability.]
(a)  A personal representative may discharge his obligation to distribute to any person under legal disability by distributing in a manner expressly provided in the will.
(b)  Unless contrary to an express provision in the will, the personal representative may discharge an obligation to distribute to a minor or person under other disability as authorized by chapter two hundred one A or any other statute.  If the personal representative knows that a guardian of the estate or conservator has been appointed or that a proceeding for appointment of a guardian of the estate or conservator is pending, the personal representative is authorized to distribute only to the guardian of the estate or conservator.
(c)  If the heir or devisee is under disability other than minority, the personal representative is authorized to distribute to:
(1)  an attorney in fact who has authority under a power of attorney to receive property for that person; or
(2)  the spouse, parent or other close relative with whom the person under disability resides if the distribution is of amounts not exceeding $10,000 a year, or property not exceeding $10,000 in value, unless the court authorizes a larger amount or greater value.
Persons receiving money or property for the disabled person are obligated to apply the money or property to the support of that person, but may not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the support of the disabled person.  Excess sums shall be preserved for future support of the disabled person.  The personal representative shall not be responsible for the proper application of money or property distributed pursuant to this subsection.
Section 3-916.  [Apportionment of Estate Taxes.]
(a)  For purposes of this section:
(1)  “Estate”, the gross estate of a decedent as determined for the purpose of federal estate tax and the estate tax payable to the commonwealth;
(2)  “Fiduciary”, personal representative or trustee.
(3)  “Person”, any individual, partnership, association, joint stock company, corporation, government, political subdivision, governmental agency, or local governmental agency;
(4)  “Person interested in the estate”, any person entitled to receive, or who has received, from a decedent or by reason of the death of a decedent any property or interest therein included in the decedent's estate.  It includes a personal representative, guardian, conservator, and trustee;
(5)  “State”, any state, territory, or possession of the United States, the District of Columbia, and the commonwealth of Puerto Rico;
(6)  “Tax”, the federal and Massachusetts estate tax and the additional inheritance tax imposed by the commonwealth and interest and penalties imposed in addition to the tax;
(b)  Except as provided in subsection (i) and, 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 code, the method described in the will controls.
(c)(1)  The court in which venue lies for the administration of the estate of a decedent, on petition for the purpose may determine the apportionment of the tax.
(2)  If the court finds that it is inequitable to apportion interest and penalties in the manner provided in subsection (b), because of special circumstances, it may direct apportionment thereof in the manner it finds equitable.
(3)  If the court finds that the assessment of penalties and interest assessed in relation to the tax is due to delay caused by the negligence of the fiduciary, the court may charge him with the amount of the assessed penalties and interest.
(4)  In any action to recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this code the determination of the court in respect thereto shall be prima facie correct.
(d)(1)  The personal representative or other person in possession of the property of the decedent required to pay the tax may withhold from any property distributable to any person interested in the estate, upon its distribution to him, the amount of tax attributable to his interest.  If the property in possession of the personal representative or other person required to pay the tax and distributable to any person interested in the estate is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the personal representative or other person required to pay the tax may recover the deficiency from the person interested in the estate.  If the property is not in the possession of the personal representative or the other person required to pay the tax, the personal representative or the other person required to pay the tax may recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this chapter.
(2)  If property held by the personal representative is distributed prior to final apportionment of the tax, the distributee shall provide a bond or other security for the apportionment liability in the form and amount prescribed by the personal representative.
(e)(1)  In making an apportionment, allowances shall be made for any exemptions granted, any classification made of persons interested in the estate and for any deductions and credits allowed by the law imposing the tax.
(2)  Any exemption or deduction allowed by reason of the relationship of any person to the decedent or by reason of the purposes of the gift inures to the benefit of the person bearing such relationship or receiving the gift; but if an interest is subject to a prior present interest which is not allowable as a deduction, the tax apportionable against the present interest shall be paid from principal.
(3)  Any deduction for property previously taxed and any credit for gift taxes or death taxes of a foreign country paid by the decedent or his estate inures to the proportionate benefit of all persons liable to apportionment.
(4)  Any credit for inheritance, succession or estate taxes or taxes in the nature thereof applicable to property or interests includable in the estate, inures to the benefit of the persons or interests chargeable with the payment thereof to the extent proportionately that the credit reduces the tax.
(5)  To the extent that property passing to or in trust for a surviving spouse or any charitable, public or similar purpose 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 shall not apply to any case if the result would be to deprive the estate of a deduction otherwise allowable under section 2053(d) of the Internal Revenue Code of 1986, as amended, or corresponding provisions of any subsequent United States tax law, relating to deduction for state death taxes on transfers for public, charitable, or religious uses.
(f)  No interest in income and no estate for years or for life or other temporary interest in any property or fund is subject to apportionment as between the temporary interest and the remainder.  The tax on the temporary interest and the tax, if any, on the remainder is chargeable against the corpus of the property or funds subject to the temporary interest and remainder.
(g)  Neither the personal representative nor other person required to pay the tax is under any duty to institute any action to recover from any person interested in the estate the amount of the tax apportioned to the person until the expiration of the 3 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 3 months' period is not subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the estate was collectible at a time following the death of the decedent but thereafter became uncollectible.  If the personal representative or other person required to pay the tax cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be equitably apportioned among the other persons interested in the estate who are subject to apportionment.
(h)  A personal representative acting in another state or a person required to pay the tax domiciled in another state may institute an action in the courts of this state and may recover a proportionate amount of the federal estate tax, of an estate tax payable to another state or of a death duty due by a decedent's estate to another state, from a person interested in the estate who is either domiciled in this state or who owns property in this state subject to attachment or execution.  For the purposes of the action the determination of apportionment by the court having jurisdiction of the administration of the decedent's estate in the other state is prima facie correct.
(i)  If the liabilities of persons interested in the estate as prescribed by this act differ from those which result under the federal estate tax law, the liabilities imposed by the federal law will control and the balance of this section shall apply as if the resulting liabilities had been prescribed herein.
(j)  If any portion of the property with respect to which such tax is levied or assessed is property in which the decedent has a qualifying income interest for life within the meaning of section 3A of chapter 65C or section 2044 of the Internal Revenue Code of 1986, as amended or any statutes of similar import, such portion of the net amount of the tax so levied or assessed, including, in the case of the Massachusetts estate tax, any tax imposed under the provision of subsection (b) of section 2 of said chapter 65C, shall, except as otherwise provided or directed by the decedent's will, be charged to and paid from the corpus of such property as equals the amount by which the total net amount of such tax levied or assessed exceeds the total net amount of such tax as would have been levied or assessed if the value of such property which is included in the measure of such tax had not been so included.  The amount so charged shall not be apportioned between temporary and remainder estates.
(k)  A direction in a will or instrument of trust to pay taxes caused by, resulting from, or imposed by reason of the death of the testator or donor, as the case may be, out of the decedent's probate estate or trust estate or other property, shall not include, unless the will or instrument of trust or a provision of such tax laws specifically provides otherwise, taxes levied or assessed under the tax laws of the United States or of the commonwealth or of any foreign state or commonwealth (i)  on generation-skipping transfers or (ii)  on any qualified terminable interest property in which the decedent had a qualifying income interest for life.
Section 3-917.  [Partial Distribution.]
If the court finds that partial distribution of the property of an estate in process of settlement can, without detriment to such estate, be made to the persons entitled thereto, the court may, subject to the rights of creditors and after notice, order such partial distribution to be made.
PART 10
CLOSING ESTATES
Section 3-1001.  [Formal Proceedings Terminating Administration; Testate or Intestate; Order of General Protection.]
(a) A personal representative or any interested person may petition for an order of complete settlement of the estate.  The personal representative may petition at any time, and any other interested person may petition after 1 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, compel or approve an accounting or distribution or both, to construe any will, determine heirs or adjudicate the final settlement and distribution of the estate.  Unless the petition is assented to by all interested parties, notice shall be given in the manner prescribed by section 1-401 by the petitioner to all interested persons.
(b)  After the time required for any notice has expired, upon proof of notice, and after any hearing that may be necessary, 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.  Such discharge shall forever exonerate the personal representative and his sureties from all liability under such decree unless his account is impeached for fraud or manifest error.
(c)  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.
Section 3-1002.  [Reserved]
Section 3-1003.  [Closing Estates; By Sworn Statement of Personal Representative.]
(a) Unless prohibited by order of the court and except for estates being administered in supervised administration proceedings, a personal representative may close an estate by filing with the court no earlier than 6 months after the date of original appointment of a general personal representative for the estate, a verified statement stating that the personal representatives or a previous personal representative, has:
(1)  determined that the time limited for presentation of creditors' claims has expired;
(2)  fully administered the estate of the decedent by making payment, settlement, or other disposition of all claims that 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 state in detail other arrangements that have been made to accommodate outstanding liabilities; and
(3)  sent a copy of the statement to all distributees of the estate and to all creditors or other claimants of whom the personal representative is aware whose claims are neither paid nor barred and has furnished a full account in writing of the personal representative's administration to the distributees whose interests are affected thereby.
(b)  If no proceedings involving the personal representative are pending in the court 1 year after the closing statement is filed, the personal representative’s closing statement may not be challenged, except for fraud or manifest error.
Section 3-1004.  [Liability of Distributees to Claimants.]
After assets of an estate have been distributed and subject to Section 3-1006, an undischarged claim not barred may be prosecuted in a proceeding against 1 or more distributees as an improper distribution in accordance with section 3-909.
Section 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 6 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.
Section 3-1006.  [Limitations on Actions and Proceedings Against Distributees.]
Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling the accounts of a personal representative or otherwise barred, the claim of a claimant to recover from a distributee who is liable to pay the claim, and the right of an heir or devisee, or of a successor personal representative acting in their behalf, to recover property improperly distributed or its value from any distributee is forever barred at the later of 3 years after the decedent's death or 1 year after the time of its distribution thereof, but all claims of creditors of the decedent are barred 1 year after the decedent's death.  This section shall not bar an action to recover property or value received as a result of fraud.
Section 3-1007.  [Reserved]
Section 3-1008.  [Reserved]
PART 11
COMPROMISE OF CONTROVERSIES
Section 3-1101.  [Effect of Approval of Agreements Involving Trusts, Inalienable Interests, or Interests of Third Persons.]
A compromise of any controversy as to admission to probate of any instrument offered for formal probate as the will of a decedent, as to the administration or distribution of an estate, or as to an accounting therefore, or as to any matter relating to said estate, or as to the construction of a will or trust created by a written instrument, or as to the fiduciary's power and authority thereunder, or as to any controversy growing out of said will or instrument that may arise between the fiduciary and any other person or the guardian or conservator of any person interested under said will or instrument or in said estate, or between claimants or the guardians or conservators of claimants to said estate, to which arbitration or compromise, in the form of an agreement in writing, such personal representative, guardian, conservator, receiver, commissioner or other fiduciary officer or trustee, and all other persons in being and of full age and not under guardianship, and the guardian or conservator, if any, of all other persons who claim a vested interest in said estate, whose interests will, in the opinion of the court, be affected by the proposed arbitration or compromise, shall be parties, 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 shall not impair the rights of creditors or of taxing authorities who are not parties to it.
Section 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 child having beneficial interests or having claims which will or may be affected by the compromise.  Execution is not required by any person whose identity cannot be ascertained or whose whereabouts is unknown and cannot reasonably be ascertained.
(2)  Any interested person, including the personal representative or a trustee, then may submit the agreement to the court for its approval and for execution by the personal representative, the trustee of every affected trust, and other fiduciaries and representatives.
(3)  After notice as prescribed by section 1-401 to all interested persons or their representatives, including the personal representative of the estate and all affected trustees of trusts, the court, if it finds that the contest or controversy is in good faith and that the effect of the agreement upon the interests of persons represented by fiduciaries or other representatives is just and reasonable, shall make an order approving the agreement and directing all fiduciaries subject to its jurisdiction 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.
Section 3-1103.  [Non-Resident Beneficiaries; Payment of Trust Fund to Foreign Trustee]
If all living parties interested as beneficiaries in a trust created by a will allowed in the commonwealth reside outside thereof, the court having jurisdiction of the trust may, on petition of parties in interest or of the personal representative or trustee, if it considers it just and expedient, authorize the personal representative or trustee to pay the fund to a trustee appointed by the proper court in any other state or country, if all living beneficiaries and the personal representative or trustee signify their consent, and the court is satisfied that the laws of such other state or country secure the due performance of said trust; and upon such payment, shown to the satisfaction of said court, the personal representative or trustee appointed here may be discharged from further responsibility by decree of said court.

PART 12
COLLECTION OF PERSONAL PROPERTY BY VOLUNTARY ADMINISTRATION
PROCEDURE FOR SMALL ESTATES
Section 3-1201.  [Collection of Personal Property by Affidavit.]
If an inhabitant of the commonwealth dies leaving an estate consisting entirely of personal property the total value of which may include a motor vehicle of which the decedent was the owner, and other personal property not exceeding $25,000 in value, any interested person may, after the expiration of 30 days from the death of the decedent, provided no petition for appointment of a personal representative has been filed with the court of the county in which the decedent resided, file with said court upon a form prescribed by the court a statement, verified by oath, or affirmation containing: (a) the name and residential address of the petitioner, (b) the name, residence and date of death of the deceased, (c) the relationship of the petitioner to the deceased, (d) a schedule showing every asset of the estate known to the petitioner and the estimated value of each such asset, (e) a statement that the petitioner has undertaken to act as voluntary personal representative of the estate of the deceased and will administer the same according to law, and apply the proceeds thereof in conformity with this section, (f) the names and addresses of surviving joint owners of property with the deceased, known to the petitioner, (g) the names and addresses known to the petitioner of the persons who would take under the provisions of part 1 of article II of this chapter in the case of intestacy, and (h) the names and addresses known to the petitioner of the persons who would take under the provisions of the will, if any.  The original of any will shall be filed with the above statement.
Upon presentation of such statement, accompanied by a certificate of the death of the deceased by a public officer and payment of a fee as may be specified in section 40 of chapter 262, the register shall docket these documents as a part of the permanent records of the court.  Upon payment of a fee as prescribed in said section 40 of chapter 262, the register shall, if no other probate proceeding for administration of such estate is pending in said court, issue an attested copy of a statement duly filed under this section.
Notwithstanding any general or special of law to the contrary, a voluntary personal representative shall certify on the statement that copies of such statement and death certificate have been sent to the division of medical assistance by certified mail.  If the decedent received medical assistance under chapter 118E (1) when age 65 or older or (2) at any time on or after March 22, 1991, regardless of age, while an inpatient in a nursing facility or other medical institution, the provisions of section 32 of said chapter 118E shall apply except (1) the period for said department to present a claim under subsection (b)(1) of said section 32 of said chapter 118E shall be within 4 months of the date the register dockets the statement and (2) interest on allowed claims under subsection (c) of said section 32 of said chapter 118E shall commence 4 months plus 60 days after said date.  This paragraph shall apply to estates of decedents dying on or after September 1, 1992.
Upon the presentation of a copy of such a statement duly attested by the register, the tender of a proper receipt in writing and the surrender of any policy, passbook, note, certificate or other evidentiary instrument, a voluntary personal representative may, as the legal representative of the deceased and his estate, receive payment of any debt or obligation in the nature of a debt, or delivery of any chattel or asset, scheduled in such statement.  Payments and deliveries made under this section shall discharge liability of the debtor, obligor or deliverer to all persons with respect to such debt, chattel, obligation or other asset unless, at the time of such payment or delivery, a written demand has been made upon said debtor, obligor or deliverer by a duly appointed personal representative.
A voluntary personal representative may sell any chattel so received and negotiate or assign any chose in action to convert the same to cash in a reasonable amount.
A voluntary personal representative shall, as far as possible out of the assets which come into his hands, first discharge the necessary expenses of the funeral and last sickness of the deceased and the necessary expenses of administration without fee for his services, and then pay the debts of the deceased in the order specified in section 3-805 and any other debts of the estate, and then distribute the balance, if any, in accordance with part 1 of article II of this chapter.
A voluntary personal representative shall be liable as a personal representative in his own wrong to all persons aggrieved by his administration of the estate, and, if letters testamentary or letters of administration are at any time granted, shall be liable as such a personal representative to the rightful personal representative.
For the purpose of paragraph (6) of section 113A of chapter 175 and section 2 of chapter 90, a voluntary personal representative shall be deemed to be the personal representative of the estate of the decedent until a personal representative is appointed.
Upon payment of the proper fee, the register may issue a certificate of appointment to such voluntary personal representative, with a copy of the statement annexed thereto.
Section 3-1202.  [Effect of Affidavit.]
The person paying, delivering, transferring, or issuing personal property or the evidence thereof pursuant to section 3-1201 is discharged and released to the same extent as if he dealt with a personal representative of the decedent.  He or she 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 a statement 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.
Section 3-1203.  [Small Estates; Summary Administration Procedure.]
If it appears that the value of the entire estate, less liens and encumbrances, does not exceed family allowances, exempt property, 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 3-1204.
Section 3-1204.  [Small Estates; Closing by Sworn Statement of Personal Representative.]
(a) Unless prohibited by order of the court and except for estates being administered by supervised personal representatives, a personal representative may close an estate administered under the summary procedures of section 3-1203 by filing with the court, at any time after disbursement and distribution of the estate, a verified statement stating that:
(1)  to the best knowledge of the personal representative, the value of the entire estate, less liens and encumbrances, did not exceed family allowances, exempt property, costs and expenses of administration, reasonable funeral expenses, and reasonable, necessary medical and hospital expenses of the last illness of the decedent;
(2)  the personal representative has fully administered the estate by disbursing and distributing it to the persons entitled thereto; and
(3)  the personal representative has sent a copy of the closing statement to all distributees of the estate and to all creditors or other claimants of whom he is aware whose claims are neither paid nor barred and has furnished a full account in writing of his administration to the distributees whose interests are affected.
