

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

William N. Brownsberger

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.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
William N. Brownsberger	24th Middlesex

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

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:

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 Sections 5 and 5A of chapter 65A of the General Laws are hereby repealed.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 Sections 33A and 33B of chapter 184 of the General Laws are hereby repealed.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9 hereby repealed.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 Section 1 of chapter 186 of the General Laws is hereby repealed.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 Chapter 189 of the General Laws is hereby repealed.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 Chapter 190 of the General Laws is hereby repealed.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 Chapter 190A of the General Laws is hereby repealed.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

CHAPTER 190B.

MASSACHUSETTS UNIFORM PROBATE CODE ARTICLE, PART AND SECTION ANALYSIS.

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497 ARTICLE I
498 GENERAL PROVISIONS, DEFINITIONS, AND PROBATE
499 JURISDICTION OF COURT
500 PART 1
501 SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS
502 Section 1-101. [Short Title.]
503 This chapter shall be known and may be cited as the Massachusetts Uniform Probate Code.
504 Section 1-102. [Purposes; Rule of Construction.]
505 (a) This chapter shall be liberally construed and applied to promote its underlying purposes and
506 policies.
507 (b) The underlying purposes and policies of this chapter are:
508 (1) to simplify and clarify the law concerning the affairs of decedents and missing persons;
509 (2) to discover and make effective the intent of a decedent in distribution of the decedent's
510 property;
511 (3) to promote a speedy and efficient system for liquidating the estate of the decedent and
512 making distribution to the decedent's successors;
513 (4) to facilitate use and enforcement of certain trusts; and
514 (5) to make uniform the law among the various jurisdictions.
515 Section 1-103. [Supplementary General Principles of Law Applicable.]
516 Unless displaced by the particular provisions of this chapter, the principles of law and equity
517 supplement its provisions.
518 Section 1-104. [Severability.]
519 If any provision of this chapter or the application thereof to any person or circumstances is held
520 invalid, the invalidity shall not affect other provisions or applications of the chapter which can be
521 given effect without the invalid provision or application, and to this end the provisions of this
522 chapter are declared to be severable.
523 Section 1-105. [Construction Against Implied Repeal.]
524 This chapter is a general act intended as a unified coverage of its subject matter and no part of it
525 shall be deemed impliedly repealed by subsequent legislation if it can reasonably be avoided.
526 Section 1-106. [Effect of Fraud and Evasion.]
527 Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed
528 under this chapter or if fraud is used to avoid or circumvent the provisions or purposes of this
529 chapter, any person injured thereby may obtain appropriate relief against the perpetrator of the
530 fraud or restitution from any person other than a bona fide purchaser benefiting from the fraud,

531 whether innocent or not. Any proceeding shall be commenced within 2 years after the discovery
532 of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later
533 than 5 years after the time of commission of the fraud. This section has no bearing on remedies
534 relating to fraud practiced on a decedent during the decedent's lifetime which affects the
535 succession of the decedent's estate.

536 Section 1-107. [Evidence of Death or Status.]

537 In addition to the rules of evidence in courts of general jurisdiction, the following rules relating
538 to a determination of death and status apply:-

539 (1) Death occurs when an individual has sustained either (i) irreversible cessation of circulatory
540 and respiratory functions or (ii) irreversible cessation of all functions of the entire brain,
541 including the brain stem. A determination of death shall be made in accordance with accepted
542 medical standards.

543 (2) A certified or authenticated copy of a death certificate purporting to be issued by an official
544 or agency of the place where the death purportedly occurred is prima facie evidence of the fact,
545 place, date, and time of death and the identity of the decedent.

546 (3) A certified or authenticated copy of any record or report of a governmental agency, domestic
547 or foreign, that an individual is missing, detained, dead, or alive is prima facie evidence of the
548 status and of the dates, circumstances, and places disclosed by the record or report.

549 (4) In the absence of prima facie evidence of death under paragraph (2) or (3), the fact of death
550 may be established by evidence, including circumstantial evidence.

551 (5) An individual whose death is not established under the preceding paragraphs who is absent
552 for a continuous period of 5 years, during which the person has not been heard from, and whose
553 absence is not satisfactorily explained after diligent search or inquiry, is presumed to be
554 dead. The person's death is presumed to have occurred at the end of the period unless there is
555 sufficient evidence for determining that death occurred earlier.

556 Section 1-108. [Act by Holder of General Power.]

557 For the purpose of granting consent or approval with regard to the acts or accounts of a personal
558 representative or trustee, including relief from liability or penalty for failure to post bond or to
559 perform other duties, and for purposes of consenting to modification or termination of a trust or
560 to deviation from its terms,

561 (i) the sole holder or all co-holders of a presently exercisable general power of appointment,
562 including one in the form of a power of amendment or revocation, or a presently exercisable
563 power to appoint among a class of appointees which is broader than the class of those persons
564 who would take in default of the exercise of such power,

565 (ii) if the court so permits in its discretion, the sole holder or all co-holders of a testamentary
566 general power of appointment, or a testamentary power to appoint among a class of appointees
567 which is broader than the class of those persons who would take in default of the exercise of such
568 power,

569 are deemed to act for beneficiaries to the extent their interests (as objects, takers in default, or
570 otherwise) are subject to the power.

571 Section 1-109. [Standard of Proof.]

572 In contested cases, the standard of proof is a preponderance of the evidence.

573 PART 2

574 DEFINITIONS

575 Section 1-201. [Definitions and Inclusions.]

576 Subject to additional definitions contained in the subsequent articles that are applicable to

577 specific articles, parts, or sections, and unless the context otherwise requires, in this chapter:
578 (1) “Administration”, includes both formal and informal testate and intestate proceedings under
579 article III.
580 (2) “Agent”, includes an attorney-in-fact under a durable or nondurable power of attorney, an
581 individual authorized to make decisions concerning another's health care in accordance with
582 chapter 201D, and an individual authorized to make decisions for another under a natural death
583 act.
584 (3) “Beneficiary”, as it relates to a trust beneficiary, includes a person who has any present or
585 future interest, vested or contingent, and also includes the owner of an interest by assignment or
586 other transfer; as it relates to a charitable trust, includes any person entitled to enforce the trust;
587 as it relates to a "beneficiary of a beneficiary designation", refers to a beneficiary of an insurance
588 or annuity policy, of an account with POD designation, of a security registered in beneficiary
589 form (TOD), or of a pension, profit-sharing, retirement, or similar benefit plan, or other
590 nonprobate transfer at death; and, as it relates to a “beneficiary designated in a governing
591 instrument”, includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a
592 beneficiary designation, a donee, appointee, or taker in default of a power of appointment, or a
593 person in whose favor a power of attorney or a power held in any individual, fiduciary, or
594 representative capacity is exercised.
595 (4) “Beneficiary designation”, refers to a governing instrument naming a beneficiary of an
596 insurance or annuity policy, of an account with POD designation, of a security registered in
597 beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar benefit plan, or
598 other nonprobate transfer at death.
599 (5) “Child”, includes an individual entitled to take as a child under this chapter by intestate
600 succession from the parent whose relationship is involved and excludes a person who is only a
601 stepchild, a foster child, a grandchild, or any more remote descendant.
602 (6) “Claims”, in respect to estates of decedents and protected persons, includes liabilities of the
603 decedent or protected person, whether arising in contract, in tort, or otherwise, and liabilities of
604 the estate which arise at or after the death of the decedent or after the appointment of a
605 conservator, including funeral expenses and expenses of administration. The term shall not
606 include estate or inheritance taxes, or demands or disputes regarding title of a decedent or
607 protected person to specific assets alleged to be included in the estate.
608 (7) “Court”, the probate and family court department of the trial court and includes the district
609 court and juvenile court departments of the trial court in proceedings relating to the appointment
610 of guardians of minors when the subject of the proceeding is a minor and there is proceeding
611 before such district or juvenile court.
612 (8) “Conservator”, a person who is appointed by a court to manage the estate of a protected
613 person.
614 (9) “Descendant”, of an individual means all of such individual's descendants of all generations,
615 with the relationship of parent and child at each generation being determined by the definition of
616 child and parent contained in this chapter.
617 (10) “Devise”, when used as a noun, means a testamentary disposition of real or personal
618 property and, when used as a verb, means to dispose of real or personal property by will.
619 (11) “Devisee”, a person designated in a will to receive a devise. In the case of a devise to an
620 existing trust or trustee, or to a trustee or trust described by will, the trust or trustee is the devisee
621 and the beneficiaries are not devisees.
622 (12) “Disability”, cause for appointment of a conservator under section 5-401.

623 (13) "Distributee", any person who has received property of a decedent from the decedent's
624 personal representative other than as a creditor or purchaser. A testamentary trustee is a
625 distributee only to the extent of distributed assets or increment thereto remaining in such trustee's
626 hands. A beneficiary of a testamentary trust to whom the trustee has distributed property
627 received from a personal representative is a distributee of the personal representative. For the
628 purposes of this provision, "testamentary trustee" includes a trustee to whom assets are
629 transferred by will, to the extent of the devised assets.

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

633 (15) "Exempt property", that property of a decedent's estate which is described in section 2-403.

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

635 (17) "Foreign personal representative", a personal representative appointed by another
636 jurisdiction.

637 (18) "Formal proceedings", proceedings conducted before a judge with notice to interested
638 persons.

639 (19) "Governing instrument", a deed, will, trust, insurance or annuity policy, account with POD
640 designation, security registered in beneficiary form (TOD), pension, profit-sharing, retirement, or
641 similar benefit plan, instrument creating or exercising a power of appointment or a power of
642 attorney, or a donative, appointive, or nominative instrument of any other type.

643 (20) "Guardian", a person who has qualified as a guardian of a minor or incapacitated person
644 pursuant to testamentary or court appointment, but excludes 1 who is a guardian ad litem.

645 (21) "Heirs", except as controlled by section 2-711, are persons, including the surviving spouse
646 and the commonwealth, who are entitled under the statutes of intestate succession to the property
647 of a decedent.

648 (22) "Incapacitated person", an individual for whom a guardian has been appointed under part 3
649 of article V.

650 (23) "Informal proceedings", those conducted without notice to interested persons by an officer
651 of the court acting as a magistrate for probate of a will or appointment of a personal
652 representative.

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

659 (25) "Issue", means descendant as defined in subsection (9).

660 (26) "Joint tenants with the right of survivorship", includes co-owners of property held under
661 circumstances that entitle one or more to the whole of the property on the death of the other or
662 others, but excludes forms of co-ownership registration in which the underlying ownership of
663 each party is in proportion to that party's contribution.

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

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

667 (29) "Magistrate", refers to the official of the court designated to perform the function of
668 magistrate as provided in section 1-307.

669 (30) "Minor", a person who is under 18 years of age.
670 (31) "Mortgage", any conveyance, agreement, or arrangement in which property is encumbered
671 or used as security.
672 (32) "Nonresident decedent", a decedent who was domiciled in another jurisdiction at the time
673 of death.
674 (33) "Organization", a corporation, business trust, estate, trust, partnership, joint venture,
675 association, government or governmental subdivision or agency, or any other legal or
676 commercial entity.
677 (34) "Parent", includes any person entitled to take, or who would be entitled to take if the child
678 died without a will, as a parent under this chapter by intestate succession from the child whose
679 relationship is in question and excludes any person who is only a stepparent, foster parent, or
680 grandparent.
681 (35) "Payor", a trustee, insurer, business entity, employer, government, governmental agency or
682 subdivision, or any other person authorized or obligated by law or a governing instrument to
683 make payments.
684 (36) "Person", an individual or an organization.
685 (37) "Personal representative", includes executor, administrator, successor personal
686 representative, special administrator, special personal representative, and persons who perform
687 substantially the same function under the law governing their status. "General personal
688 representative" excludes special personal administrator.
689 (38) "Petition", a written request to the court for an order after notice.
690 (39) "Proceeding", includes action at law and suit in equity.
691 (40) "Property", includes both real and personal property or any interest therein and means
692 anything that may be the subject of ownership.
693 (41) "Protected person", a person for whom a conservator has been appointed under part 4 of
694 article V.
695 (42) "Protective proceedings", a proceeding for appointment of a conservator under part 4 of
696 article V.
697 (43) "Register", refers to the official designated in section 4 of chapter 217.
698 (44) "Security", includes any note, stock, treasury stock, bond, debenture, evidence of
699 indebtedness, certificate of interest or participation in an oil, gas, or mining title or lease or in
700 payments out of production under such a title or lease, collateral trust certificate, transferable
701 share, voting trust certificate or, in general, any interest or instrument commonly known as a
702 security, or any certificate of interest or participation, any temporary or interim certificate,
703 receipt, or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the
704 foregoing.
705 (45) "Settlement", in reference to a decedent's estate, includes the full process of administration,
706 distribution, and closing.
707 (46) "Special personal representative", a personal representative as described by sections 3-614
708 to 3-618, inclusive.
709 (47) "State", a state of the United States, the District of Columbia, the Commonwealth of Puerto
710 Rico, or any territory or insular possession subject to the jurisdiction of the United States.
711 (48) "Successor personal representative", a personal representative, other than a special
712 administrator, who is appointed to succeed a previously appointed personal representative.
713 (49) "Successors", persons, other than creditors, who are entitled to property of a decedent under
714 the decedent's will or this chapter.

- 715 (50) "Supervised administration", refers to the proceedings described in part 5 of article III.
716 (51) "Survive", except for purposes of part 3 of article VI, means that an individual has neither
717 predeceased an event, including the death of another individual, nor is deemed to have
718 predeceased an event under section 2-104 or 2-702. The term includes its derivatives, such as
719 "survives", "survived", "survivor", "surviving".
720 (52) "Testacy proceeding", a proceeding to establish a will or determine intestacy.
721 (53) "Testator", includes an individual of either sex.
722 (54) "Trust", includes an express trust, private or charitable, with additions thereto, wherever
723 and however created. The term also includes a trust created or determined by judgment or
724 decree under which the trust is to be administered in the manner of an express trust. The term
725 excludes other constructive trusts and excludes resulting trusts, conservatorships, personal
726 representatives, trust accounts as defined in article VI, custodial arrangements pursuant to
727 chapter 201A, business trusts providing for certificates to be issued to beneficiaries, common
728 trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary
729 purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee
730 benefits of any kind, and any arrangement under which a person is nominee or escrow for
731 another.
732 (55) "Trustee", includes an original, additional, or successor trustee, whether or not appointed or
733 confirmed by court.
734 (56) "Ward", an individual for whom a guardian has been appointed pursuant to part 2 of article
735 V.
736 (57) "Will", includes codicil and any testamentary instrument that merely appoints an executor,
737 revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of
738 an individual or class to succeed to property of the decedent passing by intestate succession.

739 PART 3

740 SCOPE, JURISDICTION AND COURTS

741 Section 1-301. [Territorial Application.]

742 Except as otherwise provided in this chapter, this chapter applies to: (1) the affairs and estates of
743 decedents, missing persons, and persons to be protected, domiciled in the commonwealth, (2) the
744 property of nonresidents located in the commonwealth or property coming into the control of a
745 fiduciary who is subject to the laws of the commonwealth, (3) incapacitated persons and minors
746 in the commonwealth, (4) survivorship and related accounts in the commonwealth, and (5) trusts
747 subject to administration in the commonwealth.

748 Section 1-302. [Subject Matter Jurisdiction.]

749 (a) To the full extent permitted by the constitution, the court has jurisdiction over all subject
750 matter relating to: (1) estates of decedents, including construction of wills and determination of
751 heirs and successors of decedents, and estates of protected persons, (2) protection of minors and
752 incapacitated persons, (3) trusts, and (4) any other matters authorized by section 6 of chapter
753 215. The district court and the juvenile court shall have concurrent jurisdiction with the probate
754 and family court to appoint guardians of minors when the subject of the petition is a minor and
755 there is a proceeding before such district or juvenile court. The district and juvenile court shall
756 have continuing jurisdiction over resignation, removal, reporting, and other proceedings related
757 to the guardianship.

758 (b) The court has full power to make orders, judgments and decrees and take all other action
759 necessary and proper to administer justice in the matters which come before it.

760 (c) The court has jurisdiction over protective proceedings and guardianship proceedings.

761 (d) If both guardianship and protective proceedings as to the same person are commenced or
762 pending in the same court, the proceedings may be consolidated.

763 Section 1-303. [Venue; Multiple Proceedings; Transfer.]

764 (a) Where a proceeding under this chapter could be maintained in more than one place in the
765 commonwealth, the division in which the proceeding is first commenced has the exclusive right
766 to proceed.

767 (b) If proceedings concerning the same estate, protected person, ward, or trust are commenced in
768 more than one court of the commonwealth, the court in which the proceeding was first
769 commenced shall continue to hear the matter, and the other courts shall hold the matter in
770 abeyance until the question of venue is decided, and if the ruling court determines that venue is
771 properly in another court, it shall transfer the proceeding to the other court.

772 (c) If a court finds that in the interest of justice a proceeding or a file should be located in
773 another court of the commonwealth, the court making the finding may transfer the proceeding or
774 file to the other court.

775 Section 1-304. [Reserved.]

776 Section 1-305. [Reserved.]

777 Section 1-306. [Reserved.]

778 Section 1-307. [Magistrate; Powers.]

779 The acts and orders which this chapter specifies as performable by the magistrate may be
780 performed either by the magistrate or such other official of the court, including a judge or other
781 official of the court, all as designated by the court by a written order filed and recorded in the
782 office of the court.

783 Section 1-308. [Reserved.]

784 Section 1-309. [Reserved.]

785 Section 1-310. [Oath or Affirmation on Filed Documents.]

786 Except as otherwise specifically provided in this chapter or by rule, every document filed with
787 the court under this chapter including petitions, and demands for notice, shall be deemed to
788 include an oath, affirmation, or statement to the effect that its representations are true as far as
789 the person executing or filing it knows or is informed, and penalties for perjury may follow
790 deliberate falsification therein.

791 PART 4

792 NOTICE, PARTIES AND REPRESENTATION IN ESTATE

793 LITIGATION AND OTHER MATTERS

794 Section 1-401. [Notice; Method and Timing of Giving.]

795 (a) If notice on any matter is required by reference to this section and except for specific
796 notice requirements as otherwise provided, the court shall fix a return date and issue a citation.
797 The petitioner shall cause notice of the return day of any matter to be given to any interested
798 person or attorney if the appearance is by attorney or the interested person requested that notice
799 be sent to the attorney. Notice shall be given:

800 (1) by mailing a copy of the citation at least 14 days before the return date by certified,
801 registered or ordinary first class mail addressed to all interested persons who have not assented in
802 writing or their attorney if the appearance is by attorney or the interested person requested that
803 notice be sent to the attorney at the person's office or place of residence, if known; or

804 (2) by delivering a copy of the citation to the person being notified personally at least fourteen
805 days before the return date; or

806 (3) by publishing a copy of the citation once in a newspaper designated by the register of

807 probate having general circulation in the county where the proceeding is pending, the publication
808 of which is to be at least 7 days before the return date.

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

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

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

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

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

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

829 Section 1-402. [Notice; Waiver.]

830 A person, including a guardian ad litem, conservator, or other fiduciary, may waive notice by a
831 writing signed by the person or the person's attorney and filed in the proceeding. A person for
832 whom a guardianship or other protective order is sought, a ward, incapacitated person or a
833 protected person may not waive notice.

834 Section 1-403. [Pleadings; When Parties Bound by Others; Notice.]

835 In formal proceedings involving trusts or estates of decedents, minors, protected persons, or
836 incapacitated persons, and in judicially supervised settlements, the following apply:

837 (1) Interests to be affected shall be described in pleadings which give reasonable information to
838 owners by name or class, by reference to the instrument creating the interests, or in other
839 appropriate manner.

840 (2) Persons are bound by orders binding others in the following cases:

841 (i) Orders binding the sole holder or all co-holders of a power of revocation or a presently
842 exercisable general power of appointment, including one in the form of a power of amendment,
843 or a presently exercisable power to appoint among a class of appointees which is broader than
844 the class of those persons who would take in default of the exercise of such power, bind other
845 persons to the extent their interests as objects, takers in default, or otherwise are subject to the

846 power.

847 (ii) To the extent there is no conflict of interest between them or among persons represented,
848 orders binding a conservator bind the person whose estate the conservator controls; orders
849 binding a guardian bind the protected person or ward if no conservator has been appointed;
850 orders binding a trustee bind beneficiaries of the trust in proceedings to probate a will
851 establishing or adding to a trust, to review the acts or accounts of a prior fiduciary and in
852 proceedings involving creditors or other third parties; and orders binding a personal
853 representative bind persons interested in the undistributed assets of a decedent's estate in actions
854 or proceedings by or against the estate. If there is no conflict of interest and no conservator or
855 guardian has been appointed, a parent may represent a minor child.

856 (iii) An unborn or unascertained person who is not otherwise represented is bound by an order to
857 the extent the person's interest is adequately represented by another party having a substantially
858 identical interest in the proceeding.

859 (3) Notice is required as follows:

860 (i) Notice as prescribed by section 1-401 shall be given to every interested person or to one who
861 can bind an interested person as described in (2)(i) or (2)(ii) above. Notice may be given both
862 to a person and to another who may bind such person.

863 (ii) Notice is given to unborn or unascertained persons, who are not represented under
864 (2)(i) or (2)(ii), by giving notice to all known persons whose interest in the proceedings are
865 substantially identical to those of the unborn or unascertained persons.

866 Section 1-404. [Guardian Ad Litem and Next Friend.]

867 (a) If, in a formal proceeding involving trusts or estates of decedents, minors, protected persons,
868 or incapacitated persons, and in judicially supervised settlements, or otherwise, a minor, a
869 mentally retarded person, an autistic person, or person under disability, or a person not
870 ascertained or not in being, may be or may become interested in any property, real or personal, or
871 in the enforcement or defense of any legal rights, the court in which any action, petition or
872 proceeding of any kind relative to or affecting any such estate or legal rights is pending may,
873 upon the representation of any party thereto, or of any person interested, appoint a suitable
874 person to appear and act therein as guardian ad litem or next friend of such minor, mentally
875 retarded person, autistic person, or person under disability or not ascertained or not in being; and
876 a judgment, order or decree in such proceedings, made after such appointment, should be
877 conclusive upon all persons for whom such guardian ad litem or next friend was appointed.

878 (b) The reasonable expenses of such guardian ad litem or next friend, including compensation
879 and counsel fees, shall be determined by the court and paid as it may order, either out of the
880 estate or by the plaintiff, petitioner or the commonwealth. If such expenses are to be paid by the
881 plaintiff or petitioner execution therefor may issue in the name of the guardian ad litem or next
882 friend.

883 (c) Nothing in this code shall affect the power of a court to appoint a guardian or conservator to
884 defend the interests of a minor impleaded in such court, or interested in a suit or matter there
885 pending, nor the power of such court to appoint or allow a person, as next friend for a minor, to
886 commence, prosecute or defend a suit in his behalf.

887 (d) If it appears in a probate or appointment proceeding that a spouse, heir at law or devisee is
888 an incapacitated or protected person or a minor, notice of all proceedings shall be given to the
889 incapacitated or protected person or minor and to his guardian or conservator. Unless the
890 spouse, heir or devisee is represented by someone other than the petitioner or is under
891 guardianship or conservatorship, the court shall appoint a guardian ad litem who shall receive

892 notice of all proceedings.

893 ARTICLE II

894 INTESTACY, WILLS, AND DONATIVE TRANSFERS

895 PART 1

896 INTESTATE SUCCESSION

897 Section 2-101. [Intestate Estate.]

898 (a) Any part of a decedent's estate not effectively disposed of by will passes by intestate
899 succession to the decedent's heirs as prescribed in this part, except as modified by the decedent's
900 will.

901 (b) A decedent by will may expressly exclude or limit the right of an individual or class to
902 succeed to property of the decedent passing by intestate succession. If that individual or a
903 member of that class survives the decedent, the share of the decedent's intestate estate to which
904 that individual or class would have succeeded passes as if that individual or each member of that
905 class had disclaimed the intestate share.

906 Section 2-102. [Share of Spouse.]

907 The intestate share of a decedent's surviving spouse is:

908 (1) the entire intestate estate if:

909 (i) no descendant or parent of the decedent survives the decedent; or

910 (ii) all of the decedent's surviving descendants are also descendants of the surviving
911 spouse and there is no other descendant of the surviving spouse who survives the decedent;

912 (2) the first \$200,000, plus $\frac{3}{4}$ of any balance of the intestate estate, if no descendant of the
913 decedent survives the decedent, but a parent of the decedent survives the decedent;

914 (3) the first \$100,000 plus $\frac{1}{2}$ of any balance of the intestate estate, if all of the decedent's
915 surviving descendants are also descendants of the surviving spouse and the surviving spouse has
916 1 or more surviving descendants who are not descendants of the decedent;

917 (4) the first \$100,000 plus $\frac{1}{2}$ of any balance of the intestate estate, if 1 or more of the decedent's
918 surviving descendants are not descendants of the surviving spouse.

919 Section 2-103. [Share of Heirs Other Than Surviving Spouse.]

920 Any part of the intestate estate not passing to the decedent's surviving spouse under section 2-
921 102, or the entire intestate estate if there is no surviving spouse, passes in the following order to
922 the individuals designated below who survive the decedent:

923 (1) to the decedent's descendants per capita at each generation;

924 (2) if there is no surviving descendant, to the decedent's parents equally if both survive, or to the
925 surviving parent;

926 (3) if there is no surviving descendant or parent, to the descendants of the decedent's parents or
927 either of them per capita at each generation;

928 (4) if there is no surviving descendant, parent, or descendant of a parent, then equally to the
929 decedent's next of kin in equal degree; but if there are 2 or more descendants of deceased
930 ancestors in equal degree claiming through different ancestors, those claiming through the
931 nearest ancestor shall be preferred to those claiming through an ancestor more remote. Degrees
932 of kindred shall be computed according to the rules of civil law.

933 Section 2-104. [Reserved.]

934 Section 2-105. [No Taker.]

935 If there is no taker under the provisions of this article, the intestate estate passes to the
936 commonwealth; provided, however, if such intestate is a veteran who died while a member of the
937 Soldiers' Home in Massachusetts or the Soldiers' Home in Holyoke, the intestate estate shall

938 inure to the benefit of the legacy fund or legacy account of the soldiers' home of which the
939 intestate was a member.

940 Section 2-106. (a) [Representation.]

941 In this section:

942 (1) "Deceased descendant", "deceased parent", or "deceased ancestor", a descendant, parent, or
943 ancestor who predeceased the decedent.

944 (2) "Surviving descendant", a descendant who survived the decedent.

945 (b) If, under section 2-103(1), a decedent's intestate estate or a part thereof passes "per capita at
946 each generation" to the decedent's descendants, the estate or part thereof is divided into as many
947 equal shares as there are (i) surviving descendants in the generation nearest to the decedent that
948 contains 1 or more surviving descendants, and (ii) deceased descendants in the same generation
949 who left surviving descendants, if any. Each surviving descendant in the nearest generation is
950 allocated 1 share. The remaining shares, if any, are combined and then divided in the same
951 manner among the surviving descendants of the deceased descendants as if the surviving
952 descendants in the nearest generation and their surviving descendants had predeceased the
953 decedent.

954 (c) If, under section 2-103(3), a decedent's intestate estate or a part thereof passes "per capita at
955 each generation" to the descendants of the decedent's deceased parents or either of them, the
956 estate or part thereof is divided into as many equal shares as there are (i) surviving descendants
957 in the generation nearest the deceased parents or either of them that contains 1 or more surviving
958 descendants, and (ii) deceased descendants in the same generation who left surviving
959 descendants, if any. Each surviving descendant in the nearest generation is allocated 1
960 share. The remaining shares, if any, are combined and then divided in the same manner among
961 the surviving descendants of the deceased descendants as if the surviving descendants in the
962 nearest generation and their surviving descendants had predeceased the decedent.

963 Section 2-107. [Kindred of Half Blood.]

964 Relatives of the half blood inherit the same share they would inherit if they were of the whole
965 blood.

966 Section 2-108. [Afterborn Heirs.]

967 An individual in gestation at a particular time is treated as living at that time if the individual
968 lives 120 hours or more after birth.

969 Section 2-109. [Advancements.]

970 (a) If an individual dies intestate as to all or a portion of the estate, property the decedent gave
971 during the decedent's lifetime to an individual who, at the decedent's death, is an heir is treated as
972 an advancement against the heir's intestate share only if (i) the decedent declared in a
973 contemporaneous writing or the heir acknowledged in writing that the gift is an advancement or
974 (ii) the decedent's contemporaneous writing or the heir's written acknowledgment otherwise
975 indicates that the gift is to be taken into account in computing the division and distribution of the
976 decedent's intestate estate.

977 (b) If the value of an advancement is expressed in the conveyance, in the contemporaneous
978 writing, or in the acknowledgment, such value shall be adopted in the division and distribution of
979 the intestate estate; otherwise it shall be determined according to the value when the property
980 was given.

981 (c) Property which is advanced by an intestate shall be considered as part of the intestate's estate
982 in the division and distribution of such estate, and shall be taken by the heir who received the
983 advance toward the heir's share of the intestate estate; but the heir shall not be required to restore

984 any part thereof, although it exceeds the intestate share. A surviving spouse shall be entitled
985 only to a share in the residue after deducting the value of the advancement.

986 (d) If a child or other lineal descendant of the intestate who has received an advancement dies
987 before the intestate, leaving descendants who receive a share of the intestate's estate, the
988 advancement shall be considered as part of the intestate's estate in the division and distribution of
989 such estate, and the value thereof shall be taken in equal shares by the representatives of the
990 person who received the advancement toward their share of the intestate estate, as if the
991 advancement had been made directly to them.

992 (e) The probate court in which the estate of a decedent is settled may hear and determine all
993 questions of advancements arising relative to such estate.

994 Section 2-110. [Debts to Decedent.]

995 A debt owed to a decedent is not charged against the intestate share of any individual except the
996 debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing
997 the intestate share of the debtor's descendants.

998 Section 2-111. [Alienage.]

999 No individual is disqualified to take as an heir because the individual or another individual
1000 through whom the individual claims is or has been an alien.

1001 Section 2-112. [Dower and Curtesy Abolished.]

1002 The estates of dower and curtesy are abolished.

1003 Section 2-113. [Individuals Related to Decedent Through Two Lines.]

1004 An individual who is related to the decedent through 2 lines of relationship is entitled to only a
1005 single share based on the relationship that would entitle the individual to the larger share.

1006 Section 2-114. [Parent and Child Relationship.]

1007 (a) Except as provided in subsection (b), for purposes of intestate succession by, through, or
1008 from a person, an individual is the child of his natural parents, regardless of their marital
1009 status. The parent and child relationship may be established under applicable state law.

1010 (b) An adopted individual is the child of his adopting parent or parents and not of his natural
1011 parents, but adoption of a child by the spouse of either natural parent has no effect on the right of
1012 the child or a descendant of the child to inherit from or through either natural parent.

1013 PART 2

1014 Sections 2-201 to 2-299. [Reserved]

1015 PART 3

1016 SPOUSE AND CHILDREN UNPROVIDED FOR IN WILLS

1017 Section 2-301. [Entitlement of Spouse; Premarital Will.]

1018 (a) If a testator's surviving spouse married the testator after the testator executed a will, the
1019 surviving spouse is entitled to receive, as an intestate share, no less than the value of the share of
1020 the estate the spouse would have received if the testator had died intestate as to that portion of
1021 the testator's estate, if any, that neither is devised to a child of the testator who is born before the
1022 testator married the surviving spouse and who is not a child of the surviving spouse nor is
1023 devised to a descendant of such a child or passes under section 2-603 or 2-604 to such a child or
1024 to a descendant of such a child, unless:

1025 (1) it appears from the will that the will was made in contemplation of the testator's marriage to
1026 the surviving spouse;

1027 (2) the will expresses the intention that it is to be effective notwithstanding any subsequent
1028 marriage; or

1029 (3) the testator provided for the spouse by transfer outside the will and any intent that the

1030 transfer be in lieu of a testamentary provision is shown by the testator's statements or is
1031 reasonably inferred from the amount of the transfer or other evidence.

1032 (b) In satisfying the share provided by this section, devises made by the will to the testator's
1033 surviving spouse, if any, are applied first, and other devises, other than a devise to a child of the
1034 testator who was born before the testator married the surviving spouse and who is not a child of
1035 the surviving spouse or a devise or substitute gift under section 2-603 or 2-604 to a descendant of
1036 such a child, abate as provided in section 3-902.

1037 Section 2-302. [Omitted Children.]

1038 (a) Except as provided in subsection (b), if a testator fails to provide in a will for any children
1039 born or adopted after the execution of the will, the omitted after-born or after-adopted child
1040 receives a share in the estate as follows:

1041 (1) If the testator had no child living when the will was executed, an omitted after-born or after-
1042 adopted child receives a share in the estate equal in value to that which the child would have
1043 received had the testator died intestate, unless the will devised all or substantially all the estate to
1044 the other parent of the omitted child and that other parent survives the testator and is entitled to
1045 take under the will.

1046 (2) If the testator had 1 or more children living when the will was executed, and the will devised
1047 property or an interest in property to 1 or more of the then-living children, an omitted after-born
1048 or after-adopted child is entitled to share in the testator's estate as follows:

1049 (i) The portion of the testator's estate in which the omitted after-born or after-adopted child is
1050 entitled to share is limited to devises made to the testator's then-living children under the will.

1051 (ii) The omitted after-born or after-adopted child is entitled to receive the share of the testator's
1052 estate, as limited in subparagraph (i), that the child would have received had the testator included
1053 all omitted after-born and after-adopted children with the children to whom devises were made
1054 under the will and had given an equal share of the estate to each child.

1055 (iii) To the extent feasible, the interest granted an omitted after-born or after-adopted child under
1056 this section shall be of the same character, whether equitable or legal, present or future, as that
1057 devised to the testator's then-living children under the will.

1058 (iv) In satisfying a share provided by this paragraph, devises to the testator's children who were
1059 living when the will was executed abate ratably. In abating the devises of the then-living
1060 children, the court shall preserve to the maximum extent possible the character of the
1061 testamentary plan adopted by the testator.

1062 (b) Neither subsection (a)(1) nor subsection (a)(2) applies if:

1063 (1) It appears from the will that the omission was intentional; or

1064 (2) The testator provided for the omitted after-born or after-adopted child by transfer outside the
1065 will and the intent that the transfer be in lieu of a testamentary provision is shown by the
1066 testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

1067 (c) If at the time of execution of the will the testator fails to provide in the will for a living child
1068 solely because the testator believes the child to be dead, the child is entitled to a share in the
1069 estate as if the child were an omitted after-born or after-adopted child.

1070 (d) In satisfying a share provided by subsection (a)(1), devises made by the will abate under
1071 section 3-902.

1072 (e) No such omitted child shall take any share in real property unless a claim is filed in the
1073 registry of probate by or on behalf of such child within 1 year after the death of the decedent.

1074 PART 4

1075 EXEMPT PROPERTY AND ALLOWANCES

1076 Section 2-401. [Applicable Law.]
1077 This part applies to the estate of a decedent who dies domiciled in the commonwealth. Rights to
1078 exempt property, and discretionary family allowance for a decedent who dies not domiciled in
1079 the commonwealth are governed by the law of the decedent's domicile at death.

1080 Section 2-402. [Reserved.]

1081 Section 2-403. [Exempt Property.]

1082 (a) The decedent's surviving spouse is entitled from the estate to a value at date of death, not
1083 exceeding \$10,000 in excess of any security interests therein, in household furniture,
1084 automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse, the
1085 decedent's children are entitled jointly to the same value. If encumbered chattels are selected and
1086 the value in excess of security interests, plus that of other exempt property, is less than \$10,000,
1087 or if there is not \$10,000 worth of exempt property in the estate, the spouse or children are
1088 entitled to other assets of the estate, if any, to the extent necessary to make up the \$10,000
1089 value. Rights to exempt property and assets needed to make up a deficiency of exempt property
1090 have priority over all unsecured claims against the estate, but the right to any assets to make up a
1091 deficiency of exempt property abates as necessary to permit earlier payment of the discretionary
1092 family allowance. These rights are in addition to any benefit or share passing to the surviving
1093 spouse or children by the decedent's will, unless otherwise provided, by intestate succession, or
1094 by way of elective share.

1095 (b) The decedent's surviving spouse may remain in the house of the decedent for not more than
1096 6 months next succeeding the date of death without being chargeable for rent.

1097 Section 2-404. [Discretionary Family Allowance.]

1098 (a) In addition to the right to exempt property, the decedent's surviving spouse and minor
1099 children whom the decedent was obligated to support and children who were in fact being
1100 supported by the decedent are entitled to a reasonable allowance in money out of the estate for
1101 their maintenance during the period of administration, which allowance may not continue for
1102 longer than 1 year if the estate is inadequate to discharge allowed claims. This discretionary
1103 family allowance may be paid as a lump sum or in periodic installments. It is payable to the
1104 surviving spouse, if living, for the use of the surviving spouse and minor and dependent children;
1105 otherwise to the children, or persons having their care and custody. If a minor child or
1106 dependent child is not living with the surviving spouse, the discretionary family allowance may
1107 be made partially to the child or the child's guardian or other person having the child's care and
1108 custody, and partially to the spouse, as their needs may appear. The discretionary family
1109 allowance is exempt from and has priority over all unsecured claims.

1110 (b) The discretionary family allowance is not chargeable against any benefit or share passing to
1111 the surviving spouse or children by the will of the decedent, unless otherwise provided, by
1112 intestate succession or by way of elective share. The death of any person entitled to a
1113 discretionary family allowance terminates the right to allowances not yet paid.

1114 Section 2-405. [Source, Determination, and Documentation.]

1115 If the estate is otherwise sufficient, property specifically devised may not be used to satisfy rights
1116 to exempt property. Subject to this restriction, the surviving spouse, guardians of minor children,
1117 or children who are adults may select property of the estate as exempt property. The personal
1118 representative may make those selections if the surviving spouse, the children, or the guardians
1119 of the minor children are unable or fail to do so within a reasonable time or there is no guardian
1120 of a minor child. The personal representative may execute an instrument or deed of distribution
1121 to establish the ownership of property taken as exempt property. The personal representative

1122 may determine the discretionary family allowance in a lump sum not exceeding \$18,000 or
1123 periodic installments not exceeding \$1,500 per month for 1 year, and may disburse funds of the
1124 estate in payment of the discretionary family allowance payable in cash. The personal
1125 representative or an interested person aggrieved by any selection, determination, payment,
1126 proposed payment, or failure to act under this section may petition the court for appropriate
1127 relief, which may include a discretionary family allowance other than that which the personal
1128 representative determined or could have determined.

1129 PART 5

1130 WILLS, WILL CONTRACTS, AND CUSTODY AND DEPOSIT OF WILLS

1131 Section 2-501. [Who May Make Will.]

1132 An individual 18 or more years of age who is of sound mind may make a will.

1133 Section 2-502. [Execution of Wills.]

1134 (a) Except as provided in subsection (b) and in sections 2-506 and 2-513, a will shall be:

1135 (1) in writing;

1136 (2) signed by the testator or in the testator's name by some other individual in the testator's
1137 conscious presence and by the testator's direction; and

1138 (3) signed by at least 2 individuals, each of whom witnessed either the signing of the will as
1139 described in paragraph (2) or the testator's acknowledgment of that signature or
1140 acknowledgment of the will.

1141 (b) Intent that the document constitute the testator's will can be established by extrinsic
1142 evidence.

1143 Section 2-503. [Reserved.]

1144 Section 2-504. [Self-Proved Will.]

1145 (a) A will may be simultaneously executed, attested, and made self-proved, by acknowledgment
1146 thereof by the testator and affidavits of the witnesses, each made before an officer authorized to
1147 administer oaths under the laws of the state in which execution occurs and evidenced by the
1148 officer's certificate, under official seal, in substantially the following form:

1149 I, _____, the testator, sign my name to this instrument this ____ day of _____,
1150 and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute
1151 this instrument as my will and that I sign it willingly (or willingly direct another to sign for me),
1152 that I execute it as my free and voluntary act for the purposes therein expressed, and that I am 18
1153 years of age or older, of sound mind, and under no constraint or undue influence.

1154 _____

1155 Testator

1156 We, _____, _____, the witnesses, sign our names to this instrument,
1157 being first duly sworn, and do hereby declare to the undersigned authority that the testator signs
1158 and executes this instrument as [his] [her] will and that [he] [she] signs it willingly (or willingly
1159 directs another to sign for [him] [her]), and that each of us, in the presence and hearing of the
1160 testator, hereby signs this will as witness to the testator's signing, and that to the best of our
1161 knowledge the testator is 18 years of age or older, of sound mind, and under no constraint or
1162 undue influence.

1163 _____

1164 Witness

1165 _____

1166 Witness

1167 The State of _____

1168 County of _____
1169 Subscribed, sworn to and acknowledged before me by _____, the testator, and subscribed and
1170 sworn to before me by _____, and _____, witness, this _____ day of _____.

1171 (Seal)

1172 (Signed) _____

1173 (Official capacity of officer)

1174 (b) An attested will may be made self-proved at any time after its execution by the
1175 acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an
1176 officer authorized to administer oaths under the laws of the state in which the acknowledgment
1177 occurs and evidenced by the officer's certificate, under the official seal, attached or annexed to
1178 the will in substantially the following form:

1179 The State of _____

1180 County of _____

1181 We, _____, _____, and _____, the testator and the witnesses,
1182 respectively, whose names are signed to the attached or foregoing instrument, being first duly
1183 sworn, do hereby declare to the undersigned authority that the testator signed and executed the
1184 instrument as the testator's will and that [he] [she] had signed willingly (or willingly directed
1185 another to sign for [him] [her]), and that [he] [she] executed it as [his] [her] free and voluntary
1186 act for the purposes therein expressed, and that each of the witnesses, in the presence and hearing
1187 of the testator, signed the will as witness and that to the best of [his] [her] knowledge the testator
1188 was at that time 18 years of age or older, of sound mind, and under no constraint or undue
1189 influence.

1190 _____

1191 Testator

1192 _____

1193 Witness

1194 _____

1195 Witness

1196 Subscribed, sworn to and acknowledged before me by _____, the testator, and subscribed and
1197 sworn to before me by _____, and _____, witnesses, this _____ day of _____.

1198 (Seal)

1199 (Signed) _____

1200 (Official capacity of officer)

1201 (c) A signature affixed to a self-proving affidavit attached to a will is considered a signature
1202 affixed to the will, if necessary to prove the will's due execution.

1203 Section 2-505. [Who May Witness.]

1204 (a) An individual generally competent to be a witness may act as a witness to a will.

1205 (b) The signing of a will by an interested witness shall not invalidate the will or any provision of
1206 it except that a devise to a witness or a spouse of such witness shall be void unless there are 2
1207 other subscribing witnesses to the will who are not similarly benefited thereunder or the
1208 interested witness establishes that the bequest was not inserted, and the will was not signed, as a
1209 result of fraud or undue influence by the witness.

1210 Section 2-506. [Choice of Law as to Execution.]

1211 A written will is valid if executed in compliance with section 2-502 or if its execution complies
1212 with the law at the time of execution of the place where the will is executed, or of the law of the
1213 place where at the time of execution or at the time of death the testator is domiciled, has a place

1214 of abode, or is a national.

1215 Section 2-507. [Revocation by Writing or by Act.]

1216 (a) A will or any part thereof is revoked:

1217 (1) by executing a subsequent will that revokes the previous will or part expressly or by
1218 inconsistency; or

1219 (2) by performing a revocatory act on the will, if the testator performed the act with the intent
1220 and for the purpose of revoking the will or part or if another individual performed the act in the
1221 testator's conscious presence and by the testator's direction. For purposes of this paragraph,
1222 "revocatory act on the will" includes burning, tearing, canceling, obliterating, or destroying the
1223 will or any part of it.

1224 (b) If a subsequent will does not expressly revoke a previous will, the execution of the
1225 subsequent will wholly revokes the previous will by inconsistency if the testator intended the
1226 subsequent will to replace rather than supplement the previous will.

1227 (c) The testator is presumed to have intended a subsequent will to replace rather than
1228 supplement a previous will if the subsequent will makes a complete disposition of the testator's
1229 estate. If this presumption arises and is not rebutted, the previous will is revoked; only the
1230 subsequent will is operative on the testator's death.

1231 (d) The testator is presumed to have intended a subsequent will to supplement rather than
1232 replace a previous will if the subsequent will does not make a complete disposition of the
1233 testator's estate. If this presumption arises and is not rebutted, the subsequent will revokes the
1234 previous will only to the extent the subsequent will is inconsistent with the previous will; each
1235 will is fully operative on the testator's death to the extent they are not inconsistent.

1236 Section 2-508. [Revocation by Change of Circumstances.]

1237 Except as provided in sections 2-301, 2-803 and 2-804, a change of circumstances shall not
1238 revoke a will or any part of it.

1239 Section 2-509. [Revival of Revoked Will.]

1240 (a) If a subsequent will that wholly revoked a previous will is thereafter revoked by a revocatory
1241 act under section 2-507(a)(2), the previous will remains revoked unless it is revived. The
1242 previous will is revived if it is evident from the circumstances of the revocation of the
1243 subsequent will or from the testator's contemporary or subsequent declarations that the testator
1244 intended the previous will to take effect as executed.

1245 (b) If a subsequent will that partly revoked a previous will is thereafter revoked by a revocatory
1246 act under section 2-507(a)(2), a revoked part of the previous will is revived unless it is evident
1247 from the circumstances of the revocation of the subsequent will or from the testator's
1248 contemporary or subsequent declarations that the testator did not intend the revoked part to take
1249 effect as executed.

1250 (c) If a subsequent will that revoked a previous will in whole or in part is thereafter revoked by
1251 another, later, will, the previous will remains revoked in whole or in part, unless it or its revoked
1252 part is revived. The previous will or its revoked part is revived to the extent it appears from the
1253 terms of the later will that the testator intended the previous will to take effect.

1254 Section 2-510. [Incorporation by Reference.]

1255 A writing in existence when a will is executed may be incorporated by reference if the language
1256 of the will manifests this intent and describes the writing sufficiently to permit its identification.

1257 Section 2-511. [Testamentary Additions to Trusts.]

1258 (a) A will may validly devise property to the trustee of a trust established or to be established

1259 (i) during the testator's lifetime by the testator, by the testator and some other person, or by some

1260 other person, including a funded or unfunded life insurance trust, although the settler has
1261 reserved any or all rights of ownership of the insurance contracts, or (ii) at the testator's death by
1262 the testator's devise to the trustee, if the trust is identified in the testator's will and its terms are
1263 set forth in a written instrument, other than a will, executed before, or concurrently with, or after
1264 the execution of the testator's will or in another individual's will if that other individual has
1265 predeceased the testator, regardless of the existence, size, or character of the corpus of the
1266 trust. The devise is not invalid because the trust is amendable or revocable, or because the trust
1267 was amended after the execution of the will or the testator's death.

1268 (b) Unless the testator's will provides otherwise, property devised to a trust described in
1269 subsection (a) is not held under a testamentary trust of the testator, but it becomes a part of the
1270 trust to which it is devised, and shall be administered and disposed of in accordance with the
1271 provisions of the governing instrument setting forth the terms of the trust, including any
1272 amendments thereto made before or after the testator's death.

1273 (c) Unless the testator's will provides otherwise, a revocation or termination of the trust before
1274 the testator's death causes the devise to lapse.

1275 Section 2-512. [Events of Independent Significance.]

1276 A will may dispose of property by reference to acts and events that have significance apart from
1277 their effect upon the dispositions made by the will, whether they occur before or after the
1278 execution of the will or before or after the testator's death. The execution or revocation of
1279 another individual's will is such an event.

1280 Section 2-513. [Separate Writing Identifying Devise of Certain Types of Tangible Property.]

1281 A will may refer to a written statement or list to dispose of items of tangible personal property
1282 not otherwise specifically disposed of by the will, other than money. To be admissible under this
1283 section as evidence of the intended disposition, the writing shall be signed by the testator and
1284 shall describe the items and the devisees with reasonable certainty. The writing may be referred
1285 to as one to be in existence at the time of the testator's death; it may be prepared before or after
1286 the execution of the will; it may be altered by the testator after its preparation; and it may be a
1287 writing that has no significance apart from its effect on the dispositions made by the will.

1288 Section 2-514. [Contracts Concerning Succession.]

1289 A contract to make or not to make a will or devise, or to revoke or not to revoke a will or devise,
1290 or to die intestate, if executed after the effective date of this article, may be established only by
1291 (i) provisions of a will stating material provisions of the contract, (ii) an express reference in a
1292 will to a contract and extrinsic evidence proving the terms of the contract, or (iii) a writing
1293 signed by the decedent evidencing the contract. The execution of a joint will or mutual wills
1294 shall not create a presumption of a contract not to revoke the will or wills.

1295 Section 2-515. [Deposit of Will With Court in Testator's Lifetime.]

1296 A will may be deposited by the testator or the testator's agent with any court for safekeeping,
1297 under rules of the court. The will shall be sealed and kept confidential. During the testator's
1298 lifetime, a deposited will shall be delivered only to the testator or to a person authorized in
1299 writing signed by the testator to receive the will. A guardian of the estate or conservator may be
1300 allowed to examine a deposited will of a protected testator under procedures designed to
1301 maintain the confidential character of the document to the extent possible, and to ensure that it
1302 will be resealed and kept on deposit after the examination. Upon being informed of the testator's
1303 death, the court shall notify any person designated to receive the will and deliver it to that person
1304 on request; or the court may deliver the will to the appropriate court.

1305 Section 2-516. [Duty of Custodian of Will; Liability.]

1306 After the death of a testator a person having custody of a will of the testator shall deliver it
1307 within thirty days after notice of the death to a person able to secure its probate and if none is
1308 known, to an appropriate court. A person who willfully fails to deliver a will is liable to any
1309 person aggrieved for any damages that may be sustained by the failure. A person who willfully
1310 refuses or fails to deliver a will after being ordered by the court in a proceeding brought for the
1311 purpose of compelling delivery is subject to penalty for contempt of court.

1312 Section 2-517. [Penalty Clause for Contest.]

1313 A provision in a will purporting to penalize an interested person for contesting the will or
1314 instituting other proceedings relating to the estate is enforceable.

1315 PART 6

1316 RULES OF CONSTRUCTION APPLICABLE ONLY TO WILLS

1317 Section 2-601. [Scope.]

1318 In the absence of a finding of a contrary intention shown by the terms of the will, the rules of
1319 construction in this part control the construction of a will.

1320 Section 2-602. [Will May Pass All Property and After-Acquired Property.]

1321 Property owned by the testator at death and any acquired by the testator's estate thereafter passes
1322 under the will unless a different intention appears.

1323 Section 2-603. [Anti-Lapse; Deceased Devisee; Class Gifts.]

1324 If a devisee who is a grandparent or a lineal descendant of a grandparent is dead at the
1325 time of execution of the will, fails to survive the testator, or is treated as if he predeceased the
1326 testator, the issue of the deceased devisee who survive the testator take in place of the deceased
1327 devisee and if they are all of the same degree of kinship to the devisee they take equally, but if of
1328 unequal degree than those of more remote degree take by representation. A person who would
1329 have been a devisee under a class gift if he had survived the testator is treated as a devisee for
1330 purposes of this section whether his death occurred before or after the execution of the will.

1331 Section 2-604. [Failure of Testamentary Provision.]

1332 (a) Except as provided in section 2-603, a devise, other than a residuary devise, that fails for any
1333 reason becomes a part of the residue.

1334 (b) Except as provided in section 2-603, if the residue is devised to 2 or more persons, the share
1335 of a residuary devisee that fails for any reason passes to the other residuary devisee, or to other
1336 residuary devisees in proportion to the interest of each in the remaining part of the residue.

1337 Section 2-605. [Increase in Devised Securities; Accessions.]

1338 (a) If a testator executes a will that devises securities and the testator then owned securities that
1339 meet the description in the will, the devise includes additional securities owned by the testator at
1340 death to the extent the additional securities were acquired by the testator after the will was
1341 executed as a result of the testator's ownership of the described securities and are securities of
1342 any of the following types:

1343 (1) securities of the same organization acquired by reason of action initiated by the organization
1344 or any successor, related, or acquiring organization, excluding any acquired by exercise of
1345 purchase options;

1346 (2) securities of another organization acquired as a result of a merger, consolidation,
1347 reorganization, or other distribution by the organization or any successor, related, or acquiring
1348 organization; or

1349 (3) securities of the same organization acquired as a result of a plan of reinvestment.

1350 (b) Distributions in cash before death with respect to a described security are not part of the
1351 devise.

1352 Section 2-606. [Nonademption of Specific Devises; Unpaid Proceeds of Sale, Condemnation, or
1353 Insurance; Sale by Conservator or Agent.]

1354 (a) A specific devisee has a right to the specifically devised property in the testator's estate at
1355 death and:

1356 (1) any balance of the purchase price, together with any security agreement, owing from a
1357 purchaser to the testator at death by reason of sale of the property;

1358 (2) any amount of a condemnation award for the taking of the property unpaid at death;

1359 (3) any proceeds unpaid at death on fire or casualty insurance on or other recovery for injury to
1360 the property; and

1361 (4) property owned by the testator at death and acquired as a result of foreclosure, or obtained in
1362 lieu of foreclosure, of the security interest for a specifically devised obligation.

1363 (b) If specifically devised property is sold or mortgaged by a guardian of the estate conservator
1364 or by an agent acting within the authority of a durable power of attorney for an incapacitated
1365 principal, or if a condemnation award, insurance proceeds, or recovery for injury to the property
1366 are paid to a conservator or to an agent acting within the authority of a durable power of attorney
1367 for an incapacitated principal, the specific devisee has the right to a general pecuniary devise
1368 equal to the net sale price, the amount of the unpaid loan, the condemnation award, the insurance
1369 proceeds, or the recovery.

1370 (c) The right of a specific devisee under subsection (b) is reduced by any right the devisee has
1371 under subsection (a).

1372 (d) For the purposes of the references in subsection (b) to a conservator, subsection (b) shall not
1373 apply if after the sale, mortgage, condemnation, casualty, or recovery, it was adjudicated that the
1374 testator's incapacity ceased and the testator survived the adjudication by 1 year.

1375 (e) For the purposes of the references in subsection (b) to an agent acting within the authority of
1376 a durable power of attorney for an incapacitated principal, (i) "incapacitated principal" means a
1377 principal who is an incapacitated person, (ii) no adjudication of incapacity before death is
1378 necessary, and (iii) the acts of an agent within the authority of a durable power of attorney are
1379 presumed to be for an incapacitated principal.

1380 Section 2-607. [Nonexoneration.]

1381 A specific devise passes subject to any mortgage interest existing at the date of death, without
1382 right of exoneration, regardless of a general directive in the will to pay debts.

1383 Section 2-608. [Exercise of Power of Appointment.]

1384 (a) In the absence of a requirement that a power of appointment be exercised by a reference, or
1385 by an express or specific reference, to the power, a general residuary clause in a will, or a will
1386 making general disposition of all of the testator's property, expresses an intention to exercise a
1387 power of appointment held by the testator only if (i) the power is a general power and the
1388 creating instrument does not contain an effective gift if the power is not exercised or (ii) the
1389 testator's will manifests an intention to include the property subject to the power.

1390 (b) Unless a contrary intent is manifested in the terms of an instrument creating or limiting a
1391 power of appointment, it shall be presumed that the person so creating or limiting such power
1392 intended to authorize the donee thereof, when exercising said power, not only to create absolute
1393 interests but also to create less than absolute legal and equitable interests, including interests in
1394 trust for the benefit of objects of said power even though the trustees thereof may not be objects
1395 of said power and including new powers of appointment, general or more limited, in objects of
1396 said power, even though the objects of the new powers may include one or more that are not
1397 objects of said power.

1398 Section 2-609. [Ademption by Satisfaction.]
1399 (a) Property a testator gave in the testator's lifetime to a person is treated as a satisfaction of a
1400 devise in whole or in part, only if (i) the will provides for deduction of the gift, (ii) the testator
1401 declared in a contemporaneous writing that the gift is in satisfaction of the devise or that its value
1402 is to be deducted from the value of the devise, or (iii) the devisee acknowledged in writing that
1403 the gift is in satisfaction of the devise or that its value is to be deducted from the value of the
1404 devise.

1405 (b) For purposes of partial satisfaction, property given during lifetime shall be valued as
1406 expressed in the will or in the contemporaneous writing; if it is not so valued, such property shall
1407 be valued as of the time the devisee came into possession or enjoyment of the property or at the
1408 testator's death, whichever occurs first.

1409 (c) If the devisee fails to survive the testator, the gift is treated as a full or partial satisfaction of
1410 the devise, as appropriate, in applying sections 2-603 and 2-604, unless the testator's
1411 contemporaneous writing provides otherwise.

1412 Section 2-610. [Annuities.]

1413 (a) If an annuity, or the use, rent, income or interest of property, real or personal, is given by
1414 will or by trust instrument for the benefit of a person for life or until the happening of a
1415 contingency, such person shall be entitled to receive and enjoy the same from and after the death
1416 of the deceased, unless it is otherwise provided in such will or trust instrument.

1417 PART 7

1418 RULES OF CONSTRUCTION APPLICABLE TO DONATIVE

1419 DISPOSITIONS IN WILLS AND OTHER

1420 GOVERNING INSTRUMENTS

1421 Section 2-701. [Scope.]

1422 In the absence of a finding of a contrary intention shown by the terms of the will, the rules of
1423 construction in this part control the construction of a governing instrument. The rules of
1424 construction in this part apply to a governing instrument of any type, except as the application of
1425 a particular section is limited by its terms to a specific type or types of donative disposition or
1426 governing instrument.

1427 Section 2-702. [Requirement of Survival.]

1428 (a) For the purposes of this code, except for purposes of part 3 of article VI [Uniform TOD
1429 Security Registration Act] and except as provided in subsection (d), an individual who is not
1430 established to have survived an event, including the death of another individual, is deemed to
1431 have predeceased the event.

1432 (b) Except as provided in subsection (d) and except for a security registered in beneficiary form
1433 (TOD) under part 3 of article VI, Uniform TOD Security Registration Act, for purposes of a
1434 donative provision of a governing instrument, an individual who is not established to have
1435 survived an event, including the death of another individual, is deemed to have predeceased the
1436 event.

1437 (c) Except as provided in subsection (d), if (i) it is not established that 1 of 2 co-owners with
1438 right of survivorship survived the other co-owner, $\frac{1}{2}$ of the property passes as if 1 had survived,
1439 and $\frac{1}{2}$ as if the other had survived and (ii) there are more than 2 co-owners and it is not
1440 established that at least 1 of them survived the others, the property passes in the proportion that
1441 one bears to the whole number of co-owners. For the purposes of this subsection, "co-owners
1442 with right of survivorship" includes joint tenants, tenants by the entireties, and other co-owners
1443 of property or accounts held under circumstances that entitles 1 or more to the whole of the

1444 property or account on the death of the other or others.

1445 (d) This section shall not apply if:

1446 (1) the governing instrument contains language dealing explicitly with simultaneous deaths or
1447 deaths in a common disaster and that language is operable under the facts of the case;

1448 (2) the governing instrument expressly indicates that an individual is not required to survive an
1449 event, including the death of another individual, by any specified period or expressly requires the
1450 individual to survive the event by a specified period;

1451 (3) the application of this section to multiple governing instruments would result in an
1452 unintended failure or duplication of a disposition.

1453 (e) (1) A payor or other third party is not liable for having made a payment or transferred an
1454 item of property or any other benefit to a beneficiary designated in a governing instrument who,
1455 under this section, is not entitled to the payment or item of property, or for having taken any
1456 other action in good faith reliance on the beneficiary's apparent entitlement under the terms of
1457 the governing instrument, before the payor or other third party received written notice of a
1458 claimed lack of entitlement under this section. A payor or other third party is liable for a
1459 payment made or other action taken after the payor or other third party received written notice of
1460 a claimed lack of entitlement under this section.

1461 (2) Written notice of a claimed lack of entitlement under paragraph (1) shall be mailed to the
1462 payor's or other third party's main office or home by registered or certified mail, return receipt
1463 requested, or served upon the payor or other third party in the same manner as a summons in a
1464 civil action. Upon receipt of written notice of a claimed lack of entitlement under this section, a
1465 payor or other third party may pay any amount owed or transfer or deposit any item of property
1466 held by it to or with the court having jurisdiction of the probate proceedings relating to the
1467 decedent's estate, or if no proceedings have been commenced, to or with the court having
1468 jurisdiction of probate proceedings relating to decedents' estates located in the county of the
1469 decedent's residence. The court shall hold the funds or item of property and, upon its
1470 determination under this section, shall order disbursement in accordance with the
1471 determination. Payments, transfers, or deposits made to or with the court discharge the payor or
1472 other third party from all claims for the value of amounts paid to or items of property transferred
1473 to or deposited with the court.

1474 (f) (1) A person who purchases property for value and without notice, or who receives a
1475 payment or other item of property in partial or full satisfaction of a legally enforceable
1476 obligation, is neither obligated under this section to return the payment, item of property, or
1477 benefit nor is liable under this section for the amount of the payment or the value of the item of
1478 property or benefit. But a person who, not for value, receives a payment, item of property, or
1479 any other benefit to which the person is not entitled under this section is obligated to return the
1480 payment, item of property, or benefit, or is personally liable for the amount of the payment or the
1481 value of the item of property or benefit, to the person who is entitled to it under this section.

1482 (2) If this section or any part of this section is preempted by federal law with respect to a
1483 payment, an item of property, or any other benefit covered by this section, a person who, not for
1484 value, receives the payment, item of property, or any other benefit to which the person is not
1485 entitled under this section is obligated to return the payment, item of property, or benefit, or is
1486 personally liable for the amount of the payment or the value of the item of property or benefit, to
1487 the person who would have been entitled to it were this section or part of this section not
1488 preempted.

1489 Section 2-703. [Choice of Law as to Meaning and Effect of Donative Dispositions.]

1490 The meaning and legal effect of a donative disposition is determined by the local law of the state
1491 selected by the transferor in the governing instrument, unless the application of that law is
1492 contrary to the provisions relating to the elective share described in part 2, the provisions relating
1493 to exempt property and allowances described in part 4, or any other public policy of the
1494 commonwealth otherwise applicable to the disposition.

1495 Section 2-704. [Taxes on QTIPS.]

1496 A direction in a will or instrument of trust to pay taxes caused by, resulting from, or imposed by
1497 reason of the death of the testator or donor, as the case may be, out of the decedent's probate
1498 estate or trust estate or other property, shall not include, unless the will or instrument of trust or a
1499 provision of such tax laws specifically provides otherwise, taxes levied or assessed under the tax
1500 laws of the United States or of the commonwealth or of any foreign state or commonwealth on
1501 any qualified terminable interest property in which the decedent had a qualifying income interest
1502 for life.

1503 Section 2-705. [Class Gifts Construed to Accord with Intestate Succession.]

1504 (a) Adopted individuals and individuals born out of wedlock, and their respective descendants if
1505 appropriate to the class, are included in class gifts and other terms of relationship in accordance
1506 with the rules for intestate succession. Terms of relationship that do not differentiate
1507 relationships by blood from those by affinity, such as “uncles”, “aunts”, “nieces”, or “nephews”,
1508 are construed to exclude relatives by affinity. Terms of relationship that do not differentiate
1509 relationships by the half blood from those by the whole blood, such as “brothers”, “sisters”,
1510 “nieces”, or “nephews”, are construed to include both types of relationships.

1511 (b) In addition to the requirements of subsection (a), in construing a donative disposition by a
1512 transferor who is not the adopting parent, an adopted individual is not considered the child of the
1513 adopting parent unless the adoption took place while the person adopted was a minor.

1514 Section 2-706. [Life Insurance; Retirement Plan; Account With POD Designation; Transfer-on-
1515 Death Registration; Deceased Beneficiary.]

1516 (a) In this section:

1517 (1) “Alternative beneficiary designation”, a beneficiary designation that is expressly created by
1518 the governing instrument and, under the terms of the governing instrument, can take effect
1519 instead of another beneficiary designation on the happening of 1 or more events, including
1520 survival of the decedent or failure to survive the decedent, whether an event is expressed in
1521 condition-precedent, condition-subsequent, or any other form.

1522 (2) “Beneficiary”, the beneficiary of a beneficiary designation and includes (i) a class member
1523 if the beneficiary designation is in the form of a class gift and (ii) an individual or class member
1524 who was deceased at the time the beneficiary designation was executed as well as an individual
1525 or class member who was then living but who failed to survive the decedent.

1526 (3) “Beneficiary designation”, includes an alternative beneficiary designation and a beneficiary
1527 designation in the form of a class gift.

1528 (4) “Class member”, includes an individual who fails to survive the decedent but who would
1529 have taken under a beneficiary designation in the form of a class gift had he or she survived the
1530 decedent.

1531 (5) “Surviving beneficiary” or “surviving descendant”, a beneficiary or a descendant who did
1532 not predecease the decedent.

1533 (b) If a beneficiary fails to survive the decedent and is a grandparent or a descendant of a
1534 grandparent, the following apply:

1535 (1) If the beneficiary designation is not in the form of a class gift and the deceased beneficiary

1536 leaves surviving descendants, a substitute gift is created in the beneficiary's surviving
1537 descendants. They take by representation the property to which the beneficiary would have been
1538 entitled had the beneficiary survived the decedent.

1539 (2) If the beneficiary designation is in the form of a class gift, other than a beneficiary
1540 designation to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or
1541 "family", or a class described by language of similar import, a substitute gift is created in the
1542 deceased beneficiary or beneficiaries' surviving descendants. The property to which the
1543 beneficiaries would have been entitled had all of them survived the decedent passes to the
1544 surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each
1545 surviving beneficiary takes the share to which the surviving beneficiary would have been entitled
1546 had the deceased beneficiaries survived the decedent. Each deceased beneficiary's surviving
1547 descendants who are substituted for the deceased beneficiary take by representation the share to
1548 which the deceased beneficiary would have been entitled had the deceased beneficiary survived
1549 the decedent. For the purposes of this paragraph, "deceased beneficiary" is a class member who
1550 failed to survive the decedent and left 1 or more surviving descendants.

1551 (c) (1) A payor is protected from liability in making payments under the terms of the
1552 beneficiary designation until the payor has received written notice of a claim to a substitute gift
1553 under this section. Payment made before the receipt of written notice of a claim to a substitute
1554 gift under this section discharges the payor, but not the recipient, from all claims for the amounts
1555 paid. A payor is liable for a payment made after the payor has received written notice of the
1556 claim. A recipient is liable for a payment received, whether or not written notice of the claim is
1557 given.

1558 (2) The written notice of the claim shall be mailed to the payor's main office or home by
1559 registered or certified mail, return receipt requested, or served upon the payor in the same
1560 manner as a summons in a civil action. Upon receipt of written notice of the claim, a payor may
1561 pay any amount owed by it to the court having jurisdiction of the probate proceedings relating to
1562 the decedent's estate or, if no proceedings have been commenced, to the court having jurisdiction
1563 of probate proceedings relating to decedents' estates located in the county of the decedent's
1564 residence. The court shall hold the funds and, upon its determination under this section, shall
1565 order disbursement in accordance with the determination. Payment made to the court discharges
1566 the payor from all claims for the amounts paid.

1567 (d) (1) A person who purchases property for value and without notice, or who receives a
1568 payment or other item of property in partial or full satisfaction of a legally enforceable
1569 obligation, is neither obligated under this section to return the payment, item of property, or
1570 benefit nor is liable under this section for the amount of the payment or the value of the item of
1571 property or benefit. But a person who, not for value, receives a payment, item of property, or
1572 any other benefit to which the person is not entitled under this section is obligated to return the
1573 payment, item of property, or benefit, or is personally liable for the amount of the payment or the
1574 value of the item of property or benefit, to the person who is entitled to it under this section.

1575 (2) If this section or any part of this section is preempted by federal law with respect to a
1576 payment, an item of property, or any other benefit covered by this section, a person who, not for
1577 value, receives the payment, item of property, or any other benefit to which the person is not
1578 entitled under this section is obligated to return the payment, item of property, or benefit, or is
1579 personally liable for the amount of the payment or the value of the item of property or benefit, to
1580 the person who would have been entitled to it were this section or part of this section not
1581 preempted.

1582 Section 2-707. [Survivorship With Respect to Future Interests Under Terms of Trust; Substitute
1583 Takers.]

1584 (a) In this section:

1585 (1) “Alternative future interest”, an expressly created future interest that can take effect in
1586 possession or enjoyment instead of another future interest on the happening of 1 or more events,
1587 including survival of an event or failure to survive an event, whether an event is expressed in
1588 condition-precedent, condition-subsequent, or any other form. A residuary clause in a will shall
1589 not create an alternative future interest with respect to a future interest created in a nonresiduary
1590 devise in the will, whether or not the will specifically provides that lapsed or failed devises are to
1591 pass under the residuary clause.

1592 (2) “Beneficiary”, the beneficiary of a future interest and includes a class member if the future
1593 interest is in the form of a class gift.

1594 (3) “Class member”, includes an individual who fails to survive the distribution date but who
1595 would have taken under a future interest in the form of a class gift had the individual survived
1596 the distribution date.

1597 (4) “Distribution date”, with respect to a future interest, is the time when the future interest is to
1598 take effect in possession or enjoyment. The distribution date need not occur at the beginning or
1599 end of a calendar day, but can occur at a time during the course of a day.

1600 (5) “Future interest”, includes an alternative future interest and a future interest in the form of a
1601 class gift.

1602 (6) “Future interest under the terms of a trust”, a future interest that was created by a transfer
1603 creating a trust or to an existing trust or by an exercise of a power of appointment to an existing
1604 trust, directing the continuance of an existing trust, designating a beneficiary of an existing trust,
1605 or creating a trust.

1606 (7) “Surviving beneficiary” or “surviving descendant”, a beneficiary or a descendant who did
1607 not predecease the distribution date.

1608 (b) If an instrument is silent on the requirement of survivorship, a future interest under the terms
1609 of a trust is contingent on the beneficiary's surviving the distribution date. In that case, if a
1610 beneficiary of a future interest under the terms of a trust fails to survive the distribution date, the
1611 following apply:

1612 (1) If the future interest is not in the form of a class gift and the deceased beneficiary leaves
1613 surviving descendants, a substitute gift is created in the beneficiary's surviving
1614 descendants. They take by representation the property to which the beneficiary would have been
1615 entitled had the beneficiary survived the distribution date.

1616 (2) If the future interest is in the form of a class gift, other than a future interest to “issue”,
1617 “descendants”, “heirs of the body”, “heirs”, “next of kin”, “relatives”, or “family”, or a class
1618 described by language of similar import, a substitute gift is created in the deceased beneficiary or
1619 beneficiaries' surviving descendants. The property to which the beneficiaries would have been
1620 entitled had all of them survived the distribution date passes to the surviving beneficiaries and
1621 the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the
1622 share to which the surviving beneficiary would have been entitled had the deceased beneficiaries
1623 survived the distribution date. Each deceased beneficiary's surviving descendants who are
1624 substituted for the deceased beneficiary take by representation the share to which the deceased
1625 beneficiary would have been entitled had the deceased beneficiary survived the distribution
1626 date. For the purposes of this paragraph, “deceased beneficiary” means a class member who
1627 failed to survive the distribution date and left 1 or more surviving descendants.

1628 (c) If, after the application of subsections (b), there is no surviving taker, the property passes in
1629 the following order:

1630 (1) if the trust was created in a nonresiduary devise in the transferor's will or in a codicil to the
1631 transferor's will, the property passes under the residuary clause in the transferor's will; for
1632 purposes of this section, the residuary clause is treated as creating a future interest under the
1633 terms of a trust.

1634 (2) if no taker is produced by the application of paragraph (1), the property passes to the
1635 transferor's heirs under section 2-711.

1636 Section 2-708. [Class Gifts to "Descendants", "Issue", or "Heirs of the Body"; Form of
1637 Distribution If None Specified.]

1638 If a class gift in favor of "descendants", "issue", or "heirs of the body" does not specify the
1639 manner in which the property is to be distributed among the class members, the property is
1640 distributed among the class members who are living when the interest is to take effect in
1641 possession or enjoyment, in such shares as they would receive, under the applicable law of
1642 intestate succession, if the designated ancestor had then died intestate owning the subject matter
1643 of the class gift.

1644 Section 2-709. [Representation; Per Capita at Each Generation; Per Stirpes.]

1645 (a) In this section:

1646 (1) "Deceased child" or "deceased descendant", a child or a descendant who predeceased the
1647 distribution date.

1648 (2) "Distribution date", with respect to an interest, is the time when the interest is to take effect
1649 in possession or enjoyment. The distribution date need not occur at the beginning or end of a
1650 calendar day, but can occur at a time during the course of a day.

1651 (3) "Surviving ancestor", "surviving child", or "surviving descendant", an ancestor, a child, or a
1652 descendant who did not predecease the distribution date.

1653 (b) If an applicable statute or a governing instrument calls for property to be distributed "per
1654 capita at each generation", the property is divided into as many equal shares as there are (i)
1655 surviving descendants in the generation nearest to the designated ancestor which contains 1 or
1656 more surviving descendants (ii) and deceased descendants in the same generation who left
1657 surviving descendants, if any. Each surviving descendant in the nearest generation is allocated 1
1658 share. The remaining shares, if any, are combined and then divided in the same manner among
1659 the surviving descendants of the deceased descendants as if the surviving descendants who were
1660 allocated a share and their surviving descendants had predeceased the distribution date.