(b)  If no actions or proceedings involving the personal representative are pending in the court 1 year after the closing statement is filed, the appointment of the personal representative terminates.
(c)  A closing statement filed under this section has the same effect as one filed under section 3-1003.
ARTICLE IV
FOREIGN FIDUCIARIES
PART 1
DEFINITIONS
Section 4-101.  [Definitions.]
In this Article:
(1)  “Domiciliary foreign guardian or foreign conservator”, a foreign guardian or foreign conservator currently qualified and acting under appointment by a court of another jurisdiction in which the protected person is currently domiciled.
(2)  “Domiciliary foreign personal representative”, a foreign personal representative under the law of the jurisdiction of a decedent's domicile.
(3)  “Foreign guardian or foreign conservator”, a guardian or conservator who was appointed by a court of another jurisdiction to administer the estate of a minor or other protected person.
(4)  “Local administration”, administration by a personal representative appointed in the commonwealth pursuant to appointment proceedings described in article III.
(5)  “Local guardian or conservator”, a guardian or conservator appointed in the commonwealth pursuant to appointment proceedings described in article V, but excluding one who is merely a guardian ad item.
(6)  “Local personal representative”, includes any personal representative appointed in the commonwealth pursuant to appointment proceedings described in article III and excludes foreign personal representatives who acquire the power of a local personal representative pursuant to section 4-205.
(7)  “Nonresident protected person”, a protected person who is currently domiciled in another jurisdiction.
(8)  “Protected person”, a minor or other person whose estate in the commonwealth or in any other jurisdiction is currently administered by a guardian or conservator appointed by a court.
(9)  “Resident creditor”, a person domiciled in, or doing business in the commonwealth, who is, or could be, a claimant against an estate of a non-resident decedent or a nonresident protected person.
PART 2
POWERS OF FOREIGN PERSONAL REPRESENTATIVES
Section 4-201.  [Payment of Debt and Delivery of Property to Domiciliary Foreign Personal Representative Without Local Administration.]
(a) At any time after the expiration of 60 days from the death of a nonresident decedent, any person indebted to the estate of the nonresident decedent or having possession or control of personal property, or of an instrument evidencing a debt, obligation, stock or chose in action belonging to the estate of the nonresident decedent, or holding personal property subject to a general power of appointment exercised by the will of a nonresident decedent duly admitted to probate in a foreign jurisdiction, 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 appointment and an affidavit made by or on behalf of the representative stating:
(1)  the date of the death of the nonresident decedent,
(2)  that no local administration, or application or petition therefor, is pending in this state,
(3)  that the domiciliary foreign personal representative is entitled to payment or delivery.
(b)  Payment or delivery may be made to a foreign personal representative of a nonresident decedent appointed in a jurisdiction which was not the domicile of the decedent upon similar proof of appointment and affidavit, if such affidavit also states that there is no domiciliary foreign personal representative and no proceedings are pending for appointment of a personal representative in any court in the jurisdiction of the decedent's domicile and that the foreign personal representative is the personal representative appointed in the appointment proceeding first commenced.
(c)  If such nonresident decedent owned tangible personal property located in the commonwealth at the time of death, or at any time during the twelve months preceding death had a permanent or temporary place of abode in the commonwealth, a foreign personal representative of the decedent shall not accept payment or delivery pursuant to this section earlier than one month after filing proof of his authority in accordance with section 4-204 with a copy to the commissioner of revenue.
(d)  Any person indebted to a nonresident protected person who has not been domiciled in the commonwealth at any time within the preceding year, or having possession or control of personal property, or of an instrument evidencing a debt, obligation, stock or chose in action belonging to such nonresident protected person may pay the debt or deliver the personal property or the instrument to the domiciliary foreign guardian or conservator upon being presented with proof of his appointment and an affidavit made by or on behalf of the guardian or conservator stating:
(1)  that the protected person is not and has not been domiciled in the commonwealth at any time within the preceding year,
(2)  that no local guardian or conservator has been appointed for the protected person and no application or petition therefor is pending in the commonwealth, and
(3)  that the foreign guardian or conservator has duly qualified, is currently acting and is entitled to payment or delivery.
(e)  Payment or delivery may be made to a foreign guardian or conservator of a nonresident protected person appointed in a jurisdiction which is not the current domicile of the protected person upon similar proof of appointment and affidavit, if such affidavit also states:
(1)  that there is no domiciliary foreign guardian or conservator and no proceedings are pending for appointment of a guardian or conservator in any court of the jurisdiction of the protected person's domicile, and
(2)  that either the protected person was domiciled in the jurisdiction in which the foreign guardian or conservator was appointed at the time of his appointment, or that the  foreign guardian or conservator is the guardian or conservator  appointed in the appointment proceeding first commenced.
Section 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 or local guardian or conservator.
Section 4-203.  [Resident Creditor Notice.]
Payment or delivery under section 4-201 may not be made if a resident creditor of the nonresident decedent or nonresident protected person has notified the debtor of the nonresident decedent or nonresident protected person or the person having possession of the personal property belonging to or appointed by the nonresident decedent or belonging to the nonresident protected person that the debt should not be paid nor the property delivered to the foreign personal representative, guardian or conservator.
Section 4-204.  [Proof of Authority-Bond.]
If no local administration or application or petition therefor is pending in the commonwealth, a domiciliary foreign personal representative may file with a court in the commonwealth in a county in which property belonging to the decedent is located, authenticated copies of the domiciliary appointment and of any official bond given.
Section 4-205.  [Powers.]
A domiciliary foreign personal representative who has complied with section 4-204 may exercise as to personal property in the commonwealth all powers of a local personal representative acting in a similar representative capacity and may maintain actions and proceedings in the commonwealth subject to any conditions imposed upon nonresident parties generally.
Section 4-206.  [Power of Representatives in Transition.]
The power of a foreign personal representative under section 4-201 or 4-205 shall be exercised only if there is no administration or application therefor pending in the commonwealth.  An application or petition for local administration of the estate terminates the power of the domiciliary foreign personal representative to act under section 4-205, but the court may allow the domiciliary 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 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 the foreign personal representative in any action or proceedings in the commonwealth.
The power of a foreign guardian or conservator under section 4-201 shall be exercised only if no local guardian or conservator has been appointed and no application therefor is pending in the commonwealth.  No person who, before receiving actual notice of such appointment or application, has changed position in reliance upon the powers of a foreign guardian or conservator shall be prejudiced by reason of the appointment of a local guardian or conservator or an application therefor.
Section 4-207.  [Ancillary and Other Local Administrations; Provisions Governing.]
In respect to a nonresident decedent, the provisions of article III of this code govern (1) proceedings, if any, in a court of the commonwealth 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
JURISDICTION OVER FOREIGN REPRESENTATIVES
Section 4-301.  [Jurisdiction by Act of Foreign Personal Representative.]
A foreign personal representative submits personally to the jurisdiction of the courts of the commonwealth by (1) filing authenticated copies of his appointment as provided in section 4-204, (2) receiving payment of money or taking delivery of personal property under section 4-201, or (3) doing any act as a personal representative in the commonwealth which would have given the commonwealth jurisdiction over the foreign personal representative as an individual.  Jurisdiction under (2) is limited to the money or value of personal property collected.
A foreign guardian or conservator shall submit to the jurisdiction of the courts of the commonwealth by acting under clauses (2) and (3) of the preceding paragraph.
Section 4-302.  [Jurisdiction by Act of Decedent.]
In addition to jurisdiction conferred by section 4-301, a foreign personal representative is subject to the jurisdiction of the courts of the commonwealth to the same extent that the decedent was subject to jurisdiction immediately prior to death.
Section 4-302A.  [Proceedings to Determine Property Rights.]
In any proceeding in the commonwealth to determine rights in real or personal property in the commonwealth or administered by a fiduciary in the commonwealth or under a will admitted to probate in the commonwealth:
(a)  The interest of a nonresident decedent whose estate is not under local administration may be represented by any foreign personal representative of a decedent named a party to the proceeding and served in the manner provided in section 4-303 or by other lawful means;
(b)  The interest of a nonresident protected person named a party to the proceeding for whom there is no local guardian or conservator may be represented by a foreign guardian or conservator served in the manner provided in section 4-303 or by other lawful means.  The authority of a foreign personal representative or of a foreign guardian or conservator under this section shall include authority to be a party to an agreement of compromise in respect of the rights of the decedent or the protected person in such property.  The procedures authorized in this section are in addition to and not in limitation of all other applicable procedures.
Section 4-303.  [Service on Foreign Personal Representative.]
(a) In addition to and not in limitation of other provisions of law, service of process may be made upon the foreign personal representative, guardian or conservator by registered or certified mail, addressed to the last reasonably ascertainable address, requesting a return receipt signed by addressee only.  Notice by ordinary first class mail is sufficient if registered or certified mail service to the addressee is unavailable.  Service may be made upon a foreign personal representative in the manner in which service could have been made under other laws of the commonwealth on either the foreign personal representative or the decedent immediately prior to death.
(b)  If service is made upon a foreign personal representative, guardian or conservator as provided in subsection (a), the foreign personal representative shall be allowed at least 30 days within which to appear or respond.
PART 4
CONCLUSIVENESS OF JUDGMENTS
Section 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 of a non resident decedent is as binding on the local personal representative as if the local personal representative were a party to the adjudication.
ARTICLE V
PROTECTION OF PERSONS UNDER DISABILITY AND THEIR PROPERTY
Part 1
GENERAL PROVISIONS AND DEFINITIONS
Section 5-101.   [Definitions and Inclusions.]
As used in parts 1 to 4, inclusive, of this article:
(1)  “Claims,” in respect to a protected person, includes liabilities of the protected person, whether arising in contract, tort, or otherwise, and liabilities of the estate which arise at or after the appointment of a conservator, including expenses of administration.
(2)  “Conservator”, a person who is appointed by a court to manage the estate of a protected person and includes a limited conservator, temporary conservator and special conservator.
(3)  “Court”, the probate and family court department of the trial court and includes the district court and juvenile court departments of the trial court in proceedings relating to the appointment of guardians of minors when the subject of the proceeding is a minor and there is proceeding before such district or juvenile court.
(4)  “Disability”, cause for a protective order as described in section 5-401.
(5)  “Estate”, includes the property of the person whose affairs are subject to this article.
(6)  “Guardian”, a person who has qualified as a guardian of a minor or incapacitated person pursuant to court appointment and includes a limited guardian, special guardian and temporary guardian, but excludes one who is merely a guardian ad litem.
(7)  “Guardian ad litem”, a person or organization appointed under sections 1-404 and 5-106 of this code.
(8)  “Health care proxy”, a health care proxy executed pursuant to chapter 201D, a durable power of attorney for health care executed prior to the enactment of chapter 201D and similar instruments for appointment of health care agents executed in accordance with the laws of other jurisdictions.
(9)  “Incapacitated person”, an individual who for reasons other than advanced age or minority, has a clinically diagnosed condition that results in an inability to receive and evaluate information or make or communicate decisions to such an extent that the individual lacks the ability to meet essential requirements for physical health, safety, or self-care, even with appropriate technological assistance.
(10)  “Lease”, includes an oil, gas, or other mineral lease.
(11)  “Letters”, includes certificate of guardianship and certificate of conservatorship.
(12)  “Mentally retarded person”, an individual who has a substantial limitation in present functioning beginning before age 18, manifested by significantly subaverage intellectual functioning existing concurrently with related limitations in 2 or more of the following applicable adaptive skills areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functioning academics, leisure, and work.
(13)  “Minor”, a person who is under 18 years of age.
(14)  “Mortgage”, any conveyance, agreement, or arrangement in which property is used as collateral.
(15)  “Nursing facility”, an institution or a distinct part of an institution which is primarily engaged in providing to residents:
(A)  skilled nursing care and related services for residents who require medical or nursing care,
(B)  rehabilitation services for the rehabilitation of injured, disabled or sick persons, or
(C)  on a regular basis, health-related care and services to individuals who because of their mental or physical condition require care and services above the level of room and board which can be made available to them only through institutional facilities, and is not primarily a mental health facility or mental retardation facility.
(16)  “Organization”, includes a corporation, business trust, estate, trust, partnership, association, 2 or more persons having a joint or common interest, government, governmental subdivision or agency, or any other legal entity.
(17)  “Parent”, a natural or adoptive parent other than a parent whose parental rights have been terminated or a parent who has signed a voluntary surrender.
(18)  “Person”, an individual or an organization.
(19)  “Petition”, a written request to the court for an order after notice.
(20)  “Proceeding”, includes action at law and suit in equity.
(21)  “Property”, includes both real and personal property or any interest therein and means anything that may be the subject of ownership.
(22)  “Protected person”, a minor or other person for whom a conservator has been appointed or other protective order has been made as provided in sections 5-407 and 5-408.
(23)  “Protective proceeding”, a proceeding under the provisions of part 4 of this article.
(24)  “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.
(25)  “Ward”, a person for whom a guardian has been appointed solely because of minority.
Section 5-102.  [Facility of Payment or Delivery.]
(a) Any person under a duty to pay or deliver money or personal property to a minor may perform the duty, in amounts not exceeding $5,000 a year, by paying or delivering the money or property to:
(1)  the minor;
(2)  any person having the care and custody of the minor with whom the minor resides;
(3)  a guardian of the minor;
(4)  a custodian under the uniform transfers to minors act or a custodial trustee under the uniform custodial trust act; or
(5)  a financial institution as a deposit in a state or federally insured interest bearing account or certificate in the sole name of the minor with notice of the deposit to the minor.
(b)  If the person making payment or delivery knows that a conservator has been appointed or proceedings for appointment of a conservator of the estate of the minor are pending, the person may make payment or delivery only to the conservator.
(c)  Persons receiving money or property for a minor under subsection (a)(2) are obligated to apply the money to the support, care, education, health or welfare of the minor, but may not pay themselves except by way of reimbursement for out-of-pocket expenses for necessary goods and services.  Any excess sums shall be preserved for future support, care, education, health or welfare of the minor and any balance not so used and any property received for the minor shall be turned over to the minor when majority is attained.
(d)  A person who pays or delivers money or property in accordance with this section is not responsible for the proper application thereof.
Section 5-103.  [Delegation of Powers by Parent or Guardian.]
(a)  A parent or parents of a minor, other than a parent or parents whose parental rights have been terminated or a parent who has signed a voluntary surrender, or a guardian or guardians of a minor or incapacitated person may appoint a temporary agent for a period not exceeding 60 days, and may delegate to such agent any power that the parent or guardian has regarding the care, custody or property of the minor child, ward or incapacitated person, except the power to consent to marriage or adoption of a minor; provided, however, that no parent or guardian shall appoint a temporary agent when a court has ordered that the minor child be placed in the custody of a person other than the parent or guardian.
(b)  Any delegation under this section shall be by a writing signed by, or at the direction of, the parent(s)  or guardian(s)  and attested by at least 2 witnesses 18 years of age or older, neither of whom is the temporary agent together with the written acceptance of the temporary agent.
(c)  A parent or guardian may not appoint a temporary agent of a minor if the minor has another living parent whose whereabouts are known and who is willing and able to provide care and custody for the minor unless the nonappointing parent consents to the appointment in writing.  A parent may not appoint a temporary agent if the appointing parent's parental rights have been terminated or a parent who has signed a voluntary surrender.
(d)  Any delegation under this section may be revoked or amended by the appointing parent(s) or guardian(s) and delivered to all interested persons.  The authority of the temporary agent may be limited or altered by the court.
Section 5-104.  [Reserved]
Section 5-105.  [Venue.]
(a) Provided that the court has jurisdiction:
(1)  venue for a guardianship proceeding for a minor is in the court at the place where the minor resides at the time the proceedings are commenced, or, in the case of a nomination of a guardian by the will of a parent or guardian, in the court of the county in which the will was or could be probated except venue for a guardianship proceeding for a minor in district court or juvenile court shall be in the court where the underlying proceeding was filed;
(2)  venue for a guardianship proceeding for an incapacitated person is in the court at the place where the incapacitated person resides at the time the proceedings are commenced, or, in the case of a nomination of by the will of a parent or spouse, in the court of the county in which the will was or could be probated.  If the incapacitated person has been admitted to a facility referred to in chapter one hundred eleven, section 70E pursuant to an order of a court of competent jurisdiction, venue is also in the county in which that facility is located; and
(3)  venue for a protective proceeding is in the court at the place where the person to be protected resides at the time the proceedings are commenced, whether or not a guardian has been appointed in another place or, if the person to be protected does not reside in the commonwealth, in the court at the place where property of the person is located.
(b)  If a proceeding under this code is brought in more than one place in the commonwealth, the court at the place in which a proceeding is first brought has the exclusive right to proceed unless that court determines that venue is properly in another court or that the interests of justice otherwise require that the proceeding be transferred.
Section 5-106.  [Appointment of Counsel; Guardian ad Litem.]
(a) After filing of a petition for appointment of a guardian, conservator or other protective order, if the ward, incapacitated person or person to be protected or someone on his behalf requests appointment of counsel; or if the court determines at any time in the proceeding that the interests of the ward, incapacitated person or person to be protected are or may be inadequately represented, the court shall appoint an attorney to represent the person, giving consideration to the choice of the person if 14 or more years of age.  If the ward, incapacitated person or person to be protected has adequate resources, his counsel shall be compensated from the estate, unless the court shall order that such compensation be paid by the petitioner.  Counsel for any indigent ward, incapacitated person or person to be protected shall be compensated by the commonwealth.  This section shall not be interpreted to abridge or limit the right of any ward, incapacitated person or person to be protected to retain counsel of his own choice and to prosecute or defend a petition under this article.