1661 (c) If a governing instrument calls for property to be distributed "by representation" or "per
1662 stirpes", the property is divided into as many equal shares as there are (i) surviving children of
1663 the designated ancestor and (ii) deceased children who left surviving descendants. Each
1664 surviving child is allocated 1 share. The share of each deceased child with surviving descendants
1665 is divided in the same manner, with subdivision repeating at each succeeding generation until the
1666 property is fully allocated among surviving descendants.

1667 (d) For the purposes of subsections (b) and (c), an individual who is deceased and left no
1668 surviving descendant is disregarded, and an individual who leaves a surviving ancestor who is a
1669 descendant of the designated ancestor is not entitled to a share.

1670 Section 2-710. [Worthier Title Doctrine Abolished.]

1671 The doctrine of worthier title shall not exist in the commonwealth either as a rule of law or as a
1672 rule of construction. Language in a governing instrument describing the beneficiaries of a
1673 donative disposition as the transferor's "heirs", "heirs at law", "next of kin", "distributes",

1674 “relatives”, or “family”, or language of similar import, shall not create or presumptively create a
1675 reversionary interest in the transferor.

1676 Section 2-711. [Future Interests in “Heirs” and Like.]

1677 If an applicable statute or a governing instrument calls for a future distribution to or creates a
1678 future interest in a designated individual's “heirs”, “heirs at law”, “next of kin”, “relatives”, or
1679 “family”, or language of similar import, the property passes to those persons, including the
1680 commonwealth under section 2-105, and in such shares as would succeed to the designated
1681 individual's intestate estate under the intestate succession law of the designated individual's
1682 domicile if the designated individual died when the donative disposition is to take effect in
1683 possession or enjoyment. If the designated individual's surviving spouse is living but is
1684 remarried at the time the interest is to take effect in possession or enjoyment, the surviving
1685 spouse is not an heir of the designated individual.

1686 PART 8

1687 GENERAL PROVISIONS CONCERNING PROBATE

1688 AND NONPROBATE TRANSFERS

1689 Section 2-801. [Disclaimer of Property Interests.]

1690 (a) The following words as used in this section shall have the following meanings, unless
1691 otherwise expressly provided or the context otherwise requires:-

1692 “Beneficiary”, any person to whom, and any estate, trust, corporation or other legal entity to
1693 which, an interest in property would pass in any manner described in subsection (b), except for
1694 the execution and filing of a disclaimer in accordance with the provisions of this chapter.

1695 An “interest in property” which may be disclaimed shall include:

1696 1. any legal or equitable interest or estate, whether present, future or contingent, in any real or
1697 personal property, or in any fractional part, share, or portion thereof, or in any specific asset or
1698 assets thereof;

1699 2. any power to appoint, consume, apply, or expend property or any other right, power, or
1700 privilege, relating thereto;

1701 3. any fractional part, share or portion of any interest described in clause 1 or 2.

1702 (b) Unless barred by the provisions of subsection (h), a beneficiary may disclaim any interest in
1703 property which, except for the execution and filing of a disclaimer in accordance with the
1704 provisions of this section, pass to the beneficiary:

1705 1. By intestate succession, devise, legacy, bequest, exercise or nonexercise of a power of
1706 appointment exercisable by will, or testamentary exercise or nonexercise of a power of
1707 appointment exercisable by either deed of trust or will; as beneficiary of a testamentary trust,
1708 beneficiary of a testamentary gift to a nontestamentary trust, or donee of a power of appointment
1709 created by will; by succession in any manner described in this clause to a disclaimed interest; or
1710 in any other manner not specified above under a testamentary instrument or by operation of any
1711 statute or rule of law governing devolution or disposition of property upon or after a person's
1712 death.

1713 2. As donee, grantee, beneficiary of an intervivos trust, beneficiary of an insurance or annuity
1714 contract, donee of a power of appointment created by a nontestamentary instrument, or as
1715 surviving joint tenant or tenant by the entirety, except that a surviving joint tenant or tenant by
1716 the entirety may not disclaim that portion of an interest in joint property or property held by the
1717 entirety which is allocable to amounts contributed by him to the interest in such property;
1718 through exercise or nonexercise of a power of appointment exercisable by deed of trust or will;
1719 under any deed, assignment, or other non-testamentary instrument of conveyance or transfer; by

1720 succession in any manner described in this clause to a disclaimed interest; or in any other manner
1721 not specified above under a non-testamentary instrument or by operation of any statute or rule of
1722 law.

1723 Disclaimer may be made for a beneficiary under a legal disability by the duly appointed guardian
1724 or conservator of such beneficiary, and for a deceased beneficiary by the legal representative of
1725 such beneficiary's estate; provided, in any case, however, that the probate court having
1726 jurisdiction of the estate of such beneficiary shall have decreed, upon complaint filed by such
1727 guardian, conservator, or legal representative, that such disclaimer is in the best interests of those
1728 interested in the estate of such beneficiary and not detrimental to the best interests of the
1729 beneficiary or the estate of such beneficiary, and that such guardian, conservator, or legal
1730 representative is authorized to execute and file such disclaimer on behalf of such beneficiary in
1731 accordance with the provisions of this chapter.

1732 (c) A disclaimer shall be executed and filed pursuant to the provisions of this section at any time
1733 after the creation of the interest in property being disclaimed, but in any event not later than nine
1734 months after the event determining that the beneficiary is finally ascertained as the beneficiary of
1735 such interest and that such interest is indefeasibly vested and in the case of a beneficiary who is a
1736 surviving joint tenant or tenant by the entirety, a disclaimer shall be executed and filed in any
1737 event not later than nine months after the death of the other joint tenant or tenants or tenant by
1738 the entirety; provided, that any court having jurisdiction of the property, an interest in which is
1739 being disclaimed, may, upon petition filed by the beneficiary, the duly appointed guardian or
1740 conservator of a beneficiary under a legal disability, or the legal representative of a deceased
1741 beneficiary's estate, permit an extension of time to execute and file a disclaimer, for such further
1742 period of time as the court in its discretion deems advisable.

1743 (d) A disclaimer shall be in writing, shall describe the interest in property being disclaimed,
1744 shall declare the disclaimer and the extent thereof, shall be clear and unequivocal, and shall be
1745 signed by the beneficiary, the duly appointed guardian or conservator of a beneficiary under a
1746 legal disability, or the legal representative of a deceased beneficiary's estate.

1747 (e) The original of the disclaimer or an attested copy thereof, if filing is required to be made
1748 with more than 1 probate court, shall be filed with the probate court, or probate courts, if any,
1749 wherein a duly appointed fiduciary, if any, having custody or control of the property, an interest
1750 in which is being disclaimed, is required to file periodic accounts.

1751 If the property, an interest in which is being disclaimed, is real property, the disclaimer shall be
1752 acknowledged in the manner provided for deeds of real property. The disclaimer shall not be
1753 valid as against any person, except the beneficiary, the heirs and devisees of the beneficiary, and
1754 any person, estate, trust, corporation or other legal entity having actual notice of the disclaimer,
1755 unless the original thereof or an attested copy thereof if the original is required to be filed with a
1756 probate court, is recorded in the registry of deeds for the county or district in which the real
1757 property is situated or, in the case of registered real property, is filed and registered in the office
1758 of the assistant recorder for the registry district in which the real property is located.

1759 A copy of the disclaimer shall be served by delivering in hand or by mailing by certified mail to
1760 the last known address of the person or persons or other legal entity or entities having custody or
1761 possession of the property, an interest in which is being disclaimed. Failure to comply with these
1762 requirements of service shall not affect the validity of the disclaimer.

1763 (f) No person or other legal entity having custody or possession of the property, an interest in
1764 which is being or has been disclaimed, shall be liable for any distribution or other disposition
1765 made prior to the delivery to him or it of a copy of the disclaimer, pursuant to the requirements

1766 of subsection (e); and no such person or other legal entity shall be liable for any good faith
1767 distribution or other disposition made in reliance upon a disclaimer, the form of which is in
1768 accordance with the requirements of subsection (d), and a copy of which has been delivered to
1769 him or it pursuant to the requirements of subsection (e).

1770 If a disclaimer certifies, with particularity, that none of the contingencies specified in subsection
1771 (h), which would result in waiver or bar of the beneficiary's right to disclaim, are applicable, any
1772 person or other legal entity having custody or possession of the property, and any third party
1773 purchaser of the property, an interest in which is being or has been disclaimed, shall be entitled
1774 to rely without further inquiry upon the aforesaid certifications.

1775 (g) A disclaimer complying with all the applicable requirements of this section shall be effective
1776 according to its terms, and shall be irrevocable, upon execution in accordance with the provisions
1777 of subsection (d), and filing in accordance with the provisions of subsection (e).

1778 If the interest in property being disclaimed is a power to appoint, consume, apply, or expend
1779 property, as described in clause 2 of the second paragraph of subsection (a), or any fractional
1780 part, share, or portion thereof, such interest shall be extinguished.

1781 Except as provided in the preceding paragraph, and unless such a result would substantially
1782 impair the provisions or intent of any instrument, statute or rule of law relating to the interest in
1783 property being disclaimed, such interest shall pass in the same manner as if the beneficiary had
1784 died immediately preceding the event determining that he, she or it is the beneficiary of such
1785 interest and that such interest is indefeasibly vested.

1786 The interest in property being disclaimed shall never vest in the beneficiary.

1787 Any person or other legal entity having custody or possession of the property, an interest in
1788 which is being disclaimed, may file a complaint for instruction or complaint for declaratory
1789 judgment seeking a determination of the effect of a disclaimer, in

- 1790 1. A probate court, if any, having jurisdiction of such property; or
1791 2. If no probate court has jurisdiction of such property, any other court having jurisdiction of
1792 such property.

1793 (h) The right to disclaim an interest in property shall be barred by:-

1794 1. assignment, conveyance, encumbrance, pledge, transfer or other disposition of such interest,
1795 or any contract therefor, by the beneficiary or sale or other disposition of such interest pursuant
1796 to judicial process made before the beneficiary has disclaimed such interest as herein provided;

1797 2. insolvency of the beneficiary at the time of attempted disclaimer. For purposes of this
1798 paragraph only, sections 1 to 4, inclusive, and sections 8 to 13, inclusive, of chapter 109A shall
1799 be applicable as if the disclaimer were a conveyance;

1800 3. a written waiver of the right to disclaim such interest pursuant to the provisions of this
1801 section, signed by the beneficiary, the duly appointed guardian or conservator of a beneficiary
1802 under a legal disability, or the legal representative of a deceased beneficiary's estate;

1803 4. acceptance of such interest by the beneficiary; if the beneficiary, having knowledge of the
1804 existence of such interest, receives without objection a benefit from such interest, receives
1805 without objection a benefit from such interest, such receipt shall be deemed to constitute
1806 acceptance of such interest.

1807 The assignment, conveyance, encumbrance, pledge, transfer or other disposition or any contract
1808 therefor, sale or other disposition pursuant to judicial process, written waiver of the right to
1809 disclaim, or acceptance of apart of an interest in property shall not bar the right to disclaim any
1810 other part of such interest.

1811 (i) The right to disclaim pursuant to the provisions of this section shall exist irrespective of any

1812 limitation in the nature of an express or implied spendthrift provision or other similar restraint on
1813 alienation imposed by any instrument, statute, rule of law or otherwise on the interest in property
1814 being disclaimed.

1815 (j) Except for the provisions of subsection (h), this section shall not abridge the right of any
1816 person to disclaim, waive, release, renounce, or abandon any interest in property under section 2-
1817 201 or any other statute or rule of law.

1818 Section 2-802. [Effect of Divorce, Annulment, and Decree of Separation.]

1819 (a) An individual who is divorced from the decedent is not a surviving spouse unless, by virtue
1820 of a subsequent marriage, the individual is married to the decedent at the time of death. A
1821 judgment of separation that does not terminate the status of husband and wife is not a divorce for
1822 purposes of this section.

1823 (b) For purposes of parts 1 to 4, inclusive, of this article, and of section 3-203, a surviving
1824 spouse shall not include:

1825 (1) an individual who obtains or consents to a final decree or judgment of divorce from the
1826 decedent or an annulment of their marriage, which decree or judgment is not recognized as valid
1827 in the commonwealth, unless subsequently they participate in a marriage ceremony purporting to
1828 marry each to the other or live together as husband and wife;

1829 (2) an individual who, following an invalid decree or judgment of divorce or annulment
1830 obtained by the decedent, participates in a marriage ceremony with a third individual; or

1831 (3) an individual who was a party to a valid proceeding concluded by an order purporting to
1832 terminate all marital property rights.

1833 Section 2-803. [Effect of Homicide on Intestate Succession, Wills, Trusts, Joint Assets, Life
1834 Insurance, and Beneficiary Designation.]

1835 (a) In this section:

1836 (1) "Disposition or appointment of property", includes a transfer of an item of property or any
1837 other benefit to a beneficiary designated in a governing instrument.

1838 (2) "Governing instrument", a governing instrument executed by the decedent.

1839 (3) "Revocable", with respect to a disposition, appointment, provision, or nomination, means
1840 one under which the decedent, at the time of or immediately before death, was alone empowered,
1841 by law or under the governing instrument, to cancel the designation in favor of the killer,
1842 whether or not the decedent was then empowered to designate the decedent in place of the killer
1843 the decedent then had capacity to exercise the power.

1844 (b) An individual who feloniously and intentionally kills the decedent forfeits all benefits under
1845 this article with respect to the decedent's estate, including an intestate share, an elective share, an
1846 omitted spouse's or child's share, exempt property, and a family allowance. If the decedent died
1847 intestate, the decedent's intestate estate passes as if the killer disclaimed the intestate share.

1848 (c) The felonious and intentional killing of the decedent:

1849 (1) revokes any revocable (i) disposition or appointment of property made by the decedent to the
1850 killer in a governing instrument, (ii) provision in a governing instrument conferring a general or
1851 nongeneral power of appointment on the killer, and (iii) nomination of the killer in a governing
1852 instrument, nominating or appointing the killer to serve in any fiduciary or representative
1853 capacity, including as personal representative, executor, trustee, or agent; and

1854 (2) severs the interests of the decedent and killer in property held by them at the time of the
1855 killing as joint tenants with the right of survivorship, transforming the interests of the decedent
1856 and killer into tenancies in common.

1857 (d) A severance under subsection (c)(2) shall not affect any third-party interest in property

1858 acquired for value and in good faith reliance on an apparent title by survivorship in the killer
1859 unless a writing declaring the severance has been noted, registered, filed, or recorded in records
1860 appropriate to the kind and location of the property which are relied upon, in the ordinary course
1861 of transactions involving such property, as evidence of ownership.

1862 (e) Provisions of a governing instrument that are not revoked by this section are given effect as
1863 if the killer disclaimed all revoked provisions or, in the case of a revoked nomination in a
1864 fiduciary or representative capacity, as if the killer predeceased the decedent.

1865 (f) A wrongful acquisition of property or interest by a killer not covered by this section shall be
1866 treated in accordance with the principle that a killer cannot profit from the wrong.

1867 (g) After all right to appeal has been exhausted, a judgment of conviction establishing criminal
1868 accountability for the felonious and intentional killing of the decedent conclusively establishes
1869 the convicted individual as the decedent's killer for purposes of this section. In the absence of a
1870 conviction, the court, upon the petition of an interested person, shall determine whether, under
1871 the preponderance of evidence standard, the individual would be found criminally accountable
1872 for the felonious and intentional killing of the decedent. If the court determines that, under that
1873 standard, the individual would be found criminally accountable for the felonious and intentional
1874 killing of the decedent, the determination conclusively establishes that individual as the
1875 decedent's killer for purposes of this section.

1876 (h) (1) A payor or other third party is not liable for having made a payment or transferred an
1877 item of property or any other benefit to a beneficiary designated in a governing instrument
1878 affected by an intentional and felonious killing, or for having taken any other action in good faith
1879 reliance on the validity of the governing instrument, upon request and satisfactory proof of the
1880 decedent's death, before the payor or other third party received written notice of a claimed
1881 forfeiture or revocation under this section. A payor or other third party is liable for a payment
1882 made or other action taken after the payor or other third party received written notice of a
1883 claimed forfeiture or revocation under this section.

1884 (2) Written notice of a claimed forfeiture or revocation under paragraph (1) shall be mailed to
1885 the payor's or other third party's main office or home by registered or certified mail, return
1886 receipt requested, or served upon the payor or other third party in the same manner as a summons
1887 in a civil action. Upon receipt of written notice of a claimed forfeiture or revocation under this
1888 section, a payor or other third party may pay any amount owed or transfer or deposit any item of
1889 property held by it to or with the court having jurisdiction of the probate proceedings relating to
1890 the decedent's estate, or if no proceedings have been commenced, to or with the probate and
1891 family court located in the county of the decedent's residence. The court shall hold the funds or
1892 item of property and, upon its determination under this section, shall order disbursement in
1893 accordance with the determination. Payments, transfers, or deposits made to or with the court
1894 discharge the payor or other third party from all claims for the value of amounts paid to or items
1895 of property transferred to or deposited with the court.

1896 (i) (1) A person who purchases property for value and without notice, or who receives a
1897 payment or other item of property in partial or full satisfaction of a legally enforceable
1898 obligation, is neither obligated under this section to return the payment, item of property, or
1899 benefit nor is liable under this section for the amount of the payment or the value of the item of
1900 property or benefit. But a person who, not for value, receives a payment, item of property, or
1901 any other benefit to which the person is not entitled under this section is obligated to return the
1902 payment, item of property, or benefit, or is personally liable for the amount of the payment or the
1903 value of the item of property or benefit, to the person who is entitled to it under this section.

1904 (2) If this section or any part of this section is preempted by federal law with respect to
1905 payment, an item of property, or any other benefit covered by this section, a person who, not for
1906 value, receives the payment, item of property, or any other benefit to which the person is not
1907 entitled under this section is obligated to return the payment, item of property, or benefit, or is
1908 personally liable for the amount of the payment or the value of the item of property or benefit, to
1909 the person who would have been entitled to it were this section or part of this section not
1910 preempted.

1911 Section 2-804. [Revocation of Probate and Nonprobate Transfers by Divorce; No Revocation by
1912 Other Changes of Circumstances.]

1913 (a) In this section:

1914 (1) "Disposition or appointment of property", includes a transfer of an item of property or any
1915 other benefit to a beneficiary designated in a governing instrument.

1916 (2) "Divorce or annulment", any divorce or annulment, or any dissolution or declaration of
1917 invalidity of a marriage, that would exclude the spouse as a surviving spouse within the meaning
1918 of section 2-802. A judgment of separation that does not terminate the status of husband and
1919 wife is not a divorce for purposes of this section.

1920 (3) "Divorced individual", includes an individual whose marriage has been annulled.

1921 (4) "Governing instrument", a governing instrument executed by the divorced individual before
1922 the divorce or annulment of the individual's marriage to the individual's former spouse.

1923 (5) "Relative of the divorced individual's former spouse", an individual who is related to the
1924 divorced individual's former spouse by blood, adoption, or affinity and who, after the divorce or
1925 annulment, is not related to the divorced individual by blood, adoption, or affinity.

1926 (6) "Revocable", with respect to a disposition, appointment, provision, or nomination, means
1927 one under which the divorced individual, at the time of the divorce or annulment, was alone
1928 empowered, by law or under the governing instrument, to cancel the designation in favor of the
1929 former spouse or former spouse's relative, whether or not the divorced individual was then
1930 empowered to designate himself in place of the former spouse or in place of the former spouse's
1931 relative and whether or not the divorced individual then had the capacity to exercise the power.

1932 (b) Except as provided by the express terms of a governing instrument, a court order, or a
1933 contract relating to the division of the marital estate made between the divorced individuals
1934 before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage:

1935 (1) revokes any revocable (i) disposition or appointment of property made by a divorced
1936 individual to the individual's former spouse in a governing instrument and any disposition or
1937 appointment created by law or in a governing instrument to a relative of the divorced individual's
1938 former spouse, (ii) provision in a governing instrument conferring a general or nongeneral power
1939 of appointment on the divorced individual's former spouse or on a relative of the divorced
1940 individual's former spouse, and (iii) nomination in a governing instrument, nominating a
1941 divorced individual's former spouse or a relative of the divorced individual's former spouse to
1942 serve in any fiduciary or representative capacity, including a personal representative, executor,
1943 trustee, conservator, agent, or guardian; and

1944 (2) severs the interests of the former spouses in property held by them at the time of the divorce
1945 or annulment as joint tenants with the right of survivorship, transforming the interests of the
1946 former spouses into tenancies in common.

1947 (c) A severance under subsection (b)(2) shall not affect any third-party interest in property
1948 acquired for value and in good faith reliance on an apparent title by survivorship in the survivor
1949 of the former spouses unless a writing declaring the severance has been noted, registered, filed,

1950 or recorded in records appropriate to the kind and location of the property which are relied upon,
1951 in the ordinary course of transactions involving such property, as evidence of ownership.

1952 (d) Provisions of a governing instrument that are not revoked by this section are given effect as
1953 if the former spouse and relatives of the former spouse disclaimed the revoked provisions or, in
1954 the case of a revoked nomination in a fiduciary or representative capacity, as if the former spouse
1955 and relatives of the former spouse died immediately before the divorce or annulment.

1956 (e) Provisions revoked solely by this section are revived by the divorced individual's remarriage
1957 to the former spouse or by a nullification of the divorce or annulment.

1958 (f) No change of circumstances other than as described in this section and in section 2-803
1959 effects a revocation.

1960 (g) (1) A payor or other third party is not liable for having made a payment or transferred an
1961 item of property or any other benefit to a beneficiary designated in a governing instrument
1962 affected by a divorce, annulment, or remarriage, or for having taken any other action in good
1963 faith reliance on the validity of the governing instrument, before the payor or other third party
1964 received written notice of the divorce, annulment, or remarriage. A payor or other third party is
1965 liable for a payment made or other action taken after the payor or other third party received
1966 written notice of a claimed forfeiture or revocation under this section.

1967 (2) Written notice of the divorce, annulment, or remarriage under subsection (g)(2) shall be
1968 mailed to the payor's or other third party's main office or home by registered or certified mail,
1969 return receipt requested, or served upon the payor or other third party in the same manner as a
1970 summons in a civil action. Upon receipt of written notice of the divorce, annulment, or
1971 remarriage, a payor or other third party may pay any amount owed or transfer or deposit any item
1972 of property held by it to or with the court having jurisdiction of the probate proceedings relating
1973 to the decedent's estate or, if no proceedings have been commenced, to or with the court having
1974 jurisdiction of probate proceedings relating to decedents' estates located in the county of the
1975 decedent's residence. The court shall hold the funds or item of property and, upon its
1976 determination under this section, shall order disbursement or transfer in accordance with the
1977 determination. Payments, transfers, or deposits made to or with the court discharge the payor or
1978 other third party from all claims for the value of amounts paid to or items of property transferred
1979 to or deposited with the court.

1980 (h) (1) A person who purchases property from a former spouse, relative of a former spouse, or
1981 any other person for value and without notice, or who receives from a former spouse, relative of
1982 a former spouse, or any other person a payment or other item of property in partial or full
1983 satisfaction of a legally enforceable obligation, is neither obligated under this section to return
1984 the payment, item of property, or benefit nor is liable under this section for the amount of the
1985 payment or the value of the item of property or benefit. But a former spouse, relative of a former
1986 spouse, or other person who, not for value, received a payment, item of property, or any other
1987 benefit to which that person is not entitled under this section is obligated to return the payment,
1988 item of property, or benefit, or is personally liable for the amount of the payment or the value of
1989 the item of property or benefit, to the person who is entitled to it under this section.

1990 (2) If this section or any part of this section is preempted by federal law with respect to a
1991 payment, an item of property, or any other benefit covered by this section, a former spouse,
1992 relative of the former spouse, or any other person who, not for value, received a payment, item of
1993 property, or any other benefit to which that person is not entitled under this section is obligated
1994 to return that payment, item of property, or benefit, or is personally liable for the amount of the
1995 payment or the value of the item of property or benefit, to the person who would have been

1996 entitled to it were this section or part of this section not preempted.

1997 PART 9

1998 STATUTORY RULE AGAINST PERPETUITIES

1999 Section 2-901. [Statutory Rule Against Perpetuities.]

2000 (a) A nonvested property interest is invalid unless:

2001 (1) when the interest is created, it is certain to vest or terminate no later than 21 years after the
2002 death of an individual then alive; or

2003 (2) the interest either vests or terminates within 90 years after its creation.

2004 (b) A general power of appointment not presently exercisable because of a condition precedent
2005 is invalid unless:

2006 (1) when the power is created, the condition precedent is certain to be satisfied or becomes
2007 impossible to satisfy no later than 21 years after the death of an individual then alive; or

2008 (2) the condition precedent either is satisfied or becomes impossible to satisfy within 90 years
2009 after its creation.

2010 (c) A nongeneral power of appointment or a general testamentary power of appointment is
2011 invalid unless:

2012 (1) when the power is created, it is certain to be irrevocably exercised or otherwise to terminate
2013 no later than 21 years after the death of an individual then alive; or

2014 (2) the power is irrevocably exercised or otherwise terminates within 90 years after its creation.

2015 (d) In determining whether a nonvested property interest or a power of appointment is valid
2016 under subsection (a)(1), (b)(1), or (c)(1), the possibility that a child will be born to an individual
2017 after the individual's death is disregarded.

2018 (e) If, in measuring a period from the creation of a trust or other property arrangement, language
2019 in a governing instrument (i) seeks to disallow the vesting or termination of any interest or trust
2020 beyond, (ii) seeks to postpone the vesting or termination of any interest or trust until, or (iii)
2021 seeks to operate in effect in any similar fashion upon, the later of (A) the expiration of a period
2022 of time not exceeding 21 years after the death of the survivor of specified lives in being at the
2023 creation of the trust or other property arrangement or (B) the expiration of a period of time that
2024 exceeds or might exceed 21 years after the death of the survivor of lives in being at the creation
2025 of the trust or other property arrangement, that language is inoperative to the extent it produces a
2026 period of time that exceeds 21 years after the death of the survivor of the specified lives.

2027 Section 2-902. [When Nonvested Property Interest or Power of Attorney Appointment Created.]

2028 (a) Except as provided in subsections (b) and (c) and in section 2-905(a), the time of creation of
2029 a nonvested property interest or a power of appointment is determined under general principles
2030 of property law.

2031 (b) For purposes of this part, if there is a person who alone can exercise a power created by a
2032 governing instrument to become the unqualified beneficial owner of (i) a nonvested property
2033 interest or (ii) a property interest subject to a power of appointment described in section 2-901(b)
2034 or (c), the nonvested property interest or power of appointment is created when the power to
2035 become the unqualified beneficial owner terminates.

2036 (c) For purposes of this part, a nonvested property interest or a power of appointment arising
2037 from a transfer of property to a previously funded trust or other existing property arrangement is
2038 created when the nonvested property interest or power of appointment in the original
2039 contribution was created.

2040 Section 2-903. [Reformation.]

2041 Upon the petition of an interested person, a court shall reform a disposition in the manner that

2042 most closely approximates the transferor's manifested plan of distribution and is within the 90
2043 years allowed by section 2-901(a)(2), 2-901(b)(2), or 2-901(c)(2) if:

2044 (1) a nonvested property interest or a power of appointment becomes invalid under section 2-
2045 901 (statutory rule against perpetuities);

2046 (2) a class gift is not but might become invalid under section 2-901 (statutory rule against
2047 perpetuities) and the time has arrived when the share of any class member is to take effect in
2048 possession or enjoyment; or

2049 (3) a nonvested property interest that is not validated by section 2-901(a)(1) can vest but not
2050 within 90 years after its creation.

2051 Section 2-904. [Exclusions from Statutory Rule Against Perpetuities.]

2052 Section 2-901 shall not apply to:

2053 (1) a nonvested property interest or a power of appointment arising out of a nondonative
2054 transfer, except a nonvested property interest or a power of appointment arising out of (i) a
2055 premarital or postmarital agreement, (ii) a separation or divorce settlement, (iii) a spouse's
2056 election, (iv) a similar arrangement arising out of a prospective, existing, or previous marital
2057 relationship between the parties, (v) a contract to make or not to revoke a will or trust, (vi) a
2058 contract to exercise or not to exercise a power of appointment, (vii) a transfer in satisfaction of a
2059 duty of support, or (viii) a reciprocal transfer;

2060 (2) a fiduciary's power relating to the administration or management of assets, including the
2061 power of a fiduciary to sell, lease, or mortgage property, and the power of a fiduciary to
2062 determine principal and income;

2063 (3) a power to appoint a fiduciary;

2064 (4) a discretionary power of a trustee to distribute principal before termination of a trust to a
2065 beneficiary having an indefeasibly vested interest in the income and principal;

2066 (5) a nonvested property interest held by a charity, government, or governmental agency or
2067 subdivision, if the nonvested property interest is preceded by an interest held by another charity,
2068 government, or governmental agency or subdivision;

2069 (6) a nonvested property interest in or a power of appointment with respect to a trust or other
2070 property arrangement forming part of a pension, profit-sharing, stock bonus, health, disability,
2071 death benefit, income deferral, or other current or deferred benefit plan for 1 or more employees,
2072 independent contractors, or their beneficiaries or spouses, to which contributions are made for
2073 the purpose of distributing to or for the benefit of the participants or their beneficiaries or
2074 spouses the property, income, or principal in the trust or other property arrangement, except a
2075 nonvested property interest or a power of appointment that is created by an election of a
2076 participant or a beneficiary or spouse; or

2077 (7) a property interest, power of appointment, or arrangement that was not subject to the
2078 common-law rule against perpetuities or is excluded by another statute of the commonwealth.

2079 Section 2-905. [Prospective Application.]

2080 (a) Except as extended by subsection (b), this part applies to a nonvested property interest or a
2081 power of appointment that is created on or after the effective date of this part. For purposes of
2082 this section, a nonvested property interest or a power of appointment created by the exercise of a
2083 power of appointment is created when the power is irrevocably exercised or when a revocable
2084 exercise becomes irrevocable.

2085 (b) If a nonvested property interest or a power of appointment was created before the effective
2086 date of this part and is determined in a judicial proceeding, commenced on or after the effective
2087 date of this part, to violate the commonwealth's rule against perpetuities as that rule existed

2088 before the effective date of this part, a court upon the petition of an interested person may reform
2089 the disposition in the manner that most closely approximates the transferor's manifested plan of
2090 distribution and is within the limits of the rule against perpetuities applicable when the nonvested
2091 property interest or power of appointment was created.

2092 Section 2-906. [Supersession.] This part supersedes the rule of the common law known as the
2093 rule against perpetuities.

2094 ARTICLE III

2095 PROBATE OF WILLS AND ADMINISTRATION

2096 PART 1

2097 GENERAL PROVISIONS

2098 Section 3-101. [Devolution of Estate at Death; Restrictions.]

2099 The power of a person to leave property by will, and the rights of creditors, devisees, and heirs to
2100 property are subject to the restrictions and limitations contained in this chapter to facilitate the
2101 prompt settlement of estates. Upon the death of a person, the decedent's real and personal
2102 property devolves to the persons to whom it is devised by the decedent's last will or to those
2103 indicated as substitutes for them in cases involving lapse, renunciation, or other circumstances
2104 affecting the devolution of testate estate, or in the absence of testamentary disposition, to the
2105 decedent's heirs, or to those indicated as substitutes for them in cases involving renunciation or
2106 other circumstances affecting devolution of intestate estates, subject to allowances and exempt
2107 property, to rights of creditors, elective share of the surviving spouse, and to administration.

2108 Section 3-102. [Necessity of Order of Probate for Will.]

2109 Except as provided in section 3-1201, to be effective to prove the transfer of any property or to
2110 nominate an executor, a will shall be declared to be valid by an order of informal probate by a
2111 magistrate or an adjudication of probate by the court, except that a duly executed and unrevoked
2112 will which has not been probated may be admitted as evidence of a devise if (1) no court
2113 proceeding concerning the succession or administration of the estate has occurred, and (2) either
2114 the devisee or the devisee's successors and assigns possessed the property devised in accordance
2115 with the provisions of the will, or the property devised was not possessed or claimed by anyone
2116 by virtue of the decedent's title during the time period for testacy proceedings.

2117 Section 3-103. [Necessity of Appointment for Administration.]

2118 Except as otherwise provided in article IV, to acquire the powers and undertake the duties and
2119 liabilities of a personal representative of a decedent, a person shall be appointed by order of the
2120 court or a magistrate, qualify and be issued letters. Administration of an estate is commenced by
2121 the issuance of letters.

2122 Section 3-104. [Claims Against Decedent; Necessity of Administration.]

2123 No proceeding to enforce a claim against the estate of a decedent or a decedent's successors may
2124 be revived or commenced before the appointment of a personal representative. After the
2125 appointment and until distribution, all proceedings and actions to enforce a claim against the
2126 estate are governed by the procedure prescribed by this article. After distribution a creditor
2127 whose claim has not been barred may recover from the distributees as provided in section 3-1004
2128 or from a former personal representative individually liable as provided in section 3-1005. This
2129 section has no application to a proceeding by a secured creditor of the decedent to enforce a right
2130 to the security except as to any deficiency judgment which might be sought therein.

2131 Section 3-105. [Proceedings Affecting Devolution and Administration.]

2132 Persons interested in decedents' estates may petition the magistrate for determination in the
2133 informal proceedings provided in this article, and may petition the court for orders in formal

2134 proceedings within the court's jurisdiction including but not limited to those described in this
2135 article.

2136 Section 3-106. [Proceedings Within the Exclusive Jurisdiction of Court; Service; Jurisdiction
2137 Over Persons.]

2138 In proceedings within the exclusive jurisdiction of the court where notice is required by this
2139 chapter or by rule, and in proceedings to construe probated wills or determine heirs which
2140 concern estates that have not been and cannot now be open for administration, interested persons
2141 may be bound by the orders of the court in respect to property in or subject to the laws of the
2142 commonwealth by notice in conformity with section 1-401. An order is binding as to all who are
2143 given notice of the proceeding though less than all interested persons are notified.

2144 Section 3-107. [Scope of Proceedings; Proceedings Independent; Exception.]

2145 Unless supervised administration as described in part 5 is involved, (1) each proceeding before
2146 the court or a magistrate is independent of any other proceeding involving the same estate; (2)
2147 petitions for formal orders of the court may combine various requests for relief in a single
2148 proceeding if the orders sought may be finally granted without delay. Except as required for
2149 proceedings which are particularly described by other sections of this article, no petition is
2150 defective because it fails to embrace all matters which might then be the subject of a final order;
2151 (3) proceedings for probate of wills or adjudications of no will may be combined with
2152 proceedings for appointment of personal representatives; and (4) a proceeding for appointment of
2153 a personal representative is concluded by an order making or declining the appointment.

2154 Section 3-108. [Probate, Testacy and Appointment Proceedings; Ultimate Time Limit.]

2155 No informal probate or appointment proceeding or formal testacy or appointment proceeding,
2156 other than a proceeding to probate a will previously probated at the testator's domicile and
2157 appointment proceedings relating to an estate in which there has been a prior appointment, may
2158 be commenced more than 3 years after the decedent's death, except (1) if a previous proceeding
2159 was dismissed because of doubt about the fact of the decedent's death, appropriate probate,
2160 appointment or testacy proceedings may be maintained at any time thereafter upon a finding that
2161 the decedent's death occurred prior to the initiation of the previous proceeding and the applicant
2162 or petitioner has not delayed unduly in initiating the subsequent proceeding; (2) appropriate
2163 probate, appointment or testacy proceedings may be maintained in relation to the estate of an
2164 absent, disappeared or missing person at any time within 3 years after the death of the person can
2165 be established; and (3) a proceeding to contest an informally probated will and to secure
2166 appointment of the person with legal priority for appointment in the event the contest is
2167 successful, may be commenced within the later of 12 months from the informal probate or 3
2168 years from the decedent's death; and (4) if no proceeding concerning the succession or
2169 administration of the estate has occurred within 3 years after decedent's death, a formal testacy
2170 proceeding may be commenced at any time thereafter for the sole purpose of establishing a
2171 devise of property which the devisee or the devisee's successors and assigns possessed in
2172 accordance with the will or property which was not possessed or claimed by anyone by virtue of
2173 the decedent's title during the 3-year period, and the order of the court shall be limited to that
2174 property. These limitations shall not apply to proceedings to construe probated wills or
2175 determine heirs of an intestate. In cases under (1) or (2) above, the date on which a testacy or
2176 appointment proceeding is properly commenced shall be deemed to be the date of the decedent's
2177 death for purposes of other limitations provisions of this chapter which relate to the date of
2178 death.