(b)  The court may appoint as guardian ad litem, an individual or any public or charitable agency to investigate the condition of the ward, incapacitated person or person to be protected and make appropriate recommendations to the court.
(c)  The incapacitated person or person to be protected is entitled to be present at any hearing in person.  A ward, if 14 or more years of age, is entitled to be present at any hearing in person unless the court, upon written findings, determines that the best interest of the ward will not be served thereby.  The person is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including any physician or other qualified person and any guardian ad litem.  The issue may be determined at a closed hearing if the person or counsel for the person so requests.
(d)  Any person may apply for permission to provide information in the proceeding and the court may grant the request, with or without hearing, upon determining that the best interest of the person to be protected will be served thereby.  The court may attach appropriate conditions to the permission.
Section 5-107.  [Protection of Minors]

The court shall not appoint as guardian any person petitioning for guardianship who:  (i) is currently being investigated or has charges pending for committing an assault and battery that resulted in serious bodily injury to the minor, incapacitated or ill person; or (ii) is currently being investigated or has charges pending for neglect of the minor, incapacitated or ill person.  The court shall terminate a guardianship appointed under this section if, upon petition, it is established that the guardian is:  (i) currently being investigated or has charges pending for committing an assault and battery that resulted in serious bodily injury to the minor, incapacitated or ill person; or (ii) is currently being investigated or has charges pending for neglect of the minor, incapacitated or ill person.
PART 2
GUARDIANS OF MINORS
Section 5-201.  [Appointment and Status of Guardian of Minor.]
A person may become a guardian of a minor by appointment by parent or guardian or upon appointment by the court.  The guardianship status continues until terminated, without regard to the location from time to time of the guardian or minor ward.  The district or juvenile court may appoint guardians of minors if the person who is the subject of the petition is a minor and there is a proceeding before such district or juvenile court and shall have continuing jurisdiction over resignation, removal, reporting, and other proceedings related to the guardianship.
Section 5-202.  [Parental or Guardian Appointment of Guardian for Minor.]
(a) A parent, by will or other writing signed by the parent and attested by at least 2 witnesses, may appoint a guardian for any minor child the parent has or may have in the future, may revoke or amend the appointment, and may specify any desired limitations on the powers to be granted to the guardian.
(b)  A guardian, by will or other writing signed by the guardian and attested by at least 2 witnesses, may appoint a guardian for any minor child for whom the guardian serves, may revoke or amend the appointment, and may specify any desired limitations on the powers to be granted to the guardian.
(c)  Upon petition of an appointing parent or guardian, upon finding that the appointing parent or guardian will likely become unable to care for the minor within 2 years or less, and after notice as provided in section 5-206(b), the court, before the appointment becomes effective, may confirm the parent's or guardian's selection of a guardian and terminate the rights of others under section 5-203.
(d)  Subject to section 5-203, the appointment of a guardian becomes effective on the first to occur of the appointing parent's or guardian's death, an adjudication that the parent or guardian is an incapacitated person, or a written determination by a physician who has examined the parent or guardian that the parent or guardian is no longer able to care for the minor unless the minor is in the care or custody of a person other than a parent pursuant to sections 24, 25, 26 and 39G of chapter 119, chapter 201; or section 3 of chapter 210.
(e)  Within 30 days after the appointment becomes effective, a guardian shall:
(1)  file a notice of acceptance of appointment and a copy of the will or other nominating instrument with the court of the county in which the will was or could be probated or, in the case of another nominating instrument, with the court of the county in which the minor resides; and
(2)  unless the appointment was previously confirmed by the court, petition the court for confirmation of the appointment, giving notice in the manner provided in section 5-206(b).
(f)  The parental appointment of a guardian shall not supersede the parental rights of either parent.  If both parents are dead or have been adjudged incapacitated persons, an appointment by the last parent who dies or was adjudged incapacitated has priority.
(g)  The powers of a guardian who timely complies with the requirements of subsection (e) relate back to give acts by the guardian which are of benefit to the minor and which occurred on or after the date the guardian was eligible to file an acceptance of office the same effect as those which occurred after the filing.
(h)  The authority of a guardian appointed under this section terminates upon the first to occur of the appointment of a guardian by the court, the revocation of the appointment by the appointing parent or guardian, or the filing of an objection pursuant to section 5-203.
Section 5-203.  [Objection by Minor Fourteen or Older to Parental Appointment.]
Except where the court has previously confirmed a nominee under section 5-202(c),
(i)  a minor 14 or more years of age who is the subject of a parental appointment,
(ii)  the other parent, if that parent's parental rights have not been terminated, or
(iii)  a person other than a parent having care or custody of the minor or with whom the minor has resided during the 60 preceding days, excluding a foster parent
may prevent the appointment or cause it to terminate by filing in the court in which the appointing instrument is filed a written objection to the appointment before it is accepted or within 30 days after receiving notice of its acceptance.  An objection may be withdrawn.  An objection shall not preclude appointment of the nominee by the court in a proper proceeding of the parental nominee or any other suitable person.  The court may treat the filing of an objection as a petition for the appointment of a temporary guardian, and proceed accordingly.
Section 5-204.  [Court Appointment of Guardian of Minor; Conditions for Appointment; Temporary Guardian.]
(a) The court may appoint a guardian for a minor if (i) the minor's parents are deceased or incapacitated, (ii) the parents consent, (iii) the parents' parental rights have been terminated, (iv) the parents have signed a voluntary surrender, or (v) the court finds the parents, jointly, or the surviving parent, to be unavailable or unfit to have custody.  A guardian appointed pursuant to section 5-202 whose appointment has not been prevented or nullified under section 5-203 has priority over any guardian who may be appointed by the court, but the court may proceed with another appointment upon a finding that the parental nominee has failed to accept the appointment within 30 days after notice of the guardianship proceeding.
(b)  While a petition for appointment of a guardian is pending, if a minor has no guardian, and the court finds that following the procedures of this article will likely result in substantial harm to the health, safety or welfare of the minor occurring prior to the return date, and no other person appears to have authority to act in the circumstances, on appropriate motion, the court may appoint a temporary guardian who may exercise those powers granted in the order.  A motion for appointment of a temporary guardian shall state the nature of the circumstances requiring appointment, the particular harm sought to be avoided, and the actions which will be necessary by the temporary guardian to avoid the occurrence of the harm.  Such motion shall be accompanied by an affidavit containing facts supporting the statements and requests in the motion.  The appointment of a temporary guardian for a minor may occur even though the conditions described in subsection (a)  have not been established.  The appointment may be for a period of up to 90 days except that upon a finding of extraordinary circumstances set forth in its order, the court may order an appointment for a longer period to a date certain.  The court may for good cause shown extend the appointment for additional 90 day periods.
(c)  If an appointed guardian is not effectively performing duties and the court further finds that the welfare of the minor requires immediate action, it may appoint, with or without notice, a special guardian for the minor having the powers of a general guardian, except as limited in the letters of appointment.  The authority of any guardian previously appointed is suspended as long as a special guardian has authority.  The appointment may be for a period of up to 90 days except that upon a finding of extraordinary circumstances set forth in its order the court may order an appointment for a longer period to a date certain.  The court may for good cause shown extend the appointment for additional 90 day periods.
(d)  The petitioner shall give written notice 7 days prior to any hearing for the appointment of a temporary guardian in hand to the minor if over the age of 14 years and by delivery or by mail to all persons named in the petition for appointment of guardian.  A certificate that such notice has been given, setting forth the names and addresses of those to whom notice has been given, shall be prima facie evidence thereof.
(e)  If the court determines that an immediate emergency situation exists which requires the immediate appointment of a temporary guardian, it may shorten or waive the notice requirements in whole or in part and grant the motion, provided, however, that prior notice shall be given to the minor, if the minor is 14 or more years of age, as the court may order and post-appointment notice of any appointment is given to the minor and those named in the petition for appointment of guardian stating further that any such person may move to vacate the order of the court or request that the court take any other appropriate action on the matter, and on said motion to vacate.  The court shall hear said motion as a de novo matter, as expeditiously as possible.  A certificate stating that such notice has been given shall be filed with the court within 7 days following the appointment.  Upon failure to file such certificate the court may on its own motion vacate said order.
(f)  In the event that any person to whom notice is required is of parts unknown, such notice shall be delivered or mailed to that person's last known address, and the fact of such delivery or mailing shall be recited in the certificate of notice.
Section 5-205.  [Reserved.]
Section 5-206.  [Procedure for Court Appointment of Guardian of Minor.]
(a) A minor or any person interested in the welfare of the minor may petition for appointment of a guardian.
(b)  After the filing of a petition, notice shall be given in the manner prescribed by section 1-401 by the petitioner to:
(1)  the minor, if the minor is 14 or more years of age and is not the petitioner;
(2)  any person who has been awarded care or custody of the minor by a court of competent jurisdiction, whom is alleged to have had the principal care or custody of the minor or with whom the minor has resided during the 60 days preceding the filing of the petition, excluding foster parents;
(3)  any living parent of the minor, excluding a parent whose parental rights have been terminated or a parent who has signed a voluntary surrender, or, if none, brothers and sisters, or, if none, heirs apparent or presumptive;
(4)  the spouse if the minor is married;
(5)  any person nominated as guardian by the minor if the minor has attained 14 years of age;
(6)  any parental or guardian appointee whose appointment has not been prevented or terminated under section 5-203;
(7)  any guardian or conservator currently acting for the minor in the commonwealth or elsewhere; and
(8)  the United States veterans administration or its successor if the minor is entitled to any benefit, estate or income paid or payable by or through said administration or its successors.
(c)  Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the conditions of section 5-204(a)  have been met, and the welfare and best interest of the minor will be served by the requested appointment, it shall make the appointment and issue letters.  In other cases, the court may dismiss the proceedings or make any other disposition of the matter that will serve the best interest of the minor.
Section 5-207.  [Court Appointment of Guardian of Minor; Qualifications; Priority of Minor's Nominee.]
(a) The court may appoint as guardian any person whose appointment would be in the best interest of the minor.  The court shall appoint a person nominated by the minor, if the minor is 14 or more years of age, unless the court finds the appointment contrary to the best interest of the minor.
(b)  In the interest of developing self-reliance of a ward or for other good cause, the court, at the time of appointment or later, on its own motion or on motion of the minor ward or other interested person, may limit the powers of a guardian otherwise granted by this article and thereby create a limited guardianship.  Any limitation on the statutory power of a guardian of a minor shall be endorsed on the guardian's letters or, in the case of a guardian by parental appointment, shall be reflected in letters that are issued at the time any limitation is imposed.  Following the same procedure, additional powers may be granted or existing powers may be withdrawn.
Section 5-208.  [Bond; Consent to Service by Acceptance of Appointment; Notice.]
(a) Prior to receiving letters, a guardian shall accept appointment by filing a bond conditioned upon faithful discharge of all duties of the trust according to law and containing a statement of acceptance of the duties of the office.  By accepting a parental 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.  The petitioner shall cause notice of any proceeding to be delivered or mailed to the guardian at the guardian's address listed in the court records and to the address then known to the petitioner.
(b)  A surety shall be required on the bond of a guardian of a minor unless the court determines that it is in the best interest of the minor to waive the surety or to require additional sureties.
(c)  The requirements and provisions of section 5-411 apply to guardians appointed under this part.
Section 5-209.  [Powers, Duties, Rights and Immunities of Guardian of Minor; Limitations.]
(a) A guardian of a ward has the powers and responsibilities of a parent regarding the ward's support, care, education, health and welfare.  A guardian shall act at all times in the ward's best interest and exercise reasonable care, diligence and prudence.
(b)  In particular and without qualifying the foregoing, a guardian of a ward or incapacitated person shall:
(1)  if consistent with the terms of any order by a court of competent jurisdiction take custody of the person of the ward or incapacitated person and establish his place of abode within or without the commonwealth;
(2)  become or remain personally acquainted with the ward or incapacitated person and maintain sufficient contact with the person to know of his capacities, limitations, needs, opportunities, and physical and mental health;
(3)  take reasonable care of the personal effects and commence protective proceedings if necessary to protect other property of the ward or incapacitated person;
(4)  apply any available money of the ward or incapacitated person to his current needs for support, care, education health and welfare; provided that if any person has a legal duty to support a minor and has sufficient funds, the minor's funds are not to be used to discharge the legal obligation of support without prior order of the court unless the court determines that the minor's funds may be used for support;
(5)  conserve any excess money of the person for his future needs, but if a conservator has been appointed for the estate of the ward or incapacitated person, the guardian, at least quarterly, shall pay to the conservator money of the ward or incapacitated person to be conserved for  his future needs; and
(6)  report the condition of the ward or protected person and of his estate that has been subject to the guardian's possession or control, as ordered by the court on petition of any person interested in the respondent's welfare or as required by court rule, but not less than annually.
(c)  A guardian of a ward or incapacitated person may:
(1)  apply for and receive money for the support of the ward or incapacitated person otherwise payable to his parent, guardian, or custodian for his support under the terms of any statutory benefit or insurance system or any private contract, devise, trust, conservatorship, or custodianship;
(2)  if no conservator for the estate of the ward or incapacitated person has been appointed, institute proceedings, including administrative proceedings, or take other appropriate action to compel the performance by any person of a duty to support the ward or incapacitated person or to pay sums for his benefit;
(3)  if consistent with the terms of any order by a court of competent jurisdiction and sections 5-306A and 5-309, consent to medical or other professional care, treatment, or advice for the ward or incapacitated person without liability by reason of the consent for injury to the ward or incapacitated person resulting from the negligence or acts of third persons unless a parent would have been liable in the circumstances;
(4)  consent or refuse to consent to the marriage, divorce or adoption of the ward or incapacitated person;
(5)  if reasonable under all of the circumstances, delegate to the ward or incapacitated person certain responsibilities for decisions affecting his well-being; and
(6)  utilize the services of agencies and individuals to provide necessary and desirable social and protective services of different types appropriate to such person including, but not limited to, counseling services, advocacy services, legal services, and other aid as the guardian deems to be in the interest of such person.
(d)  A guardian is entitled to reasonable compensation for services as guardian and to reimbursement for room, board and clothing personally provided to the ward or incapacitated person, but only as approved by order of the court and only from the person's estate.  If a conservator, other than the guardian or one who is affiliated with the guardian, has been appointed for the estate of the person, reasonable compensation and reimbursement to the guardian may be approved and paid by the conservator without order of the court controlling the guardian.
(e)  A guardian need not use the guardian's personal funds for the ward or incapacitated person's expenses.  A guardian is not liable to a third person for acts of the respondent solely by reason of the relationship.
Section 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 shall not affect the guardian's liability for prior acts or the obligation to account for funds and assets of the ward.  Resignation of a guardian shall not terminate the guardianship until it has been approved by the court.  A parental appointment under an informally probated will is voided if the will is later denied probate in a formal proceeding.
Section 5-211.  [Reserved.]
Section 5-212.  [Resignation, Removal, and Other Post-appointment Proceedings.]
(a) Any person interested in the welfare of a ward or the ward, if 14 or more years of age, may petition for removal of a guardian on the ground that removal would be in the best interest of the ward or for any other order that is 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.
(b)  Notice of hearing on a petition for an order subsequent to appointment of a guardian shall be given to the ward, the guardian, the parents of the ward, provided that the parental rights have not been terminated or a voluntary surrender has not been signed, and any other person as ordered by the court.
(c)  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, including appointment of a successor guardian.
PART 3
GUARDIANS OF INCAPACITATED PERSONS
Section 5-301.  [Nomination of Guardian for Incapacitated Person by Will or Other Writing.]
(a) A parent, by will or other writing signed by the parent and attested by at least 2 witnesses, may nominate a guardian for an unmarried adult child who the parent believes is an incapacitated person, may revoke or amend the nomination, and may specify any desired limitations on the powers to be granted to the guardian.
(b)  An individual by will or other writing signed by the individual and attested by at least 2 witnesses, may nominate a guardian for his spouse who the individual believes is an incapacitated person, may revoke or amend the nomination, and may specify any desired limitations on the powers to be granted to the guardian.
Section 5-302.  [Reserved.]
Section 5-303.  [Procedure for Court Appointment of a Guardian of an Incapacitated Person.]
(a) An incapacitated person or any person interested in the welfare of the person alleged to be incapacitated may petition for a determination of incapacity, in whole or in part, and the appointment of a guardian, limited or general.
(b)  The petition shall set forth the petitioner's name, residence and address, relationship to the person alleged to be incapacitated, and interest in the appointment, and, to the extent known, set forth the following with respect to the person alleged to be incapacitated and the relief requested:
(1)  the name and age of the person alleged to be incapacitated, his residence and the date residence was established;
(2)  the address of the place it is proposed that the person alleged to be incapacitated will reside if the appointment is made;
(3)  a brief description of the nature of the alleged incapacity, and whether:
(A)  the person is alleged to be mentally retarded;
(B)  the petitioner seeks court authorization to consent to treatment for which a substituted judgment determination may be required; or
(C)  the petitioner seeks court authorization to admit the person alleged to be incapacitated to a nursing facility.