2179 Section 3-109. [Statutes of Limitation on Decedent's Cause of Action.]

2180 No statute of limitation running on a cause of action belonging to a decedent which had not been
2181 barred as of the date of death, shall apply to bar a cause of action surviving the decedent's death
2182 sooner than 4 months after death. A cause of action which, but for this section, would have been
2183 barred less than 4 months after death, is barred after 4 months unless tolled.

2184 PART 2

2185 VENUE FOR PROBATE AND ADMINISTRATION;

2186 PRIORITY TO ADMINISTER

2187 Section 3-201. [Venue for First and Subsequent Estate Proceedings; Location of Property.]

2188 (a) Venue for the first informal or formal testacy or appointment proceedings after a decedent's
2189 death is:

2190 (1) in the county where the decedent was domiciled at the time of death; or

2191 (2) if the decedent was not domiciled in the commonwealth, in any county where property of the
2192 decedent was located at the time of death.

2193 (b) Venue for all subsequent proceedings within the exclusive jurisdiction of the court is in the
2194 place where the initial proceeding occurred, unless the initial proceeding has been transferred as
2195 provided in section 1-303 or (c) of this section.

2196 (c) If the first proceeding was informal, on application of an interested person and after notice to
2197 the proponent in the first proceeding, the court, upon finding that venue is elsewhere, may
2198 transfer the proceeding and the file to the other court.

2199 (d) For the purpose of aiding determinations concerning location of assets which may be
2200 relevant in cases involving non-domiciliaries, a debt, other than one evidenced by investment or
2201 commercial paper or other instrument in favor of a non-domiciliary is located where the debtor
2202 resides or, if the debtor is a person other than an individual, at the place where it has its principal
2203 office. Commercial paper, investment paper and other instruments are located where the
2204 instrument is. An interest in property held in trust is located where the trustee may be sued.

2205 Section 3-202. [Appointment or Testacy Proceedings; Conflicting Claim of Domicile in Another
2206 State.]

2207 If conflicting claims as to the domicile of a decedent are made in a formal testacy or appointment
2208 proceeding commenced in the commonwealth, and in a testacy or appointment proceeding after
2209 notice pending at the same time in another state, the court of the commonwealth shall stay,
2210 dismiss, or permit suitable amendment in, the proceeding here unless it is determined that the
2211 local proceeding was commenced before the proceeding elsewhere. The determination of
2212 domicile in the proceeding first commenced shall be accepted as determinative in the proceeding
2213 in the commonwealth.

2214 Section 3-203. [Priority Among Persons Seeking Appointment as Personal Representative.]

2215 (a) Whether the proceedings are formal or informal, persons have priority for appointment in the
2216 following order:

2217 (1) the person with priority as determined by a probated will including a person nominated by a
2218 power conferred in a will;

2219 (2) the surviving spouse of the decedent who is a devisee of the decedent;

2220 (3) other devisees of the decedent;

2221 (4) the surviving spouse of the decedent;

2222 (5) other heirs of the decedent;

2223 (6) if there is no known spouse or next of kin, a public administrator appointed pursuant to
2224 chapter 194.

2225 (b) An objection to an appointment can be made only in formal proceedings. In case of

2226 objection the priorities stated in (a) apply except that
2227 (1) if the estate appears to be more than adequate to meet exemptions and costs of
2228 administration but inadequate to discharge anticipated unsecured claims, the court, on petition of
2229 creditors, may appoint any qualified person;
2230 (2) in case of objection to appointment of a person other than one whose priority is determined
2231 by will by an heir or devisee appearing to have a substantial interest in the estate, the court may
2232 appoint a person who is acceptable to the heirs and devisees or, in default of agreement any
2233 suitable person.
2234 (c) A person entitled to letters under (2) through (5) of (a) above, may nominate a qualified
2235 person to act as personal representative. Any person may renounce the right to nominate or to an
2236 appointment by appropriate writing filed with the court. When 2 or more persons share a
2237 priority, those of them who do not renounce shall concur in nominating another to act for them,
2238 or in applying for appointment.
2239 (d) Conservators of the estates of protected persons, or if there is no conservator, any guardian
2240 except a guardian ad litem of a minor or incapacitated person, may exercise the same right to
2241 nominate, to object to another's appointment, or to participate in determining the preference of a
2242 majority in interest of the heirs and devisees that the protected person or ward would have if
2243 qualified for appointment.
2244 (e) Appointment of one who does not have priority, including priority resulting from
2245 renunciation or nomination determined pursuant to this section, may be made only in formal
2246 proceedings. Before appointing one without priority, the court shall determine that those having
2247 priority, although given notice of the proceedings, have failed to request appointment or to
2248 nominate another for appointment, and that administration is necessary.
2249 (f) No person is qualified to serve as a personal representative:
2250 (1) who is under the age of 18;
2251 (2) whose appointment the court finds in formal proceedings to be contrary to the best interests
2252 of the estate.
2253 (g) A personal representative appointed by a court of the decedent's domicile has priority over
2254 all other persons except where the decedent's will nominates different persons to be personal
2255 representative in the commonwealth and in the state of domicile. The domiciliary personal
2256 representative may nominate another, who shall have the same priority as the domiciliary
2257 personal representative.
2258 (h) This section governs priority for appointment of a successor personal representative but shall
2259 not apply to the selection of a special personal representative.
2260 Section 3-204. [Reserved.]
2261 Section 3-205. [Judge or Register as Personal Representative.]
2262 If a judge or register desires to be appointed personal representative of the estate of his spouse,
2263 child or parent who at the time of their decease was domiciled in his county, such appointment
2264 may be made and all subsequent proceedings relative to the estate may be had in the court of any
2265 adjoining county, and the register thereof shall forthwith transmit to the register of the county
2266 where the decedent was domiciled, a true and attested copy of all papers relating thereto filed
2267 and entered on the docket, which shall be recorded by the register to whom they are transmitted.
2268 PART 3
2269 INFORMAL PROBATE AND APPOINTMENT PROCEEDINGS
2270 Section 3-301. [Informal Probate or Appointment Proceedings; Petition; Contents.]
2271 (a) Petitions for informal probate or informal appointment shall be directed to the court, and

2272 verified by the petitioner to be accurate and complete to the best of the petitioner's knowledge
2273 and belief as to the following information:

2274 (1) Every petition for informal probate of a will or for informal appointment of a personal
2275 representative, other than a special or successor representative, shall contain the following:

2276 (i) a statement of the interest of the petitioner;

2277 (ii) the name, date of death, age and address of the decedent at the time of death, and the names
2278 and addresses of the spouse, children, heirs and devisees and the ages of any who are minors so
2279 far as known or ascertainable with reasonable diligence by the applicant;

2280 (iii) a statement identifying any heir or surviving spouse who may be an incapacitated person;

2281 (iv) if the decedent was not domiciled in the commonwealth at the time of death, a statement
2282 showing venue;

2283 (v) a statement identifying and indicating the address of any personal representative of the
2284 decedent appointed in the commonwealth or elsewhere whose appointment has not been
2285 terminated;

2286 (vi) a statement that a copy of the petition and the death certificate have been sent to the division
2287 of medical assistance by certified mail; and

2288 (vii) a statement that the time limit for informal probate or appointment as provided in this
2289 article has not expired either because 3 years or less have passed since the decedent's death, or, if
2290 more than 3 years from death have passed, circumstances as described by section 3-108
2291 authorizing tardy probate or appointment have occurred.

2292 (2) A petition for informal probate of a will shall state the following in addition to the statements
2293 required by (1):

2294 (i) that the original of the decedent's last will is in the possession of the court, or accompanies
2295 the petition, or that an authenticated copy of a will probated in another jurisdiction accompanies
2296 the petition;

2297 (ii) that the petitioner, to the best of the petitioner's knowledge, believes the will to have been
2298 validly executed;

2299 (iii) that after the exercise of reasonable diligence, the petitioner is unaware of any instrument
2300 revoking the will, and that the petitioner believes that the instrument which is the subject of the
2301 petition is the decedent's last will.

2302 (iv) a statement that a death certificate issued by a public officer is in the possession of the court,
2303 or accompanies the petition.

2304 (3) A petition for informal appointment of a personal representative to administer an estate
2305 under a will shall describe the will by date of execution and state the time and place of probate or
2306 the pending petition for probate. The petition for appointment shall adopt the statements in the
2307 petition for probate and state the name, address and priority for appointment of the person whose
2308 appointment is sought.

2309 (4) A petition for informal appointment of a personal representative in intestacy shall state in
2310 addition to the statements required by (1):

2311 (i) that after the exercise of reasonable diligence, the petitioner is unaware of any unrevoked
2312 testamentary instrument relating to property having a situs in the commonwealth under section 1-
2313 301, or, a statement why any such instrument of which the petitioner may be aware is not being
2314 probated;

2315 (ii) the priority of the person whose appointment is sought and the names of any other persons
2316 having a prior or equal right to the appointment under section 3-203.

2317 (iii) a statement that a death certificate issued by a public officer is in the possession of the

2318 court, or accompanies the petition.

2319 (5) A petition for appointment of a personal representative to succeed a personal representative
2320 appointed under a different testacy status shall refer to the order in the most recent testacy
2321 proceeding, state the name and address of the person whose appointment is sought and of the
2322 person whose appointment will be terminated if the petition is granted, and describe the priority
2323 of the petitioner.

2324 (6) A petition for appointment of a personal representative to succeed a personal representative
2325 who has tendered a resignation as provided in section 3-610(c), or whose appointment has been
2326 terminated by death or removal, shall adopt the statements in the petition which led to the
2327 appointment of the person being succeeded except as specifically changed or corrected, state the
2328 name and address of the person who seeks appointment as successor, and describe the priority of
2329 the petitioner.

2330 (b) By verifying a petition for informal probate, or informal appointment, the petitioner submits
2331 personally to the jurisdiction of the court in any proceeding for relief from fraud relating to the
2332 petition, or for perjury, that may be instituted against the petitioner.

2333 Section 3-302. [Informal Probate; Duty of Magistrate; Effect of Informal Probate.]

2334 Upon receipt of a petition requesting informal probate of a will, the court or a magistrate, upon
2335 making the findings required by section 3-303 shall issue a written statement of informal probate
2336 if at least 7 days have elapsed since the decedent's death. Informal probate is conclusive as to all
2337 persons until superseded by an order in a formal testacy proceeding. No defect in the petition or
2338 procedure relating thereto which leads to informal probate of a will renders the probate void.

2339 Section 3-303. [Informal Probate; Proof and Findings Required.]

2340 (a) In an informal proceeding for original probate of a will, the court or a magistrate shall
2341 determine whether:

2342 (1) the petition is complete;

2343 (2) the petitioner has made oath or affirmation that the statements contained in the petition are
2344 true to the best of the petitioner's knowledge and belief;

2345 (3) the petitioner appears from the petition to be an interested person as defined in section 1-
2346 201(24);

2347 (4) on the basis of the statements in the petition, venue is proper;

2348 (5) an original, duly executed and apparently unrevoked will is in the court's possession;

2349 (6) on the basis of the statements in the petition any notice required by section 3-306 has been
2350 given and that the petition is not within section 3-304;

2351 (7) it appears from the petition that the time limit for original probate has not expired;

2352 (8) on the basis of statements in the petition, the spouse and heirs are not incapacitated persons
2353 or minors; or if they are incapacitated persons or minors they are represented by guardians or
2354 conservators; and

2355 (9) a death certificate issued by a public officer is in the court's possession.

2356 (b) The petition shall be denied if it indicates that a personal representative has been appointed
2357 in another county of the commonwealth or except as provided in subsection (d) below, if it
2358 appears that this or another will of the decedent has been the subject of a previous probate order.

2359 (c) A will which appears to have the required signatures and which contains an attestation clause
2360 showing that requirements of execution under section 2-502 have been met shall be probated
2361 without further proof. In other cases, a magistrate may assume execution if the will appears to
2362 have been properly executed.

2363 (d) Informal probate of a will which has been previously probated in another state or country

2364 may be granted at any time upon written petition by any interested person, together with deposit
2365 of an authenticated copy of the will and of the statement probating it from the office or court
2366 where it was first probated.

2367 (e) A will from a place which does not provide for probate of a will after death and which is not
2368 eligible for probate under subsection (a) above, may be probated in the commonwealth upon
2369 receipt by the court of a duly authenticated copy of the will and a duly authenticated certificate
2370 of its legal custodian that the copy filed is a true copy and that the will has become operative
2371 under the law of the other place.

2372 Section 3-304. [Informal Probate; Unavailable in Certain Cases.]

2373 Petitions for informal probate which relate to 1 or more of a known series of testamentary
2374 instruments, other than a will and 1 or more codicils thereto, the latest of which does not
2375 expressly revoke the earlier, shall be declined.

2376 Section 3-305. [Informal Probate; Magistrate Not Satisfied.]

2377 (a) If the magistrate is not satisfied that a will is entitled to be probated in informal proceedings
2378 because of failure to meet the requirements of sections 3-303 and 3-304 or any other reason, the
2379 magistrate may decline the petition. A declination of informal probate is not an adjudication and
2380 shall not preclude formal probate proceedings.

2381 Section 3-306. [Informal Probate; Notice Requirements.]

2382 (a) The petitioner shall give written notice seven days prior to petitioning for informal
2383 probate or appointment by delivery or by mail: (1) to all heirs and devisees; (2) to any person
2384 having a prior or equal right to appointment not waived in writing and filed with the court; and
2385 (3) to any personal representative of the decedent whose appointment has not been terminated.
2386 The notice shall be delivered or sent by ordinary mail to each of the heirs and devisees. A
2387 certificate that such notice has been given, setting forth the names and addresses of those to
2388 whom notice has been given shall be prima facie evidence thereof. No other prior notice of an
2389 informal probate or appointment proceeding is required.

2390 (b) The petitioner shall publish a notice once in a newspaper designated by the register of
2391 probate having general circulation in the county where the proceeding is pending, the publication
2392 of which is to be not more than thirty days after informal probate or appointment. The court or
2393 magistrate for good cause shown may provide for a different method or time of giving notice.

2394 (c) The notice shall include the name and address of the petitioner and personal
2395 representative, indicate that it is provided to persons who have or may have some interest in the
2396 estate being administered, indicate whether bond with or without surety will be filed, and
2397 describe the court where papers relating to the estate are on file. The notice shall state that the
2398 estate is being administered under informal procedure by the personal representative under the
2399 Massachusetts uniform probate code without supervision by the court, that inventory and
2400 accounts are not required to be filed with the court, but that interested parties are entitled to
2401 notice regarding the administration from the personal representative and can petition the court in
2402 any matter relating to the estate, including distribution of assets and expenses of administration.
2403 The notice shall state that interested parties are entitled to petition the court to institute formal
2404 proceedings and to obtain orders terminating or restricting the powers of personal representatives
2405 appointed under informal procedure.

2406 (d) If it appears from the petition that there is no spouse or heir of the decedent or that
2407 any devisee is a charity, the petitioner shall give notice to the attorney general of the
2408 commonwealth.

2409 (e) If it appears from the petition that a spouse, heir or devisee is a minor or an
2410 incapacitated person, the petitioner shall give notice to that person and that person's guardian or
2411 conservator.

2412 (f) The duty shall not extend to require notice to persons who have been adjudicated in a
2413 prior formal testacy proceeding to have no interest in the estate. The petitioner's failure to give
2414 this notice is a breach of duty to the persons concerned but shall not affect the validity of the
2415 probate, appointment, powers or other duties. A petitioner may inform other persons of the
2416 petition by delivery or ordinary first class mail.

2417 Section 3-307. [Informal Appointment Proceedings; Delay in Order; Duty of Magistrate; Effect
2418 of Appointment.]

2419 (a) Upon receipt of a petition for informal appointment of a personal representative other than a
2420 special personal representative as provided in section 3-614, if at least 7 days have elapsed since
2421 the decedent's death, the court or a magistrate, after making the findings required by section 3-
2422 308, shall appoint the petitioner subject to qualification and acceptance; provided, that if the
2423 decedent was a non-resident, the court or a magistrate shall delay the order of appointment until
2424 30 days have elapsed since death unless the personal representative appointed at the decedent's
2425 domicile is the petitioner, or unless the decedent's will directs that the decedent's estate be
2426 subject to the laws of the commonwealth.

2427 (b) The status of personal representative and the powers and duties pertaining to the office are
2428 fully established by informal appointment. An appointment, and the office of personal
2429 representative created thereby, is subject to termination as provided in sections 3-608 through 3-
2430 612, but is not subject to retroactive vacation.

2431 Section 3-308. [Informal Appointment Proceedings; Proof and Findings Required.]

2432 (a) In informal appointment proceedings, the court or a magistrate shall determine whether:

- 2433 (1) the petition for informal appointment of a personal representative is complete;
2434 (2) the petitioner has made oath or affirmation that the statements contained in the petition are
2435 true to the best of the petitioner's knowledge and belief;
2436 (3) the petitioner appears from the petition to be an interested person as defined in section 1-
2437 201(24);
2438 (4) on the basis of the statements in the petition, venue is proper;
2439 (5) any will to which the requested appointment relates has been formally or informally
2440 probated; but this requirement shall not apply to the appointment of a special personal
2441 representative;
2442 (6) any notice required by section 3-306 has been given; and
2443 (7) from the statements in the petition, the person whose appointment is sought has priority
2444 entitling that person to the appointment;
2445 (8) on the basis of the statements in the petition, the spouse and heirs are not incapacitated
2446 persons or minors; or if any are incapacitated persons or minors they are represented by
2447 guardians or conservators; and
2448 (9) a death certificate issued by a public officer is in the court's possession.

2449 (b) Unless section 3-612 controls, the petition shall be denied if it indicates that: a personal
2450 representative who has not filed a written statement of resignation has been appointed in this or
2451 another county of the commonwealth; unless the petitioner is the domiciliary personal
2452 representative or the domiciliary representative's nominee, the decedent was not domiciled in the
2453 commonwealth; and a personal representative whose appointment has not been terminated has
2454 been appointed by a court in the state of domicile;, or that other requirements of this section have
2455 not been met.

2456 Section 3-309. [Informal Appointment Proceedings; Magistrate Not Satisfied.]

2457 If the magistrate is not satisfied that a requested informal appointment of a personal
2458 representative should be made because of failure to meet the requirements of sections 3-307 and
2459 3-308, or for any other reason, the magistrate may decline the petition. A declination of informal
2460 appointment is not an adjudication and shall not preclude appointment in formal proceedings.

2461 Section 3-310. [Reserved.]

2462 Section 3-311. [Informal Appointment Unavailable in Certain Cases.]

2463 If a petition for informal appointment indicates the existence of a possible unrevoked
2464 testamentary instrument which may relate to property subject to the laws of the commonwealth,
2465 and which is not filed for probate in this court, the magistrate shall decline the petition.

2466 PART 4

2467 FORMAL TESTACY AND APPOINTMENT PROCEEDINGS

2468 Section 3-401. [Formal Testacy Proceedings; Nature; When Commenced.]

2469 A formal testacy proceeding is litigation to determine whether a decedent left a valid will. A
2470 formal testacy proceeding may be commenced by an interested person filing a petition as
2471 described in section 3-402(a) in which that person requests that the court enter an order probating
2472 a will, or a petition to set aside an informal probate of a will or to prevent informal probate of a
2473 will which is the subject of a pending petition, or a petition in accordance with section 3-
2474 402(b) for an order that the decedent died intestate.

2475 A petition may seek formal probate of a will without regard to whether the same or a conflicting
2476 will has been informally probated. A formal testacy proceeding may, but need not, involve a
2477 request for appointment of a personal representative.

2478 During the pendency of a formal testacy proceeding, the magistrate shall not act upon any
2479 petition for informal probate of any will of the decedent or any petition for informal appointment
2480 of a personal representative of the decedent.

2481 Unless a petition in a formal testacy proceeding also requests confirmation of the previous
2482 informal appointment, a previously appointed personal representative, after receipt of notice of
2483 the commencement of a formal probate proceeding, shall refrain from exercising the power to
2484 make any further distribution of the estate during the pendency of the formal proceeding. A
2485 petitioner who seeks the appointment of a different personal representative in a formal
2486 proceeding also may request an order restraining the acting personal representative from
2487 exercising any of the powers of office and requesting the appointment of a special personal
2488 representative. In the absence of a request, or if the request is denied, the commencement of a
2489 formal proceeding has no effect on the powers and duties of a previously appointed personal
2490 representative other than those relating to distribution.

2491 Section 3-402. [Formal Testacy or Appointment Proceedings; Petition; Contents.]

2492 (a) Petitions for formal probate of a will, or for adjudication of intestacy with or without request
2493 for appointment of a personal representative, shall be directed to the court, request a judicial
2494 order and contain further statements as indicated in this section. A petition for formal probate of

2495 a will

2496 (1) requests an order as to the testacy of the decedent in relation to a particular instrument which

2497 may or may not have been informally probated and determining the heirs,

2498 (2) contains the statements required for informal petitions as stated in section 3-301(a)(1), the

2499 statements required by subparagraphs (ii) and (iii) of section 3-301(a)(2), and

2500 (3) states whether the original of the last will of the decedent is in the possession of the court or

2501 accompanies the petition.

2502 If the original will is neither in the possession of the court nor accompanies the petition and no

2503 authenticated copy of a will probated in another jurisdiction accompanies the petition, the

2504 petition also shall state the contents of the will, and indicate that it is lost, destroyed, or otherwise

2505 unavailable.

2506 (b) If a death certificate issued by a public officer is not filed with the petition, the court may

2507 direct the petitioner to report the results of, or make and report back concerning, a reasonably

2508 diligent search for the alleged decedent in any manner that may seem advisable.

2509 (c) A petition for adjudication of intestacy and appointment of a personal representative in

2510 intestacy shall request a judicial finding and order that the decedent left no will and determining

2511 the heirs, contain the statements required by clauses (1) and (4) of section 3-301(a) and indicate

2512 whether supervised administration is sought. A petition may request an order determining

2513 intestacy and heirs without requesting the appointment of a personal representative, in which

2514 case, the statements required by subparagraph (ii) of section 3-301(a)(4) above may be omitted.

2515 Section 3-403. [Formal Testacy Proceedings; Notice of Hearing on Petition.]

2516 (a) Upon commencement of a formal testacy proceeding, notice shall be given in the manner

2517 prescribed by section 1-401 by the petitioner to the persons herein enumerated.

2518 (b) Notice shall be given to the following persons: the surviving spouse, children, and other

2519 heirs of the decedent, the devisees and executors named in any will that is being, or has been,

2520 probated, or offered for informal or formal probate in the county, or that is known by the

2521 petitioner to have been probated, or offered for informal or formal probate elsewhere, and any

2522 personal representative of the decedent whose appointment has not been terminated. Notice may

2523 be given to other persons. In addition, the petitioner shall give notice by publication to all

2524 unknown persons and to all known persons whose addresses are unknown who have any interest

2525 in the matters being litigated.

2526 (c) The notice shall include the name and address of the petitioner and personal representative,

2527 indicate that it is being sent to persons who have or may have some interest in the estate being

2528 administered, indicate whether bond with or without surety will be filed, and describe the court

2529 where papers relating to the estate are on file. The notice shall state that the estate is being

2530 administered under formal procedure by the personal representative under the Massachusetts

2531 Uniform Probate Code without supervision by the court, that inventory and accounts are not

2532 required to be filed with the court, but that recipients are entitled to notice regarding the

2533 administration from the personal representative and can petition the court in any matter relating

2534 to the estate, including distribution of assets and expenses of administration.

2535 (d) If it appears from the petition that there is no spouse or heir of the decedent or that any

2536 devisee is a charity, the petitioner shall give notice to the attorney general.

2537 (e) If it appears from the petition that a spouse, heir or devisee is a minor or an incapacitated

2538 person, the petitioner shall give notice to that person and that person's guardian or conservator.

2539 (f) The duty shall not extend to require notice to persons who have been adjudicated in a prior

2540 formal testacy proceeding to have no interest in the estate. The petitioner's failure to give this

2541 notice is a breach of duty to the persons concerned but shall not affect the validity of the probate,
2542 appointment, powers or other duties. A petitioner may inform other persons of the petition by
2543 delivery or ordinary first class mail.

2544 Section 3-404. [Reserved.]

2545 Section 3-405. [Formal Testacy Proceedings; Uncontested Cases; Hearings and Proof.]

2546 If evidence concerning execution of the will is necessary, the affidavit or testimony of 1 of any
2547 attesting witnesses to the instrument is sufficient. If the affidavit or testimony of an attesting
2548 witness is not available, execution of the will may be proved by other evidence or affidavit.

2549 Section 3-406. [Formal Testacy Proceedings; Contested Cases; Testimony of Attesting
2550 Witnesses.]

2551 (a) If evidence concerning execution of an attested will which is not self-proved is necessary in
2552 contested cases, the testimony of at least 1 of the attesting witnesses, if within the
2553 commonwealth, competent and able to testify, is required. Due execution of a will may be
2554 proved by other evidence.

2555 (b) If the will is self-proved, compliance with signature and other requirements of execution
2556 shall be presumed subject to rebuttal without the testimony of any witness upon filing the will
2557 and the acknowledgment and affidavits annexed or attached thereto, unless there is proof of
2558 fraud or forgery affecting the acknowledgment or affidavit.

2559 Section 3-407. [Reserved.]

2560 Section 3-408. [Formal Testacy Proceedings; Will Construction; Effect of Final Order in
2561 Another Jurisdiction.]

2562 A final order of a court of another state determining testacy, the validity or construction of a will,
2563 made in a proceeding involving notice to and an opportunity for contest by all interested persons
2564 shall be accepted as determinative by the courts of the commonwealth if it includes, or is based
2565 upon, a finding that the decedent was domiciled at death in the state where the order was made.

2566 Section 3-409. [Formal Testacy Proceedings; Order; Foreign Will.]

2567 After the time required for any notice has expired, upon proof of notice, and after any hearing
2568 that may be necessary, if the court finds that the testator is dead, venue is proper and that the
2569 proceeding was commenced within the limitation prescribed by section 3-108, it shall determine
2570 the decedent's domicile at death, the heirs and the status of testacy. Any will found to be valid
2571 and unrevoked shall be formally probated. Termination of any previous informal appointment of
2572 a personal representative, which may be appropriate in view of the relief requested and findings,
2573 shall be governed by section 3-612. The petition shall be dismissed or appropriate amendment
2574 allowed if the court is not satisfied that the alleged decedent is dead. A will from a place which
2575 does not provide for probate of a will after death, may be proved for probate in the
2576 commonwealth by a duly authenticated certificate of its legal custodian that the copy introduced
2577 is a true copy and that the will has become effective under the law of the other place.

2578 Section 3-410. [Formal Testacy Proceedings; Probate of More Than One Instrument.]

2579 If 2 or more instruments are offered for probate before a final order is entered in a formal testacy
2580 proceeding, more than 1 instrument may be probated if neither expressly revokes the other or
2581 contains provisions which work a total revocation by implication. If more than 1 instrument is
2582 probated, the order shall indicate what provisions control in respect to the nomination of an
2583 executor, if any. The order may, but need not, indicate how any provisions of a particular
2584 instrument are affected by the other instrument. After a final order in a formal testacy
2585 proceeding has been entered, no petition for probate of any other instrument of the decedent may
2586 be entertained, except incident to a petition to vacate a previous probate order and subject to the

2587 time limits of section 3-412.

2588 Section 3-411. [Formal Testacy Proceedings; Partial Intestacy.]

2589 If it becomes evident in the course of a formal testacy proceeding that, though one or more
2590 instruments are entitled to be probated, the decedent's estate is or may be partially intestate, the
2591 court shall enter an order to that effect.

2592 Section 3-412. [Formal Testacy Proceedings; Effect of Order; Vacation.]

2593 Subject to appeal and subject to vacation as provided herein and in section 3-413, a formal
2594 testacy order under sections 3-409 to 3-411, including an order that the decedent left no valid
2595 will and determining heirs, is final as to all persons with respect to all issues concerning the
2596 decedent's estate that the court considered or might have considered incident to its rendition
2597 relevant to the question of whether the decedent left a valid will, and to the determination of
2598 heirs, except that:

2599 (1) The court shall entertain a petition for vacation of its order and probate of another will of the
2600 decedent if it is shown that the proponents of the later-offered will were unaware of its existence
2601 at the time of the earlier proceeding or were unaware of the earlier proceeding and were given no
2602 notice thereof, except by publication.

2603 (2) If intestacy of all or part of the estate has been ordered, the determination of heirs of the
2604 decedent may be reconsidered if it is shown that 1 or more persons were omitted from the
2605 determination and it is also shown that the persons were unaware of their relationship to the
2606 decedent, were unaware of the death or were given no notice of any proceeding concerning the
2607 estate, except by publication.

2608 (3) A petition for vacation under either clause (1) or clause (2) shall be filed prior to the earlier
2609 of the following time limits:

2610 (i) If a personal representative has been appointed for the estate, the time of entry of any order
2611 approving final distribution of the estate, or, if the estate is closed by statement, 6 months after
2612 the filing of the closing statement.

2613 (ii) Whether or not a personal representative has been appointed for the estate of the decedent,
2614 the time prescribed by section 3-108 when it is no longer possible to initiate an original
2615 proceeding to probate a will of the decedent.

2616 (iii) Twelve months after the entry of the order sought to be vacated.

2617 (4) The order originally rendered in the testacy proceeding may be vacated, if appropriate under
2618 the circumstances, by the order of probate of the later-offered will or the order redetermining
2619 heirs.

2620 (5) If the alleged decedent is not dead, the alleged decedent may recover estate assets in the
2621 hands of the personal representative. In addition to any remedies available to the alleged
2622 decedent by reason of any fraud or intentional wrongdoing, the alleged decedent may recover
2623 any estate or its proceeds from distributees that is in their hands, or the value of distributions
2624 received by them, to the extent that any recovery from distributees is equitable in view of all of
2625 the circumstances.

2626 Section 3-413. [Formal Testacy Proceedings; Vacation of Order For Other Cause.]

2627 For good cause shown, an order in a formal testacy proceeding may be vacated within the time
2628 allowed for appeal.

2629 Section 3-414. [Formal Proceedings Concerning Appointment of Personal Representative.]

2630 (a) A formal proceeding for adjudication regarding the priority or qualification of one who is a
2631 petitioner for appointment as personal representative, or of one who previously has been
2632 appointed personal representative in informal proceedings, if an issue concerning the testacy of

2633 the decedent is or may be involved, is governed by section 3-402, as well as by this section. In
2634 other cases, the petition shall contain or adopt the statements required by section 3-301(a)(1) and
2635 describe the question relating to priority or qualification of the personal representative which is
2636 to be resolved. If the proceeding precedes any appointment of a personal representative, it shall
2637 stay any pending informal appointment proceedings as well as any commenced thereafter. If the
2638 proceeding is commenced after appointment, the previously appointed personal representative,
2639 after receipt of notice thereof, shall refrain from exercising any power of administration except
2640 as necessary to preserve the estate or unless the court orders otherwise.

2641 (b) After notice as prescribed in section 3-403 to interested persons, including all persons
2642 interested in the administration of the estate as successors under the applicable assumption
2643 concerning testacy, any previously appointed personal representative and any person having or
2644 claiming priority for appointment as personal representative, the court shall determine who is
2645 entitled to appointment under section 3-203, make a proper appointment and, if appropriate,
2646 terminate any prior appointment found to have been improper as provided in cases of removal
2647 under section 3-611.

2648 PART 5

2649 SUPERVISED ADMINISTRATION

2650 Section 3-501. [Supervised Administration; Nature of Proceeding.]

2651 Supervised administration is a single in rem proceeding to secure complete administration and
2652 settlement of a decedent's estate under the continuing authority of the court which extends until
2653 entry of an order approving distribution of the estate and discharging the personal representative
2654 or other order terminating the proceeding. A supervised personal representative is responsible to
2655 the court, as well as to the interested parties, and is subject to directions concerning the estate
2656 made by the court on its own motion or on the motion of any interested party. Except as
2657 otherwise provided in this Part, or as otherwise ordered by the court, a supervised personal
2658 representative has the same duties and powers as a personal representative who is not supervised.

2659 Section 3-502. [Supervised Administration; Petition; Order.]

2660 A petition for supervised administration may be filed by any interested person or by a personal
2661 representative at any time or the prayer for supervised administration may be joined with a
2662 petition in a testacy or appointment proceeding. If the testacy of the decedent and the priority
2663 and qualification of any personal representative have not been adjudicated previously, the
2664 petition for supervised administration shall include the matters required of a petition in a formal
2665 testacy proceeding and the notice requirements and procedures applicable to a formal testacy
2666 proceeding apply. If not previously adjudicated, the court shall adjudicate the testacy of the
2667 decedent and questions relating to the priority and qualifications of the personal representative in
2668 any case involving a request for supervised administration, even though the request for
2669 supervised administration may be denied. After notice to interested persons, the court shall order
2670 supervised administration of a decedent's estate: (1) if the decedent's will directs supervised
2671 administration, it shall be ordered unless the court finds that circumstances bearing on the need
2672 for supervised administration have changed since the execution of the will and that there is no
2673 necessity for supervised administration; (2) if the decedent's will directs unsupervised
2674 administration, supervised administration shall be ordered only upon a finding that it is necessary
2675 for protection of persons interested in the estate; or (3) in other cases if the court finds that
2676 supervised administration is necessary under the circumstances.

2677 Section 3-503. [Supervised Administration; Effect on Other Proceedings.]

2678 (a) The pendency of a proceeding for supervised administration of a decedent's estate stays

2679 action on any informal petition then pending or thereafter filed.
2680 (b) If a will has been previously probated in informal proceedings, the effect of the filing of a
2681 petition for supervised administration is as provided for formal testacy proceedings by section 3-
2682 401.

2683 (c) After receiving notice of the filing of a petition for supervised administration, a personal
2684 representative who has been appointed previously shall not exercise the power to distribute any
2685 estate. The filing of the petition shall not affect other powers and duties unless the court restricts
2686 the exercise of any of them pending full hearing on the petition.

2687 Section 3-504. [Supervised Administration; Powers of Personal Representative.]

2688 Unless restricted by the court, a supervised personal representative has, without interim orders
2689 approving exercise of a power, all powers of personal representatives under this code, but the
2690 personal representative shall not exercise power to make any distribution of the estate without
2691 prior order of the court. Any other restriction on the power of a personal representative which
2692 may be ordered by the court shall be endorsed on the personal representative's letters of
2693 appointment and, unless so endorsed, is ineffective as to persons dealing in good faith with the
2694 personal representative.

2695 Section 3-505. [Supervised Administration; Interim Orders; Distribution and Closing Orders.]

2696 Unless otherwise ordered by the court, supervised administration shall be terminated by order in
2697 accordance with time restrictions, notices and contents of orders prescribed for proceedings
2698 under section 3-1001. Interim orders approving or directing partial distributions or granting
2699 other relief may be issued by the court at any time during the pendency of a supervised
2700 administration on the petition of the personal representative or any interested person. Unless
2701 otherwise required by order, notice of interim orders in supervised administration need be given
2702 only to interested persons who request notice of all orders entered in the proceeding.

2703 PART 6

2704 PERSONAL REPRESENTATIVE; APPOINTMENT, CONTROL AND

2705 TERMINATION OF AUTHORITY

2706 Section 3-601. [Qualification.]

2707 Prior to receiving letters, a personal representative shall accept appointment and qualify by filing
2708 a bond with the appointing court.

2709 Section 3-602. [Acceptance of Appointment; Consent to Jurisdiction.]

2710 By accepting appointment, a personal representative submits personally to the jurisdiction of any
2711 court of the commonwealth in any proceeding relating to the estate that may be instituted by any
2712 interested person. Notice of any proceeding in the probate and family court shall be delivered to
2713 the personal representative, or mailed by ordinary first class mail at the address listed in the
2714 petition for appointment or as thereafter reported to the court and to the address as then known to
2715 the petitioner. Service in a proceeding in any other court shall be delivered in accordance with
2716 the rules of that court.

2717 Section 3-603. [Bond Without Sureties.]

2718 (a) Sureties shall be required on the bond of a personal representative unless: (i) the will directs
2719 that there be no bond or waives the requirement of surety thereon; (ii) all of the heirs, if no will
2720 has been probated, or all of the devisees named in a will file a written waiver of sureties; (iii) the
2721 personal representative is a bank or trust company qualified to do trust business or exercise trust
2722 powers in this state; or (iv) the court concludes that sureties are not in the best interests of the
2723 estate. In any formal proceeding the court, on its own motion, may require sureties or additional
2724 sureties.

2725 (b) No surety shall be required upon bonds filed by national banks or trust companies located in
2726 the commonwealth and duly permitted to act in a fiduciary capacity as personal representative or
2727 trustee, except that the court appointing such bank or trust company as a personal representative,
2728 other than as trustee, may upon application of any interested person require the bank or trust
2729 company so appointed to give such security, in addition to any lien or security provided by the
2730 laws of the United States, as the court may consider proper, and upon failure of such bank or
2731 trust company to give the security required may revoke such appointment and remove such bank
2732 or trust company.

2733 Section 3-604. [Bond With Sureties; Procedure; Reduction.]

2734 (a) If a bond is required and the provisions of the will or order do not specify the amount, unless
2735 stated in the petition, the person qualifying shall file a statement under oath with the court
2736 indicating the best estimate of the value of the personal estate of the decedent and shall file a
2737 bond with the court in an amount equal to the estimate. The court may permit the amount of the
2738 bond to be reduced by the value of assets of the estate deposited with a domestic financial
2739 institution in a manner that prevents their unauthorized disposition. On petition of the personal
2740 representative or another interested person the court may increase or reduce the amount of the
2741 bond, release the surety, or permit the substitution of another bond with the same or different
2742 surety.

2743 (b) In this section, "financial institution" means an organization authorized to do business under
2744 state or federal laws relating to financial institutions, and includes a bank, trust company, savings
2745 bank, building and loan association, savings and loan company or association, credit union and
2746 any corporation authorized to do business as a banking company under chapter 172A.

2747 Section 3-605. [Demand For Sureties by Interested Person.]

2748 Any person apparently having an interest in the estate worth in excess of \$5000, or any creditor
2749 having a claim in excess of \$5000, may make a written demand that a personal representative
2750 give bond. The demand shall be filed with the court and a copy mailed to the personal
2751 representative, if appointment and qualification have occurred. Thereupon, bond shall be
2752 required, but the requirement ceases if the person demanding bond ceases to be interested in the
2753 estate, or if the bond is excused as provided in section 3-604. After receiving notice and until the
2754 provision of sureties or cessation of the requirement of sureties, the personal representative shall
2755 refrain from exercising any powers of office except as necessary to preserve the estate. Failure
2756 of the personal representative to meet a requirement of sureties by providing suitable sureties
2757 within 30 days after receipt of notice shall be cause for removal and appointment of a successor
2758 personal representative.

2759 Section 3-606. [Terms and Conditions of Bonds.]

2760 (a) The following requirements and provisions shall apply to any bond required by this part:

2761 (1) Bonds shall name the first justice of the court making the appointment and his successors as
2762 obligee for the benefit of the persons interested in the estate and shall be conditioned upon the
2763 faithful discharge by the fiduciary of all duties according to law.

2764 (2) Unless otherwise provided by the terms of the approved bond, sureties are jointly and
2765 severally liable with the personal representative and with each other. The address of sureties
2766 shall be stated in the bond.

2767 (3) By executing an approved bond of a personal representative, the surety consents to the
2768 jurisdiction of the court which issued letters to the primary obligor in any proceedings pertaining
2769 to the fiduciary duties of the personal representative and naming the surety as a party. Notice of
2770 any proceeding shall be delivered to the surety or mailed to the surety by registered or certified

2771 mail at the address as listed with the court where the bond is filed and to the address as then
2772 known to the petitioner.

2773 (4) On petition of a successor personal representative, any other personal representative of the
2774 same decedent, or any interested person, a proceeding in the court may be initiated against a
2775 surety for breach of the obligation of the bond of the personal representative.

2776 (5) The bond of the personal representative shall not be void after the first recovery but may be
2777 proceeded against from time to time until the whole penalty is exhausted.

2778 (6) If a new bond is required, the sureties on the prior bond shall be liable for all breaches of the
2779 conditions thereof committed before the new bond is approved and filed.

2780 (7) In no event shall any surety be liable for any claim or cause of action arising out of or in any
2781 way connected with acts or omissions of the personal representative occurring prior to the
2782 appointment of such person as personal representative. As provided in section 7-304, this
2783 section shall also apply to bonds of trustees.

2784 (b) No action or proceeding may be commenced against the surety on any matter as to which an
2785 action or proceeding against the primary obligor is barred by adjudication or limitation.

2786 Section 3-607. [Order Restraining Personal Representative.]

2787 (a) On complaint in equity of any person who appears to have an interest in the estate, the court
2788 by temporary order may restrain a personal representative from performing specified acts of
2789 administration, disbursement, or distribution, or exercise of any powers or discharge of any
2790 duties of his office, or make any other order to secure proper performance of his duty, if it
2791 appears to the court that the personal representative otherwise may take some action which
2792 would jeopardize unreasonably the interest of the petitioner or of some other interested
2793 person. Persons with whom the personal representative may transact business may be made
2794 parties.

2795 (b) The matter shall be set for hearing within 10 days unless the parties otherwise agree. Notice
2796 as the court directs shall be given to the personal representative and the attorney of record, if any,
2797 and to any other parties named a defendant in the petition.

2798 Section 3-608. [Termination of Appointment; General.]

2799 Termination of appointment of a personal representative occurs as indicated in sections 3-609 to
2800 3-612, inclusive. Termination ends the right and power pertaining to the office of personal
2801 representative as conferred by this code or any will, except that a personal representative, at any
2802 time prior to distribution or until restrained or enjoined by court order, may perform acts
2803 necessary to protect the estate and may deliver the assets to a successor
2804 representative. Termination shall not discharge a personal representative from liability for
2805 transactions or omissions occurring before termination, or relieve the personal representative of
2806 the duty to preserve assets subject to the personal representative's control, to account therefor and
2807 to deliver the assets. Termination shall not affect the jurisdiction of the court over the personal
2808 representative, but shall terminate the authority to represent the estate in any pending or future
2809 proceeding.

2810 Section 3-609. [Termination of Appointment; Death or Disability.]

2811 The death of a personal representative or the appointment of a guardian or conservator for the
2812 estate of a personal representative, terminates his appointment. Until appointment and
2813 qualification of a successor or special personal representative to replace the deceased or
2814 protected representative, the representative of the estate of the deceased or protected personal
2815 representative, if any, shall have the duty to protect the estate possessed and being administered
2816 by the decedent or ward at the time the appointment terminates, the power to perform acts

2817 necessary for protection of the estate and shall account for and deliver the estate assets to a
2818 successor or special personal representative upon appointment and qualification.

2819 Section 3-610. [Reserved.]

2820 Section 3-611. [Termination of Appointment by Removal; Cause; Procedure.]

2821 (a) A person interested in the estate may petition for removal of a personal representative for
2822 cause at any time. Notice shall be given in the manner prescribed by section 1-401 by the
2823 petitioner to the personal representative, and to other persons as the court may order. The court
2824 may suspend the personal representative's authority in any manner during the pendency of the
2825 proceeding. If removal is ordered, the court also shall direct by order the disposition of the
2826 assets remaining in the name of, or under the control of, the personal representative being
2827 removed.

2828 (b) Cause for removal exists if it is shown that a personal representative, or the person seeking
2829 appointment, intentionally misrepresented material facts in the proceedings leading to
2830 appointment, or that the personal representative has disregarded an order of the court, has
2831 become incapable of discharging the duties of the office, or has mismanaged the estate or failed
2832 to perform any duty pertaining to the office. Unless the decedent's will directs otherwise, a
2833 personal representative appointed at the decedent's domicile, incident to securing his
2834 appointment or his nominee as ancillary personal representative, may obtain removal of another
2835 who was appointed personal representative in the commonwealth to administer local assets.

2836 Section 3-612. [Termination of Appointment; Change of Testacy Status.]

2837 Except as otherwise ordered in formal proceedings, the probate of a will subsequent to the
2838 appointment of a personal representative in intestacy or under a will which is superseded by
2839 formal probate of another will, or the vacation of an informal probate of a will subsequent to the
2840 appointment of the personal representative thereunder, shall not terminate the appointment of the
2841 personal representative although the personal representative's powers may be reduced as
2842 provided in section 3-401. Termination shall occur upon appointment in informal or formal
2843 appointment proceedings of a person entitled to appointment under the later assumption
2844 concerning testacy. If no request for new appointment is made within 30 days after expiration of
2845 time for appeal from the order in formal testacy proceedings, or from the informal probate,
2846 changing the assumption concerning testacy, the previously appointed personal representative,
2847 upon request, may be appointed personal representative under the subsequently probated will, or
2848 as in intestacy as the case may be.

2849 Section 3-613. [Successor Personal Representative.]

2850 Parts 3 and 4 of this article govern proceedings for appointment of a personal representative to
2851 succeed one whose appointment has been terminated. After appointment and qualification, a
2852 successor personal representative may be substituted in all actions and proceedings to which the
2853 former personal representative was a party, and no notice, process or claim which was given or
2854 served upon the former personal representative need be given to or served upon the successor in
2855 order to preserve any position or right the person giving the notice or filing the claim may
2856 thereby have obtained or preserved with reference to the former personal representative. Except
2857 as otherwise ordered by the court, the successor personal representative shall have the powers
2858 and duties in respect to the continued administration which the former personal representative
2859 would have had if the appointment had not been terminated.

2860 Section 3-614. [Special Representative; Appointment.]

2861 A special personal representative may be appointed in a proceeding by order of the court on the
2862 petition of any interested person and finding, after notice and hearing, that appointment is

2863 necessary to preserve the estate or to secure its proper administration including its administration
2864 in circumstances where a general personal representative cannot or should not act. If it appears
2865 to the court that an emergency exists, appointment may be ordered without notice. A special
2866 personal representative shall continue to act during appeal of his appointment unless the court
2867 orders otherwise.

2868 Section 3-615. [Special Representative; Who May Be Appointed.]

2869 Any suitable person may be appointed special personal representative.

2870 Section 3-616. [Reserved.]

2871 Section 3-617. [Special Representative; Formal Proceedings; Power and Duties.]

2872 (a) A special personal representative appointed by order of the court in any formal proceeding
2873 has the power of a general personal representative except as limited by section 3-715(b) and in
2874 the appointment and duties as prescribed in the order. The appointment may be for a period of
2875 up to 90 days except in extraordinary circumstances, in which case the court may order an
2876 appointment for a longer period. The court may, for good cause shown, extend the appointment
2877 for additional period, of up to 90 days.

2878 (b) A special personal representative shall have authority to distribute only pursuant to part 7 of
2879 article III, and pursuant to specific orders of the court.

2880 Section 3-618. [Termination of Appointment; Special Representative.]

2881 The appointment of a special representative terminates in accordance with the provisions of the
2882 order of appointment or on the appointment of a general personal representative. In other cases,
2883 the appointment of a special personal representative is subject to termination as provided in
2884 sections 3-608 to 3-611, inclusive.

2885 PART 7

2886 DUTIES AND POWERS OF PERSONAL REPRESENTATIVES

2887 Section 3-701. [Time of Accrual of Duties and Powers.]

2888 The duties and powers of a personal representative commence upon appointment. The powers of
2889 a personal representative relate back in time to give acts by the person appointed which are
2890 beneficial to the estate occurring prior to appointment the same effect as those occurring
2891 thereafter. Prior to appointment, a person named executor in a will may carry out written
2892 instructions of the decedent relating to the decedent's body, funeral and burial arrangements. A
2893 personal representative may ratify and accept acts on behalf of the estate done by others if the
2894 acts would have been proper for a personal representative.

2895 Section 3-702. [Priority Among Different Letters.]

2896 A person to whom general letters are issued first has exclusive authority under the letters until
2897 the appointment is terminated or modified. If, through error, general letters are afterwards issued
2898 to another, the first appointed representative may recover any property of the estate in the hands
2899 of the representative subsequently appointed, but the acts of the latter done in good faith before
2900 notice of the first letters are not void for want of validity of appointment.

2901 Section 3-703. [General Duties; Relation and Liability to Persons Interested in Estate; Standing
2902 to Sue.]

2903 (a) A personal representative is a fiduciary who shall observe the standards of care applicable to
2904 trustees as described by chapter 203C. A personal representative shall have the duty to settle and
2905 distribute the estate of the decedent in accordance with the terms of any probated and effective
2906 will and this code, and as expeditiously and efficiently as is consistent with the best interests of
2907 the estate. The personal representative shall use the authority conferred by this code, by the
2908 terms of the will, if any, and by any order in proceedings to which the personal representative is

2909 party for the best interests of successors to the estate.

2910 (b) Subject to other obligations of administration, an informally probated will is authority to
2911 administer and distribute the estate according to its terms. An order of appointment of a personal
2912 representative, whether issued in informal or formal proceedings, is authority to distribute
2913 apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal
2914 representative is not aware of a pending testacy proceeding, a proceeding to vacate an order
2915 entered in an earlier testacy proceeding, a formal proceeding questioning appointment or fitness
2916 to continue, or a supervised administration proceeding. Nothing in this section shall affect the
2917 duty of the personal representative to administer and distribute the estate in accordance with the
2918 rights of claimants, the surviving spouse, any minor and dependent children and any pretermitted
2919 child of the decedent as described elsewhere in this code.

2920 (c) Except as to proceedings which do not survive the death of the decedent, a personal
2921 representative of a decedent domiciled in the commonwealth at death has the same standing to
2922 sue and be sued in the courts of the commonwealth and the courts of any other jurisdiction as the
2923 decedent had immediately prior to death.

2924 Section 3-704. [Personal Representative to Proceed Without Court Order; Exception.]

2925 A personal representative shall proceed expeditiously with the settlement and distribution of a
2926 decedent's estate and, except as otherwise specified or ordered in regard to a supervised personal
2927 representative, do so without adjudication, order, or direction of the court, but the personal
2928 representative may invoke the jurisdiction of the court, in proceedings authorized by this code, to
2929 resolve questions concerning the estate or its administration.

2930 Section 3-705. [Reserved.]

2931 Section 3-706. [Duty of Personal Representative; Inventory and Appraisalment.]

2932 Within 3 months after appointment, a personal representative, who is not a successor to another
2933 representative who has previously discharged this duty, shall prepare an inventory of property
2934 owned by the decedent at the time of death, listing it with reasonable detail, and indicating as to
2935 each listed item, its fair market value as of the date of the decedent's death, and the type and
2936 amount of any encumbrance that may exist with reference to any item.

2937 The personal representative shall file with the court or mail to all interested persons whose
2938 addresses are reasonably available a copy of the inventory. The personal representative may also
2939 file the original of the inventory with the court.

2940 Section 3-707. [Employment of Appraisers.]

2941 The personal representative may employ 1 or more qualified and disinterested appraisers to assist
2942 in ascertaining the fair market value as of the date of the decedent's death of any asset the value
2943 of which may be subject to reasonable doubt. Different persons may be employed to appraise
2944 different kinds of assets included in the estate.

2945 Section 3-708. [Reserved]

2946 Section 3-709. [Duty of Personal Representative; Possession of Estate.]

2947 (a) Except as otherwise provided by a decedent's will, every personal representative has a right
2948 to, and shall take possession or control of, the decedent's property, except that any real property
2949 or tangible personal property may be left with or surrendered to the person presumptively
2950 entitled thereto unless or until, in the judgment of the personal representative, possession of the
2951 property will be necessary for purposes of administration. The request by a personal
2952 representative for delivery of any property possessed by an heir or devisee is conclusive
2953 evidence, in any action against the heir or devisee for possession thereof, that the possession of
2954 the property by the personal representative is necessary for purposes of administration. The

2955 personal representative shall pay taxes on, and take all steps reasonably necessary for the
2956 management, protection and preservation of, the estate in the personal representative's
2957 possession. The personal representative may maintain an action to recover possession of
2958 property or to determine the title thereto.

2959 (b) Whoever injuriously intermeddles with any personal property of a deceased person, without
2960 being thereto authorized by law, shall be liable as a personal representative in his own wrong to
2961 the person aggrieved.

2962 (c) A personal representative in his own wrong shall be liable to the rightful personal
2963 representative for the full value of the personal property of the deceased taken by him and for all
2964 damages caused to the estate by his acts; and he or she shall not be allowed to retain or deduct
2965 any part of such estate, except for funeral expenses or debts of the deceased or other charges
2966 actually paid by him and which the rightful personal representative might have been compelled
2967 to pay.

2968 Section 3-710. [Power to Avoid Transfers.]

2969 The property liable for the payment of unsecured debts of a decedent includes all property
2970 transferred by the decedent by any means which is in law void or voidable as against creditors,
2971 and subject to prior liens, the right to recover this property, so far as necessary for the payment of
2972 unsecured debts of the decedent, is exclusively in the personal representative.

2973 Section 3-711. [Reserved.]

2974 Section 3-712. [Improper Exercise of Power; Breach of Fiduciary Duty.]

2975 If the exercise of power concerning the estate is improper, the personal representative is liable to
2976 interested persons for damage or loss resulting from breach of fiduciary duty to the same extent
2977 as a trustee of an express trust. The rights of purchasers and others dealing with a personal
2978 representative shall be determined as provided in sections 3-713 and 3-714.

2979 Section 3-713. [Sale, Encumbrance or Transaction Involving Conflict of Interest; Voidable;
2980 Exceptions.]

2981 Any sale or encumbrance to the personal representative, the personal representative's spouse,
2982 agent or attorney, or any corporation or trust in which the personal representative has a
2983 substantial beneficial interest, or any transaction which is affected by a substantial conflict of
2984 interest on the part of the personal representative, is voidable by any person interested in the
2985 estate except one who has consented after fair disclosure, unless

2986 (1) the will or a contract entered into by the decedent expressly authorized the transaction or
2987 transactions in general; or

2988 (2) the transaction is approved by the court after notice to interested persons.

2989 Section 3-714. [Persons Dealing with Personal Representative; Protection.]

2990 A person who in good faith either assists a personal representative or deals with a personal
2991 representative for value is protected as if the personal representative properly exercised
2992 power. The fact that a person knowingly deals with a personal representative shall not alone
2993 require the person to inquire into the existence of a power or the propriety of its exercise. Except
2994 for restrictions on powers of supervised personal representatives which are endorsed on letters as
2995 provided in section 3-504, no provision in any will or order of court purporting to limit the power
2996 of a personal representative is effective except as to persons with actual knowledge thereof. A
2997 person is not bound to see to the proper application of estate assets paid or delivered to a
2998 personal representative. The protection here expressed extends to instances in which some
2999 procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of
3000 letters, including a case in which the alleged decedent is found to be alive. The protection here

3001 expressed is not by substitution for that provided by comparable provisions of the laws relating
3002 to commercial transactions and laws simplifying transfers of securities by fiduciaries.
3003 Section 3-715. [Transactions Authorized for Personal Representatives; Exceptions.]
3004 (a) Except as restricted or otherwise provided by the will or by an order in a formal proceeding
3005 and subject to the priorities stated in section 3-902, a personal representative other than a special
3006 personal representative, acting reasonably for the benefit of the interested persons, may properly:
3007 (1) retain assets owned by the decedent pending distribution or liquidation including those in
3008 which the representative is personally interested or which are otherwise improper for trust
3009 investment;
3010 (2) receive assets from fiduciaries, or other sources;
3011 (3) perform, compromise or refuse performance of the decedent's contracts that continue as
3012 obligations of the estate, as he may determine under the circumstances. In performing
3013 enforceable contracts by the decedent to convey or lease land, the personal representative, among
3014 other possible courses of action, may:
3015 (i) execute and deliver a deed of conveyance for cash payment of all sums remaining due or the
3016 purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or
3017 (ii) deliver a deed in escrow with directions that the proceeds, when paid in accordance with the
3018 escrow agreement, be paid to the successors of the decedent, as designated in the escrow
3019 agreement;
3020 (4) satisfy written charitable pledges of the decedent irrespective of whether the pledges
3021 constituted binding obligations of the decedent or were properly presented as claims, if in the
3022 judgment of the personal representative the decedent would have wanted the pledges completed
3023 under the circumstances;
3024 (5) if funds are not needed to meet debts and expenses currently payable and are not
3025 immediately distributable, deposit or invest liquid assets of the estate, including moneys received
3026 from the sale of other assets, in federally insured interest-bearing accounts, readily marketable
3027 secured loan arrangements or other prudent investments which would be reasonable for use by
3028 trustees generally;
3029 (6) acquire or dispose of tangible and intangible personal property for cash or on credit, at public
3030 or private sale; and manage, develop, improve, exchange, change the character of, or abandon an
3031 estate asset;
3032 (7) make repairs or alterations in buildings or other structures, demolish any improvements,
3033 structures, raze existing or erect new party walls or buildings;
3034 (8) subdivide, develop or dedicate land to public use; adjust boundaries; or adjust differences in
3035 valuation by giving or receiving considerations; or dedicate easements to public use without
3036 consideration;
3037 (9) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or
3038 renew, for a term within or extending beyond the period of administration;
3039 (10) enter into a lease or arrangement for exploration and removal of minerals or other natural
3040 resources or enter into a pooling or unitization agreement;
3041 (11) abandon property when, in the opinion of the personal representative, it is valueless, or is so
3042 encumbered, or is in condition that it is of no benefit to the estate;
3043 (12) vote stocks or other securities in person or by general or limited proxy;
3044 (13) pay calls, assessments, and other sums chargeable or accruing against or on account of
3045 securities, unless barred by the provisions relating to claims;
3046 (14) hold a security in the name of a nominee or in other form without disclosure of the interest

3047 of the estate but the personal representative is liable for any act of the nominee in connection
3048 with the security so held;

3049 (15) insure the assets of the estate against damage, loss and liability and the personal
3050 representative against liability as to third persons;

3051 (16) borrow money with or without security to be repaid from the estate assets or otherwise; and
3052 advance money for the protection of the estate;

3053 (17) effect a fair and reasonable compromise with any debtor or obligor, or extend, renew or in
3054 any manner modify the terms of any obligation owing to the estate. If the personal
3055 representative holds a mortgage, pledge or other lien upon property of another person, the
3056 personal representative may, in lieu of foreclosure, accept a conveyance or transfer of
3057 encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien;

3058 (18) pay taxes, assessments, compensation of a personal representative other than a special
3059 personal representative, and other expenses incident to the administration of the estate;

3060 (19) sell or exercise stock subscription or conversion rights; consent, directly or through a
3061 committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation
3062 of a corporation or other business enterprise;

3063 (20) allocate items of income or expense to either estate income or principal, as permitted or
3064 provided by law;

3065 (21) employ persons, including attorneys, auditors, investment advisors, or agents, even if they
3066 are associated with the personal representative, to advise or assist the personal representative in
3067 the performance of administrative duties; act without independent investigation upon their
3068 recommendations; and instead of acting personally, employ 1 or more agents to perform any act
3069 of administration, whether or not discretionary;

3070 (22) defend and prosecute claims, or proceedings in any jurisdiction for the protection of the
3071 estate and of the personal representative in the performance of duties;

3072 (23) sell, or lease any personal property of the estate or any interest therein for cash, credit, or
3073 for part cash and part credit, and with or without security for unpaid balances;

3074 (24) continue any unincorporated business or venture in which the decedent was engaged at the
3075 time of death (i) in the same business form for a period of not more than 4 months from the date
3076 of appointment of a general personal representative if continuation is a reasonable means of
3077 preserving the value of the business including good will, (ii) in the same business form for any
3078 additional period of time that may be approved by order of the court in a formal proceeding to
3079 which the persons interested in the estate are parties; or (iii) throughout the period of
3080 administration if the business is incorporated by the personal representative and if none of the
3081 probable distributees of the business who are competent adults object to its incorporation and
3082 retention in the estate;

3083 (25) incorporate any business or venture in which the decedent was engaged at the time of
3084 death;

3085 (26) provide for exoneration of the personal representative from personal liability in any
3086 contract entered into on behalf of the estate;

3087 (27) satisfy and settle claims and distribute the estate as provided in this code.

3088 (b) Except as restricted or otherwise provided by the will or by an order in a formal proceeding
3089 and subject to the priorities stated in section 3-902, a special personal representative acting
3090 reasonably for the benefit of the interested persons, may properly exercise only those powers set
3091 forth in subsections (1), (2), (3), (5), (7), (12), (15), (18), (19), (20), (21), (22), (24) and (26) of
3092 paragraph (a).

3093 Section 3-716. [Powers and Duties of Successor Personal Representative.]
3094 A successor personal representative has the same power and duty as the original personal
3095 representative to complete the administration and distribution of the estate, as expeditiously as
3096 possible, but shall not exercise any power expressly made personal to the executor named in the
3097 will.

3098 Section 3-717. [Co-representatives; When Joint Action Required.]
3099 If 2 or more persons are appointed co-representatives and unless the will provides otherwise, the
3100 concurrence of all is required on all acts connected with the administration and distribution of the
3101 estate. This restriction shall not apply when any co-representative receives and receipts for
3102 property due the estate, when the concurrence of all cannot readily be obtained in the time
3103 reasonably available for emergency action necessary to preserve the estate, or when a co-
3104 representative has been delegated to act for the others. Persons dealing with a co-representative
3105 if actually unaware that another has been appointed to serve or if advised by the personal
3106 representative with whom they deal that the personal representative has authority to act alone for
3107 any of the reasons mentioned herein, are as fully protected as if the person with whom they dealt
3108 had been the sole personal representative.

3109 Section 3-718. [Powers of Surviving Personal Representative.]
3110 Unless the terms of the will otherwise provide, every power exercisable by personal co-
3111 representatives may be exercised by the 1 or more remaining after the appointment of 1 or more
3112 is terminated, and if 1 of 2 or more nominated as co-representatives is not appointed, those
3113 appointed may exercise all the powers incident to the office.

3114 Section 3-719. [Compensation of Personal Representative.]
3115 A personal representative is entitled to reasonable compensation for services. If a will provides
3116 for compensation of the personal representative and there is no contract with the decedent
3117 regarding compensation, the personal representative may renounce the provision before
3118 qualifying and be entitled to reasonable compensation. A personal representative also may
3119 renounce the right to all or any part of the compensation. A written renunciation of fee may be
3120 filed with the court.

3121 Section 3-720. [Expenses in Estate Litigation.]
3122 If any personal representative or person nominated as personal representative defends or
3123 prosecutes any proceeding in good faith, whether successful or not that personal representative or
3124 person is entitled to receive from the estate necessary expenses and disbursements including
3125 reasonable attorneys' fees incurred.

3126 Section 3-721. [Reserved]

3127 PART 8

3128 CREDITORS' CLAIMS

3129 Section 3-801. [Reserved]

3130 Section 3-802. [Statutes of Limitations.]
3131 Unless an estate is insolvent, the personal representative, with the consent of all successors
3132 whose interests would be affected, may waive any defense of limitations available to the
3133 estate. If the defense is not waived, no claim barred by a statute of limitations at the time of the
3134 decedent's death may be allowed or paid.
3135 Only those successors who would be affected thereby shall agree to a waiver of a defense of
3136 limitations available to an estate.

3137 Section 3-803. [Limitations on Presentation of Claims.]
3138 (a) Except as provided in this chapter, a personal representative shall not be held to answer to an

3139 action by a creditor of the deceased unless such action is commenced within 1 year after the date
3140 of death of the deceased and unless, before the expiration of such period, the process in such
3141 action has been served by delivery in hand upon such personal representative or service thereof
3142 accepted by him or a notice stating the name of the estate, the name and address of the creditor,
3143 the amount of the claim and the court in which the action has been brought has been filed with
3144 the register.

3145 (b) A trustee of a trust, the assets of which are subject as a matter of substantive law to being
3146 reached by creditors of the deceased shall not be held to answer to an action by a creditor of the
3147 deceased unless such action is commenced against such trustee or against the personal
3148 representative of the deceased within the time and in the manner provided in subsection

3149 (a). Such trustee shall have immunity from personal liability to a creditor or the deceased in the
3150 same manner as a personal representative has, pursuant to section 3-807.

3151 (c) A claim described in subsections (a) or (b) which is barred by statute of the decedent's
3152 domicile before the limitation in the commonwealth is barred in the commonwealth.

3153 (d) Nothing in this section affects or prevents:

3154 (1) any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate;

3155 (2) an action for personal injuries or death, if commenced more than one year after the date of
3156 death of the deceased, brought against the personal representative, provided that such action is
3157 commenced within three years next after the cause of action accrues, and provided further that
3158 any judgment recovered in any action so brought may be satisfied only from the proceeds of a
3159 policy of insurance or bond, if any, and not from the general assets of the estate.

3160 (3) collection of compensation for services rendered and reimbursement for expenses advanced
3161 by the personal representative or by the attorney or accountant for the personal representative of
3162 the estate.

3163 (e) If the supreme judicial court, upon a complaint in equity filed by a creditor whose claim has
3164 not been prosecuted within the time limited by subsections (a) or (b), deems that justice and
3165 equity require it and that such creditor is not chargeable with culpable neglect in not prosecuting
3166 his claim within the time so limited, it may give him judgment for the amount of his claim
3167 against the estate of the deceased person, provided forthwith upon the filing of the complaint a
3168 notice such as provided in subsection (a) has been filed in the proper registry of probate; but such
3169 judgment shall not affect any payment or distribution made before the filing of such complaint
3170 and notice.

3171 (f) If a deceased received medical assistance under chapter 118E when such deceased was 55
3172 years of age or older or while an inpatient in a nursing facility or other medical institution,
3173 section 32 of chapter 118E shall govern the notice to be given to the division of medical
3174 assistance and such division's claim for recovery under section 31 of said chapter 118E if the
3175 division so chooses.

3176 Section 3-804. [Manner of Commencement of Claims.]

3177 (1) A personal representative shall not be held to answer to an action by a creditor of the
3178 deceased which is commenced within any other or additional period of limitation for bringing
3179 such action provided by or under this chapter unless before the expiration of such period the
3180 process in such action has been served by delivery in hand upon the personal representative or
3181 service thereof accepted by the personal representative or a notice as aforesaid has been filed
3182 with the register.

3183 (2) Claims against a decedent's estate shall be commenced by a proceeding against the personal
3184 representative in any court where the personal representative may be subjected to jurisdiction, to

3185 obtain payment of his claim against the estate, but the commencement of the proceeding shall
3186 occur within the time limited for presenting the claim. No presentation of claim is required in
3187 regard to matters claimed in proceedings against the decedent which were pending at the time of
3188 his death.

3189 (3) A special personal representative shall be liable to an action by a creditor of the deceased
3190 brought within the period of limitation provided in section 3-803; provided, however, that any
3191 such action shall be stayed by the court in which it is brought until such time as a general
3192 personal representative has been appointed and said general personal representative has been
3193 substituted for said special personal representative as the party defendant.

3194 Section 3-805. [Classification of Claims.]

3195 (a) If the applicable assets of the estate are insufficient to pay all claims in full, the personal
3196 representative shall make payment in the following order:

- 3197 (1) costs and expenses of administration;
- 3198 (2) reasonable funeral expenses;
- 3199 (3) debts and taxes with preference under federal law;
- 3200 (4) reasonable and necessary medical and hospital expenses of the last illness of the decedent,
3201 including compensation of persons attending the decedent;
- 3202 (5) debts and taxes with preference under other laws of the commonwealth;
- 3203 (6) debts due to the division of medical assistance;
- 3204 (7) all other claims.

3205 (b) No preference shall be given in the payment of any claim over any other claim of the same
3206 class, and a claim due and payable shall not be entitled to a preference over claims not due.

3207 Section 3-806. [Allowance of Claims.]

3208 (a) A judgment in a proceeding in another court against a personal representative to enforce a
3209 claim against a decedent's estate is an allowance of the claim.

3210 (b) Unless otherwise provided in any judgment in another court entered against the personal
3211 representative, allowed claims bear interest at the legal rate for the period commencing with the
3212 date of judgment unless based on a contract making a provision for interest, in which case they
3213 bear interest in accordance with that provision.

3214 Section 3-807. [Payment of Claims.]

3215 (a) Upon the expiration of the time limitation provided in section 3-803 for the presentation of
3216 claims, the personal representative shall proceed to pay the claims allowed against the estate in
3217 the order of priority prescribed, after making provision for family allowances, for claims already
3218 presented that have not yet been allowed or whose allowance has been appealed, and for
3219 unbarred claims that may yet be presented, including costs and expenses of administration. By
3220 petition to the court in a proceeding for the purpose, or by appropriate motion if the
3221 administration is supervised, a claimant whose claim has been allowed but not paid may secure
3222 an order directing the personal representative to pay the claim to the extent funds of the estate are
3223 available to pay it.

3224 (b) If a personal representative finds that the estate of the deceased will probably be insufficient
3225 for the payment of his debts the personal representative shall represent the estate to be insolvent
3226 to the court, and shall, pursuant to court order, after notice to all persons interested, divide and
3227 pay over what remains in the personal representative's hands among the creditors who prove
3228 their debts. No action shall be maintained against a personal representative after an estate has
3229 been represented insolvent, unless for a claim entitled to a preference which would not be
3230 affected by the insolvency of the estate or unless the assets prove more than sufficient to pay all

3231 the debts allowed. If the estate is represented insolvent while an action is pending for a claim
3232 which is not entitled to such preference, the action may be stayed without costs until it appears
3233 whether the estate is insolvent, and if it is not insolvent, the plaintiff may prosecute the action as
3234 if no such representation had been made.

3235 (c) If a personal representative shall not within 6 months after the date of death of the deceased
3236 have had notice of demands against the estate of the deceased sufficient to warrant him to
3237 represent such estate to be insolvent, he or she may, after the expiration of said 6 months, pay the
3238 debts due from the estate and shall not be personally liable to any creditor in consequence for
3239 such payments made before notice of such creditor's demand; and if such a personal
3240 representative shall be in doubt as to the validity of any debt which, if valid, the personal
3241 representative would have a right to pay under this section, the personal representative may, with
3242 the approval of the court, after notice to all persons interested, pay such debt or so much thereof
3243 as the court may authorize.

3244 (d) If a personal representative pays under subsection (c), before notice of the demand of any
3245 other creditor, the whole of the estate and effects of the deceased, the personal representative
3246 shall not be required in consequence of such notice to represent the estate insolvent, but in an
3247 action against the personal representative shall be discharged upon proving such payments.

3248 (e) If a personal representative pays, under subsection (c), so much of the estate and effects of
3249 the deceased that the remainder is insufficient to satisfy a demand of which the personal
3250 representative afterward has notice, the personal representative shall be liable on such last
3251 mentioned demand for only so much as may then remain. If 2 or more such demands are
3252 exhibited, which together exceed the amount of assets remaining in his hands, the personal
3253 representative may represent the estate insolvent, and shall, pursuant to court order, after notice
3254 to all persons interested, divide and pay over what remains in the personal representative's hands
3255 among the creditors who prove their debts; but the creditors of the deceased who have been
3256 previously paid shall not be liable to repay any part of the amount received by them.

3257 (f) If it appears, upon the settlement of the account of a personal representative, that the whole
3258 estate and effects which have come to the personal representative's hands have been exhausted in
3259 paying the charges of administration and debts or claims entitled by law to a preference over the
3260 common creditors of the deceased, such settlement shall be a bar to an action brought against the
3261 personal representative by a creditor who is not entitled to such preference, although the estate
3262 has not been represented insolvent.

3263 (g) The personal representative at any time may pay any just claim that has not been barred,
3264 with or without formal presentation, but, except as provided in subsections (c), (d), (e) and (f), is
3265 personally liable to any other claimant whose claim is allowed and who is injured by its payment
3266 if:

3267 (1) payment was made before the expiration of the time limit stated in subsection (a) and the
3268 personal representative failed to require the payee to give adequate security for the refund of any
3269 of the payment necessary to pay other claimants; or

3270 (2) payment was made, due to negligence or willful fault of the personal representative, in such
3271 manner as to deprive the injured claimant of priority.

3272 Section 3-808. [Individual Liability of Personal Representative.]

3273 (a) Unless otherwise provided in the contract, a personal representative is not individually liable
3274 on a contract properly entered into in his fiduciary capacity in the course of administration of the
3275 estate unless he fails to reveal his representative capacity and identify the estate in the contract.

3276 (b) A personal representative is individually liable only if he or she is personally at fault for (1)

3277 obligations arising from ownership or control of the estate or (2) for torts committed in the
3278 course of administration of the estate.

3279 (c) Claims based on contracts entered into by a personal representative in his fiduciary capacity,
3280 on obligations arising from ownership or control of the estate or on torts committed in the course
3281 of estate administration may be asserted against the estate by proceeding against the personal
3282 representative in his fiduciary capacity, whether or not the personal representative is individually
3283 liable therefor.

3284 (d) Issues of liability as between the estate and the personal representative individually may be
3285 determined in a proceeding for accounting, surcharge or indemnification or other appropriate
3286 proceeding.