(4)  the name and address of the proposed guardian, his relationship to the person alleged to be incapacitated, the reason why he or she should be selected, and the basis of the claim, if any, for priority for appointment;
(5)  the name and address of the person's:
(A)  spouse; and
(B)  children, or if none, parents and brothers and sisters, or, if none, heirs apparent or presumptive and the ages of any who are minors, so far as known or ascertainable with reasonable diligence by the petitioner;
(6)  the name and address of the person who has care or custody of the person alleged to be incapacitated or with whom the person has resided during the 60 days (exclusive of any period of hospitalization or institutionalization)  preceding the filing of the petition;
(7)  the name and address of any representative payee;
(8)  the name and address of any person nominated as guardian by the person alleged to be incapacitated, and the name and address of any guardian or conservator currently acting for him in the commonwealth or elsewhere;
(9)  the name and address of any agent designated under a durable power of attorney or health care proxy of which the person alleged to be incapacitated is the principal, if known to the petitioner, and the petitioner shall attach a copy of any such power of attorney or health care proxy, if available;
(10)  the reason why a guardianship is necessary, the type of guardianship requested, and if a general guardianship, the reason why limited guardianship is inappropriate, and if a limited guardianship, the powers to be granted to the limited guardian;
(11)  a statement:
(A)  that a medical certificate dated within 30 days of the filing of the petition or, in the case of a person alleged to be mentally retarded, a clinical team report dated within 180 days of the filing of the petition, is in the possession of the court or accompanies the petition; or
(B)  of the nature of any circumstance which makes it impossible to obtain a medical certificate or clinical team report which shall be supported by affidavit or affidavits meeting the requirement set forth in Massachusetts Rule of Civil Procedure 4.1(h), in which case the court may waive or postpone the requirement of filing of a medical certificate or clinical team report; and
(12)  a general statement of the property of the person alleged to be incapacitated with an estimate of its value, including any insurance or pension, and the source and amount of any other anticipated income or receipts.
(c)  Unless otherwise directed by the court, a medical certificate filed under this article shall be signed by a physician or licensed psychologist and shall contain:
(1)  a description of the nature, type, and extent of the person's specific cognitive and functional limitations;
(2)  an evaluation of the person's mental and physical condition and, if appropriate, educational potential, adaptive behavior, and social skills;
(3)  a prognosis for improvement and a recommendation as to the appropriate treatment or habilitation plan; and
(4)  the date of any examination upon which the report is based.
(d)  A person alleged to be mentally retarded shall be examined by a clinical team consisting of a physician, a licensed psychologist and a social worker, each of whom is experienced in the evaluation of mentally retarded persons, who shall report their conclusions to the Court.
(e)  Reasonable expenses incurred in any examination conducted pursuant to this section shall be paid by the petitioner, the estate of the person alleged to be incapacitated, or by the commonwealth as the court may determine.
Section 5-304.  [Notice in Guardianship or Conservatorship Proceeding.]
(a) In a proceeding for the appointment of a guardian or conservator or for protective order, and if notice is required in a proceeding for appointment of a temporary guardian or temporary conservator, notice shall be given by the petitioner to:
(1)  the person alleged to be incapacitated or the person to be protected and his spouse and children, or, if none, parents, brothers and sisters, or, if none, heirs apparent or presumptive;
(2)  any person who is serving as guardian, conservator, or who has the care or custody of the person or with whom the person has resided during the 60 days (exclusive of any period of hospitalization or institutionalization)  preceding the filing of the petition;
(3)  in case no other person is notified under paragraph (1), at least one of the nearest adult relatives, if any can be found;
(4)  all other persons named in the petition;
(5)  if the person is alleged to be mentally retarded, to the department of developmental services;
(6)  the United States veteran's administration or its successor, if the  person is entitled to any benefit, estate or income paid or payable by or through said administration or its successor; and
(7)  any other person as directed by the court.
(b)  Notice of hearing on a petition for an order subsequent to appointment of a guardian or conservator shall be given to the incapacitated person, person to be protected, the guardian, the conservator and any other person as ordered by the court.
(c)  Notice shall be served personally on the person alleged to be incapacitated or the person to be protected.  In all other cases, required notices shall be given as provided in section 1-401.
(d)  A person alleged to be incapacitated or person to be protected may not waive notice.
Section 5-305.  [Who May Be Guardian; Priorities.]
(a) Any qualified person may be appointed guardian of an incapacitated person.
(b)  Unless lack of qualification or other good cause dictates the contrary, the court shall appoint a guardian in accordance with the incapacitated person's most recent nomination in a durable power of attorney.
(c)  Except as provided in subsection (b), the following, if suitable, are entitled to consideration for appointment in the order listed:
(1)  the spouse of the incapacitated person or a person nominated by will of a deceased spouse or by other writing signed by the spouse and attested by at least 2 witnesses;
(2)  a parent of the incapacitated person, or a person nominated pursuant to section 5-301; and
(3)  any person the court deems appropriate.
(d)  With respect to persons having equal priority, the court shall select the one it deems best suited to serve.  The court, acting in the best interest of the incapacitated person, may pass over a person having priority and appoint a person having a lower priority or no priority.
Section 5-306.  [Findings; Order of Appointment.]
(a) The court shall exercise the authority conferred in this part so as to encourage the development of maximum self-reliance and independence of the incapacitated person and make appointive and other orders only to the extent necessitated by the incapacitated person's limitations or other conditions warranting the procedure.
(b)  Upon hearing, the court may appoint a guardian as requested if it finds that:
(1)  a qualified person seeks appointment;
(2)  venue is proper;
(3)  the required notices have been given;
(4)  any required medical certificate is dated and the examination has taken place within 30 days prior to the hearing;
(5)  any required clinical team report is dated and the examinations have taken place within 180 days prior to the filing of the petition;
(6)  the person for whom a guardian is sought is an incapacitated person;
(7)  the appointment is necessary or desirable as a means of providing continuing care and supervision of the incapacitated person; and
(8)  the person's needs cannot be met by less restrictive means, including use of appropriate technological assistance.
The court, on appropriate findings, may enter any appropriate order, or dismiss the proceedings.
(c)  The court, at the time of appointment or later, on its own motion or on appropriate petition or motion of the incapacitated person or other interested person, may limit the powers of a guardian otherwise conferred by parts 1 to 4, inclusive, of this article and thereby create a limited guardianship.  Any limitation on the statutory power of a guardian of an incapacitated person shall be endorsed on the guardian's letters.  Following the same procedure, a limitation may be removed or modified and appropriate letters issued.
Section 5-306A.  [Substituted Judgment.]
(a) No guardian, temporary guardian or special guardian of a minor or an incapacitated person shall have the authority to consent to treatment for which substituted judgment determination may be required, provided that the court shall authorize such treatment when it (i) specifically finds using the substituted judgment standard that the person, if not incapacitated, would consent to such treatment and (ii) specifically approves and authorizes a treatment plan and endorses said plan in its order or decree.  The court shall not authorize such treatment plan except after a hearing for the purpose of which counsel shall be provided for any indigent minor or incapacitated person.  Said hearing shall be held as soon as is practicable; provided, however, that if the petitioner requests a temporary order on the grounds that the welfare of the minor or person alleged to be incapacitated requires an immediate authorization of treatment, the court shall act on such request in accordance with the procedures set forth in section 5-308.
(b)  The court may delegate to a guardian the authority to monitor the treatment process to ensure that a treatment plan is followed, provided a guardian is readily available for such purpose.  Approval of a treatment plan shall not be withheld, however, because a guardian is not available to serve as monitor.  In such circumstances, the court shall appoint a suitable person to monitor the treatment process to ensure that the treatment plan is followed.  Reasonable expense incurred in such monitoring may be paid out of the estate of such person, by the petitioner, or, subject to appropriation, by the commonwealth, as may be determined by the court.
(c)  Each order authorizing a treatment plan pursuant to this section shall provide for periodic review at least annually to determine whether the incapacitated person's condition and circumstances have substantially changed such that, if competent, the incapacitated person would no longer consent to the treatment authorized therein.  Each such order shall further provide for an expiration date beyond which the authority to provide treatment thereunder shall, if not extended by the court, terminate.
(d)  An incapacitated person is required to attend any hearing relative to authority to consent to treatment for which a substituted judgment determination is required, unless the court finds that there exist extraordinary circumstances requiring the absence of the incapacitated person in which event the attendance of his counsel shall suffice; provided that the court may base its findings exclusively upon affidavits and other documentary evidence if it (1) determines after careful inquiry and upon representations of counsel, that there are no contested issues of fact and (2) includes in its findings the reason that oral testimony was not required.
(e)  Any privilege established by section 135A of chapter 112 or by section 20B of chapter 233 relating to confidential communications shall not prohibit the filing of reports or affidavits, or the giving of testimony, pursuant to this part, for the purposes of obtaining treatment of a person alleged to be incapacitated; provided, however, that such person has been informed prior to making such communication that they may be used for such purpose and has waived the privilege.
Section 5-307.  [Bond; Acceptance of Appointment; Consent to Jurisdiction.]
(a) Prior to receiving letters, a guardian shall accept appointment by filing a bond conditioned upon faithful discharge of all duties of the trust according to law and containing a statement of acceptance of the duties of the office.  By accepting a parental 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.  The petitioner shall cause notice of any proceeding to be delivered or mailed to the guardian at the guardian's address listed in the court records and to the address then known to the petitioner.
(b)  A surety shall be required on the bond of a guardian of an incapacitated person unless the court determines that it is in the best interest of the incapacitated person to waive the surety or to require additional sureties.  Language in a durable power of attorney or health care proxy waiving the guardian's bond shall be deemed to be a request for waiver of any necessity of sureties on a bond.
 (c)  The requirements and provisions of section 5-411 apply to guardians appointed under this part.
Section 5-308.  [Emergency Orders; Temporary Guardians.]
(a) While a petition for appointment of a guardian is pending, if an incapacitated person has no guardian, and the court finds that following the procedures of this article will likely result in immediate and substantial harm to the health, safety or welfare of the person alleged to be incapacitated occurring prior to the return date, and no other person appears to have authority to act in the circumstances, on appropriate motion the court may appoint a temporary guardian who may exercise only those powers granted in the order.  A motion for appointment of a temporary guardian shall state the nature of the circumstances requiring appointment, the particular harm sought to be avoided, the actions which will be necessary by the temporary guardian to avoid the occurrence of the harm and the name and address of any agent designated under a health care proxy or durable power of attorney of which the person alleged to be incapacitated is the principal, and the petitioner shall attach a copy of any such health care proxy or durable power of attorney, if available.  Such motion shall be accompanied by an affidavit containing facts supporting the statements and requests in the motion.  The appointment may be for a period of up to 90 days except that upon a finding of extraordinary circumstances set forth in its order, the court may order an appointment for a longer period to a date certain.  The court may for good cause shown extend the appointment for additional 90 day periods.
(b)  If an appointed guardian is not effectively performing duties and the court further finds that the welfare of the incapacitated person requires immediate action, it may appoint, with or without notice, a special guardian for the incapacitated person having the powers of a general guardian, except as limited in the letters of appointment.  The authority of any guardian previously appointed by the court is suspended as long as a special guardian has authority.  The appointment may be for a period of up to 90 days except that upon a finding of extraordinary circumstances set forth in its order the court may order an appointment for a longer period to a date certain.  The court may for good cause shown extend the appointment for additional 90 day periods.
(c)  The petitioner shall give written notice 7 days prior to any hearing for the appointment of a temporary guardian in hand to the person alleged to be incapacitated and by delivery or by mail to all persons named in the petition for appointment of guardian.  A certificate that such notice has been given, setting forth the names and addresses of those to whom notice has been given, shall be prima facie evidence thereof.
(d)  If the court determines that an immediate emergency situation exists which requires the immediate appointment of a temporary guardian, it may shorten or waive the notice requirements in whole or in part and grant the motion, provided, however, that prior notice shall be given to the person alleged to be incapacitated as the court may order and post appointment notice of any appointment is given to the person alleged to be incapacitated and those named in the petition for appointment of guardian stating further that any such person may move to vacate the order of the court or request that the court take any other appropriate action on the matter, and on said motion to vacate.  The court shall hear said motion as a de novo matter, as expeditiously as possible.  A certificate stating that such notice has been given shall be filed with the court within 7 days following the appointment.  Upon failure to file such certificate the court may on its own motion vacate said order.
(e)  In the event that any person to whom notice is required is of parts unknown, such notice shall be delivered or mailed to that person's last known address, and the fact of such delivery or mailing shall be recited in the certificate of notice.
(f)  Appointment of a temporary guardian, with or without notice, is not a final determination of a person's incapacity.
(g)  The court may remove a temporary guardian at any time.  A temporary guardian shall make any report the court requires.  In other respects the provisions of parts 1, 2, 3 and 4 of this article concerning guardians apply to temporary guardians.
Section 5-309.  [Powers, Duties, Rights and Immunities of Guardians, Limitations.]
(a) Except as limited pursuant to section 5-306(c), a guardian of an incapacitated person shall make decisions regarding the incapacitated person's support, care, education, health and welfare, but a guardian is not personally liable for the incapacitated person's expenses and is not liable to third persons by reason of that relationship for acts of the incapacitated person.  A guardian shall exercise authority only as necessitated by the incapacitated person's mental and adaptive limitations, and, to the extent possible, shall encourage the incapacitated person to participate in decisions, to act on his own behalf, and to develop or regain the capacity to manage personal affairs.  A guardian, to the extent known, shall consider the expressed desires and personal values of the incapacitated person when making decisions, and shall otherwise act in the incapacitated person's best interest and exercise reasonable care, diligence, and prudence.  A guardian shall immediately notify the court if the incapacitated person's condition has changed so that he or she is capable of exercising rights previously limited.  In addition, a guardian has the duties, powers and responsibilities of a guardian of a minor as described in section 5-209(b), (c), (d) and (e).
(b)  A guardian shall report in writing the condition of the incapacitated person and account for funds and other assets subject to the guardian's possession or control within 60 days following appointment, at least annually thereafter, and when otherwise ordered by the court.  A report shall briefly state:
(1)  the current mental, physical and social condition of the incapacitated person;
(2)  the living arrangements for all addresses of the incapacitated person during the reporting period;
(3)  the medical, educational, vocational and other services provided to the incapacitated person and the guardian's opinion as to the adequacy of the incapacitated person's care;
(4)  a summary of the guardian's visits with and activities on the incapacitated person's behalf and the extent to which the incapacitated person participated in decision-making;
(5)  if the incapacitated person is institutionalized, whether the guardian considers the current treatment or habilitation plan to be in the incapacitated person's best interests;
(6)  plans regarding future care; and
(7)  a recommendation as to the need for continued guardianship and any recommended changes in the scope of the guardianship.
(c)  The court shall establish a system for monitoring guardianships, including the filing and review of annual reports.
(d)  The court may appoint a guardian ad litem pursuant to section 1-404 to review a report, to interview the incapacitated person or guardian, and to make such other investigation as the court may direct.
(e)  A guardian, without authorization of the court, may not revoke a health care proxy of which the incapacitated person is the principal.  If a health care proxy is in effect, absent an order of the court to the contrary, a health-care decision of the agent takes precedence over that of a guardian.
(f)  No guardian shall be given the authority under this chapter to admit or commit an incapacitated person to a mental health facility or a mental retardation facility as defined in the regulations of the department of mental health.
(g)  No guardian shall have the authority admit an incapacitated person to a nursing facility except upon a specific finding by the court that such admission is in the incapacitated person's best interest.
Section 5-310.  [Termination of Guardianship for Incapacitated Person.]
The authority and responsibility of a guardian of an incapacitated person terminates upon the death of the guardian or incapacitated person, the determination of incapacity of the guardian, the determination that the person is no longer incapacitated, or upon removal or resignation as provided in section 5-311.  Testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding.  Termination shall not affect a guardian's liability for prior acts or the obligation to report or account for funds and assets of the incapacitated person.
Section 5-311.  [Removal or Resignation of Guardian; Termination of Incapacity.]
(a) On petition of the incapacitated person or any person interested in the incapacitated person's welfare, the court, after notice and hearing, may remove a guardian if the person under guardianship is no longer incapacitated or for other good cause.  On petition of the guardian, the court, after hearing, may accept a resignation.
(b)  The incapacitated person or any person interested in the welfare of the incapacitated person may petition for an order that the person is no longer incapacitated and for termination of the guardianship.  A request for an order may also be made informally to the court.
(c)  Upon removal, resignation, or death of the guardian, or if the guardian is determined to be incapacitated or disabled, the court may appoint a successor guardian and make any other appropriate order.  Before appointing a successor guardian, or ordering that a person's incapacity has terminated, the court shall follow the same procedures to safeguard the rights of the incapacitated person that apply to a petition for appointment of a guardian.
Section 5-312.  [Reserved.]
Section 5-313.  [Religious Freedom of Incapacitated Person.]
It shall be the duty of all guardians appointed under this Article to protect and preserve the incapacitated person's right of freedom of religion and religious practice.
PART 4
MANAGEMENT OF PROPERTY OF PERSONS UNDER DISABILITY AND MINORS
Section 5-401.  [Management of Estate.]
(a) Upon petition and after notice and hearing in accordance with the provisions of this part, the court may appoint a limited or unlimited conservator or make any other protective order for cause as provided in this section.
(b)  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, real property or personal property requiring management or protection that cannot otherwise be provided or has or may have business affairs that may be jeopardized or prevented by minority, or that funds are needed for support and education and that protection is necessary or desirable to obtain or provide money.
(c)  Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a person who is disabled for reasons other than minority if the court determines that:
(1)  the person is unable to manage property and business affairs effectively because of a clinically diagnosed impairment in the ability to receive and evaluate information or make or communicate decisions, even with the use of appropriate technological assistance, or because the individual is detained or otherwise unable to return to the United States; and
(2)  the person has property that will be wasted or dissipated unless management is provided or money is needed for the support, care, and welfare of the person or those entitled to the person's support and that protection is necessary or desirable to obtain or provide money.
Section 5-402.  [Protective Proceedings; Jurisdiction of Business 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; and
(2)  exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of the commonwealth shall be managed, expended, or distributed to or for the use of the protected person, the protected person's dependents, or other claimants.
Section 5-403.  [Reserved.]
Section 5-404.  [Original Petition for Appointment or Protective Order.]