3287 Section 3-809. [Secured Claims.]

3288 Payment of a secured claim is upon the basis of the amount allowed if the creditor surrenders his
3289 security; otherwise payment is upon the basis of 1 of the following:

3290 (1) if the creditor exhausts his security before receiving payment, unless precluded by other law,
3291 upon the amount of the claim allowed less the fair value of the security; or

3292 (2) if the creditor does not have the right to exhaust his security or has not done so, upon the
3293 amount of the claim allowed less the value of the security determined by converting it into
3294 money according to the terms of the agreement pursuant to which the security was delivered to
3295 the creditor, or by the creditor and personal representative by agreement, arbitration, compromise
3296 or litigation.

3297 Section 3-810. [Claims Not Due and Contingent or Unliquidated Claims.]

3298 (a) If a claim which will become due at a future time or a contingent or unliquidated claim
3299 becomes due or certain before the distribution of the estate, and if the claim has been allowed or
3300 established by a proceeding, it is paid in the same manner as presently due and absolute claims of
3301 the same class.

3302 (b) In other cases the personal representative or, on petition of the personal representative or the
3303 claimant in a special proceeding for the purpose, the court may provide for payment as follows:

3304 (1) if the claimant consents, he may be paid the present or agreed value of the claim, taking any
3305 uncertainty into account;

3306 (2) arrangement for future payment, or possible payment, on the happening of the contingency
3307 or on liquidation may be made by creating a trust, giving a mortgage, obtaining a bond or
3308 security from a distributee, or otherwise.

3309 Section 3-811. [Counterclaims.]

3310 In paying a claim the personal representative may deduct any counterclaim which the estate has
3311 against the claimant. In determining a claim against an estate a court shall reduce the amount
3312 allowed by the amount of any counterclaims and, if the counterclaims exceed the claim, render a
3313 judgment against the claimant in the amount of the excess. A counterclaim, liquidated or
3314 unliquidated, may arise from a transaction other than that upon which the claim is based. A
3315 counterclaim may give rise to relief exceeding in amount or different in kind from that sought in
3316 the claim.

3317 Section 3-812. [Execution and Levies Prohibited.]

3318 No execution may issue upon nor may any levy be made against any property of the estate under
3319 any judgment against a decedent or a personal representative, but this section shall not be
3320 construed to prevent the enforcement of mortgages, pledges or liens upon real or personal
3321 property in an appropriate proceeding.

3322 Section 3-813. [Compromise of Claims.]

3323 When a claim against the estate has been presented in any manner, the personal representative
3324 may, if it appears for the best interest of the estate, compromise the claim, whether due or not
3325 due, absolute or contingent, liquidated or unliquidated.

3326 Section 3-814. [Encumbered Assets.]

3327 If any assets of the estate are encumbered by mortgage, pledge, lien, or other security interest,
3328 the personal representative may pay the encumbrance or any part thereof, renew or extend any
3329 obligation secured by the encumbrance or convey or transfer the assets to the creditor in
3330 satisfaction of his lien, in whole or in part, whether or not the holder of the encumbrance has
3331 presented a claim, if it appears to be for the best interest of the estate. Payment of an
3332 encumbrance shall not increase the share of the distributee entitled to the encumbered assets
3333 unless the distributee is entitled to exoneration.

3334 Section 3-815. [Administration in More Than One State; Duty of Personal Representative.]

3335 (a) All assets of estates being administered in the commonwealth are subject to all claims,
3336 allowances and charges existing or established against the personal representative wherever
3337 appointed.

3338 (b) If the estate either in the commonwealth or as a whole is insufficient to cover all family
3339 exemptions and allowances (determined by the law of the decedent's domicile), prior charges and
3340 claims, each claimant whose claim has been allowed either in the commonwealth or elsewhere in
3341 administrations of which the personal representative is aware, is entitled to receive payment of
3342 an equal proportion of his claim, after satisfaction of the exemptions, allowances and charges. If
3343 a preference or security in regard to a claim is allowed in another jurisdiction but not in the
3344 commonwealth, the creditor so benefited is to receive dividends from local assets only upon the
3345 balance of his claim after deducting the amount of the benefit.

3346 (c) In case the family exemptions and allowances, prior charges and claims of the entire estate
3347 exceed the total value of the portions of the estate being administered separately and the
3348 commonwealth is not the state of the decedent's last domicile, the claims allowed in the
3349 commonwealth shall be paid their proportionate share of total assets if local assets are adequate
3350 for the purpose, and the balance of local assets shall be transferred to the domiciliary personal
3351 representative. If local assets are not sufficient to pay all claims allowed in the commonwealth
3352 the amount to which they are entitled, local assets shall be marshalled so that each claim allowed
3353 in the commonwealth is paid its proportion as far as possible, after taking into account all
3354 dividends on claims allowed in the commonwealth from assets in other jurisdictions.

3355 Section 3-816. [Final Distribution to Domiciliary Representative.]

3356 The estate of a non-resident decedent being administered by a personal representative appointed
3357 in the commonwealth shall, if there is a personal representative of the decedent's domicile
3358 willing to receive it, be distributed to the domiciliary personal representative for the benefit of
3359 the successors of the decedent unless (1) by virtue of the decedent's will, if any, and applicable
3360 choice of law rules, the successors are identified pursuant to the local law of the commonwealth
3361 without reference to the local law of the decedent's domicile; (2) the personal representative of
3362 the commonwealth, after reasonable inquiry, is unaware of the existence or identity of a
3363 domiciliary personal representative; or (3) the court orders otherwise in a proceeding for a
3364 closing order under section 3-1001 or incident to the closing of a supervised administration. In
3365 other cases, distribution of the estate of a decedent shall be made in accordance with the other
3366 parts of this article.

3367 PART 9

3368 SPECIAL PROVISIONS RELATING TO DISTRIBUTION

3369 Section 3-901. [Successors' Rights if No Administration.]
3370 In the absence of administration, the heirs and devisees are entitled to the estate in accordance
3371 with the terms of a probated will or the laws of intestate succession. Devisees may establish title
3372 by the probated will to devised property. Persons entitled to property by family allowance,
3373 exemption or intestacy may establish title thereto by proof of the decedent's ownership, his
3374 death, and their relationship to the decedent. Successors take subject to all charges incident to
3375 administration, including the claims of creditors and allowances of surviving spouse and
3376 dependent children, and subject to the rights of others resulting from abatement, retainer,
3377 advancement, and ademption.

3378 Section 3-902. [Distribution; Order in Which Assets Appropriated; Abatement.]

3379 (a) Except as provided in subsection (b) and except as provided in connection with the share of
3380 the surviving spouse who elects to take an elective share, shares of distributees abate, without
3381 any preference or priority as between real and personal property, in the following order: (1)
3382 property passing by intestacy; (2) residuary devises; (3) general devises; (4) specific
3383 devises. For purposes of abatement, a general devise charged on any specific property or fund is
3384 a specific devise to the extent of the value of the property on which it is charged, and upon the
3385 failure or insufficiency of the property on which it is charged, a general devise to the extent of
3386 the failure or insufficiency. Abatement within each classification is in proportion to the amounts
3387 of property each of the beneficiaries would have received if full distribution of the property had
3388 been made in accordance with the terms of the will.

3389 (b) If the will expresses an order of abatement, or if the testamentary plan or the express or
3390 implied purpose of the devise would be defeated by the order of abatement stated in subsection
3391 (a), the shares of the distributees abate as may be found necessary to give effect to the intention
3392 of the testator.

3393 (c) If the subject of a preferred devise is sold or used incident to administration, abatement shall
3394 be achieved by appropriate adjustments in, or contribution from, other interests in the remaining
3395 assets.

3396 Section 3-903. [Right of Retainer.]

3397 The amount of a non-contingent indebtedness of a successor to the estate if due, or its present
3398 value if not due, shall be offset against the successor's interest; but the successor has the benefit
3399 of any defense which would be available to him in a direct proceeding for recovery of the debt.

3400 Section 3-904. [Interest on General Pecuniary Devise.]

3401 The rate of interest upon general pecuniary devises or pecuniary distribution under a trust
3402 instrument, unless otherwise provided in the will or trust instrument, shall be such as the
3403 supreme judicial court may by general rules establish, and in absence of any such rules the rate
3404 shall be 4 per cent per annum. Unless otherwise provided in the will or trust instrument, interest
3405 shall be payable from the date of the expiration of the period within which creditors may bring
3406 actions against a personal representative as provided in section 3-803.

3407 Section 3-905. [Reserved]

3408 Section 3-906. [Distribution in Kind; Valuation; Method.]

3409 (a) Except as restricted or otherwise provided for by will or order of the court, a personal
3410 representative may distribute assets of the estate in kind or partly in cash and partly in kind and
3411 pro rata or not pro rata at then current values as between distributees.

3412 (b) After the probable charges against the estate are known, the personal representative may
3413 mail or deliver a proposal for distribution to all persons who have a right to object to the
3414 proposed distribution. The right of any distributee to object to the proposed distribution on the

3415 basis of the kind or value of asset he is to receive, if not waived earlier in writing, terminates if
3416 he fails to object in writing received by the personal representative within 30 days after mailing
3417 or delivery of the proposal.

3418 Section 3-907. [Distribution in Kind; Evidence.]

3419 If distribution in kind is made, the personal representative shall execute an instrument or deed of
3420 distribution assigning, transferring or releasing the assets to the distributee as evidence of the
3421 distributee's title to the property.

3422 Section 3-908. [Distribution; Right or Title of Distributee.]

3423 Proof that a distributee has received an instrument or deed of distribution of assets in kind, or
3424 payment in distribution, from a personal representative, is conclusive evidence that the
3425 distributee has succeeded to the interest of the estate in the distributed assets, as against all
3426 persons interested in the estate, except that the personal representative may recover the assets or
3427 their value if the distribution was improper.

3428 Section 3-909. [Improper Distribution; Liability of Distributee.]

3429 Unless the distribution or payment no longer can be questioned because of adjudication,
3430 estoppel, or limitation, a distributee of property improperly distributed or paid, or a claimant who
3431 was improperly paid, is liable to return the property improperly received and its income since
3432 distribution if he has the property. If he does not have the property, then he is liable to return the
3433 value as of the date of disposition of the property improperly received and its income and gain
3434 received by him.

3435 Section 3-910. [Reserved.]

3436 Section 3-911. [Reserved.]

3437 Section 3-912. [Private Agreements Among Successors to Decedent Binding on Personal
3438 Representative.]

3439 Subject to the rights of creditors and taxing authorities, competent successors may agree among
3440 themselves to alter the interests, shares, or amounts to which they are entitled under the will of
3441 the decedent, or under the laws of intestacy, in any way that they provide in a written contract
3442 executed by all who are affected by its provisions. The personal representative shall abide by the
3443 terms of the agreement subject to his obligation to administer the estate for the benefit of
3444 creditors, to pay all taxes and costs of administration, and to carry out the responsibilities of his
3445 office for the benefit of any successors of the decedent who are not parties. Personal
3446 representatives of decedents' estates are not required to see to the performance of trusts if the
3447 trustee thereof is another person who is willing to accept the trust. Accordingly, trustees of a
3448 testamentary trust are successors for the purposes of this section. Nothing herein relieves
3449 trustees of any duties owed to beneficiaries of trusts.

3450 Section 3-913. [Distributions to Trustee.]

3451 (a) If a trust instrument does not excuse the trustee from giving bond, before distributing to a
3452 trustee a personal representative may petition the appropriate court to require that the trustee post
3453 bond with sureties if the personal representative apprehends that distribution might jeopardize
3454 the interests of persons who are not able to protect themselves, and the personal representative
3455 may withhold distribution until the court has acted.

3456 (b) No inference of negligence on the part of the personal representative shall be drawn from his
3457 failure to exercise the authority conferred by subsection (a).

3458 Section 3-914. [Disposition of Unclaimed Assets.]

3459 (a) If a personal representative has money which the personal representative considers it
3460 advisable to deposit in a savings bank, or in savings accounts in a trust company, or in paid-up

3461 shares and accounts of and in a co-operative bank, or with which the personal representative
3462 considers it advisable to purchase shares or make deposits in a credit union located in the
3463 commonwealth or to purchase share accounts of a federal savings and loan association located in
3464 the commonwealth, in the name of the judge of probate, for the benefit of any person, the
3465 personal representative may apply to the court by which he or she was appointed for leave so to
3466 do, and the court may in its discretion, without notice, direct such money to be so
3467 deposited. When the deposit is made the deposit book or certificates of the bank shall be filed in
3468 court. When the person entitled to such money satisfies the court of his right to receive it, the
3469 court shall by decree direct that it be transferred to him.

3470 (b)(1) If a personal representative holds property the disposition of which depends upon the
3471 death of an absentee whose death has not been determined under paragraph (1), (2) or (3) of
3472 section 1-107, on or after the day 5 years after the date of the absentee's disappearance the
3473 personal representative, or any person who would be interested in the property were the absentee
3474 dead, may petition the court having jurisdiction of the estate for an order that the property be
3475 disposed of to the persons to whom and in the shares or proportions in which it would be
3476 distributed if the absentee had died on the day 5 years after the date of the absentee's
3477 disappearance.

3478 (2) The court may direct the petitioner to report the results of, or make and report back
3479 concerning, a reasonably diligent search for the absentee in any manner that may seem advisable,
3480 including any or all of the following methods:

3481 (i) by inserting in 1 or more suitable periodicals a notice requesting information from any person
3482 having knowledge of the whereabouts of the absentee;

3483 (ii) by notifying law enforceable officials, public welfare agencies and registers of deaths in
3484 appropriate locations of the disappearance of the absentee;

3485 (iii) by engaging the services of an investigator.

3486 The costs of any search so directed shall be paid from estate property.

3487 (3) After any such report directed by the court under paragraph (2) above has been completed to
3488 the satisfaction of the court, notice of the hearing on the petition shall be given as provided in
3489 section 1-401.

3490 (4) If after the hearing the court finds that the facts warrant a presumption of death under
3491 paragraph (4) of section 1-107, it shall enter an appropriate order of disposition of the trust
3492 property and any undistributed net income.

3493 Section 3-915. [Distribution to Person Under Disability.]

3494 (a) A personal representative may discharge his obligation to distribute to any person under
3495 legal disability by distributing in a manner expressly provided in the will.

3496 (b) Unless contrary to an express provision in the will, the personal representative may
3497 discharge an obligation to distribute to a minor or person under other disability as authorized by
3498 chapter two hundred one A or any other statute. If the personal representative knows that a
3499 guardian of the estate or conservator has been appointed or that a proceeding for appointment of
3500 a guardian of the estate or conservator is pending, the personal representative is authorized to
3501 distribute only to the guardian of the estate or conservator.

3502 (c) If the heir or devisee is under disability other than minority, the personal representative is
3503 authorized to distribute to:

3504 (1) an attorney in fact who has authority under a power of attorney to receive property for that
3505 person; or

3506 (2) the spouse, parent or other close relative with whom the person under disability resides if the

3507 distribution is of amounts not exceeding \$10,000 a year, or property not exceeding \$10,000 in
3508 value, unless the court authorizes a larger amount or greater value.

3509 Persons receiving money or property for the disabled person are obligated to apply the money or
3510 property to the support of that person, but may not pay themselves except by way of
3511 reimbursement for out-of-pocket expenses for goods and services necessary for the support of
3512 the disabled person. Excess sums shall be preserved for future support of the disabled
3513 person. The personal representative shall not be responsible for the proper application of money
3514 or property distributed pursuant to this subsection.

3515 Section 3-916. [Apportionment of Estate Taxes.]

3516 (a) For purposes of this section:

3517 (1) "Estate", the gross estate of a decedent as determined for the purpose of federal estate tax
3518 and the estate tax payable to the commonwealth;

3519 (2) "Fiduciary", personal representative or trustee.

3520 (3) "Person", any individual, partnership, association, joint stock company, corporation,
3521 government, political subdivision, governmental agency, or local governmental agency;

3522 (4) "Person interested in the estate", any person entitled to receive, or who has received, from a
3523 decedent or by reason of the death of a decedent any property or interest therein included in the
3524 decedent's estate. It includes a personal representative, guardian, conservator, and trustee;

3525 (5) "State", any state, territory, or possession of the United States, the District of Columbia, and
3526 the commonwealth of Puerto Rico;

3527 (6) "Tax", the federal and Massachusetts estate tax and the additional inheritance tax imposed
3528 by the commonwealth and interest and penalties imposed in addition to the tax;

3529 (b) Except as provided in subsection (i) and, unless the will otherwise provides, the tax shall be
3530 apportioned among all persons interested in the estate. The apportionment is to be made in the
3531 proportion that the value of the interest of each person interested in the estate bears to the total
3532 value of the interests of all persons interested in the estate. The values used in determining the
3533 tax are to be used for that purpose. If the decedent's will directs a method of apportionment of
3534 tax different from the method described in this code, the method described in the will controls.

3535 (c)(1) The court in which venue lies for the administration of the estate of a decedent, on
3536 petition for the purpose may determine the apportionment of the tax.

3537 (2) If the court finds that it is inequitable to apportion interest and penalties in the manner
3538 provided in subsection (b), because of special circumstances, it may direct apportionment thereof
3539 in the manner it finds equitable.

3540 (3) If the court finds that the assessment of penalties and interest assessed in relation to the tax is
3541 due to delay caused by the negligence of the fiduciary, the court may charge him with the
3542 amount of the assessed penalties and interest.

3543 (4) In any action to recover from any person interested in the estate the amount of the tax
3544 apportioned to the person in accordance with this code the determination of the court in respect
3545 thereto shall be prima facie correct.

3546 (d)(1) The personal representative or other person in possession of the property of the decedent
3547 required to pay the tax may withhold from any property distributable to any person interested in
3548 the estate, upon its distribution to him, the amount of tax attributable to his interest. If the
3549 property in possession of the personal representative or other person required to pay the tax and
3550 distributable to any person interested in the estate is insufficient to satisfy the proportionate
3551 amount of the tax determined to be due from the person, the personal representative or other
3552 person required to pay the tax may recover the deficiency from the person interested in the

3553 estate. If the property is not in the possession of the personal representative or the other person
3554 required to pay the tax, the personal representative or the other person required to pay the tax
3555 may recover from any person interested in the estate the amount of the tax apportioned to the
3556 person in accordance with this chapter.

3557 (2) If property held by the personal representative is distributed prior to final apportionment of
3558 the tax, the distributee shall provide a bond or other security for the apportionment liability in the
3559 form and amount prescribed by the personal representative.

3560 (e)(1) In making an apportionment, allowances shall be made for any exemptions granted, any
3561 classification made of persons interested in the estate and for any deductions and credits allowed
3562 by the law imposing the tax.

3563 (2) Any exemption or deduction allowed by reason of the relationship of any person to the
3564 decedent or by reason of the purposes of the gift inures to the benefit of the person bearing such
3565 relationship or receiving the gift; but if an interest is subject to a prior present interest which is
3566 not allowable as a deduction, the tax apportionable against the present interest shall be paid from
3567 principal.

3568 (3) Any deduction for property previously taxed and any credit for gift taxes or death taxes of a
3569 foreign country paid by the decedent or his estate inures to the proportionate benefit of all
3570 persons liable to apportionment.

3571 (4) Any credit for inheritance, succession or estate taxes or taxes in the nature thereof applicable
3572 to property or interests includable in the estate, inures to the benefit of the persons or interests
3573 chargeable with the payment thereof to the extent proportionately that the credit reduces the tax.

3574 (5) To the extent that property passing to or in trust for a surviving spouse or any charitable,
3575 public or similar purpose is not an allowable deduction for purposes of the tax solely by reason
3576 of an inheritance tax or other death tax imposed upon and deductible from the property, the
3577 property is not included in the computation provided for in subsection (b) hereof, and to that
3578 extent no apportionment is made against the property. The sentence immediately preceding shall
3579 not apply to any case if the result would be to deprive the estate of a deduction otherwise
3580 allowable under section 2053(d) of the Internal Revenue Code of 1986, as amended, or
3581 corresponding provisions of any subsequent United States tax law, relating to deduction for state
3582 death taxes on transfers for public, charitable, or religious uses.

3583 (f) No interest in income and no estate for years or for life or other temporary interest in any
3584 property or fund is subject to apportionment as between the temporary interest and the
3585 remainder. The tax on the temporary interest and the tax, if any, on the remainder is chargeable
3586 against the corpus of the property or funds subject to the temporary interest and remainder.

3587 (g) Neither the personal representative nor other person required to pay the tax is under any duty
3588 to institute any action to recover from any person interested in the estate the amount of the tax
3589 apportioned to the person until the expiration of the 3 months next following final determination
3590 of the tax. A personal representative or other person required to pay the tax who institutes the
3591 action within a reasonable time after the 3 months' period is not subject to any liability or
3592 surcharge because any portion of the tax apportioned to any person interested in the estate was
3593 collectible at a time following the death of the decedent but thereafter became uncollectible. If
3594 the personal representative or other person required to pay the tax cannot collect from any person
3595 interested in the estate the amount of the tax apportioned to the person, the amount not
3596 recoverable shall be equitably apportioned among the other persons interested in the estate who
3597 are subject to apportionment.

3598 (h) A personal representative acting in another state or a person required to pay the tax

3599 domiciled in another state may institute an action in the courts of this state and may recover a
3600 proportionate amount of the federal estate tax, of an estate tax payable to another state or of a
3601 death duty due by a decedent's estate to another state, from a person interested in the estate who
3602 is either domiciled in this state or who owns property in this state subject to attachment or
3603 execution. For the purposes of the action the determination of apportionment by the court having
3604 jurisdiction of the administration of the decedent's estate in the other state is prima facie correct.

3605 (i) If the liabilities of persons interested in the estate as prescribed by this act differ from those
3606 which result under the federal estate tax law, the liabilities imposed by the federal law will
3607 control and the balance of this section shall apply as if the resulting liabilities had been
3608 prescribed herein.

3609 (j) If any portion of the property with respect to which such tax is levied or assessed is property
3610 in which the decedent has a qualifying income interest for life within the meaning of section 3A
3611 of chapter 65C or section 2044 of the Internal Revenue Code of 1986, as amended or any statutes
3612 of similar import, such portion of the net amount of the tax so levied or assessed, including, in
3613 the case of the Massachusetts estate tax, any tax imposed under the provision of subsection (b) of
3614 section 2 of said chapter 65C, shall, except as otherwise provided or directed by the decedent's
3615 will, be charged to and paid from the corpus of such property as equals the amount by which the
3616 total net amount of such tax levied or assessed exceeds the total net amount of such tax as would
3617 have been levied or assessed if the value of such property which is included in the measure of
3618 such tax had not been so included. The amount so charged shall not be apportioned between
3619 temporary and remainder estates.

3620 (k) A direction in a will or instrument of trust to pay taxes caused by, resulting from, or imposed
3621 by reason of the death of the testator or donor, as the case may be, out of the decedent's probate
3622 estate or trust estate or other property, shall not include, unless the will or instrument of trust or a
3623 provision of such tax laws specifically provides otherwise, taxes levied or assessed under the tax
3624 laws of the United States or of the commonwealth or of any foreign state or commonwealth
3625 (i) on generation-skipping transfers or (ii) on any qualified terminable interest property in
3626 which the decedent had a qualifying income interest for life.

3627 Section 3-917. [Partial Distribution.]

3628 If the court finds that partial distribution of the property of an estate in process of settlement can,
3629 without detriment to such estate, be made to the persons entitled thereto, the court may, subject
3630 to the rights of creditors and after notice, order such partial distribution to be made.

3631 PART 10

3632 CLOSING ESTATES

3633 Section 3-1001. [Formal Proceedings Terminating Administration; Testate or Intestate; Order of
3634 General Protection.]

3635 (a) A personal representative or any interested person may petition for an order of complete
3636 settlement of the estate. The personal representative may petition at any time, and any other
3637 interested person may petition after 1 year from the appointment of the original personal
3638 representative except that no petition under this section may be entertained until the time for
3639 presenting claims which arose prior to the death of the decedent has expired. The petition may
3640 request the court to determine testacy, if not previously determined, to consider the final account,
3641 compel or approve an accounting or distribution or both, to construe any will, determine heirs or
3642 adjudicate the final settlement and distribution of the estate. Unless the petition is assented to by
3643 all interested parties, notice shall be given in the manner prescribed by section 1-401 by the
3644 petitioner to all interested persons.

3645 (b) After the time required for any notice has expired, upon proof of notice, and after any
3646 hearing that may be necessary, the court may enter an order or orders, on appropriate conditions,
3647 determining the persons entitled to distribution of the estate, and, as circumstances require,
3648 approving settlement and directing or approving distribution of the estate and discharging the
3649 personal representative from further claim or demand of any interested person. Such discharge
3650 shall forever exonerate the personal representative and his sureties from all liability under such
3651 decree unless his account is impeached for fraud or manifest error.

3652 (c) If one or more heirs or devisees were omitted as parties in, or were not given notice of, a
3653 previous formal testacy proceeding, the court, on proper petition for an order of complete
3654 settlement of the estate under this section, and after notice to the omitted or unnotified persons
3655 and other interested parties determined to be interested on the assumption that the previous order
3656 concerning testacy is conclusive as to those given notice of the earlier proceeding, may
3657 determine testacy as it affects the omitted persons and confirm or alter the previous order of
3658 testacy as it affects all interested persons as appropriate in the light of the new proofs. In the
3659 absence of objection by an omitted or unnotified person, evidence received in the original testacy
3660 proceeding shall constitute prima facie proof of due execution of any will previously admitted to
3661 probate, or of the fact that the decedent left no valid will if the prior proceedings determined this
3662 fact.

3663 Section 3-1002. [Reserved]

3664 Section 3-1003. [Closing Estates; By Sworn Statement of Personal Representative.]

3665 (a) Unless prohibited by order of the court and except for estates being administered in
3666 supervised administration proceedings, a personal representative may close an estate by filing
3667 with the court no earlier than 6 months after the date of original appointment of a general
3668 personal representative for the estate, a verified statement stating that the personal
3669 representatives or a previous personal representative, has:

3670 (1) determined that the time limited for presentation of creditors' claims has expired;

3671 (2) fully administered the estate of the decedent by making payment, settlement, or other
3672 disposition of all claims that were presented, expenses of administration and estate, inheritance
3673 and other death taxes, except as specified in the statement, and that the assets of the estate have
3674 been distributed to the persons entitled. If any claims remain undischarged, the statement shall
3675 state whether the personal representative has distributed the estate subject to possible liability
3676 with the agreement of the distributees or state in detail other arrangements that have been made
3677 to accommodate outstanding liabilities; and

3678 (3) sent a copy of the statement to all distributees of the estate and to all creditors or other
3679 claimants of whom the personal representative is aware whose claims are neither paid nor barred
3680 and has furnished a full account in writing of the personal representative's administration to the
3681 distributees whose interests are affected thereby.

3682 (b) If no proceedings involving the personal representative are pending in the court 1 year after
3683 the closing statement is filed, the personal representative's closing statement may not be
3684 challenged, except for fraud or manifest error.

3685 Section 3-1004. [Liability of Distributees to Claimants.]

3686 After assets of an estate have been distributed and subject to Section 3-1006, an undischarged
3687 claim not barred may be prosecuted in a proceeding against 1 or more distributees as an improper
3688 distribution in accordance with section 3-909.

3689 Section 3-1005. [Limitations on Proceedings Against Personal Representative.]

3690 Unless previously barred by adjudication and except as provided in the closing statement, the

3691 rights of successors and of creditors whose claims have not otherwise been barred against the
3692 personal representative for breach of fiduciary duty are barred unless a proceeding to assert the
3693 same is commenced within 6 months after the filing of the closing statement. The rights thus
3694 barred do not include rights to recover from a personal representative for fraud,
3695 misrepresentation, or inadequate disclosure related to the settlement of the decedent's estate.
3696 Section 3-1006. [Limitations on Actions and Proceedings Against Distributees.]
3697 Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling the
3698 accounts of a personal representative or otherwise barred, the claim of a claimant to recover from
3699 a distributee who is liable to pay the claim, and the right of an heir or devisee, or of a successor
3700 personal representative acting in their behalf, to recover property improperly distributed or its
3701 value from any distributee is forever barred at the later of 3 years after the decedent's death or 1
3702 year after the time of its distribution thereof, but all claims of creditors of the decedent are barred
3703 1 year after the decedent's death. This section shall not bar an action to recover property or value
3704 received as a result of fraud.

3705 Section 3-1007. [Reserved]

3706 Section 3-1008. [Reserved]

3707 PART 11

3708 COMPROMISE OF CONTROVERSIES

3709 Section 3-1101. [Effect of Approval of Agreements Involving Trusts, Inalienable Interests, or
3710 Interests of Third Persons.]

3711 A compromise of any controversy as to admission to probate of any instrument offered for
3712 formal probate as the will of a decedent, as to the administration or distribution of an estate, or as
3713 to an accounting therefore, or as to any matter relating to said estate, or as to the construction of
3714 a will or trust created by a written instrument, or as to the fiduciary's power and authority
3715 thereunder, or as to any controversy growing out of said will or instrument that may arise
3716 between the fiduciary and any other person or the guardian or conservator of any person
3717 interested under said will or instrument or in said estate, or between claimants or the guardians or
3718 conservators of claimants to said estate, to which arbitration or compromise, in the form of an
3719 agreement in writing, such personal representative, guardian, conservator, receiver,
3720 commissioner or other fiduciary officer or trustee, and all other persons in being and of full age
3721 and not under guardianship, and the guardian or conservator, if any, of all other persons who
3722 claim a vested interest in said estate, whose interests will, in the opinion of the court, be affected
3723 by the proposed arbitration or compromise, shall be parties, if approved in a formal proceeding
3724 in the court for that purpose, is binding on all the parties thereto including those unborn,
3725 unascertained or who could not be located. An approved compromise is binding even though it
3726 may affect a trust or an inalienable interest. A compromise shall not impair the rights of
3727 creditors or of taxing authorities who are not parties to it.

3728 Section 3-1102. [Procedure for Securing Court Approval of Compromise.]

3729 The procedure for securing court approval of a compromise is as follows:

3730 (1) The terms of the compromise shall be set forth in an agreement in writing which shall be
3731 executed by all competent persons and parents or guardians acting for any minor child having
3732 beneficial interests or having claims which will or may be affected by the
3733 compromise. Execution is not required by any person whose identity cannot be ascertained or
3734 whose whereabouts is unknown and cannot reasonably be ascertained.

3735 (2) Any interested person, including the personal representative or a trustee, then may submit
3736 the agreement to the court for its approval and for execution by the personal representative, the

3737 trustee of every affected trust, and other fiduciaries and representatives.
3738 (3) After notice as prescribed by section 1-401 to all interested persons or their representatives,
3739 including the personal representative of the estate and all affected trustees of trusts, the court, if it
3740 finds that the contest or controversy is in good faith and that the effect of the agreement upon the
3741 interests of persons represented by fiduciaries or other representatives is just and reasonable,
3742 shall make an order approving the agreement and directing all fiduciaries subject to its
3743 jurisdiction to execute the agreement. Minor children represented only by their parents or
3744 guardians may be bound only if their parents or guardians join with other competent persons in
3745 execution of the compromise. Upon the making of the order and the execution of the agreement,
3746 all further disposition of the estate is in accordance with the terms of the agreement.
3747 Section 3-1103. [Non-Resident Beneficiaries; Payment of Trust Fund to Foreign Trustee]
3748 If all living parties interested as beneficiaries in a trust created by a will allowed in the
3749 commonwealth reside outside thereof, the court having jurisdiction of the trust may, on petition
3750 of parties in interest or of the personal representative or trustee, if it considers it just and
3751 expedient, authorize the personal representative or trustee to pay the fund to a trustee appointed
3752 by the proper court in any other state or country, if all living beneficiaries and the personal
3753 representative or trustee signify their consent, and the court is satisfied that the laws of such
3754 other state or country secure the due performance of said trust; and upon such payment, shown to
3755 the satisfaction of said court, the personal representative or trustee appointed here may be
3756 discharged from further responsibility by decree of said court.

3757 PART 12

3758 COLLECTION OF PERSONAL PROPERTY BY VOLUNTARY ADMINISTRATION
3759 PROCEDURE FOR SMALL ESTATES

3760 Section 3-1201. [Collection of Personal Property by Affidavit.]

3761 If an inhabitant of the commonwealth dies leaving an estate consisting entirely of personal
3762 property the total value of which may include a motor vehicle of which the decedent was the
3763 owner, and other personal property not exceeding \$25,000 in value, any interested person may,
3764 after the expiration of 30 days from the death of the decedent, provided no petition for
3765 appointment of a personal representative has been filed with the court of the county in which the
3766 decedent resided, file with said court upon a form prescribed by the court a statement, verified by
3767 oath, or affirmation containing: (a) the name and residential address of the petitioner, (b) the
3768 name, residence and date of death of the deceased, (c) the relationship of the petitioner to the
3769 deceased, (d) a schedule showing every asset of the estate known to the petitioner and the
3770 estimated value of each such asset, (e) a statement that the petitioner has undertaken to act as
3771 voluntary personal representative of the estate of the deceased and will administer the same
3772 according to law, and apply the proceeds thereof in conformity with this section, (f) the names
3773 and addresses of surviving joint owners of property with the deceased, known to the petitioner,
3774 (g) the names and addresses known to the petitioner of the persons who would take under the
3775 provisions of part 1 of article II of this chapter in the case of intestacy, and (h) the names and
3776 addresses known to the petitioner of the persons who would take under the provisions of the will,
3777 if any. The original of any will shall be filed with the above statement.

3778 Upon presentation of such statement, accompanied by a certificate of the death of the deceased
3779 by a public officer and payment of a fee as may be specified in section 40 of chapter 262, the
3780 register shall docket these documents as a part of the permanent records of the court. Upon
3781 payment of a fee as prescribed in said section 40 of chapter 262, the register shall, if no other

3782 probate proceeding for administration of such estate is pending in said court, issue an attested
3783 copy of a statement duly filed under this section.

3784 Notwithstanding any general or special of law to the contrary, a voluntary personal
3785 representative shall certify on the statement that copies of such statement and death certificate
3786 have been sent to the division of medical assistance by certified mail. If the decedent received
3787 medical assistance under chapter 118E (1) when age 65 or older or (2) at any time on or after
3788 March 22, 1991, regardless of age, while an inpatient in a nursing facility or other medical
3789 institution, the provisions of section 32 of said chapter 118E shall apply except (1) the period for
3790 said department to present a claim under subsection (b)(1) of said section 32 of said chapter
3791 118E shall be within 4 months of the date the register docket the statement and (2) interest on
3792 allowed claims under subsection (c) of said section 32 of said chapter 118E shall commence 4
3793 months plus 60 days after said date. This paragraph shall apply to estates of decedents dying on
3794 or after September 1, 1992.

3795 Upon the presentation of a copy of such a statement duly attested by the register, the tender of a
3796 proper receipt in writing and the surrender of any policy, passbook, note, certificate or other
3797 evidentiary instrument, a voluntary personal representative may, as the legal representative of the
3798 deceased and his estate, receive payment of any debt or obligation in the nature of a debt, or
3799 delivery of any chattel or asset, scheduled in such statement. Payments and deliveries made
3800 under this section shall discharge liability of the debtor, obligor or deliverer to all persons with
3801 respect to such debt, chattel, obligation or other asset unless, at the time of such payment or
3802 delivery, a written demand has been made upon said debtor, obligor or deliverer by a duly
3803 appointed personal representative.

3804 A voluntary personal representative may sell any chattel so received and negotiate or assign any
3805 chose in action to convert the same to cash in a reasonable amount.

3806 A voluntary personal representative shall, as far as possible out of the assets which come into his
3807 hands, first discharge the necessary expenses of the funeral and last sickness of the deceased and
3808 the necessary expenses of administration without fee for his services, and then pay the debts of
3809 the deceased in the order specified in section 3-805 and any other debts of the estate, and then
3810 distribute the balance, if any, in accordance with part 1 of article II of this chapter.

3811 A voluntary personal representative shall be liable as a personal representative in his own wrong
3812 to all persons aggrieved by his administration of the estate, and, if letters testamentary or letters
3813 of administration are at any time granted, shall be liable as such a personal representative to the
3814 rightful personal representative.

3815 For the purpose of paragraph (6) of section 113A of chapter 175 and section 2 of chapter 90, a
3816 voluntary personal representative shall be deemed to be the personal representative of the estate
3817 of the decedent until a personal representative is appointed.

3818 Upon payment of the proper fee, the register may issue a certificate of appointment to such
3819 voluntary personal representative, with a copy of the statement annexed thereto.

3820 Section 3-1202. [Effect of Affidavit.]

3821 The person paying, delivering, transferring, or issuing personal property or the evidence thereof
3822 pursuant to section 3-1201 is discharged and released to the same extent as if he dealt with a
3823 personal representative of the decedent. He or she is not required to see to the application of the
3824 personal property or evidence thereof or to inquire into the truth of any statement in the
3825 affidavit. If any person to whom a statement is delivered refuses to pay, deliver, transfer, or
3826 issue any personal property or evidence thereof, it may be recovered or its payment, delivery,
3827 transfer, or issuance compelled upon proof of their right in a proceeding brought for the purpose

3828 by or on behalf of the persons entitled thereto. Any person to whom payment, delivery, transfer
3829 or issuance is made is answerable and accountable therefor to any personal representative of the
3830 estate or to any other person having a superior right.

3831 Section 3-1203. [Small Estates; Summary Administration Procedure.]

3832 If it appears that the value of the entire estate, less liens and encumbrances, does not exceed
3833 family allowances, exempt property, costs and expenses of administration, reasonable funeral
3834 expenses, and reasonable and necessary medical and hospital expenses of the last illness of the
3835 decedent, the personal representative, without giving notice to creditors, may immediately
3836 disburse and distribute the estate to the persons entitled thereto and file a closing statement as
3837 provided in section 3-1204.

3838 Section 3-1204. [Small Estates; Closing by Sworn Statement of Personal Representative.]

3839 (a) Unless prohibited by order of the court and except for estates being administered by
3840 supervised personal representatives, a personal representative may close an estate administered
3841 under the summary procedures of section 3-1203 by filing with the court, at any time after
3842 disbursement and distribution of the estate, a verified statement stating that:

3843 (1) to the best knowledge of the personal representative, the value of the entire estate, less liens
3844 and encumbrances, did not exceed family allowances, exempt property, costs and expenses of
3845 administration, reasonable funeral expenses, and reasonable, necessary medical and hospital
3846 expenses of the last illness of the decedent;

3847 (2) the personal representative has fully administered the estate by disbursing and distributing it
3848 to the persons entitled thereto; and

3849 (3) the personal representative has sent a copy of the closing statement to all distributees of the
3850 estate and to all creditors or other claimants of whom he is aware whose claims are neither paid
3851 nor barred and has furnished a full account in writing of his administration to the distributees
3852 whose interests are affected.

3853 (b) If no actions or proceedings involving the personal representative are pending in the court 1
3854 year after the closing statement is filed, the appointment of the personal representative
3855 terminates.

3856 (c) A closing statement filed under this section has the same effect as one filed under section 3-
3857 1003.

3858 ARTICLE IV

3859 FOREIGN FIDUCIARIES

3860 PART 1

3861 DEFINITIONS

3862 Section 4-101. [Definitions.]

3863 In this Article:

3864 (1) "Domiciliary foreign guardian or foreign conservator", a foreign guardian or foreign
3865 conservator currently qualified and acting under appointment by a court of another jurisdiction in
3866 which the protected person is currently domiciled.

3867 (2) "Domiciliary foreign personal representative", a foreign personal representative under the
3868 law of the jurisdiction of a decedent's domicile.

3869 (3) "Foreign guardian or foreign conservator", a guardian or conservator who was appointed by
3870 a court of another jurisdiction to administer the estate of a minor or other protected person.

3871 (4) "Local administration", administration by a personal representative appointed in the
3872 commonwealth pursuant to appointment proceedings described in article III.

3873 (5) "Local guardian or conservator", a guardian or conservator appointed in the commonwealth

3874 pursuant to appointment proceedings described in article V, but excluding one who is merely a
3875 guardian ad item.

3876 (6) "Local personal representative", includes any personal representative appointed in the
3877 commonwealth pursuant to appointment proceedings described in article III and excludes foreign
3878 personal representatives who acquire the power of a local personal representative pursuant to
3879 section 4-205.

3880 (7) "Nonresident protected person", a protected person who is currently domiciled in another
3881 jurisdiction.

3882 (8) "Protected person", a minor or other person whose estate in the commonwealth or in any
3883 other jurisdiction is currently administered by a guardian or conservator appointed by a court.

3884 (9) "Resident creditor", a person domiciled in, or doing business in the commonwealth, who is,
3885 or could be, a claimant against an estate of a non-resident decedent or a nonresident protected
3886 person.

3887 PART 2

3888 POWERS OF FOREIGN PERSONAL REPRESENTATIVES

3889 Section 4-201. [Payment of Debt and Delivery of Property to Domiciliary Foreign Personal
3890 Representative Without Local Administration.]

3891 (a) At any time after the expiration of 60 days from the death of a nonresident decedent, any
3892 person indebted to the estate of the nonresident decedent or having possession or control of
3893 personal property, or of an instrument evidencing a debt, obligation, stock or chose in action
3894 belonging to the estate of the nonresident decedent, or holding personal property subject to a
3895 general power of appointment exercised by the will of a nonresident decedent duly admitted to
3896 probate in a foreign jurisdiction, may pay the debt, deliver the personal property, or the
3897 instrument evidencing the debt, obligation, stock or chose in action, to the domiciliary foreign
3898 personal representative of the nonresident decedent upon being presented with proof of
3899 appointment and an affidavit made by or on behalf of the representative stating:

3900 (1) the date of the death of the nonresident decedent,

3901 (2) that no local administration, or application or petition therefor, is pending in this state,

3902 (3) that the domiciliary foreign personal representative is entitled to payment or delivery.

3903 (b) Payment or delivery may be made to a foreign personal representative of a nonresident
3904 decedent appointed in a jurisdiction which was not the domicile of the decedent upon similar
3905 proof of appointment and affidavit, if such affidavit also states that there is no domiciliary
3906 foreign personal representative and no proceedings are pending for appointment of a personal
3907 representative in any court in the jurisdiction of the decedent's domicile and that the foreign
3908 personal representative is the personal representative appointed in the appointment proceeding
3909 first commenced.

3910 (c) If such nonresident decedent owned tangible personal property located in the commonwealth
3911 at the time of death, or at any time during the twelve months preceding death had a permanent or
3912 temporary place of abode in the commonwealth, a foreign personal representative of the
3913 decedent shall not accept payment or delivery pursuant to this section earlier than one month
3914 after filing proof of his authority in accordance with section 4-204 with a copy to the
3915 commissioner of revenue.

3916 (d) Any person indebted to a nonresident protected person who has not been domiciled in the
3917 commonwealth at any time within the preceding year, or having possession or control of
3918 personal property, or of an instrument evidencing a debt, obligation, stock or chose in action
3919 belonging to such nonresident protected person may pay the debt or deliver the personal property

3920 or the instrument to the domiciliary foreign guardian or conservator upon being presented with
3921 proof of his appointment and an affidavit made by or on behalf of the guardian or conservator
3922 stating:

3923 (1) that the protected person is not and has not been domiciled in the commonwealth at any time
3924 within the preceding year,

3925 (2) that no local guardian or conservator has been appointed for the protected person and no
3926 application or petition therefor is pending in the commonwealth, and

3927 (3) that the foreign guardian or conservator has duly qualified, is currently acting and is entitled
3928 to payment or delivery.

3929 (e) Payment or delivery may be made to a foreign guardian or conservator of a nonresident
3930 protected person appointed in a jurisdiction which is not the current domicile of the protected
3931 person upon similar proof of appointment and affidavit, if such affidavit also states:

3932 (1) that there is no domiciliary foreign guardian or conservator and no proceedings are pending
3933 for appointment of a guardian or conservator in any court of the jurisdiction of the protected
3934 person's domicile, and

3935 (2) that either the protected person was domiciled in the jurisdiction in which the foreign
3936 guardian or conservator was appointed at the time of his appointment, or that the foreign
3937 guardian or conservator is the guardian or conservator appointed in the appointment proceeding
3938 first commenced.

3939 Section 4-202. [Payment or Delivery Discharges.]

3940 Payment or delivery made in good faith on the basis of the proof of authority and affidavit
3941 releases the debtor or person having possession of the personal property to the same extent as if
3942 payment or delivery had been made to a local personal representative or local guardian or
3943 conservator.

3944 Section 4-203. [Resident Creditor Notice.]

3945 Payment or delivery under section 4-201 may not be made if a resident creditor of the
3946 nonresident decedent or nonresident protected person has notified the debtor of the nonresident
3947 decedent or nonresident protected person or the person having possession of the personal
3948 property belonging to or appointed by the nonresident decedent or belonging to the nonresident
3949 protected person that the debt should not be paid nor the property delivered to the foreign
3950 personal representative, guardian or conservator.

3951 Section 4-204. [Proof of Authority-Bond.]

3952 If no local administration or application or petition therefor is pending in the commonwealth, a
3953 domiciliary foreign personal representative may file with a court in the commonwealth in a
3954 county in which property belonging to the decedent is located, authenticated copies of the
3955 domiciliary appointment and of any official bond given.

3956 Section 4-205. [Powers.]

3957 A domiciliary foreign personal representative who has complied with section 4-204 may exercise
3958 as to personal property in the commonwealth all powers of a local personal representative acting
3959 in a similar representative capacity and may maintain actions and proceedings in the
3960 commonwealth subject to any conditions imposed upon nonresident parties generally.

3961 Section 4-206. [Power of Representatives in Transition.]

3962 The power of a foreign personal representative under section 4-201 or 4-205 shall be exercised
3963 only if there is no administration or application therefor pending in the commonwealth. An
3964 application or petition for local administration of the estate terminates the power of the
3965 domiciliary foreign personal representative to act under section 4-205, but the court may allow

3966 the domiciliary foreign personal representative to exercise limited powers to preserve the
3967 estate. No person who, before receiving actual notice of a pending local administration, has
3968 changed position in reliance upon the powers of a foreign personal representative shall be
3969 prejudiced by reason of the application or petition for, or grant of, local administration. The
3970 local personal representative is subject to all duties and obligations which have accrued by virtue
3971 of the exercise of the powers by the foreign personal representative and may be substituted for
3972 the foreign personal representative in any action or proceedings in the commonwealth.
3973 The power of a foreign guardian or conservator under section 4-201 shall be exercised only if no
3974 local guardian or conservator has been appointed and no application therefor is pending in the
3975 commonwealth. No person who, before receiving actual notice of such appointment or
3976 application, has changed position in reliance upon the powers of a foreign guardian or
3977 conservator shall be prejudiced by reason of the appointment of a local guardian or conservator
3978 or an application therefor.

3979 Section 4-207. [Ancillary and Other Local Administrations; Provisions Governing.]

3980 In respect to a nonresident decedent, the provisions of article III of this code govern
3981 (1) proceedings, if any, in a court of the commonwealth for probate of the will, appointment,
3982 removal, supervision, and discharge of the local personal representative, and any other order
3983 concerning the estate; and (2) the status, powers, duties and liabilities of any local personal
3984 representative and the rights of claimants, purchasers, distributees and others in regard to a local
3985 administration.

3986 PART 3

3987 JURISDICTION OVER FOREIGN REPRESENTATIVES

3988 Section 4-301. [Jurisdiction by Act of Foreign Personal Representative.]

3989 A foreign personal representative submits personally to the jurisdiction of the courts of the
3990 commonwealth by (1) filing authenticated copies of his appointment as provided in section 4-
3991 204, (2) receiving payment of money or taking delivery of personal property under section 4-
3992 201, or (3) doing any act as a personal representative in the commonwealth which would have
3993 given the commonwealth jurisdiction over the foreign personal representative as an
3994 individual. Jurisdiction under (2) is limited to the money or value of personal property collected.
3995 A foreign guardian or conservator shall submit to the jurisdiction of the courts of the
3996 commonwealth by acting under clauses (2) and (3) of the preceding paragraph.

3997 Section 4-302. [Jurisdiction by Act of Decedent.]

3998 In addition to jurisdiction conferred by section 4-301, a foreign personal representative is subject
3999 to the jurisdiction of the courts of the commonwealth to the same extent that the decedent was
4000 subject to jurisdiction immediately prior to death.

4001 Section 4-302A. [Proceedings to Determine Property Rights.]

4002 In any proceeding in the commonwealth to determine rights in real or personal property in the
4003 commonwealth or administered by a fiduciary in the commonwealth or under a will admitted to
4004 probate in the commonwealth:

4005 (a) The interest of a nonresident decedent whose estate is not under local administration may be
4006 represented by any foreign personal representative of a decedent named a party to the proceeding
4007 and served in the manner provided in section 4-303 or by other lawful means;

4008 (b) The interest of a nonresident protected person named a party to the proceeding for whom
4009 there is no local guardian or conservator may be represented by a foreign guardian or conservator
4010 served in the manner provided in section 4-303 or by other lawful means. The authority of a
4011 foreign personal representative or of a foreign guardian or conservator under this section shall

4012 include authority to be a party to an agreement of compromise in respect of the rights of the
4013 decedent or the protected person in such property. The procedures authorized in this section are
4014 in addition to and not in limitation of all other applicable procedures.

4015 Section 4-303. [Service on Foreign Personal Representative.]

4016 (a) In addition to and not in limitation of other provisions of law, service of process may be made
4017 upon the foreign personal representative, guardian or conservator by registered or certified mail,
4018 addressed to the last reasonably ascertainable address, requesting a return receipt signed by
4019 addressee only. Notice by ordinary first class mail is sufficient if registered or certified mail
4020 service to the addressee is unavailable. Service may be made upon a foreign personal
4021 representative in the manner in which service could have been made under other laws of the
4022 commonwealth on either the foreign personal representative or the decedent immediately prior to
4023 death.

4024 (b) If service is made upon a foreign personal representative, guardian or conservator as
4025 provided in subsection (a), the foreign personal representative shall be allowed at least 30 days
4026 within which to appear or respond.

4027 PART 4

4028 CONCLUSIVENESS OF JUDGMENTS

4029 Section 4-401. [Effect of Adjudication For or Against Personal Representative.]

4030 An adjudication rendered in any jurisdiction in favor of or against any personal representative of
4031 the estate of a non resident decedent is as binding on the local personal representative as if the
4032 local personal representative were a party to the adjudication.

4033 ARTICLE V

4034 PROTECTION OF PERSONS UNDER DISABILITY AND THEIR PROPERTY

4035 Part 1

4036 GENERAL PROVISIONS AND DEFINITIONS

4037 Section 5-101. [Definitions and Inclusions.]

4038 As used in parts 1 to 4, inclusive, of this article:

4039 (1) "Claims," in respect to a protected person, includes liabilities of the protected person,
4040 whether arising in contract, tort, or otherwise, and liabilities of the estate which arise at or after
4041 the appointment of a conservator, including expenses of administration.

4042 (2) "Conservator", a person who is appointed by a court to manage the estate of a protected
4043 person and includes a limited conservator, temporary conservator and special conservator.

4044 (3) "Court", the probate and family court department of the trial court and includes the district
4045 court and juvenile court departments of the trial court in proceedings relating to the appointment
4046 of guardians of minors when the subject of the proceeding is a minor and there is proceeding
4047 before such district or juvenile court.

4048 (4) "Disability", cause for a protective order as described in section 5-401.

4049 (5) "Estate", includes the property of the person whose affairs are subject to this article.

4050 (6) "Guardian", a person who has qualified as a guardian of a minor or incapacitated person
4051 pursuant to court appointment and includes a limited guardian, special guardian and temporary
4052 guardian, but excludes one who is merely a guardian ad litem.

4053 (7) "Guardian ad litem", a person or organization appointed under sections 1-404 and 5-106 of
4054 this code.

4055 (8) "Health care proxy", a health care proxy executed pursuant to chapter 201D, a durable power
4056 of attorney for health care executed prior to the enactment of chapter 201D and similar
4057 instruments for appointment of health care agents executed in accordance with the laws of other

4058 jurisdictions.

4059 (9) "Incapacitated person", an individual who for reasons other than advanced age or minority,
4060 has a clinically diagnosed condition that results in an inability to receive and evaluate
4061 information or make or communicate decisions to such an extent that the individual lacks the
4062 ability to meet essential requirements for physical health, safety, or self-care, even with
4063 appropriate technological assistance.

4064 (10) "Lease", includes an oil, gas, or other mineral lease.

4065 (11) "Letters", includes certificate of guardianship and certificate of conservatorship.

4066 (12) "Mentally retarded person", an individual who has a substantial limitation in present
4067 functioning beginning before age 18, manifested by significantly subaverage intellectual
4068 functioning existing concurrently with related limitations in 2 or more of the following
4069 applicable adaptive skills areas: communication, self-care, home living, social skills, community
4070 use, self-direction, health and safety, functioning academics, leisure, and work.

4071 (13) "Minor", a person who is under 18 years of age.

4072 (14) "Mortgage", any conveyance, agreement, or arrangement in which property is used as
4073 collateral.

4074 (15) "Nursing facility", an institution or a distinct part of an institution which is primarily
4075 engaged in providing to residents:

4076 (A) skilled nursing care and related services for residents who require medical or nursing care,
4077 (B) rehabilitation services for the rehabilitation of injured, disabled or sick persons, or
4078 (C) on a regular basis, health-related care and services to individuals who because of their
4079 mental or physical condition require care and services above the level of room and board which
4080 can be made available to them only through institutional facilities, and is not primarily a mental
4081 health facility or mental retardation facility.

4082 (16) "Organization", includes a corporation, business trust, estate, trust, partnership, association,
4083 2 or more persons having a joint or common interest, government, governmental subdivision or
4084 agency, or any other legal entity.

4085 (17) "Parent", a natural or adoptive parent other than a parent whose parental rights have been
4086 terminated or a parent who has signed a voluntary surrender.

4087 (18) "Person", an individual or an organization.

4088 (19) "Petition", a written request to the court for an order after notice.

4089 (20) "Proceeding", includes action at law and suit in equity.

4090 (21) "Property", includes both real and personal property or any interest therein and means
4091 anything that may be the subject of ownership.

4092 (22) "Protected person", a minor or other person for whom a conservator has been appointed or
4093 other protective order has been made as provided in sections 5-407 and 5-408.

4094 (23) "Protective proceeding", a proceeding under the provisions of part 4 of this article.

4095 (24) "Security", includes any note, stock, treasury stock, bond, debenture, evidence of
4096 indebtedness, certificate of interest or participation in an oil, gas, or mining title or lease or in
4097 payments out of production under such a title or lease, collateral trust certificate, transferable
4098 share, voting trust certificate or, in general, any interest or instrument commonly known as a
4099 security, or any certificate of interest or participation, any temporary or interim certificate,
4100 receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase any of the
4101 foregoing.

4102 (25) "Ward", a person for whom a guardian has been appointed solely because of minority.
4103 Section 5-102. [Facility of Payment or Delivery.]

4104 (a) Any person under a duty to pay or deliver money or personal property to a minor may
4105 perform the duty, in amounts not exceeding \$5,000 a year, by paying or delivering the money or
4106 property to:

4107 (1) the minor;

4108 (2) any person having the care and custody of the minor with whom the minor resides;

4109 (3) a guardian of the minor;

4110 (4) a custodian under the uniform transfers to minors act or a custodial trustee under the uniform
4111 custodial trust act; or

4112 (5) a financial institution as a deposit in a state or federally insured interest bearing account or
4113 certificate in the sole name of the minor with notice of the deposit to the minor.

4114 (b) If the person making payment or delivery knows that a conservator has been appointed or
4115 proceedings for appointment of a conservator of the estate of the minor are pending, the person
4116 may make payment or delivery only to the conservator.

4117 (c) Persons receiving money or property for a minor under subsection (a)(2) are obligated to
4118 apply the money to the support, care, education, health or welfare of the minor, but may not pay
4119 themselves except by way of reimbursement for out-of-pocket expenses for necessary goods and
4120 services. Any excess sums shall be preserved for future support, care, education, health or
4121 welfare of the minor and any balance not so used and any property received for the minor shall
4122 be turned over to the minor when majority is attained.

4123 (d) A person who pays or delivers money or property in accordance with this section is not
4124 responsible for the proper application thereof.

4125 Section 5-103. [Delegation of Powers by Parent or Guardian.]

4126 (a) A parent or parents of a minor, other than a parent or parents whose parental rights have been
4127 terminated or a parent who has signed a voluntary surrender, or a guardian or guardians of a
4128 minor or incapacitated person may appoint a temporary agent for a period not exceeding 60 days,
4129 and may delegate to such agent any power that the parent or guardian has regarding the care,
4130 custody or property of the minor child, ward or incapacitated person, except the power to consent
4131 to marriage or adoption of a minor; provided, however, that no parent or guardian shall appoint a
4132 temporary agent when a court has ordered that the minor child be placed in the custody of a
4133 person other than the parent or guardian.

4134 (b) Any delegation under this section shall be by a writing signed by, or at the direction of, the
4135 parent(s) or guardian(s) and attested by at least 2 witnesses 18 years of age or older, neither of
4136 whom is the temporary agent together with the written acceptance of the temporary agent.

4137 (c) A parent or guardian may not appoint a temporary agent of a minor if the minor has another
4138 living parent whose whereabouts are known and who is willing and able to provide care and
4139 custody for the minor unless the nonappointing parent consents to the appointment in writing. A
4140 parent may not appoint a temporary agent if the appointing parent's parental rights have been
4141 terminated or a parent who has signed a voluntary surrender.

4142 (d) Any delegation under this section may be revoked or amended by the appointing parent(s) or
4143 guardian(s) and delivered to all interested persons. The authority of the temporary agent may be
4144 limited or altered by the court.

4145 Section 5-104. [Reserved]

4146 Section 5-105. [Venue.]

4147 (a) Provided that the court has jurisdiction:

4148 (1) venue for a guardianship proceeding for a minor is in the court at the place where the minor
4149 resides at the time the proceedings are commenced, or, in the case of a nomination of a guardian

4150 by the will of a parent or guardian, in the court of the county in which the will was or could be
4151 probated except venue for a guardianship proceeding for a minor in district court or juvenile
4152 court shall be in the court where the underlying proceeding was filed;

4153 (2) venue for a guardianship proceeding for an incapacitated person is in the court at the place
4154 where the incapacitated person resides at the time the proceedings are commenced, or, in the
4155 case of a nomination of by the will of a parent or spouse, in the court of the county in which the
4156 will was or could be probated. If the incapacitated person has been admitted to a facility referred
4157 to in chapter one hundred eleven, section 70E pursuant to an order of a court of competent
4158 jurisdiction, venue is also in the county in which that facility is located; and

4159 (3) venue for a protective proceeding is in the court at the place where the person to be protected
4160 resides at the time the proceedings are commenced, whether or not a guardian has been
4161 appointed in another place or, if the person to be protected does not reside in the commonwealth,
4162 in the court at the place where property of the person is located.

4163 (b) If a proceeding under this code is brought in more than one place in the commonwealth, the
4164 court at the place in which a proceeding is first brought has the exclusive right to proceed unless
4165 that court determines that venue is properly in another court or that the interests of justice
4166 otherwise require that the proceeding be transferred.

4167 Section 5-106. [Appointment of Counsel; Guardian ad Litem.]

4168 (a) After filing of a petition for appointment of a guardian, conservator or other protective order,
4169 if the ward, incapacitated person or person to be protected or someone on his behalf requests
4170 appointment of counsel; or if the court determines at any time in the proceeding that the interests
4171 of the ward, incapacitated person or person to be protected are or may be inadequately
4172 represented, the court shall appoint an attorney to represent the person, giving consideration to
4173 the choice of the person if 14 or more years of age. If the ward, incapacitated person or person to
4174 be protected has adequate resources, his counsel shall be compensated from the estate, unless the
4175 court shall order that such compensation be paid by the petitioner. Counsel for any indigent
4176 ward, incapacitated person or person to be protected shall be compensated by the
4177 commonwealth. This section shall not be interpreted to abridge or limit the right of any ward,
4178 incapacitated person or person to be protected to retain counsel of his own choice and to
4179 prosecute or defend a petition under this article.

4180 (b) The court may appoint as guardian ad litem, an individual or any public or charitable agency
4181 to investigate the condition of the ward, incapacitated person or person to be protected and make
4182 appropriate recommendations to the court.

4183 (c) The incapacitated person or person to be protected is entitled to be present at any hearing in
4184 person. A ward, if 14 or more years of age, is entitled to be present at any hearing in person
4185 unless the court, upon written findings, determines that the best interest of the ward will not be
4186 served thereby. The person is entitled to be represented by counsel, to present evidence, to
4187 cross-examine witnesses, including any physician or other qualified person and any guardian ad
4188 litem. The issue may be determined at a closed hearing if the person or counsel for the person so
4189 requests.

4190 (d) Any person may apply for permission to provide information in the proceeding and the court
4191 may grant the request, with or without hearing, upon determining that the best interest of the
4192 person to be protected will be served thereby. The court may attach appropriate conditions to the
4193 permission.

4194 Section 5-107. [Protection of Minors]

4195 The court shall not appoint as guardian any person petitioning for guardianship who: (i) is
4196 currently being investigated or has charges pending for committing an assault and battery that
4197 resulted in serious bodily injury to the minor, incapacitated or ill person; or (ii) is currently being
4198 investigated or has charges pending for neglect of the minor, incapacitated or ill person. The
4199 court shall terminate a guardianship appointed under this section if, upon petition, it is
4200 established that the guardian is: (i) currently being investigated or has charges pending for
4201 committing an assault and battery that resulted in serious bodily injury to the minor,
4202 incapacitated or ill person; or (ii) is currently being investigated or has charges pending for
4203 neglect of the minor, incapacitated or ill person.

4204 PART 2

4205 GUARDIANS OF MINORS

4206 Section 5-201. [Appointment and Status of Guardian of Minor.]

4207 A person may become a guardian of a minor by appointment by parent or guardian or upon
4208 appointment by the court. The guardianship status continues until terminated, without regard to
4209 the location from time to time of the guardian or minor ward. The district or juvenile court may
4210 appoint guardians of minors if the person who is the subject of the petition is a minor and there is
4211 a proceeding before such district or juvenile court and shall have continuing jurisdiction over
4212 resignation, removal, reporting, and other proceedings related to the guardianship.

4213 Section 5-202. [Parental or Guardian Appointment of Guardian for Minor.]

4214 (a) A parent, by will or other writing signed by the parent and attested by at least 2 witnesses,
4215 may appoint a guardian for any minor child the parent has or may have in the future, may revoke
4216 or amend the appointment, and may specify any desired limitations on the powers to be granted
4217 to the guardian.

4218 (b) A guardian, by will or other writing signed by the guardian and attested by at least 2
4219 witnesses, may appoint a guardian for any minor child for whom the guardian serves, may
4220 revoke or amend the appointment, and may specify any desired limitations on the powers to be
4221 granted to the guardian.

4222 (c) Upon petition of an appointing parent or guardian, upon finding that the appointing parent or
4223 guardian will likely become unable to care for the minor within 2 years or less, and after notice
4224 as provided in section 5-206(b), the court, before the appointment becomes effective, may
4225 confirm the parent's or guardian's selection of a guardian and terminate the rights of others under
4226 section 5-203.

4227 (d) Subject to section 5-203, the appointment of a guardian becomes effective on the first to
4228 occur of the appointing parent's or guardian's death, an adjudication that the parent or guardian is
4229 an incapacitated person, or a written determination by a physician who has examined the parent
4230 or guardian that the parent or guardian is no longer able to care for the minor unless the minor is
4231 in the care or custody of a person other than a parent pursuant to sections 24, 25, 26 and 39G of
4232 chapter 119, chapter 201; or section 3 of chapter 210.

4233 (e) Within 30 days after the appointment becomes effective, a guardian shall:

4234 (1) file a notice of acceptance of appointment and a copy of the will or other nominating
4235 instrument with the court of the county in which the will was or could be probated or, in the case
4236 of another nominating instrument, with the court of the county in which the minor resides; and

4237 (2) unless the appointment was previously confirmed by the court, petition the court for
4238 confirmation of the appointment, giving notice in the manner provided in section 5-206(b).

4239 (f) The parental appointment of a guardian shall not supersede the parental rights of either
4240 parent. If both parents are dead or have been adjudged incapacitated persons, an appointment by

4241 the last parent who dies or was adjudged incapacitated has priority.

4242 (g) The powers of a guardian who timely complies with the requirements of subsection (e) relate
4243 back to give acts by the guardian which are of benefit to the minor and which occurred on or
4244 after the date the guardian was eligible to file an acceptance of office the same effect as those
4245 which occurred after the filing.

4246 (h) The authority of a guardian appointed under this section terminates upon the first to occur of
4247 the appointment of a guardian by the court, the revocation of the appointment by the appointing
4248 parent or guardian, or the filing of an objection pursuant to section 5-203.

4249 Section 5-203. [Objection by Minor Fourteen or Older to Parental Appointment.]
4250 Except where the court has previously confirmed a nominee under section 5-202(c),
4251 (i) a minor 14 or more years of age who is the subject of a parental appointment,
4252 (ii) the other parent, if that parent's parental rights have not been terminated, or
4253 (iii) a person other than a parent having care or custody of the minor or with whom the minor
4254 has resided during the 60 preceding days, excluding a foster parent
4255 may prevent the appointment or cause it to terminate by filing in the court in which the
4256 appointing instrument is filed a written objection to the appointment before it is accepted or
4257 within 30 days after receiving notice of its acceptance. An objection may be withdrawn. An
4258 objection shall not preclude appointment of the nominee by the court in a proper proceeding of
4259 the parental nominee or any other suitable person. The court may treat the filing of an objection
4260 as a petition for the appointment of a temporary guardian, and proceed accordingly.

4261 Section 5-204. [Court Appointment of Guardian of Minor; Conditions for Appointment;
4262 Temporary Guardian.]

4263 (a) The court may appoint a guardian for a minor if (i) the minor's parents are deceased or
4264 incapacitated, (ii) the parents consent, (iii) the parents' parental rights have been terminated,
4265 (iv) the parents have signed a voluntary surrender, or (v) the court finds the parents, jointly, or
4266 the surviving parent, to be unavailable or unfit to have custody. A guardian appointed pursuant
4267 to section 5-202 whose appointment has not been prevented or nullified under section 5-203 has
4268 priority over any guardian who may be appointed by the court, but the court may proceed with
4269 another appointment upon a finding that the parental nominee has failed to accept the
4270 appointment within 30 days after notice of the guardianship proceeding.

4271 (b) While a petition for appointment of a guardian is pending, if a minor has no guardian, and
4272 the court finds that following the procedures of this article will likely result in substantial harm to
4273 the health, safety or welfare of the minor occurring prior to the return date, and no other person
4274 appears to have authority to act in the circumstances, on appropriate motion, the court may
4275 appoint a temporary guardian who may exercise those powers granted in the order. A motion for
4276 appointment of a temporary guardian shall state the nature of the circumstances requiring
4277 appointment, the particular harm sought to be avoided, and the actions which will be necessary
4278 by the temporary guardian to avoid the occurrence of the harm. Such motion shall be
4279 accompanied by an affidavit containing facts supporting the statements and requests in the
4280 motion. The appointment of a temporary guardian for a minor may occur even though the
4281 conditions described in subsection (a) have not been established. The appointment may be for a
4282 period of up to 90 days except that upon a finding of extraordinary circumstances set forth in its
4283 order, the court may order an appointment for a longer period to a date certain. The court may
4284 for good cause shown extend the appointment for additional 90 day periods.

4285 (c) If an appointed guardian is not effectively performing duties and the court further finds that
4286 the welfare of the minor requires immediate action, it may appoint, with or without notice, a

4287 special guardian for the minor having the powers of a general guardian, except as limited in the
4288 letters of appointment. The authority of any guardian previously appointed is suspended as long
4289 as a special guardian has authority. The appointment may be for a period of up to 90 days except
4290 that upon a finding of extraordinary circumstances set forth in its order the court may order an
4291 appointment for a longer period to a date certain. The court may for good cause shown extend
4292 the appointment for additional 90 day periods.

4293 (d) The petitioner shall give written notice 7 days prior to any hearing for the appointment of a
4294 temporary guardian in hand to the minor if over the age of 14 years and by delivery or by mail to
4295 all persons named in the petition for appointment of guardian. A certificate that such notice has
4296 been given, setting forth the names and addresses of those to whom notice has been given, shall
4297 be prima facie evidence thereof.

4298 (e) If the court determines that an immediate emergency situation exists which requires the
4299 immediate appointment of a temporary guardian, it may shorten or waive the notice requirements
4300 in whole or in part and grant the motion, provided, however, that prior notice shall be given to
4301 the minor, if the minor is 14 or more years of age, as the court may order and post-appointment
4302 notice of any appointment is given to the minor and those named in the petition for appointment
4303 of guardian stating further that any such person may move to vacate the order of the court or
4304 request that the court take any other appropriate action on the matter, and on said motion to
4305 vacate. The court shall hear said motion as a de novo matter, as expeditiously as possible. A
4306 certificate stating that such notice has been given shall be filed with the court within 7 days
4307 following the appointment. Upon failure to file such certificate the court may on its own motion
4308 vacate said order.

4309 (f) In the event that any person to whom notice is required is of parts unknown, such notice shall
4310 be delivered or mailed to that person's last known address, and the fact of such delivery or
4311 mailing shall be recited in the certificate of notice.

4312 Section 5-205. [Reserved.]

4313 Section 5-206. [Procedure for Court Appointment of Guardian of Minor.]

4314 (a) A minor or any person interested in the welfare of the minor may petition for appointment of
4315 a guardian.

4316 (b) After the filing of a petition, notice shall be given in the manner prescribed by section 1-401
4317 by the petitioner to:

4318 (1) the minor, if the minor is 14 or more years of age and is not the petitioner;

4319 (2) any person who has been awarded care or custody of the minor by a court of competent
4320 jurisdiction, whom is alleged to have had the principal care or custody of the minor or with
4321 whom the minor has resided during the 60 days preceding the filing of the petition, excluding
4322 foster parents;

4323 (3) any living parent of the minor, excluding a parent whose parental rights have been
4324 terminated or a parent who has signed a voluntary surrender, or, if none, brothers and sisters, or,
4325 if none, heirs apparent or presumptive;

4326 (4) the spouse if the minor is married;

4327 (5) any person nominated as guardian by the minor if the minor has attained 14 years of age;

4328 (6) any parental or guardian appointee whose appointment has not been prevented or terminated
4329 under section 5-203;

4330 (7) any guardian or conservator currently acting for the minor in the commonwealth or
4331 elsewhere; and

4332 (8) the United States veterans administration or its successor if the minor is entitled to any

4333 benefit, estate or income paid or payable by or through said administration or its successors.

4334 (c) Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper,
4335 the required notices have been given, the conditions of section 5-204(a) have been met, and the
4336 welfare and best interest of the minor will be served by the requested appointment, it shall make
4337 the appointment and issue letters. In other cases, the court may dismiss the proceedings or make
4338 any other disposition of the matter that will serve the best interest of the minor.

4339 Section 5-207. [Court Appointment of Guardian of Minor; Qualifications; Priority of Minor's
4340 Nominee.]

4341 (a) The court may appoint as guardian any person whose appointment would be in the best
4342 interest of the minor. The court shall appoint a person nominated by the minor, if the minor is 14
4343 or more years of age, unless the court finds the appointment contrary to the best interest of the
4344 minor.

4345 (b) In the interest of developing self-reliance of a ward or for other good cause, the court, at the
4346 time of appointment or later, on its own motion or on motion of the minor ward or other
4347 interested person, may limit the powers of a guardian otherwise granted by this article and
4348 thereby create a limited guardianship. Any limitation on the statutory power of a guardian of a
4349 minor shall be endorsed on the guardian's letters or, in the case of a guardian by parental
4350 appointment, shall be reflected in letters that are issued at the time any limitation is
4351 imposed. Following the same procedure, additional powers may be granted or existing powers
4352 may be withdrawn.

4353 Section 5-208. [Bond; Consent to Service by Acceptance of Appointment; Notice.]

4354 (a) Prior to receiving letters, a guardian shall accept appointment by filing a bond conditioned
4355 upon faithful discharge of all duties of the trust according to law and containing a statement of
4356 acceptance of the duties of the office. By accepting a parental or court appointment as guardian,
4357 a guardian submits personally to the jurisdiction of the court in any proceeding relating to the
4358 guardianship that may be instituted by any interested person. The petitioner shall cause notice of
4359 any proceeding to be delivered or mailed to the guardian at the guardian's address listed in the
4360 court records and to the address then known to the petitioner.

4361 (b) A surety shall be required on the bond of a guardian of a minor unless the court determines
4362 that it is in the best interest of the minor to waive the surety or to require additional sureties.

4363 (c) The requirements and provisions of section 5-411 apply to guardians appointed under this
4364 part.

4365 Section 5-209. [Powers, Duties, Rights and Immunities of Guardian of Minor; Limitations.]

4366 (a) A guardian of a ward has the powers and responsibilities of a parent regarding the ward's
4367 support, care, education, health and welfare. A guardian shall act at all times in the ward's best
4368 interest and exercise reasonable care, diligence and prudence.