(a) The person to be protected or any person who is interested in the estate, affairs, or welfare of the person, including a parent, guardian, custodian, or any person who would be adversely affected by lack of effective management of the person's property and business affairs may petition for a determination of disability, in whole or in part, and the appointment of a conservator or for other appropriate protective order.
(b)  The petition shall set forth the petitioner's name, residence address, current street address if different, relationship to the person to be protected, and interest in the appointment or other protective order, and, to the extent known, state the following with respect to the person to be protected and the relief requested:
(1)  the name of the person to be protected, his age, principal residence, current street address, and, if different, the address of the dwelling where it is proposed that the person to be protected will reside if the appointment is made, and the date residence was established;
(2)  a brief description of the nature of the alleged incapacity;
(3)  if the petition is being brought because the individual is detained or is otherwise unable to return to the United States, a statement of the relevant circumstances, including the time and nature of the detention or inability to return and a description of any search or inquiry concerning the person's whereabouts;
(4)  the name and address of the person's:
(A)  spouse; and
(B)  adult children, or if none, parents and adult brothers and sisters, or, if none, heirs apparent or presumptive;
(5)  the name and address of the person who has care or custody of the person or with whom the person has resided during the 60 days, exclusive of any period of hospitalization or institutionalization, preceding the  filing of the petition;
(6)  the name and address of any representative payee, trustee or custodian of a trust or custodianship of which the person to be protected is a beneficiary;
(7)  the name and address of any person nominated as conservator by the person to be protected under a durable power of attorney, if known to the petitioner, and the name and address of any guardian or conservator currently acting for him in the commonwealth or elsewhere;
(8)  the name and address of any agent designated under a durable power of attorney of which the person to be protected is the principal, if known to the petitioner, and the petitioner shall attach a copy of any such power of attorney, if available;
(9)  a general statement of the person's property with an estimate of its value, including any insurance, pension, and the source and amount of any anticipated income or receipts;
(10)  the reason why appointment of a conservator or other protective order is in the best interest of the person to be protected;
(11)  a statement:
(A)  that a medical certificate conforming with the provisions of section 5-303(c) dated within 30 days of the filing of the petition is in the possession of the court or accompanies the petition; or
(B)  of the nature of any circumstance which makes it impossible to obtain a medical certificate which shall be supported by affidavit or affidavits meeting the requirements set forth in Massachusetts Rule of Civil Procedure 4.1(h), in which case the court may waive or postpone the requirement of filing of a medical certificate.
(c)  If the appointment of a conservator is requested, the petition shall also set forth to the extent known:
(1)  the name and address of the proposed conservator, his relationship to the person to be protected, the reason why he or she should be selected, and the basis of the claim, if any, for priority for appointment;
(2)  the name and address of any person nominated as conservator by the person to be protected if 14 or more years of age;
(3)  the type of conservatorship requested, and if a general conservatorship, the reason why a limited conservatorship is inappropriate, and if a limited conservatorship, the powers to be granted to the limited conservator or property to be placed under the conservator's control; and
(d)  Reasonable expenses incurred in any examination conducted pursuant to this section shall be paid by the petitioner, the estate of the person to be protected, or by the commonwealth as the court may determine.
Section 5-405.  [Notice.]

(a)  On a petition for appointment of a conservator or other protective order, the requirements for notice described in section 5-304 apply, but (i) if the person to be protected has disappeared or is otherwise situated so as to make personal service of notice impracticable, notice to the person shall be given by leaving a copy of the petition and citation at the last and usual place of abode of the person to be protected, and (ii) if the person to be protected is a minor, the provisions of section 5-206(b) also apply.
(b)  Notice of hearing on a petition for an order subsequent to appointment of a conservator or other protective order shall be given to the protected person, any conservator of the protected person's estate, and any other person as ordered by the court.
Section 5-406.  [Reserved.]
Section 5-407.  [Findings; Order of Appointment; Permissible Court Orders.]
(a) The court shall exercise the authority conferred in this Part to encourage the development of maximum self-reliance and independence of a protected person and make protective orders only to the extent necessitated by the protected person's limitations and other conditions warranting the procedure.
(b)  Upon hearing, the court may appoint a conservator as requested if it finds that:
(1)  a qualified person seeks appointment;
(2)  venue is proper;
(3)  the required notices have been given;
(4)  any required medical certificate is dated and the examination has taken place within 30 days prior to the hearing;
(5)  the person for whom a conservator is sought is a disabled person;
(6)  the appointment is necessary or desirable as a means of providing continuing care and supervision of the property and business affairs of the person to be protected; and
(7)  the person's needs cannot be met by less restrictive means, including use of appropriate technological assistance.
The court, on appropriate findings, may enter any appropriate order or dismiss the proceedings.
(c)  After full 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, after making appropriate findings of fact, has all those powers over the property and business affairs of the minor which are or may be necessary for the best interest of the minor and members of the minor's immediate family.  Those powers include, but are not limited to, the power to create revocable trusts of the property of the estate which may extend beyond the minority of the minor, provided that:
(1)  the court determines that it is in the best interest of the minor to extend the management and protection of the minor's money and property beyond the minor attaining the age of 18;
(2)  the minor and issue of the minor are the only beneficiaries of the trust during the minor's lifetime;
(3)  upon the termination of the trust during the minor's lifetime, the trust property will be distributed only to the minor;
(4)  the ward, upon attaining the age of 18 shall have the inter vivos and testamentary power to appoint to or among such person or persons and in such proportions and upon such terms, whether outright or in trust or otherwise, all or any part of the property of the trust as the minor may determine;
(5)  upon the death of the minor, to the extent that the minor fails to exercise the power to appoint, the trust will provide that the trust property be distributed to or be held in trust for the benefit of such relatives as would be likely recipients of legacies from the minor as determined by the court pursuant to subsection (e).
After full hearing and upon determining that an amendment, extension, or revocation is in the best interest of the minor, the court may amend, extend, or revoke the trust whether or not the minor has attained the age of 18.  The court shall retain jurisdiction over the trust while it continues to exist.
(d)  After full hearing and upon determining that a basis for an appointment or other protective order exists with respect to a person to be protected for reasons other than minority, the court, after making appropriate findings of fact, has all those powers over the property and business affairs of the protected person which are or may be necessary for the best interest of the protected person and members of his immediate family.  Those powers include, but are not limited to the power to:
(1)  make gifts, except as otherwise provided in section 5-424(b);
(2)  convey, release, or disclaim contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entireties;
(3)  exercise or release a power of appointment;
(4)  create a revocable or irrevocable trust of property of the estate, whether the trust does or does not extend beyond the duration of the conservatorship, or to revoke or amend a trust revocable by the protected person;
(5)  exercise rights to elect options and change beneficiaries under insurance policies and annuities or surrender the policies and annuities for their cash value;
(6)  exercise any right to an elective share in the estate of the protected person's deceased spouse and to renounce or disclaim any interest by testate or intestate succession or by transfer inter vivos; and
(7)  make, amend, or revoke the protected person's will.  The conservator, in making, amending, or revoking the protected person's will, shall comply with section 2-502 of this chapter.
(e)  The court, in exercising or in approving a conservator's exercise of the powers listed in subsection (d), shall consider primarily the decision that the protected person would have made if not disabled, to the extent that the decision can be ascertained.  In the absence of any evidence of the personal preference of the protected person, the court shall consider the following factors, and may exercise or approve a conservator's exercise of such powers even in the absence of 1 or more such factors:
(1)  the financial needs of the protected person and the needs of individuals who are dependent on the protected person for support and the interest of creditors;
(2)  reduction of income, estate, inheritance, or other tax liabilities;
(3)  eligibility for governmental assistance;
(4)  the protected person's previous pattern of giving or level of support;
(5)  the existing estate plan;
(6)  the likely recipients of the protected person's bounty;
(7)  the protected person's life expectancy; the probability that the conservatorship will terminate before the protected person's death; and
(8)  any other factors the court considers relevant.
(f)  A determination that a basis for appointment of a conservator or other protective order exists is not a determination of incapacity of the protected person.
(g)  The conservator shall have custody of all wills, codicils and other estate planning documents executed by the protected person.
Section 5-408.  [Protective Arrangements and Single Transactions Authorized.]
(a) Upon petition, after notice as provided in section 5-405 and hearing, and if a basis exists as described in section 5-401 for affecting the property and business affairs of a person, the court, without appointing a conservator, may authorize, direct or ratify any transaction necessary or desirable to achieve any arrangement for security, service, or care meeting the foreseeable needs of the protected person.  Protective arrangements include payment, delivery, deposit, or retention of funds or property; sale, mortgage, lease, or other transfer of tangible or intangible personal property; entry into an annuity contract, a contract for life care, a deposit contract, or a contract for training and education; or addition to or establishment of a suitable trust including a trust created under the uniform custodial trust act.
(b)  Upon petition, after notice as provided in section 5-405 and hearing, and if a basis exists as described in section 5-401 for affecting the property and business 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 property and business affairs, including settlement of a claim, if the court determines that the transaction is in the best interest of the protected person.
(c)  Before approving a protective arrangement or other transaction under this section, the court shall consider the factors listed in section 5-407(e).  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.
Section 5-409.  [Who May Be Appointed Conservator; Priorities.]
(a) Subject to subsection (c), the court may appoint an individual or a corporation with general power to serve as trustee or conservator of the estate of a protected person.  The following are entitled to consideration for appointment in the order listed:
(1)  Unless lack of qualification or other good cause dictates the contrary, a person nominated in the protected person's most recent durable power of attorney;
(2)  a conservator, guardian of property, or other like fiduciary appointed or recognized by an appropriate court of any other jurisdiction in which the protected person resides;
(3)  an individual or corporation nominated by the protected person 14 or more years of age and of sufficient mental capacity to make an intelligent choice;
(4)  an agent appointed by the protected person under a durable power of attorney;
(5)  a parent of the protected person, or any parental nominee; and
(6)  any person deemed appropriate by the court.
(b)  The court, acting in the best interest of the protected person, may pass over a person having priority and appoint a person having a lower priority or no priority.
(c)  An owner, operator, or employee of a long-term care institution at which the protected person is receiving care or a paid caretaker may not be appointed as conservator unless related to the protected person by blood, marriage, or adoption.
Section 5-410.  [Bond.]
(a) A conservator, temporary conservator and special conservator shall furnish a bond conditioned upon faithful discharge of all duties of the trust according to law and containing a statement of acceptance of the duties of the office.  A surety shall be required on the bond of a conservator, except the court may waive the requirement of sureties for good cause shown by the conservator.  A bond with sureties shall be in the amount established by the court.
(b)  Notwithstanding subsection (a), but subject to section 5-415, a conservator shall not be required to furnish sureties on his bond if the conservator has a priority for appointment under section 5-409(a)(1) and the person nominating the conservator expressly waives the requirement.
Section 5-411. [Terms and Requirements of Bonds.]
(a) The following requirements and provisions apply to any bond required under sections 5-208, 5-305 and 5-410:
(1)  Bonds shall name the first judge of the court making the appointment and his successors as obligee for the benefit of the persons interested in the estate and shall be conditioned upon the faithful discharge by the fiduciary of all duties according to law.
(2)  Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the guardian or conservator and with each other.
(3)  By executing an approved bond of a guardian or conservator, the surety consents to the jurisdiction of the court that issued letters to the primary obligor in any proceeding pertaining to the fiduciary duties of the guardian or conservator and naming the surety as a party respondent.  Notice of any proceeding on the bond shall be delivered to the surety or mailed by registered or certified mail to the address listed with the court at the place where the bond is filed and to the address as then known to the petitioner.
(4)  On petition of a successor guardian or conservator or any interested person, a proceeding may be initiated against a surety for breach of the obligation of the bond of the guardian or conservator.
(5)  The bond of the guardian or conservator is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.
(6)  If a new bond is required, the sureties on the prior bond shall be liable for all breaches of the conditions thereof committed before the new bond is approved and filed.
(7)  In no event shall any surety be liable for any claim or cause of action arising out of or in any way connected with acts or omissions of the guardian or conservator occurring prior to the appointment of such person as guardian or conservator.
 (b)  No proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred.
Section 5-412.  [Acceptance of Appointment; Consent to Jurisdiction.]
Prior to receiving letters, a conservator, temporary conservator and special conservator shall accept appointment by filing a bond containing a statement of acceptance of the duties of the office.  By accepting appointment, a conservator submits personally to the jurisdiction of the court in any proceeding relating to the estate which may be instituted by any interested person.  Notice of any proceeding shall be delivered to the conservator or mailed by registered or certified mail to the address as listed in the petition for appointment or as thereafter reported to the court and to the address as then known to the petitioner.
Section 5-412A.  [Emergency Orders; Temporary Conservators.]
(a) While a petition for appointment of a conservator or other protective order is pending and after hearing and without notice to others, the court may make orders to preserve and apply the property of the person to be protected as may be required for the support of the person to be protected or his dependents.
(b)  While a petition for appointment of a conservator is pending, if a person to be protected has no conservator, and the court finds that following the procedures of this article will likely result in substantial harm to the property, income or entitlements of the person to be protected or those entitled to the person's support occurring prior to the return date, and no other person appears to have authority to act in the circumstances, on appropriate motion the court may appoint a temporary conservator having the powers who may exercise only those powers granted in the order.  A motion for appointment of a temporary conservator shall state the nature of the circumstances requiring appointment, the particular harm sought to be avoided, the actions which will be necessary by the temporary conservator to avoid the occurrence of the harm and the name and address of any attorney in fact designated under a durable power of attorney of which the person to be protected is the principal, and the petitioner shall attach a copy of any such durable power of attorney, if available.  Such motion shall be accompanied by an affidavit containing facts supporting the statements and requests in the motion.  The appointment may be for a period of up to 90 days except that upon a finding of extraordinary circumstances set forth in its order, the court may order an appointment for a longer period to a date certain.  The court may for good cause shown extend the appointment for additional 90 day periods.
(c)  If an appointed conservator is not effectively performing duties and the court further finds that the welfare of the person to be protected requires immediate action, it may appoint, with or without notice, a special conservator for the protected person having the powers of a general conservator, except as limited in the letters of appointment.  The authority of any conservator previously appointed by the court is suspended as long as a special conservator has authority.  The appointment may be for a period of up to 90 days except that upon a finding of extraordinary circumstances set forth in its order the court may order an appointment for a longer period to a date certain.  The court may for good cause shown extend the appointment for additional 90 day periods.
(d)  The petitioner shall give written notice 7 days prior to any hearing for the appointment of a temporary conservator in hand to the person to be protected and by delivery or by mail to all persons named in the petition for appointment of conservator.  A certificate that such notice has been given, setting forth the names and addresses of those to whom notice has been given, shall be prima facie evidence thereof.
(e)  If the court determines that an immediate emergency situation exists which requires the immediate appointment of a temporary conservator, it may shorten or waive the notice requirements in whole or in part and grant the motion, provided, however, that prior notice shall be given to the person to be protected as the court may order and post-appointment notice of any appointment is given to the person to be protected and those named in the petition for appointment of conservator stating further that any such person may move to vacate the order of the court or request that the court take any other appropriate action on the matter, and on said motion to vacate, the court shall hear said motion as a de novo matter, as expeditiously as possible.  A certificate stating that such notice has been given shall be filed with the court within 7 days following the appointment.  Upon failure to file such certificate the court may on its own motion vacate said order.
(f)  In the event that any person to whom notice is required is of parts unknown, such notice shall be delivered or mailed to that person's last known address, and the fact of such delivery or mailing shall be recited in the certificate of notice.
(g)  Appointment of a temporary conservator, with or without notice, is not a determination of a persons incapacity or disability.
(h)  The court may remove a temporary or special conservator at any time.  A temporary conservator and a special conservator shall make any report the court requires.  In other respects the provisions of parts 1, 2, 3 and 4 of this article concerning conservators apply to temporary and special conservators.
Section 5-413.  [Compensation and Expenses.]
If not otherwise compensated for services rendered, any guardian ad litem, attorney, physician, licensed psychologist, clinical team, guardian, special guardian, temporary guardian, conservator, temporary conservator or special conservator appointed in a protective proceeding and any attorney whose services resulted in a protective order or in an order that was beneficial to a protected person's estate is entitled to reasonable compensation from the estate.  Compensation may be paid and expenses reimbursed without court order, but, if the court later determines that the compensation is excessive or the expenses are inappropriate, the excessive or inappropriate amount shall be repaid to the estate on such terms as the court may order, including, but not limited to, costs, interest and attorney fees.  The court may order that such compensation be paid by the petitioner.
Section 5-414.  [Reserved.]
Section 5-415.  [Petitions for Orders Subsequent to Appointment.]
(a) 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:
(1)  requiring sureties or collateral or additional sureties or collateral, or reducing bond;
(2)  requiring an inventory or accounting for the administration of the trust;
(3)  directing distribution;
(4)  removing the conservator and appointing a temporary or successor conservator; or
(5)  granting other appropriate relief.
(b)  A conservator may petition the appointing court for instructions concerning fiduciary responsibility.
(c)  Upon notice and hearing, the court may give appropriate instructions or make any appropriate order.
Section 5-416.  [General Duty of Conservator; Plan.]
(a) A conservator, in relation to powers conferred by this part, or implicit in the title acquired by virtue of the proceeding, shall act as a fiduciary and observe the standards of care applicable to trustees as described by chapter 203C.
(b)  A conservator shall exercise authority only as necessitated by the mental and adaptive limitations of the protected person, and to the extent possible, encourage the person to participate in decisions, to act in the person's own behalf, and to develop or regain the ability to manage the person's estate and business affairs.
(c)  The court may order a conservator to file with the appointing court a plan for managing, expending, and distributing the assets of the protected person's estate.  The plan shall be based on the actual needs of the person and take into consideration the best interest of the person.  The conservator shall include in the plan steps to develop or restore the person's ability to manage the person's property, an estimate of the duration of the conservatorship, and projections for expenses and resources.
(d)  In investing an estate, selecting assets of the estate for distribution, and invoking powers of revocation or withdrawal available for the use and benefit of the protected person and exercisable by the conservator, a conservator shall take into account any estate plan of the person known to the conservator and may examine the will and any other donative, nominative, or other appointive instrument of the person.
Section 5-417.  [Inventory and Records.]
(a) Within 90 days after qualification, each conservator shall prepare and file with the appointing court a detailed inventory of the estate subject to the conservatorship together with an oath or affirmation that the inventory is believed to be complete and accurate as far as information permits.  The conservator shall provide a copy thereof to the protected person if the person has attained the age of 14 years.  A copy also shall be provided to any guardian or parent with whom the protected person resides.
(b)  The conservator shall keep suitable records of the administration and exhibit the same on request of any interested person.
Section 5-418.  [Accounts.]
(a) Each conservator shall account to the court for administration of the trust not less than annually unless the court directs otherwise, upon resignation or removal and at other times as the court may direct.  On termination of the protected person's minority or disability, a conservator shall account to the court.  Subject to appeal or vacation within the time permitted, an order allowing an intermediate account of a conservator adjudicates as to liabilities of the conservator concerning the matters set forth therein or shown thereby; and an order allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected person or the protected person's successors relating to the conservatorship.
(b)  A conservator or any interested person may petition for an order of complete settlement of an account.  Notice shall be given in the manner prescribed by section 1-401 by the petitioner to all interested persons.
(c)  An account shall state or contain:
(1)  a listing of the balance of the prior account or inventory, receipts, disbursements and distributions during the reporting period and the assets of the estate under the conservator's control at the end of the reporting period;
(2)  a listing of the services provided to the protected person; and
(3)  any recommended changes in any conservatorship plan as well as a recommendation as to the continued need for conservatorship and any recommended changes in the scope of the conservatorship.
(d)  If there are persons interested to whom notice has not been given, or if the interests of persons incapacitated or under disability are not represented except by the accountant, the court shall appoint as guardian ad litem an individual or any public or charitable agency to review the account and make appropriate recommendations to the court.
(e)  Objections to a conservator's account shall be filed in the manner prescribed by section 1-401.  After the time required for any notice has expired, upon proof of notice, and after any hearing that may be necessary, 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 conservator from further claim or demand of any interested person.
(f)  The court shall establish a system for monitoring of conservatorships, including the filing and review of conservators' accounts and plans.
Section 5-419.  [Conservators; Title By Appointment.]
(a) The appointment of a conservator vests in the conservator title as fiduciary to all property, or to the part thereof specified in the order, of the protected person, held at the time of appointment or thereafter acquired.  An order vesting title to only a part of the property of the protected person creates a conservatorship limited to assets specified in the order.
(b)  Except as otherwise provided herein, the interest of the protected person in property vested in a conservator by this section is not transferable or assignable by the protected person.  An attempted transfer or assignment by the protected person, though ineffective to affect property rights, may generate a claim for restitution or damage.
Section 5-420.  [Recording of Conservator's Letters.]
(a) Letters of conservatorship are evidence of transfer of all assets or the part thereof specified in the letters, of a protected person to the conservator.  An order terminating a conservatorship is evidence of transfer of all assets subjected to the conservatorship from the conservator to the protected person, or to successors of the person.
(b)  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, shall be filed or recorded in each registry district in which the protected person owns real property to give record notice of title as between the conservator and the protected person.
Section 5-421.  [Sale, Encumbrance, or Transaction Involving Conflict of Interest Voidable; Exceptions.]
Any sale or encumbrance to a conservator, the spouse, agent, attorney of a conservator or any corporation, trust, or other organization in which the conservator has a substantial beneficial interest, or any other transaction involving the estate being administered by the conservator which is affected by a substantial conflict between fiduciary and personal interests is voidable unless the transaction is approved by the court after notice as directed by the court.
Section 5-422.  [Persons Dealing With Conservators; Protection.]
(a) A person who in good faith either assists or deals with a conservator for value in any transaction other than those requiring a court order as provided in section 5-407 is protected as if the conservator properly exercised the power.  The fact that a person knowingly deals with a conservator shall not alone require the person to inquire into the existence of a power or the propriety of its exercise, but restrictions on powers of conservators which are endorsed on letters as provided in section 5-425 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.
(b)  The protection expressed in this section extends to any procedural irregularity or jurisdictional defect occurring in proceedings leading to the issuance of letters and is not a substitution for protection provided by comparable provisions of the law relating to commercial transactions or to simplifying transfers of securities by fiduciaries.
Section 5-423.  [Powers of Conservator in Administration.]
(a) Subject to limitation provided in section 5-425, a conservator has all of the powers conferred in this section and any additional powers conferred by law.
(b)  A conservator without court authorization or confirmation, may invest and reinvest funds of the estate as would a trustee.
(c)  A conservator, acting reasonably in efforts to accomplish the purpose of the appointment, may act without court authorization or confirmation, to
(1)  collect, hold, and retain assets of the estate including land in this or another state, until judging that disposition of the assets should be made, and the assets may be retained even though they include an asset in which the conservator is personally interested;
(2)  receive additions to the estate;
(3)  continue or participate in the operation of any business or other enterprise;
(4)  acquire an undivided interest in an estate asset in which the conservator, in any fiduciary capacity, holds an undivided interest;
(5)  invest and reinvest estate assets in accordance with subsection (b);
(6)  deposit estate funds in a state or federally insured financial institution, including one operated by the conservator, not in excess of $100,000, or such other amount as is protected by federal or state insurance, in any single institution;
(7)  dispose of tangible and intangible personal property for cash or on credit, at public or private sale;
(8)  subject to court approval, acquire estate assets, including land in this or another state at public or private sale, and lease, manage, develop, improve, exchange, change the character of, or abandon an estate asset;
(9)  subject to court approval, make repairs or alterations in buildings or other structures; demolish any structures; and raze existing or erect new party walls or buildings;
(10)  subject to court approval, subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation by giving or receiving considerations; and dedicate easements to public use without consideration;
(11)  subject to court approval, enter for any purpose into a lease as lessor or lessee or renew for a term within or extending beyond the term of the conservatorship;
(12)  subject to court approval, enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;
(13)  subject to court approval, grant an option involving disposition of an estate asset and take an option for the acquisition of any asset;
(14)  vote a security, in person or by general or limited proxy;
(15)  pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;
(16)  sell or exercise stock-subscription or conversion rights;
(17)  consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;
(18)  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;
(19)  insure the assets of the estate against damage or loss and the conservator against liability with respect to third persons;
(20)  borrow money to be repaid from estate assets or otherwise; 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, for which the conservator has a lien on the estate as against the protected person for advances so made;
(21)  pay or contest any claim; settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise; and release, in whole or in part, any claim belonging to the estate to the extent the claim is uncollectible;
(22)  pay taxes, assessments, compensation of the conservator, and other expenses incurred in the collection, care, administration, and protection of the estate;
(23)  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;
(24)  pay any sum distributable to a protected person or individual who is dependent on the protected person by paying the sum to the distributee or by paying the sum for the use of the distributee:
(A)  to the guardian of the distributee;
(B)  to a distributee's custodian under the uniform transfers to minors act or custodial trustee under the uniform custodial trust act; or
(C)  if there is no guardian, custodian or custodial trustee, to a relative or other person having custody of the distributee;
(25)  employ persons, including attorneys, auditors, investment advisors, or agents, even though they are associated with the conservator, to advise or assist in the performance of administrative duties; act upon their recommendation without independent investigation;
(26)  commence, prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of fiduciary duties;
(27)  make funeral and burial arrangements and enter into pre-paid funeral contracts;
(28)  resign the office of fiduciary held by the protected or incapacitated or person pursuant to any court appointment or written instrument; and
(29)  execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the conservator.
(c)  A conservator may not sell, mortgage or grant options in real estate, except as provided in chapter 202.
Section 5-423A.  [Delegation.]
(a) A conservator may not delegate to an agent or another conservator the entire administration of the estate, but a conservator may otherwise delegate the management of investments that a prudent conservator of comparable skills may delegate under similar circumstances.
(b)  The conservator shall exercise reasonable care, skill, and caution in:
(1)  selecting an agent;
(2)  establishing the scope and terms of a delegation, consistent with the purposes and terms of the conservatorship; and
(3)  periodically reviewing an agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.
(c)  In performing a delegated function, an agent owes a duty to the estate to exercise reasonable care to comply with the terms of the delegation.
(d)  A conservator who complies with subsections (a)  and (b)  is not liable to the protected person or to the estate for the decisions or actions of the agent to whom a function was delegated.
(e)  By accepting a delegation from a conservator subject to the law of the commonwealth, an agent submits to the jurisdiction of the courts of the commonwealth.
Section 5-424.  [Distributive Duties and Powers of Conservator.]
(a) Unless otherwise specified in the order of appointment and endorsed on the letters of appointment or contrary to the plan filed pursuant to section 5-416, 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 dependents in accordance with the following principles:
(1)  The conservator shall consider recommendations relating to the appropriate standard of support, education, and benefit for the protected person or dependent made by a parent or guardian, if any.  The conservator may not be surcharged for sums paid to persons or organizations furnishing support, education, or care to the protected person or a dependent pursuant to the recommendations of a parent or guardian of the protected person unless the conservator knows that the parent or guardian derives undue or disproportionate personal financial benefit therefrom, including relief from any personal duty of support or the recommendations are clearly not in the best interest of the protected person.
(2)  The conservator shall expend or distribute sums reasonably necessary for the support, education, care, or benefit of the protected person and dependents with due regard to (i)  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 be wholly self-sufficient and able to manage business affairs and the estate; (ii)  the accustomed standard of living of the protected person and dependents; and (iii)  other funds or sources used for the support of the protected person.
(3)  The conservator may expend funds of the estate for the support, funeral expenses and burial expenses 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.
(4)  Funds expended under this subsection may be paid by the conservator to any person, including the protected person, to reimburse for expenditures that the conservator might have made, or in advance for services to be rendered to the protected person if it is reasonable to expect the services will be performed and advance payments are customary or reasonably necessary under the circumstances.
(5)  A conservator, in discharging the responsibilities conferred by court order and this part, shall implement the principles described in section 5-407(a), to the extent possible.
(b)  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 persons which the protected person has expressed an intent to benefit, in amounts that do not exceed in total for any year 10 per cent of the income from the estate.
(c)  When a minor who has not been adjudged disabled under section 5-401(c) attains majority, the conservator, after meeting all claims and expenses of administration, shall pay over and distribute all funds and properties to the formerly protected person as soon as possible.
(d)  If satisfied that a protected person's disability, other than minority, has ceased, the conservator, after meeting all claims and expenses of administration, shall pay over and distribute all funds and properties to the formerly protected person as soon as possible.
(e)  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 the conservator's possession, inform the personal representative or beneficiary named therein of the delivery, and retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled thereto.  If, 40 days after 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 in order to be able to proceed to administer and distribute the decedent's estate.  Upon application for an order granting the powers of a personal representative to a conservator, after notice to any person nominated personal representative by any will of which the applicant is aware, the court may grant the application 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 has the effect of an order of appointment of a personal representative as provided in section 3-308 and parts 6 to 10, inclusive, of article III, but the estate in the name of the conservator, after administration, may be distributed to the decedent's successors without prior re-transfer to the conservator as personal representative.
Section 5-425.  [Enlargement or Limitation of Powers of Conservator.]
Subject to the restrictions in section 5-407(c), the court may confer on a conservator at the time of appointment or later, in addition to the powers conferred by sections 5-423 and 5-424, any power that the court itself could exercise under sections 5-407(c) and 5-407(d).  The court, at the time of appointment or later, may limit the powers of a conservator otherwise conferred by sections 5-423 and 5-424 or previously conferred by the court and may at any time remove or modify any limitation.  If the court limits any power conferred on the conservator by section 5-423 or section 5-424, or specifies, as provided in section 5-419(a), that title to some but not all assets of the protected person vest in the conservator, the limitation or specification of assets subject to the conservatorship shall be endorsed upon the letters of appointment.
Section 5-426.  [Preservation of Estate Plan; Right to Examine.]
In (i) investing the estate, (ii) selecting assets of the estate for distribution under subsections (a) and (b) of section 5-424, and (iii) 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 shall take into account any estate plan of the protected person known to them, including a will, any revocable trust of which the person is settlor, and any contract, transfer, or joint ownership arrangement originated by the protected person with provisions for payment or transfer of benefits or interests at the person's death to another or others.
Section 5-427.  [Claims Against Protected Person.]
A conservator may pay or secure from the estate claims against the estate or against the protected person arising before or after the conservatorship.
Section 5-428.  [Personal Liability of Conservator.]
(a) Unless otherwise provided in the contract, a conservator is not personally liable on a contract properly entered into in fiduciary capacity in the course of administration of the estate unless the conservator fails to reveal the representative capacity and identify the estate in the contract.
(b)  The conservator is not personally liable unless the conservator is personally at fault for either (i) obligations arising from ownership or control of property of the estate, or (ii) torts committed in the course of administration of the estate.
(c)  Claims based on (i) contracts entered into by a conservator in fiduciary capacity, (ii) obligations arising from ownership or control of the estate, or (iii) torts committed in the course of administration of the estate, may be asserted against the estate by proceeding against the conservator in fiduciary capacity, whether or not the conservator is personally liable therefor.
(d)  Any question of liability between the estate and the conservator personally may be determined in a proceeding for accounting, surcharge, or indemnification, or other appropriate proceeding or action.
Section 5-429.  [Removal or Resignation of Conservator; Termination of Disability; Termination of Proceedings.]
(a) On petition of the protected person or any person interested in the protected person's welfare, the court, after notice and hearing, may remove a conservator if the person under conservatorship is no longer disabled or for other good cause.  On petition of the conservator, the court, after hearing, may accept a resignation.
(b)  An order adjudicating disability may specify a minimum period, not exceeding 6 months, during which a petition for an adjudication that the protected person is no longer incapacitated may not be filed without special leave.  Subject to that restriction, the protected person or any person interested in the welfare of the protected person may petition for an order that the person is no longer disabled and for termination of the conservatorship.  A request for an order may also be made informally to the court and any person who knowingly interferes with transmission of the request may be adjudged guilty of contempt of court.
(c)  Upon removal, resignation, or death of the conservator, or if the conservator is determined to be incapacitated or disabled, the court may appoint a successor conservator and make any other appropriate order.  Before appointing a successor conservator, or ordering that a person's disability has terminated, the court shall follow the same procedures to safeguard the rights of the protected person that apply to a petition for appointment of a conservator.
(d)  A conservatorship terminates upon the death of the protected person or upon order of the court.
(e)  Upon the death of a protected person, the conservator shall conclude the administration of the estate by distribution to the person's successors.  The conservator shall file a final accounting and petition for discharge within 30 days after distribution.
(f)  Unless created for reasons other than minority, a conservatorship created for a minor terminates when the protected person attains majority or is emancipated.
(g)  On petition of a protected person, a conservator, or another person interested in a protected person's welfare, the court may terminate the conservatorship if the protected person no longer needs the assistance or protection of a conservator.  Termination of the conservatorship shall not affect a conservator's liability for previous acts or the obligation to account for funds and assets of the protected person.
(h)  Upon termination of a conservatorship and whether or not formally distributed by the conservator, title to assets of the estate passes to the formerly protected person or the person's successors.  The order of termination shall provide for expenses of administration and direct the conservator to execute appropriate instruments to evidence the transfer of title or confirm a distribution previously made and to file a final accounting and a petition for discharge upon approval of the final accounting.
(i)  The court shall enter a final order of discharge upon the approval of the final accounting and satisfaction by the conservator of any other conditions placed by the court on the conservator's discharge.
Section 5-430.  [Payment of Debt and Delivery of Property to Foreign Conservator without Local Proceedings.]
(a) 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 it to a conservator, guardian of the estate, or other like fiduciary appointed by a court of the state of residence of the protected person upon being presented with proof of appointment and an affidavit made by or on behalf of the fiduciary stating:
(1)  that no protective proceeding relating to the protected person is pending in the commonwealth; and
(2)  that the foreign fiduciary is entitled to payment or to receive delivery.
(b)  If the person to whom the affidavit is presented is not aware of any protective proceeding pending in the commonwealth, payment or delivery in response to the demand and affidavit discharges the debtor or possessor.
Section 5-431.  [Foreign Conservator; Proof of Authority; Bond; Powers.]
(a) If a conservator has not been appointed in the commonwealth and no petition in a protective proceeding is pending in the commonwealth, a conservator appointed in the state in which the protected person resides may file in a court of the commonwealth in a county in which property belonging to the protected person is located, authenticated copies of letters of appointment and of any bond.  Thereafter, the domiciliary foreign conservator may exercise as to assets in the commonwealth all powers of a conservator appointed in the commonwealth and may maintain actions and proceedings in the commonwealth subject to any conditions imposed upon non-resident parties generally.
(b)  If a ward, incapacitated or protected person removes from or resides out of the commonwealth, a guardian or conservator appointed within the commonwealth may transfer and pay over the whole or any part of the personal property of such person to a guardian, conservator, trustee or committee or other official appointed by competent authority in the state or country where such person resides, upon such terms and such manner as the court by which he or she was appointed may, after notice to all parties interested, order upon petition filed therefor.
PART 5
DURABLE POWER OF ATTORNEY
Section 5-501.  [Definition.]
(a) A durable power of attorney is a power of attorney by which a principal designates another his attorney in fact in writing and the writing contains the words “This power of attorney shall not be affected by subsequent disability or incapacity of the principal, or lapse of time,” or “This power of attorney shall become effective upon the disability or incapacity of the principal,” or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incapacity, and, unless it states a time of termination, notwithstanding the lapse of time since the execution of the instrument.
(b)  References in this part to the disability or incapacity of the principal shall mean the mental illness or other disability of the principal recognized under the General Laws.
Section 5-502.  [Durable Power of Attorney Not Affected By Lapse of Time, Disability or Incapacity.]
All acts done by an attorney in fact pursuant to a durable power of attorney during any period of disability or incapacity of the principal have the same effect and inure to the benefit of and bind the principal and his successors in interest as if the principal were competent and not disabled.  Unless the instrument states a time of termination, the power is exercisable notwithstanding the lapse of time since the execution of the instrument.
Section 5-503.  [Relation of Attorney in Fact to Court-appointed Fiduciary.]
(a) If, following execution of a durable power of attorney, a court of the principal's domicile appoints a conservator, guardian of the estate, or other fiduciary charged with the management of all of the principal's property or all of his property except specified exclusions, the attorney in fact is accountable to the fiduciary as well as to the principal.  The fiduciary has the same power to revoke or amend the power of attorney that the principal would have had if such principal were not disabled or incapacitated.
(b)  A principal may nominate, by a durable power of attorney, the conservator, or guardian of the person for consideration by the court if protective proceedings for the principal's person or estate are thereafter commenced.  A principal may in a nomination of a conservator or guardian request that sureties on any bond of a conservator or guardian be waived.  The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification.
Section 5-504.  [Power of Attorney Not Revoked Until Notice.]
(a) The death of a principal who has executed a written power of attorney, durable or otherwise, shall not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the death of the principal, acts in good faith under the power.  Any action so taken, unless otherwise invalid or unenforceable, binds successors in interest of the principal.
(b)  The disability or incapacity of a principal who has previously executed a written power of attorney that is not a durable power shall not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power.  Any action so taken, unless otherwise invalid or unenforceable, binds the principal and his successors in interest.
Section 5-505.  [Proof of Continuance of Durable and Other Powers of Attorney by Affidavit.]
As to acts undertaken in good faith reliance thereon, an affidavit executed by the attorney in fact under a power of attorney, durable or otherwise, stating that he did not have at the time of exercise of the power actual knowledge of the termination of the power by revocation or of the principal's death, disability, or incapacity is conclusive proof of the nonrevocation or nontermination of the power at that time.  If the exercise of the power of attorney requires execution and delivery of any instrument that is recordable, the affidavit when authenticated for record is likewise recordable.  This section shall not affect any provision in a power of attorney for its termination by expiration of time or occurrence of an event other than express revocation or a change in the principal's capacity.
Section 5-506.  [Enforcement.]

The attorney in fact under a durable power of attorney is authorized to prosecute legal action for damages in behalf of the principal in the event of an unreasonable refusal of a third party to honor the authority of a valid durable power of attorney.
Section 5-507.  [Protection; Third Parties.]
No third party acting in good faith reliance on a durable power of attorney shall be held liable for action taken in such reliance.
ARTICLE VI
NONPROBATE TRANSFERS ON DEATH
PART 1
PROVISIONS RELATING TO EFFECT OF DEATH
Section 6‑101.  [Nonprobate Transfers on Death.]
(a) A provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage promissory note, certificated or uncertificated security, account, agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, conveyance, deed of gift, marital property agreement, or any other written instrument effective as a contract, gift, conveyance or trust, is nontestamentary.
(b)  This subsection includes a written provision that:
(1)  money or other benefits or property due to, controlled by, or owned by a decedent before death shall be paid after the decedent's death to a person whom the decedent designates either in the instrument or in a separate writing, including a will, executed either before, after, or at the same time as the instrument if:
(i)  the original document specifically provides for disposition in accordance with the later instrument; or
    (ii)  the later instrument has independent significance such as a contract, gift, conveyance, trust or will.
(2)  money due or to become due under the instrument ceases to be payable in the event of death of the promisee or the promisor before payment or demand.
(c)  This section shall not limit rights of creditors under other laws of the commonwealth.
PART 2
MULTIPLE‑PERSON ACCOUNTS
SUBPART 1
DEFINITIONS AND GENERAL PROVISIONS
Section 6‑201 to 6-206.  [Reserved]

SUBPART 2
OWNERSHIP AS BETWEEN PARTIES AND OTHERS
Section 6‑211 to 6-216.  [Reserved]

SUBPART 3
PROTECTION OF FINANCIAL INSTITUTIONS
Section 6‑221 to 6-227.  [Reserved]

PART 3
UNIFORM TOD SECURITY REGISTRATION ACT
Section 6‑301.  [Definitions.]
In this part:
(1)  “Beneficiary form”, a registration of a security which indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.
(2)  “Register”, including its derivatives, is to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.
(3)  “Registering entity”, a person who originates or transfers a security title by registration, and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.
(4)  “Security”, has the same meaning as provided in clause (k) of section 401 of chapter 110A and includes a security account.
(5)  “Security account”, (i) a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death, or (ii) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.
Section 6‑302.  [Registration in Beneficiary Form; Sole or Joint Tenancy Ownership.]
Only individuals whose registration of a security shows sole ownership by 1 individual or multiple ownership by 2 or more with rights of survivorship, rather than as tenants in common, may obtain registration in beneficiary form.  Multiple owners of a security registered in beneficiary form hold as joint tenants with rights of survivorship, or as tenants by the entireties, and not as tenants in common.
Section 6‑303.  [Registration in Beneficiary Form; Applicable Law.]
A security may be registered in beneficiary form if the form is authorized by this part or a similar law of the state of organization of the issuer or registering entity, the location of the registering entity's principal office, the office of its transfer agent or its office making the registration, or by this part or a similar law of the state listed as the owner's address at the time of registration.  A registration governed by the law of a jurisdiction in which this part or similar law is not in force or was not in force when a registration in beneficiary form was made is nevertheless presumed to be valid and authorized as a matter of contract law.
Section 6‑304.  [Origination of Registration in Beneficiary Form.]
A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners.
Section 6‑305.  [Form of Registration in Beneficiary Form.]
Registration in beneficiary form may be shown by the words “transfer on death” or the abbreviation “TOD”, or by the words “pay on death” or the abbreviation “POD”, after the name of the registered owner and before the name of a beneficiary.
Section 6‑306.  [Effect of Registration in Beneficiary Form.]
The designation of a transfer on death beneficiary on a registration in beneficiary form shall have no effect on ownership until the owner's death.  A registration of a security in beneficiary form may be canceled or changed at any time by the sole owner or all surviving owners without the consent of the beneficiary.
Section 6‑307.  [Ownership on Death of Owner.]
On death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners.  On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survived the death of all owners.  Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common.  If no beneficiary survives the death of all owners, and if no anti-lapse statute applies, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners.
Section 6‑308.  [Protection of Registering Entity.]
(a) A registering entity is not required to offer or to accept a request for security registration in beneficiary form.  If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by this part.
(b)  By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on death of the deceased owner as provided in this part.
(c)  A registering entity is discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner if it registers a transfer of the security in accordance with section 6‑307 and does so in good faith reliance (i) on the registration, (ii) on this part, and (iii) on information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representatives, or other information available to the registering entity.  The protections of this part shall not extend to a reregistration or payment made after a registering entity has received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form.  No other notice or other information available to the registering entity shall affect its right to protection under this part.
(d)  The protection provided by this part to the registering entity of a security shall not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds.
Section 6‑309.  [Nontestamentary Transfer on Death.]
(a) A transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and this part and is not testamentary.
(b)  This part shall not limit the rights of creditors of security owners against beneficiaries and other transferees under other laws of the commonwealth.
Section 6‑310.  [Terms, Conditions, and Forms for Registration.]
(a) A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests (i) for registrations in beneficiary form, and (ii) for implementation of registrations in beneficiary form, including requests for cancellation of previously registered transfer on death beneficiary designations and requests for reregistration to effect a change of beneficiary.  The terms and conditions so established may provide for proving death, avoiding or resolving any problems concerning fractional shares, designating primary and contingent beneficiaries, and substituting a named beneficiary's descendants to take in the place of the named beneficiary in the event of the beneficiary's death.  Substitution may be indicated by appending to the name of the primary beneficiary the letters LDPS, standing for “lineal descendants per stirpes.”  This designation substitutes a deceased beneficiary's descendants who survive the owner for a beneficiary who fails to so survive, the descendants to be identified and to share in accordance with the law of the beneficiary's domicile at the owner's death governing inheritance by descendants of an intestate.  Other forms of identifying beneficiaries who are to take on 1 or more contingencies, and rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form, may be contained in a registering entity's terms and conditions.
(b)  The following are examples of registrations in beneficiary form which a registering entity may authorize:
(1)  Sole owner‑sole beneficiary: John S Brown TOD (or POD) John S Brown Jr.
(2)  Multiple owners‑sole beneficiary: John S Brown Mary B Brown JT TEN TOD John S Brown Jr.
(3)  Multiple owners‑primary and secondary (substituted) beneficiaries: (example 1) John S Brown Mary B Brown JT TEN TOD John S Brown Jr SUB BENE Peter Q Brown (example 2) John S Brown Mary B Brown JT TEN TOD John S Brown Jr LDPS.
Section 6‑311.  [Rights of Creditors and Others.]
(a) If other assets of the estate are insufficient, a transfer resulting from registration under this part shall not be effective against the estate of a deceased party to the extent needed to pay claims against the estate and statutory allowances to the surviving spouse and children.
(b)  A surviving party or beneficiary who receives payment of a security registered in accordance with this part shall be liable to account to the personal representative of the decedent for a proportionate share of the amount received to which the decedent, immediately before death, was beneficially entitled to the extent necessary to discharge the claims and allowances described in subsection (a) remaining unpaid after application of the decedent's estate.  A proceeding to assert the liability may not be commenced unless a claim is presented pursuant to section 3-804, or the personal representative has received a written demand for statutory allowance by the surviving spouse, a child, or a person acting for a child of the decedent.  The proceeding shall be commenced within 1 year after death of the decedent.  Sums recovered by the personal representative shall be administered as part of the decedent's estate.
(c)  A personal representative, surviving party or beneficiary against whom a proceeding is brought may join as a party to the proceeding a surviving party or beneficiary of this or of any other security of the decedent.
ARTICLE VII
TRUST ADMINISTRATION
PART 1
SITUS OF TRUSTS
Section 7‑101.  [Principal Place of Administration.]
A trust shall be subject to the jurisdiction of the court of the commonwealth for the county in which is located its principal place of administration.  The principal place of administration of a testamentary trust shall be deemed to be the location of the court of the commonwealth in which the will creating the trust was granted informal or formal probate.  Unless otherwise designated in the trust instrument, the principal place of administration of an inter vivos 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 the trustee 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 1 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 1 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.
Section 7-102.  [Reserved.]
Section 7‑103.  [Effect of Trusteeship.]
(a) By accepting the trusteeship of a trust, the trustee submits personally to the jurisdiction of the court in any proceeding under section 7‑201 of this code relating to the trust that may be initiated by any interested person.  Notice of any proceeding shall be delivered to the trustee, or mailed to the trustee by ordinary first class mail at the trustee's address as reported to the court and to the trustee's address as then known to the petitioner.
(b)  To the extent of their interests in the trust, all beneficiaries of a trust administered in the commonwealth are subject to the jurisdiction of the court of the commonwealth for the county in which is located the principal place of administration of the trust, for the purposes of proceedings under section 7‑201, provided notice is given pursuant to section 1‑401.
Section 7-104.  [Reserved.]
Section 7‑105.  [Qualification of Foreign Trustee.]
A foreign corporate trustee is required to qualify as a foreign corporation doing business in the commonwealth if it maintains the principal place of administration of any trust within the commonwealth.  A foreign co‑trustee is not required to qualify in the commonwealth solely because its co‑trustee maintains the principal place of administration in the commonwealth.  Unless otherwise doing business in the commonwealth, local qualification by a foreign trustee, corporate or individual, is not required in order for the trustee to receive distribution from a local estate, to hold, invest in, manage or acquire property located in the commonwealth, or to maintain litigation.  Nothing in this section affects a determination of what other acts require qualification as doing business in the commonwealth.
PART 2
JURISDICTION OF COURT CONCERNING TRUSTS
Section 7‑201.  [Court; Jurisdiction of Trusts.]
(a) The court has jurisdiction of proceedings initiated by interested parties concerning the internal affairs of testamentary and inter vivos 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 trusts.  These include, but are not limited to, proceedings:
(1)  to appoint or remove a trustee;
(2)  to review trustees' fees and to review and settle interim or final accounts; and
(3)  to ascertain beneficiaries, to determine any question arising in the administration or distribution of any trust including questions of construction of trust instruments, to instruct trustees, to authorize the sale of real or personal property, to order the consolidation or the termination and distribution of uneconomic trusts, to authorize compromise of controversies affecting trusts under the procedure described in sections 3-1101 and 3-1102, and to determine the existence or nonexistence of any immunity, power, privilege, duty or right.
(b)  Neither accepting trusteeship of a testamentary or inter vivos trust nor a proceeding under this section results 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 court as invoked by interested parties or as otherwise exercised as provided by law.
Section 7‑202.  [Trust Proceedings; Venue.]
Venue for proceedings under section 7‑201 involving trusts in the commonwealth is in the principal place of administration of the trust, and otherwise by the rules of civil procedure.
Section 7‑203.  [Trust Proceedings; Dismissal of Matters Relating to Foreign Trusts.]
The court will not, over the objection of a party, entertain proceedings under section 7‑201 involving a trust registered or having its principal place of administration in another state, unless (1) when 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) when the interests of justice otherwise would seriously be impaired.  The 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 court may grant a continuance or enter any other appropriate order.
Section 7‑204.  [Reserved]
Section 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 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 the trustee's own services.  Any person who has received excessive compensation from a trust may be ordered to make appropriate refunds.
Section 7‑206.  [Trust Proceedings; Initiation by Notice; Necessary Parties.]
Proceedings under section 7‑201 are initiated by filing a petition in the court and giving notice pursuant to section 1‑401 to interested parties.  The 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
DUTIES AND LIABILITIES OF TRUSTEES
Section 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 shall not be altered by this code.
Section 7‑302.  [Reserved.]
Section 7‑303.  [Duty to Inform and Account to Beneficiaries.]
The trustee shall keep the donor of a revocable trust and the beneficiaries of an irrevocable trust reasonably informed of the trust and its administration.  In addition, unless the trust is revocable:

    (a)  Within 30 days after his acceptance of the trust or the trust becomes irrevocable, whichever is later, the trustee shall inform in writing the current beneficiaries and if possible, 1 or more persons who under section 1‑403 may represent beneficiaries with future interests, of the court having jurisdiction over the trust and of the trustee's name and address.  The information shall be delivered or sent by ordinary first class mail.
(b)  Upon reasonable request, the trustee shall provide the beneficiary with a copy of the trust and with relevant information about the assets of the trust and the particulars relating to its administration.
(c)  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.
Section 7-304.  [Duty to Provide Bond.]
In the case of a testamentary trust, a trustee shall furnish a bond for the performance of the trustee's fiduciary duties and a surety shall be required unless waived by the terms of the trust, or found by the court to be not necessary to protect the interests of the beneficiaries.  On petition of the trustee or other interested person the 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.  When the instrument creating the trust exempts the trustee from furnishing a bond or limits the amount thereof, or the court determines that the bond is insufficient, the court may if it concludes that a bond be necessary or that a bond of a larger amount is necessary, require the furnishing of such bond.
Section 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 court may enter any order furthering efficient administration and the interests of beneficiaries, including, if appropriate, removal of the trustee and appointment of a trustee in another state or country.  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.
Section 7‑306.  [Personal Liability of Trustee to Third Parties.]
(a) Unless otherwise provided in the contract, a trustee is not personally liable on contracts properly entered into in the trustee's fiduciary capacity in the course of administration of the trust estate unless the trustee fails to reveal his representative capacity and identify the trust estate in the contract.
(b)  A trustee is not personally liable unless the trustee is personally at fault for either (i) obligations arising from ownership or control of property of the trust estate, or (ii) torts committed in the course of administration of the trust estate.
(c)  Claims based on contracts entered into by a trustee in the trustee's 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 a fiduciary capacity, whether or not the trustee is personally liable therefor.
(d)  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.
Section 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 6 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 examination by the beneficiary is protected after 3 years.  A beneficiary is deemed to have received a final account or statement if, being an adult, it is received by the beneficiary personally or if, being a minor or disabled person, it is received by the beneficiary's representative as described in section 1‑403(1)  and (2).
Section 7-308.  [Resignation or Removal of Trustee; Appointment to Fill Vacancy.]
(a) A trustee may resign the office or be removed as provided by the terms of the will or other instrument creating the trust.  Any vacancy caused by such resignation, removal or otherwise may be filled as so provided.
(b)  A trustee may resign the office by filing a written statement of resignation with a petition for permission to resign with the court having jurisdiction of the trust.
(c)  A trustee or any person interested in a trust may at any time petition for removal of a trustee on the ground that removal would be in the best interest of the beneficiaries of the trust or for cause.  Cause for removal exists if it is shown that the trustee has disregarded an order of the court, has become incapacitated or otherwise incapable of discharging the duties of the office, or has mismanaged the property or failed to perform any duty pertaining to the office.
(d)  A trustee or any person interested in a trust may at any time petition for the appointment of a trustee to fill a vacancy which is not filled as provided by the terms of the will or other instrument creating the trust.
(e)  Upon filing of the petition, the court shall fix a time and place for hearing.  Notice shall be given by the petitioner to the trustees, the beneficiaries and to other persons as the court may order.  After notice and hearing, the court may terminate the appointment of a trustee by ordering removal or by accepting the resignation and, if the petition contains a prayer therefor, may appoint a successor trustee to fill the vacancy caused by such resignation, removal or otherwise.
Section 7-309.  [Petition for Transfers of Trust Property Whose Disposition Depends Upon the Death of an Absentee.]
(a)  If a trustee holds trust property the disposition of which depends upon the death of an absentee whose death has not been determined under paragraph (1), (2) or (3) of section 1-107, on or after the day 5 years after the date of the absentee's disappearance the trustee, or any person who would be interested in the trust property were the absentee dead, may petition the court having jurisdiction of the trust for an order that the trust property be disposed of to the persons to whom and in the shares or proportions in which it would be distributed under the provisions of the trust if the absentee had died on that day.
(b)  The court may direct the petitioner to report the results of, or make and report back concerning, a reasonably diligent search for the absentee in any manner that may seem advisable, including any or all of the following methods:
(1)  by inserting in 1 or more suitable periodicals a notice requesting information from any person having knowledge of the whereabouts of the absentee;
(2)  by notifying law enforceable officials, public welfare agencies and registers of deaths in appropriate locations of the disappearance of the absentee;
(3)  by engaging the services of an investigator.
The costs of any search so directed shall be paid from the trust property.
(c)  After any such report directed by the court under paragraph (b) above has been completed to the satisfaction of the court, notice of the hearing on the petition shall be given as provided in section 1-401.
(d)  If after the hearing the court finds that the facts warrant a presumption of death under paragraph (4) of section 1-107, it shall enter an appropriate order of disposition of the trust property and any undistributed net income.
Section 7-310.  [Receipts of Trustees.]
The receipt of a trustee, or of any 1 or more of several trustees, for any money, securities or other personal property or effects payable, transferable or deliverable to him or them under any trust or power shall be a sufficient discharge therefor to the person paying, transferring or delivering it, and no such person shall be bound to see to the application thereof.
Section 7-311.  [Duties of Purchasers.]
A company or corporation, public or private, or quasi corporation, or unincorporated association, or the managers of any trust, or any transfer agent, registrar or other agent of such company, corporation, quasi corporation, unincorporated association or managers, shall not be bound to see to the execution of any trust, express, implied or constructive, to which any of its shares, bonds or securities are subject, or to ascertain or inquire whether the trust authorizes a transfer thereof by the holder, but this section shall not be a protection against liability for participating with actual knowledge in a breach of trust, and the fact that the trust is of record shall not constitute such actual knowledge.
PART 4
POWERS OF FIDUCIARY
Section 7-401.  [Powers of Fiduciary.]
Except as restricted or otherwise provided by the will, deed or other instrument creating a trust or by an order in a formal proceeding, a trustee acting reasonably for the benefit of the interested persons may, without court authorization or confirmation, properly:
(1)  hold and retain property of the trust including land in another state, until judging that disposition of the property should be made, and the property may be retained even though it includes property in which the trustee is personally interested;
(2)  receive additions to the trust from fiduciaries or other sources;
(3)  continue or participate in the operation of any business or other enterprise;
(4)  acquire an undivided interest in property in which the trustee, in any fiduciary capacity, holds an undivided interest;
(5)  invest and reinvest principal and income in any property the trustee determines, and without limiting the generality of the foregoing, invest in (i) shares of an investment company or in shares or undivided portions of any common trust fund established by the trustee and (ii) policies of life or endowment insurance or annuity contracts on the life of any beneficiary of the trust or of any person in whose life such beneficiary has an insurable interest;
(6)  deposit trust funds in a state or federally insured financial institution, including 1 operated by the trustee;
(7)  acquire or dispose of property, including land in another state, for cash or on credit, at public or private sale, and manage, develop, improve, exchange, partition, change the character of, abandon or demolish property;
(8)  make ordinary or extraordinary repairs or alterations in buildings or other structures; demolish any improvements; and raze existing or erect new party walls or buildings;
(9)  subdivide, develop, or dedicate land to public use; adjust boundaries; adjust differences in valuation on exchange or partition by giving or receiving considerations; and dedicate easements to public use without consideration;
(10)  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 trust;
(11)  enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;
(12)  grant an option involving disposition of an estate asset and take an option for the acquisition of any asset;
(13)  vote a security, in person or by general or limited proxy;
(14)  pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;
(15)  sell or exercise stock subscription or conversion rights;
(16)  consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;
(17)  hold uncertificated securities as more fully provided in section 14B of chapter 203;
(18)  insure the property of the trust against damage or loss and the trustee against liability with respect to third persons;
(19)  borrow money with or without security to be repaid from the trust property or otherwise and in connection therewith mortgage or otherwise encumber any property on any conditions the trustee determines even if the term of the loan may extend beyond the term of the trust;
(20)  pay or contest any claim; settle a claim by or against the trust or its property by compromise, arbitration, or otherwise; and release, in whole or in part, any claim belonging to the trust to the extent the claim is uncollectible;
(21)  pay taxes, assessments, compensation of the trustee, and other expenses incurred in the collection, care, administration, and protection of the estate;
(22)  allocate items of income or expense to either income or principal, as permitted or provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties;
(23)  allot in or towards satisfaction of any payment, distribution, or division, in any manner the trustee determines, any property at its then current fair market value;
(24)  hold trusts and shares undivided or at any time hold them or any of them set apart one from another;
(25)  pay any sum distributable to a beneficiary by paying the sum to the beneficiary or by paying the sum for the use of the beneficiary to the guardian, conservator or custodian of the beneficiary or, if none, to a relative or other person having custody of the beneficiary;
(26)  employ persons, including attorneys, auditors, investment advisors, or agents, even though they are associated with the trustee, to advise or assist in the performance of administrative duties; act upon their recommendation without independent investigation, and instead of acting personally, employ agents to perform any act of administration, whether or not discretionary;
(27)  prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of trust property and of the trustee in the performance of fiduciary duties; and
(28)  execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the trustee.
PART 5
STATUTORY CUSTODIANSHIP TRUSTS
Section 7-501.  [Transfer of Property; Statutory Custodianship Trustee; Revocability.]
An adult person may, during his lifetime, transfer any property owned by him, in any manner otherwise consistent with law, to 1 or more named persons designated, in substance, as a “statutory custodianship trustee”.  Such transfer shall be sufficient to create a trust upon the terms set forth in this part 5 as it is in effect at the date of the transfer without any further trust instrument or designation of terms and without appointment or qualification by any court, and shall be complete upon acceptance of the trust by the trustee or trustees manifested in any form.  The trustee or trustees shall serve without giving bond or surety unless the transferor by written instrument, or the court upon the application of any person interested in the estate of the transferor and upon good cause shown, shall provide for a bond.  All transfers in trust under this part 5 shall be revocable by the transferor at any time the transferor has legal capacity by a writing signed by the transferor and delivered to the person, or if more than 1 to any person serving as trustee.
Section 7-502.  [Application of Income and Principal; Accounting by Trustee.]
During the life of the transferor the trustee or trustees shall apply the income and principal, by payment to the transferor or by direct expenditure, as may be necessary for the comfortable and suitable maintenance and support of the transferor and the transferor's family in accordance with the principles applicable to a conservator.  Upon the death of the transferor the remaining property shall be delivered and paid over to the estate of the transferor.  With respect to the property in the trust, except as modified in the instrument of transfer, the trustee or trustees shall have the fiduciary powers provided in section 7-401, and such additional rights and powers as the transferor may provide by written instrument.  The trustee or trustees shall account at least annually to the transferor or to the transferor's guardian or conservator, if any, and after the death of the transferor to the transferor's personal representative.  In the event of the incompetency of the transferor the trustee or trustees may apply to the court in the same manner as a guardian or conservator for authority to deal with property held in trust in any manner in which the court might authorize a guardian or conservator to deal with property of the transferor.
Section 7-503.  [Resignation or Removal of Trustee; Appointment to Fill Vacancy.]
A trustee may resign by an instrument in writing delivered to the transferor or to the transferor's guardian or conservator, if any.  A trustee may be removed by the transferor by an instrument in writing delivered to such trustee.  If there is more one person serving as trustee, a vacancy need not be filled, and until a successor is appointed the remaining trustee or trustees may act alone.  In the event of a vacancy a successor may be appointed by the transferor, if legally competent, or as the transferor shall have provided by a written instrument, and otherwise by the transferor's guardian or conservator, if any, and if none, by the transferor's heirs presumptive, and such appointment shall become effective upon acceptance.
SECTION 10.  Sections 1 to 14, inclusive, and sections 17 to 30, inclusive, of chapter 191 of the General Laws are hereby repealed.
SECTION 11.  Chapter 191A of the General Laws is hereby repealed.
SECTION 12.  Chapter 192 of the General Laws is hereby repealed.
SECTION 13.  Chapter 193 of the General Laws is hereby repealed.
SECTION 14.  Chapter 195 of the General Laws is hereby repealed.
SECTION 15.  Chapter 196 of the General Laws is hereby repealed.
SECTION 16.  Chapter 197 of the General Laws is hereby repealed.
SECTION 17.  Sections 1 to 7, inclusive, of chapter 198 of the General Laws are hereby repealed.
SECTION 18.  Sections 8 to 10, inclusive, of said 198 of the General Laws are hereby repealed.
SECTION 19.  Sections 11 to 33, inclusive, of said chapter 198 of the General Laws are hereby repealed.
SECTION 20.  Chapter 199A of the General Laws is hereby repealed.
SECTION 21.  Chapter 201 of the General Laws is hereby repealed.
SECTION 22.  Chapter 201B of the General Laws is hereby repealed.
SECTION 23.  Chapter 201C of the General Laws is hereby repealed.
SECTION 24.  Chapter 201E of the General Laws is hereby repealed.
SECTION 25.  Section 3B of chapter 203 of the General Laws is hereby repealed.
SECTION 26.  Sections 5 to 14A, inclusive, of said chapter 203 are hereby repealed.
SECTION 27.  Sections 15 to 39, inclusive, of chapter 203 are hereby repealed.
SECTION 28.  Sections 3 and 3A of chapter 204 of the General Laws are hereby repealed.
SECTION 29.  Sections 13 to 18, inclusive, of said chapter 204 are hereby repealed.
SECTION 30.  Section 37 of said chapter 204 is hereby repealed.
SECTION 31.  Chapter 205 is hereby amended by striking out section 1, as appearing in the 2006 Official Edition, and inserting in place thereof the following section:-
Section 1. An executor, temporary executor or temporary administrator with the will annexed, administrator, administrator with the will annexed, special administrator, receiver of an absentee, conservator, temporary guardian and, unless otherwise expressly provided, a guardian or trustee under a will or appointed by the probate court, including a trustee under a will holding property for public charitable purposes, before entering upon the duties of his trust, shall give bond with sufficient sureties, in such sum as the probate court may order, payable to the judge of said court and his successors, and with condition substantially as follows:
1. In the case of an executor or administrator with the will annexed:
First, To make and return to the probate court within three months a true inventory of all the testator’s real and personal property which at the time of making such inventory shall have come to his possession or knowledge;
Second, To administer according to law and to the will of the testator all personal property of the testator which may come into his possession or into the possession of any person for him, and also the proceeds of any of the real estate of the testator which may be sold or mortgaged by him;
Third, To render upon oath a true account of his administration at least once a year until his trust is fulfilled, unless he is excused therefrom in any year by the court, and also to render such account at such other times as the court may order.
2. In the case of an administrator:
First, To make and return to the probate court within three months a true inventory of all the intestate’s real and personal property which at the time of making such inventory shall have come to his possession or knowledge;
Second, To administer according to law all the personal property of the deceased which may come into his possession or into the possession of any person for him, and also the proceeds of any of the real property of the deceased which may be sold or mortgaged by him;
Third, To render upon oath a true account of his administration at least once a year until his trust is fulfilled, unless he is excused therefrom in any year by the court, and also to render such account at such other times as the court orders;
Fourth, To pay to such persons as the court orders any balance remaining in his hands upon the settlement of his accounts;
Fifth, To deliver his letters of administration into the court if a will of the deceased is thereafter duly proved and allowed.
3. In the case of a special administrator:
That he will make and return to the probate court within such time as it orders a true inventory of all the personal property of the deceased which at the time of making such inventory shall have come to his possession or knowledge, and that he will, whenever required by the probate court, truly account on oath for all the property of the deceased which may be received by him as such special administrator, and will deliver the same to any person who may be appointed executor or administrator of the deceased, or may be otherwise lawfully authorized to receive the same.
4. In the case of a receiver of an absentee under chapter two hundred:
With condition substantially as provided for the bond of an executor or administrator, and with the further condition to obey all orders and decrees made by the probate court.
5. In the case of a trustee under a will or appointed by the probate court:
First, To make and return to the probate court at such time as it orders a true inventory of all the real and personal property belonging to him as trustee which at the time of the making of such inventory shall have come to his possession or knowledge;
Second, To manage and dispose of all such property, and faithfully to perform his trust relative thereto according to law and to the will of the testator or the terms of the trust as the case may be;
Third, To render upon oath at least once a year until his trust is fulfilled, unless he is excused therefrom in any year by the court, a true account of the property in his hands and of the management and disposition thereof, and also to render such account at such other times as said court orders;
Fourth, At the expiration of his trust to settle his account in the probate court, and to pay over and deliver all the property remaining in his hands, or due from him on such settlement, to the person or persons entitled thereto.
6. In the case of a temporary executor appointed under section thirteen of chapter one hundred and ninety-two or a temporary administrator with the will annexed appointed under section seven A of chapter one hundred and ninety-three:
First, when required by the provisions of chapter one hundred and ninety-two and whenever required by the probate court, to make and return to the probate court a true inventory of all the deceased’s real and personal property which at the time of making such inventory shall have come to his possession or knowledge, and to render upon oath a true account of his administration;
Second, to deliver all the property of the deceased which may be received by him as such temporary executor or temporary administrator with the will annexed to any person who may be appointed executor, administrator or administrator with the will annexed of the deceased, or may be otherwise lawfully authorized to receive the same.
SECTION 32.  Said chapter 205 is hereby amended by striking out section l, as so appearing, and inserting in place thereof the following section:—
Section 1.  A receiver of an absentee, and, unless otherwise expressly provided, a guardian before entering upon the duties of his trust, shall give bond with sufficient sureties, in such sum as the probate court may order payable to the judge of said court and his successors, and with condition substantially as follows:
1.  In the case of a receiver of an absentee under chapter 200:
With condition substantially as provided for the bond of an executor or administrator, and with the further condition to obey all orders and decrees made by the probate court.
SECTION 33.  Sections 2 to 5, inclusive, of said chapter 205 are hereby repealed.
SECTION 34.  Said chapter 205 is hereby further amended by striking out section 5 and inserting in place thereof the following section:-
“Section 5.  A trustee under a will shall be exempt from giving sureties on his bond, if the testator has ordered or requested such exemption, or that no bond be required, or if all the persons beneficially interested in the trust, of full age and legal capacity, other than creditors, request such exemption; but not until the conservator of any person under disability interested therein and such other persons as the court orders have been notified and had opportunity to show cause against the same. The probate court may, however, at any time require such trustee, or a trustee appointed by the probate court, to give a bond with sureties. The court may, with or without notice, exempt a trustee under a will holding property for public charitable purposes from giving surety on his bond.”
SECTION 35.  Section 6 of said chapter 205 of the General Laws is hereby repealed.
SECTION 36.  Said chapter 205 is hereby further amended by striking out section 6A, as appearing in the 2006 Official Edition, and inserting in place thereof the following section:—
Section 6A.  No surety shall be required upon bonds filed by national banks, located in the commonwealth and duly permitted to act in a fiduciary capacity, as receiver, assignee, guardian, conservator except that the court appointing such a bank as such a fiduciary, other than as trustee, may upon application of an interested person require the bank so appointed to give such security, in addition to the lien or security provided by the laws of the United States, as the court may consider proper, and upon failure of such bank to give the security required may revoke such appointment and remove such bank.
SECTION 37.  Sections 7 to 8, inclusive, of said chapter 205 are hereby repealed.
SECTION 38.  Sections 1, 16, 18, 20 to 22, inclusive, 23A to 30, inclusive, of chapter 206 of the General Laws are hereby repealed.
SECTION 39.  Section 7 of chapter 210 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out, in lines 6 and 7, the words “chapters one hundred ninety and one hundred and ninety-six,” and inserting in place thereof the following:—  chapter 190B.
SECTION 40.  Section 8 of chapter 215 of the General Laws is hereby repealed.
SECTION 41.  Section 30B of said chapter 215 is hereby repealed.
SECTION 42.  Sections 5 and 5A of chapter 259 of the General Laws are hereby repealed.
SECTION 43.  Except as provided elsewhere in this act, on the effective date of this act:
1.  this act shall apply to pre-existing governing instruments, except that it shall not apply to governing instruments which became irrevocable prior to the effective date of this act;
2.  this act shall apply 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 act;
3.  every personal representative including a person administering an estate of a minor or incompetent holding an appointment on that date, continues to hold the appointment but has only the powers conferred by this act and is subject to the duties imposed with respect to any act occurring or done thereafter;
4.  an act done before the effective date in any proceeding and any accrued right is not impaired by this act.  If a right is acquired, extinguished or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before the effective date, the provisions shall remain in force with respect to that right;
5.  any rule of construction or presumption provided in this act applies to governing instruments executed before the effective date unless there is a clear indication of a contrary intent, except that it shall not apply to governing instruments which became irrevocable prior to the effective date of this act.
SECTION 44.  Sections 1-201, 1-401, 1-404 and Article V of chapter 190B of the General Laws, inserted by section 9, and sections 21, 22, 30, 31, 34, 35 and 41 shall take effect on July 1, 2009.  The remainder of this act shall take effect on July 1, 2011.