4369 (b) In particular and without qualifying the foregoing, a guardian of a ward or incapacitated
4370 person shall:

4371 (1) if consistent with the terms of any order by a court of competent jurisdiction take custody of
4372 the person of the ward or incapacitated person and establish his place of abode within or without
4373 the commonwealth;

4374 (2) become or remain personally acquainted with the ward or incapacitated person and maintain
4375 sufficient contact with the person to know of his capacities, limitations, needs, opportunities, and
4376 physical and mental health;

4377 (3) take reasonable care of the personal effects and commence protective proceedings if
4378 necessary to protect other property of the ward or incapacitated person;

4379 (4) apply any available money of the ward or incapacitated person to his current needs for
4380 support, care, education health and welfare; provided that if any person has a legal duty to
4381 support a minor and has sufficient funds, the minor's funds are not to be used to discharge the
4382 legal obligation of support without prior order of the court unless the court determines that the
4383 minor's funds may be used for support;

4384 (5) conserve any excess money of the person for his future needs, but if a conservator has been
4385 appointed for the estate of the ward or incapacitated person, the guardian, at least quarterly, shall
4386 pay to the conservator money of the ward or incapacitated person to be conserved for his future
4387 needs; and

4388 (6) report the condition of the ward or protected person and of his estate that has been subject to
4389 the guardian's possession or control, as ordered by the court on petition of any person interested
4390 in the respondent's welfare or as required by court rule, but not less than annually.

4391 (c) A guardian of a ward or incapacitated person may:

4392 (1) apply for and receive money for the support of the ward or incapacitated person otherwise
4393 payable to his parent, guardian, or custodian for his support under the terms of any statutory
4394 benefit or insurance system or any private contract, devise, trust, conservatorship, or
4395 custodianship;

4396 (2) if no conservator for the estate of the ward or incapacitated person has been appointed,
4397 institute proceedings, including administrative proceedings, or take other appropriate action to
4398 compel the performance by any person of a duty to support the ward or incapacitated person or
4399 to pay sums for his benefit;

4400 (3) if consistent with the terms of any order by a court of competent jurisdiction and sections 5-
4401 306A and 5-309, consent to medical or other professional care, treatment, or advice for the ward
4402 or incapacitated person without liability by reason of the consent for injury to the ward or
4403 incapacitated person resulting from the negligence or acts of third persons unless a parent would
4404 have been liable in the circumstances;

4405 (4) consent or refuse to consent to the marriage, divorce or adoption of the ward or incapacitated
4406 person;

4407 (5) if reasonable under all of the circumstances, delegate to the ward or incapacitated person
4408 certain responsibilities for decisions affecting his well-being; and

4409 (6) utilize the services of agencies and individuals to provide necessary and desirable social and
4410 protective services of different types appropriate to such person including, but not limited to,
4411 counseling services, advocacy services, legal services, and other aid as the guardian deems to be
4412 in the interest of such person.

4413 (d) A guardian is entitled to reasonable compensation for services as guardian and to
4414 reimbursement for room, board and clothing personally provided to the ward or incapacitated
4415 person, but only as approved by order of the court and only from the person's estate. If a
4416 conservator, other than the guardian or one who is affiliated with the guardian, has been
4417 appointed for the estate of the person, reasonable compensation and reimbursement to the
4418 guardian may be approved and paid by the conservator without order of the court controlling the
4419 guardian.

4420 (e) A guardian need not use the guardian's personal funds for the ward or incapacitated person's
4421 expenses. A guardian is not liable to a third person for acts of the respondent solely by reason of
4422 the relationship.

4423 Section 5-210. [Termination of Appointment of Guardian; General.]

4424 A guardian's authority and responsibility terminates upon the death, resignation, or removal of

4425 the guardian or upon the minor's death, adoption, marriage, or attainment of majority, but
4426 termination shall not affect the guardian's liability for prior acts or the obligation to account for
4427 funds and assets of the ward. Resignation of a guardian shall not terminate the guardianship
4428 until it has been approved by the court. A parental appointment under an informally probated
4429 will is voided if the will is later denied probate in a formal proceeding.

4430 Section 5-211. [Reserved.]

4431 Section 5-212. [Resignation, Removal, and Other Post-appointment Proceedings.]

4432 (a) Any person interested in the welfare of a ward or the ward, if 14 or more years of age, may
4433 petition for removal of a guardian on the ground that removal would be in the best interest of the
4434 ward or for any other order that is in the best interest of the ward. A guardian may petition for
4435 permission to resign. A petition for removal or for permission to resign may, but need not,
4436 include a request for appointment of a successor guardian.

4437 (b) Notice of hearing on a petition for an order subsequent to appointment of a guardian shall be
4438 given to the ward, the guardian, the parents of the ward, provided that the parental rights have
4439 not been terminated or a voluntary surrender has not been signed, and any other person as
4440 ordered by the court.

4441 (c) After notice and hearing on a petition for removal or for permission to resign, the court may
4442 terminate the guardianship and make any further order that may be appropriate, including
4443 appointment of a successor guardian.

4444 PART 3

4445 GUARDIANS OF INCAPACITATED PERSONS

4446 Section 5-301. [Nomination of Guardian for Incapacitated Person by Will or Other Writing.]

4447 (a) A parent, by will or other writing signed by the parent and attested by at least 2 witnesses,
4448 may nominate a guardian for an unmarried adult child who the parent believes is an incapacitated
4449 person, may revoke or amend the nomination, and may specify any desired limitations on the
4450 powers to be granted to the guardian.

4451 (b) An individual by will or other writing signed by the individual and attested by at least 2
4452 witnesses, may nominate a guardian for his spouse who the individual believes is an
4453 incapacitated person, may revoke or amend the nomination, and may specify any desired
4454 limitations on the powers to be granted to the guardian.

4455 Section 5-302. [Reserved.]

4456 Section 5-303. [Procedure for Court Appointment of a Guardian of an Incapacitated Person.]

4457 (a) An incapacitated person or any person interested in the welfare of the person alleged to be
4458 incapacitated may petition for a determination of incapacity, in whole or in part, and the
4459 appointment of a guardian, limited or general.

4460 (b) The petition shall set forth the petitioner's name, residence and address, relationship to the
4461 person alleged to be incapacitated, and interest in the appointment, and, to the extent known, set
4462 forth the following with respect to the person alleged to be incapacitated and the relief requested:

4463 (1) the name and age of the person alleged to be incapacitated, his residence and the date
4464 residence was established;

4465 (2) the address of the place it is proposed that the person alleged to be incapacitated will reside
4466 if the appointment is made;

4467 (3) a brief description of the nature of the alleged incapacity, and whether:

4468 (A) the person is alleged to be mentally retarded;

4469 (B) the petitioner seeks court authorization to consent to treatment for which a substituted
4470 judgment determination may be required; or

4471 (C) the petitioner seeks court authorization to admit the person alleged to be incapacitated to a
4472 nursing facility.

4473 (4) the name and address of the proposed guardian, his relationship to the person alleged to be
4474 incapacitated, the reason why he or she should be selected, and the basis of the claim, if any, for
4475 priority for appointment;

4476 (5) the name and address of the person's:

4477 (A) spouse; and

4478 (B) children, or if none, parents and brothers and sisters, or, if none, heirs apparent or
4479 presumptive and the ages of any who are minors, so far as known or ascertainable with
4480 reasonable diligence by the petitioner;

4481 (6) the name and address of the person who has care or custody of the person alleged to be
4482 incapacitated or with whom the person has resided during the 60 days (exclusive of any period of
4483 hospitalization or institutionalization) preceding the filing of the petition;

4484 (7) the name and address of any representative payee;

4485 (8) the name and address of any person nominated as guardian by the person alleged to be
4486 incapacitated, and the name and address of any guardian or conservator currently acting for him
4487 in the commonwealth or elsewhere;

4488 (9) the name and address of any agent designated under a durable power of attorney or health
4489 care proxy of which the person alleged to be incapacitated is the principal, if known to the
4490 petitioner, and the petitioner shall attach a copy of any such power of attorney or health care
4491 proxy, if available;

4492 (10) the reason why a guardianship is necessary, the type of guardianship requested, and if a
4493 general guardianship, the reason why limited guardianship is inappropriate, and if a limited
4494 guardianship, the powers to be granted to the limited guardian;

4495 (11) a statement:

4496 (A) that a medical certificate dated within 30 days of the filing of the petition or, in the case of a
4497 person alleged to be mentally retarded, a clinical team report dated within 180 days of the filing
4498 of the petition, is in the possession of the court or accompanies the petition; or

4499 (B) of the nature of any circumstance which makes it impossible to obtain a medical certificate
4500 or clinical team report which shall be supported by affidavit or affidavits meeting the
4501 requirement set forth in Massachusetts Rule of Civil Procedure 4.1(h), in which case the court
4502 may waive or postpone the requirement of filing of a medical certificate or clinical team report;
4503 and

4504 (12) a general statement of the property of the person alleged to be incapacitated with an
4505 estimate of its value, including any insurance or pension, and the source and amount of any other
4506 anticipated income or receipts.

4507 (c) Unless otherwise directed by the court, a medical certificate filed under this article shall be
4508 signed by a physician or licensed psychologist and shall contain:

4509 (1) a description of the nature, type, and extent of the person's specific cognitive and functional
4510 limitations;

4511 (2) an evaluation of the person's mental and physical condition and, if appropriate, educational
4512 potential, adaptive behavior, and social skills;

4513 (3) a prognosis for improvement and a recommendation as to the appropriate treatment or
4514 habilitation plan; and

4515 (4) the date of any examination upon which the report is based.

4516 (d) A person alleged to be mentally retarded shall be examined by a clinical team consisting of a

4517 physician, a licensed psychologist and a social worker, each of whom is experienced in the
4518 evaluation of mentally retarded persons, who shall report their conclusions to the Court.

4519 (e) Reasonable expenses incurred in any examination conducted pursuant to this section shall be
4520 paid by the petitioner, the estate of the person alleged to be incapacitated, or by the
4521 commonwealth as the court may determine.

4522 Section 5-304. [Notice in Guardianship or Conservatorship Proceeding.]

4523 (a) In a proceeding for the appointment of a guardian or conservator or for protective order, and
4524 if notice is required in a proceeding for appointment of a temporary guardian or temporary
4525 conservator, notice shall be given by the petitioner to:

4526 (1) the person alleged to be incapacitated or the person to be protected and his spouse and
4527 children, or, if none, parents, brothers and sisters, or, if none, heirs apparent or presumptive;
4528 (2) any person who is serving as guardian, conservator, or who has the care or custody of the
4529 person or with whom the person has resided during the 60 days (exclusive of any period of
4530 hospitalization or institutionalization) preceding the filing of the petition;
4531 (3) in case no other person is notified under paragraph (1), at least one of the nearest adult
4532 relatives, if any can be found;
4533 (4) all other persons named in the petition;
4534 (5) if the person is alleged to be mentally retarded, to the department of developmental services;
4535 (6) the United States veteran's administration or its successor, if the person is entitled to any
4536 benefit, estate or income paid or payable by or through said administration or its successor; and
4537 (7) any other person as directed by the court.

4538 (b) Notice of hearing on a petition for an order subsequent to appointment of a guardian or
4539 conservator shall be given to the incapacitated person, person to be protected, the guardian, the
4540 conservator and any other person as ordered by the court.

4541 (c) Notice shall be served personally on the person alleged to be incapacitated or the person to
4542 be protected. In all other cases, required notices shall be given as provided in section 1-401.

4543 (d) A person alleged to be incapacitated or person to be protected may not waive notice.

4544 Section 5-305. [Who May Be Guardian; Priorities.]

4545 (a) Any qualified person may be appointed guardian of an incapacitated person.

4546 (b) Unless lack of qualification or other good cause dictates the contrary, the court shall appoint
4547 a guardian in accordance with the incapacitated person's most recent nomination in a durable
4548 power of attorney.

4549 (c) Except as provided in subsection (b), the following, if suitable, are entitled to consideration
4550 for appointment in the order listed:

4551 (1) the spouse of the incapacitated person or a person nominated by will of a deceased spouse or
4552 by other writing signed by the spouse and attested by at least 2 witnesses;
4553 (2) a parent of the incapacitated person, or a person nominated pursuant to section 5-301; and
4554 (3) any person the court deems appropriate.

4555 (d) With respect to persons having equal priority, the court shall select the one it deems best
4556 suited to serve. The court, acting in the best interest of the incapacitated person, may pass over a
4557 person having priority and appoint a person having a lower priority or no priority.

4558 Section 5-306. [Findings; Order of Appointment.]

4559 (a) The court shall exercise the authority conferred in this part so as to encourage the
4560 development of maximum self-reliance and independence of the incapacitated person and make
4561 appointive and other orders only to the extent necessitated by the incapacitated person's
4562 limitations or other conditions warranting the procedure.

- 4563 (b) Upon hearing, the court may appoint a guardian as requested if it finds that:
4564 (1) a qualified person seeks appointment;
4565 (2) venue is proper;
4566 (3) the required notices have been given;
4567 (4) any required medical certificate is dated and the examination has taken place within 30 days
4568 prior to the hearing;
4569 (5) any required clinical team report is dated and the examinations have taken place within 180
4570 days prior to the filing of the petition;
4571 (6) the person for whom a guardian is sought is an incapacitated person;
4572 (7) the appointment is necessary or desirable as a means of providing continuing care and
4573 supervision of the incapacitated person; and
4574 (8) the person's needs cannot be met by less restrictive means, including use of appropriate
4575 technological assistance.

4576 The court, on appropriate findings, may enter any appropriate order, or dismiss the proceedings.

4577 (c) The court, at the time of appointment or later, on its own motion or on appropriate petition or
4578 motion of the incapacitated person or other interested person, may limit the powers of a guardian
4579 otherwise conferred by parts 1 to 4, inclusive, of this article and thereby create a limited
4580 guardianship. Any limitation on the statutory power of a guardian of an incapacitated person
4581 shall be endorsed on the guardian's letters. Following the same procedure, a limitation may be
4582 removed or modified and appropriate letters issued.

4583 Section 5-306A. [Substituted Judgment.]

4584 (a) No guardian, temporary guardian or special guardian of a minor or an incapacitated person
4585 shall have the authority to consent to treatment for which substituted judgment determination
4586 may be required, provided that the court shall authorize such treatment when it (i) specifically
4587 finds using the substituted judgment standard that the person, if not incapacitated, would consent
4588 to such treatment and (ii) specifically approves and authorizes a treatment plan and endorses said
4589 plan in its order or decree. The court shall not authorize such treatment plan except after a
4590 hearing for the purpose of which counsel shall be provided for any indigent minor or
4591 incapacitated person. Said hearing shall be held as soon as is practicable; provided, however,
4592 that if the petitioner requests a temporary order on the grounds that the welfare of the minor or
4593 person alleged to be incapacitated requires an immediate authorization of treatment, the court
4594 shall act on such request in accordance with the procedures set forth in section 5-308.

4595 (b) The court may delegate to a guardian the authority to monitor the treatment process to ensure
4596 that a treatment plan is followed, provided a guardian is readily available for such
4597 purpose. Approval of a treatment plan shall not be withheld, however, because a guardian is not
4598 available to serve as monitor. In such circumstances, the court shall appoint a suitable person to
4599 monitor the treatment process to ensure that the treatment plan is followed. Reasonable expense
4600 incurred in such monitoring may be paid out of the estate of such person, by the petitioner, or,
4601 subject to appropriation, by the commonwealth, as may be determined by the court.

4602 (c) Each order authorizing a treatment plan pursuant to this section shall provide for periodic
4603 review at least annually to determine whether the incapacitated person's condition and
4604 circumstances have substantially changed such that, if competent, the incapacitated person would
4605 no longer consent to the treatment authorized therein. Each such order shall further provide for
4606 an expiration date beyond which the authority to provide treatment thereunder shall, if not
4607 extended by the court, terminate.

4608 (d) An incapacitated person is required to attend any hearing relative to authority to consent to

4609 treatment for which a substituted judgment determination is required, unless the court finds that
4610 there exist extraordinary circumstances requiring the absence of the incapacitated person in
4611 which event the attendance of his counsel shall suffice; provided that the court may base its
4612 findings exclusively upon affidavits and other documentary evidence if it (1) determines after
4613 careful inquiry and upon representations of counsel, that there are no contested issues of fact and
4614 (2) includes in its findings the reason that oral testimony was not required.

4615 (e) Any privilege established by section 135A of chapter 112 or by section 20B of chapter 233
4616 relating to confidential communications shall not prohibit the filing of reports or affidavits, or the
4617 giving of testimony, pursuant to this part, for the purposes of obtaining treatment of a person
4618 alleged to be incapacitated; provided, however, that such person has been informed prior to
4619 making such communication that they may be used for such purpose and has waived the
4620 privilege.

4621 Section 5-307. [Bond; Acceptance of Appointment; Consent to Jurisdiction.]

4622 (a) Prior to receiving letters, a guardian shall accept appointment by filing a bond conditioned
4623 upon faithful discharge of all duties of the trust according to law and containing a statement of
4624 acceptance of the duties of the office. By accepting a parental or court appointment as guardian,
4625 a guardian submits personally to the jurisdiction of the court in any proceeding relating to the
4626 guardianship that may be instituted by any interested person. The petitioner shall cause notice of
4627 any proceeding to be delivered or mailed to the guardian at the guardian's address listed in the
4628 court records and to the address then known to the petitioner.

4629 (b) A surety shall be required on the bond of a guardian of an incapacitated person unless the
4630 court determines that it is in the best interest of the incapacitated person to waive the surety or to
4631 require additional sureties. Language in a durable power of attorney or health care proxy
4632 waiving the guardian's bond shall be deemed to be a request for waiver of any necessity of
4633 sureties on a bond.

4634 (c) The requirements and provisions of section 5-411 apply to guardians appointed under this
4635 part.

4636 Section 5-308. [Emergency Orders; Temporary Guardians.]

4637 (a) While a petition for appointment of a guardian is pending, if an incapacitated person has no
4638 guardian, and the court finds that following the procedures of this article will likely result in
4639 immediate and substantial harm to the health, safety or welfare of the person alleged to be
4640 incapacitated occurring prior to the return date, and no other person appears to have authority to
4641 act in the circumstances, on appropriate motion the court may appoint a temporary guardian who
4642 may exercise only those powers granted in the order. A motion for appointment of a temporary
4643 guardian shall state the nature of the circumstances requiring appointment, the particular harm
4644 sought to be avoided, the actions which will be necessary by the temporary guardian to avoid the
4645 occurrence of the harm and the name and address of any agent designated under a health care
4646 proxy or durable power of attorney of which the person alleged to be incapacitated is the
4647 principal, and the petitioner shall attach a copy of any such health care proxy or durable power of
4648 attorney, if available. Such motion shall be accompanied by an affidavit containing facts
4649 supporting the statements and requests in the motion. The appointment may be for a period of up
4650 to 90 days except that upon a finding of extraordinary circumstances set forth in its order, the
4651 court may order an appointment for a longer period to a date certain. The court may for good
4652 cause shown extend the appointment for additional 90 day periods.

4653 (b) If an appointed guardian is not effectively performing duties and the court further finds that
4654 the welfare of the incapacitated person requires immediate action, it may appoint, with or

4655 without notice, a special guardian for the incapacitated person having the powers of a general
4656 guardian, except as limited in the letters of appointment. The authority of any guardian
4657 previously appointed by the court is suspended as long as a special guardian has authority. The
4658 appointment may be for a period of up to 90 days except that upon a finding of extraordinary
4659 circumstances set forth in its order the court may order an appointment for a longer period to a
4660 date certain. The court may for good cause shown extend the appointment for additional 90 day
4661 periods.

4662 (c) The petitioner shall give written notice 7 days prior to any hearing for the appointment of a
4663 temporary guardian in hand to the person alleged to be incapacitated and by delivery or by mail
4664 to all persons named in the petition for appointment of guardian. A certificate that such notice
4665 has been given, setting forth the names and addresses of those to whom notice has been given,
4666 shall be prima facie evidence thereof.

4667 (d) If the court determines that an immediate emergency situation exists which requires the
4668 immediate appointment of a temporary guardian, it may shorten or waive the notice requirements
4669 in whole or in part and grant the motion, provided, however, that prior notice shall be given to
4670 the person alleged to be incapacitated as the court may order and post appointment notice of any
4671 appointment is given to the person alleged to be incapacitated and those named in the petition for
4672 appointment of guardian stating further that any such person may move to vacate the order of the
4673 court or request that the court take any other appropriate action on the matter, and on said motion
4674 to vacate. The court shall hear said motion as a de novo matter, as expeditiously as possible. A
4675 certificate stating that such notice has been given shall be filed with the court within 7 days
4676 following the appointment. Upon failure to file such certificate the court may on its own motion
4677 vacate said order.

4678 (e) In the event that any person to whom notice is required is of parts unknown, such notice shall
4679 be delivered or mailed to that person's last known address, and the fact of such delivery or
4680 mailing shall be recited in the certificate of notice.

4681 (f) Appointment of a temporary guardian, with or without notice, is not a final determination of
4682 a person's incapacity.

4683 (g) The court may remove a temporary guardian at any time. A temporary guardian shall make
4684 any report the court requires. In other respects the provisions of parts 1, 2, 3 and 4 of this article
4685 concerning guardians apply to temporary guardians.

4686 Section 5-309. [Powers, Duties, Rights and Immunities of Guardians, Limitations.]

4687 (a) Except as limited pursuant to section 5-306(c), a guardian of an incapacitated person shall
4688 make decisions regarding the incapacitated person's support, care, education, health and welfare,
4689 but a guardian is not personally liable for the incapacitated person's expenses and is not liable to
4690 third persons by reason of that relationship for acts of the incapacitated person. A guardian shall
4691 exercise authority only as necessitated by the incapacitated person's mental and adaptive
4692 limitations, and, to the extent possible, shall encourage the incapacitated person to participate in
4693 decisions, to act on his own behalf, and to develop or regain the capacity to manage personal
4694 affairs. A guardian, to the extent known, shall consider the expressed desires and personal
4695 values of the incapacitated person when making decisions, and shall otherwise act in the
4696 incapacitated person's best interest and exercise reasonable care, diligence, and prudence. A
4697 guardian shall immediately notify the court if the incapacitated person's condition has changed so
4698 that he or she is capable of exercising rights previously limited. In addition, a guardian has the
4699 duties, powers and responsibilities of a guardian of a minor as described in section 5-209(b), (c),
4700 (d) and (e).

4701 (b) A guardian shall report in writing the condition of the incapacitated person and account for
4702 funds and other assets subject to the guardian's possession or control within 60 days following
4703 appointment, at least annually thereafter, and when otherwise ordered by the court. A report
4704 shall briefly state:

4705 (1) the current mental, physical and social condition of the incapacitated person;

4706 (2) the living arrangements for all addresses of the incapacitated person during the reporting
4707 period;

4708 (3) the medical, educational, vocational and other services provided to the incapacitated person
4709 and the guardian's opinion as to the adequacy of the incapacitated person's care;

4710 (4) a summary of the guardian's visits with and activities on the incapacitated person's behalf
4711 and the extent to which the incapacitated person participated in decision-making;

4712 (5) if the incapacitated person is institutionalized, whether the guardian considers the current
4713 treatment or habilitation plan to be in the incapacitated person's best interests;

4714 (6) plans regarding future care; and

4715 (7) a recommendation as to the need for continued guardianship and any recommended changes
4716 in the scope of the guardianship.

4717 (c) The court shall establish a system for monitoring guardianships, including the filing and
4718 review of annual reports.

4719 (d) The court may appoint a guardian ad litem pursuant to section 1-404 to review a report, to
4720 interview the incapacitated person or guardian, and to make such other investigation as the court
4721 may direct.

4722 (e) A guardian, without authorization of the court, may not revoke a health care proxy of which
4723 the incapacitated person is the principal. If a health care proxy is in effect, absent an order of the
4724 court to the contrary, a health-care decision of the agent takes precedence over that of a guardian.

4725 (f) No guardian shall be given the authority under this chapter to admit or commit an
4726 incapacitated person to a mental health facility or a mental retardation facility as defined in the
4727 regulations of the department of mental health.

4728 (g) No guardian shall have the authority admit an incapacitated person to a nursing facility
4729 except upon a specific finding by the court that such admission is in the incapacitated person's
4730 best interest.

4731 Section 5-310. [Termination of Guardianship for Incapacitated Person.]

4732 The authority and responsibility of a guardian of an incapacitated person terminates upon the
4733 death of the guardian or incapacitated person, the determination of incapacity of the guardian, the
4734 determination that the person is no longer incapacitated, or upon removal or resignation as
4735 provided in section 5-311. Testamentary appointment under an informally probated will
4736 terminates if the will is later denied probate in a formal proceeding. Termination shall not affect
4737 a guardian's liability for prior acts or the obligation to report or account for funds and assets of
4738 the incapacitated person.

4739 Section 5-311. [Removal or Resignation of Guardian; Termination of Incapacity.]

4740 (a) On petition of the incapacitated person or any person interested in the incapacitated person's
4741 welfare, the court, after notice and hearing, may remove a guardian if the person under
4742 guardianship is no longer incapacitated or for other good cause. On petition of the guardian, the
4743 court, after hearing, may accept a resignation.

4744 (b) The incapacitated person or any person interested in the welfare of the incapacitated person
4745 may petition for an order that the person is no longer incapacitated and for termination of the
4746 guardianship. A request for an order may also be made informally to the court.

4747 (c) Upon removal, resignation, or death of the guardian, or if the guardian is determined to be
4748 incapacitated or disabled, the court may appoint a successor guardian and make any other
4749 appropriate order. Before appointing a successor guardian, or ordering that a person's incapacity
4750 has terminated, the court shall follow the same procedures to safeguard the rights of the
4751 incapacitated person that apply to a petition for appointment of a guardian.

4752 Section 5-312. [Reserved.]

4753 Section 5-313. [Religious Freedom of Incapacitated Person.]

4754 It shall be the duty of all guardians appointed under this Article to protect and preserve the
4755 incapacitated person's right of freedom of religion and religious practice.

4756 PART 4

4757 MANAGEMENT OF PROPERTY OF PERSONS UNDER DISABILITY AND MINORS

4758 Section 5-401. [Management of Estate.]

4759 (a) Upon petition and after notice and hearing in accordance with the provisions of this part, the
4760 court may appoint a limited or unlimited conservator or make any other protective order for
4761 cause as provided in this section.

4762 (b) Appointment of a conservator or other protective order may be made in relation to the estate
4763 and affairs of a minor if the court determines that a minor owns money, real property or personal
4764 property requiring management or protection that cannot otherwise be provided or has or may
4765 have business affairs that may be jeopardized or prevented by minority, or that funds are needed
4766 for support and education and that protection is necessary or desirable to obtain or provide
4767 money.

4768 (c) Appointment of a conservator or other protective order may be made in relation to the estate
4769 and affairs of a person who is disabled for reasons other than minority if the court determines
4770 that:

4771 (1) the person is unable to manage property and business affairs effectively because of a
4772 clinically diagnosed impairment in the ability to receive and evaluate information or make or
4773 communicate decisions, even with the use of appropriate technological assistance, or because the
4774 individual is detained or otherwise unable to return to the United States; and

4775 (2) the person has property that will be wasted or dissipated unless management is provided or
4776 money is needed for the support, care, and welfare of the person or those entitled to the person's
4777 support and that protection is necessary or desirable to obtain or provide money.

4778 Section 5-402. [Protective Proceedings; Jurisdiction of Business Affairs of Protected Persons.]

4779 After the service of notice in a proceeding seeking the appointment of a conservator or other
4780 protective order and until termination of the proceeding, the court in which the petition is filed
4781 has:

4782 (1) exclusive jurisdiction to determine the need for a conservator or other protective order until
4783 the proceedings are terminated; and

4784 (2) exclusive jurisdiction to determine how the estate of the protected person which is subject to
4785 the laws of the commonwealth shall be managed, expended, or distributed to or for the use of the
4786 protected person, the protected person's dependents, or other claimants.

4787 Section 5-403. [Reserved.]

4788 Section 5-404. [Original Petition for Appointment or Protective Order.]

4789 (a) The person to be protected or any person who is interested in the estate, affairs, or welfare of
4790 the person, including a parent, guardian, custodian, or any person who would be adversely
4791 affected by lack of effective management of the person's property and business affairs may
4792 petition for a determination of disability, in whole or in part, and the appointment of a

4793 conservator or for other appropriate protective order.

4794 (b) The petition shall set forth the petitioner's name, residence address, current street address if
4795 different, relationship to the person to be protected, and interest in the appointment or other
4796 protective order, and, to the extent known, state the following with respect to the person to be
4797 protected and the relief requested:

4798 (1) the name of the person to be protected, his age, principal residence, current street address,
4799 and, if different, the address of the dwelling where it is proposed that the person to be protected
4800 will reside if the appointment is made, and the date residence was established;

4801 (2) a brief description of the nature of the alleged incapacity;

4802 (3) if the petition is being brought because the individual is detained or is otherwise unable to
4803 return to the United States, a statement of the relevant circumstances, including the time and
4804 nature of the detention or inability to return and a description of any search or inquiry concerning
4805 the person's whereabouts;

4806 (4) the name and address of the person's:

4807 (A) spouse; and

4808 (B) adult children, or if none, parents and adult brothers and sisters, or, if none, heirs apparent or
4809 presumptive;

4810 (5) the name and address of the person who has care or custody of the person or with whom the
4811 person has resided during the 60 days, exclusive of any period of hospitalization or
4812 institutionalization, preceding the filing of the petition;

4813 (6) the name and address of any representative payee, trustee or custodian of a trust or
4814 custodianship of which the person to be protected is a beneficiary;

4815 (7) the name and address of any person nominated as conservator by the person to be protected
4816 under a durable power of attorney, if known to the petitioner, and the name and address of any
4817 guardian or conservator currently acting for him in the commonwealth or elsewhere;

4818 (8) the name and address of any agent designated under a durable power of attorney of which
4819 the person to be protected is the principal, if known to the petitioner, and the petitioner shall
4820 attach a copy of any such power of attorney, if available;

4821 (9) a general statement of the person's property with an estimate of its value, including any
4822 insurance, pension, and the source and amount of any anticipated income or receipts;

4823 (10) the reason why appointment of a conservator or other protective order is in the best interest
4824 of the person to be protected;

4825 (11) a statement:

4826 (A) that a medical certificate conforming with the provisions of section 5-303(c) dated within 30
4827 days of the filing of the petition is in the possession of the court or accompanies the petition; or

4828 (B) of the nature of any circumstance which makes it impossible to obtain a medical certificate
4829 which shall be supported by affidavit or affidavits meeting the requirements set forth in
4830 Massachusetts Rule of Civil Procedure 4.1(h), in which case the court may waive or postpone the
4831 requirement of filing of a medical certificate.

4832 (c) If the appointment of a conservator is requested, the petition shall also set forth to the extent
4833 known:

4834 (1) the name and address of the proposed conservator, his relationship to the person to be
4835 protected, the reason why he or she should be selected, and the basis of the claim, if any, for
4836 priority for appointment;

4837 (2) the name and address of any person nominated as conservator by the person to be protected
4838 if 14 or more years of age;

4839 (3) the type of conservatorship requested, and if a general conservatorship, the reason why a
4840 limited conservatorship is inappropriate, and if a limited conservatorship, the powers to be
4841 granted to the limited conservator or property to be placed under the conservator's control; and
4842 (d) Reasonable expenses incurred in any examination conducted pursuant to this section shall be
4843 paid by the petitioner, the estate of the person to be protected, or by the commonwealth as the
4844 court may determine.

4845 Section 5-405. [Notice.]

4846 (a) On a petition for appointment of a conservator or other protective order, the requirements for
4847 notice described in section 5-304 apply, but (i) if the person to be protected has disappeared or is
4848 otherwise situated so as to make personal service of notice impracticable, notice to the person
4849 shall be given by leaving a copy of the petition and citation at the last and usual place of abode of
4850 the person to be protected, and (ii) if the person to be protected is a minor, the provisions of
4851 section 5-206(b) also apply.

4852 (b) Notice of hearing on a petition for an order subsequent to appointment of a conservator or
4853 other protective order shall be given to the protected person, any conservator of the protected
4854 person's estate, and any other person as ordered by the court.

4855 Section 5-406. [Reserved.]

4856 Section 5-407. [Findings; Order of Appointment; Permissible Court Orders.]

4857 (a) The court shall exercise the authority conferred in this Part to encourage the development of
4858 maximum self-reliance and independence of a protected person and make protective orders only
4859 to the extent necessitated by the protected person's limitations and other conditions warranting
4860 the procedure.

4861 (b) Upon hearing, the court may appoint a conservator as requested if it finds that:

4862 (1) a qualified person seeks appointment;

4863 (2) venue is proper;

4864 (3) the required notices have been given;

4865 (4) any required medical certificate is dated and the examination has taken place within 30 days
4866 prior to the hearing;

4867 (5) the person for whom a conservator is sought is a disabled person;

4868 (6) the appointment is necessary or desirable as a means of providing continuing care and
4869 supervision of the property and business affairs of the person to be protected; and

4870 (7) the person's needs cannot be met by less restrictive means, including use of appropriate
4871 technological assistance.

4872 The court, on appropriate findings, may enter any appropriate order or dismiss the proceedings.

4873 (c) After full hearing and upon determining that a basis for an appointment or other protective
4874 order exists with respect to a minor without other disability, the court, after making appropriate
4875 findings of fact, has all those powers over the property and business affairs of the minor which
4876 are or may be necessary for the best interest of the minor and members of the minor's immediate
4877 family. Those powers include, but are not limited to, the power to create revocable trusts of the
4878 property of the estate which may extend beyond the minority of the minor, provided that:

4879 (1) the court determines that it is in the best interest of the minor to extend the management and
4880 protection of the minor's money and property beyond the minor attaining the age of 18;

4881 (2) the minor and issue of the minor are the only beneficiaries of the trust during the minor's
4882 lifetime;

4883 (3) upon the termination of the trust during the minor's lifetime, the trust property will be

4884 distributed only to the minor;

4885 (4) the ward, upon attaining the age of 18 shall have the inter vivos and testamentary power to
4886 appoint to or among such person or persons and in such proportions and upon such terms,
4887 whether outright or in trust or otherwise, all or any part of the property of the trust as the minor
4888 may determine;

4889 (5) upon the death of the minor, to the extent that the minor fails to exercise the power to
4890 appoint, the trust will provide that the trust property be distributed to or be held in trust for the
4891 benefit of such relatives as would be likely recipients of legacies from the minor as determined
4892 by the court pursuant to subsection (e).

4893 After full hearing and upon determining that an amendment, extension, or revocation is in the
4894 best interest of the minor, the court may amend, extend, or revoke the trust whether or not the
4895 minor has attained the age of 18. The court shall retain jurisdiction over the trust while it
4896 continues to exist.

4897 (d) After full hearing and upon determining that a basis for an appointment or other protective
4898 order exists with respect to a person to be protected for reasons other than minority, the court,
4899 after making appropriate findings of fact, has all those powers over the property and business
4900 affairs of the protected person which are or may be necessary for the best interest of the
4901 protected person and members of his immediate family. Those powers include, but are not
4902 limited to the power to:

4903 (1) make gifts, except as otherwise provided in section 5-424(b);

4904 (2) convey, release, or disclaim contingent and expectant interests in property, including marital
4905 property rights and any right of survivorship incident to joint tenancy or tenancy by the
4906 entireties;

4907 (3) exercise or release a power of appointment;

4908 (4) create a revocable or irrevocable trust of property of the estate, whether the trust does or
4909 does not extend beyond the duration of the conservatorship, or to revoke or amend a trust
4910 revocable by the protected person;

4911 (5) exercise rights to elect options and change beneficiaries under insurance policies and
4912 annuities or surrender the policies and annuities for their cash value;

4913 (6) exercise any right to an elective share in the estate of the protected person's deceased spouse
4914 and to renounce or disclaim any interest by testate or intestate succession or by transfer inter
4915 vivos; and

4916 (7) make, amend, or revoke the protected person's will. The conservator, in making, amending,
4917 or revoking the protected person's will, shall comply with section 2-502 of this chapter.

4918 (e) The court, in exercising or in approving a conservator's exercise of the powers listed in
4919 subsection (d), shall consider primarily the decision that the protected person would have made if
4920 not disabled, to the extent that the decision can be ascertained. In the absence of any evidence of
4921 the personal preference of the protected person, the court shall consider the following factors,
4922 and may exercise or approve a conservator's exercise of such powers even in the absence of 1 or
4923 more such factors:

4924 (1) the financial needs of the protected person and the needs of individuals who are dependent
4925 on the protected person for support and the interest of creditors;

4926 (2) reduction of income, estate, inheritance, or other tax liabilities;

4927 (3) eligibility for governmental assistance;

4928 (4) the protected person's previous pattern of giving or level of support;

4929 (5) the existing estate plan;

- 4930 (6) the likely recipients of the protected person's bounty;
4931 (7) the protected person's life expectancy; the probability that the conservatorship will terminate
4932 before the protected person's death; and
4933 (8) any other factors the court considers relevant.

4934 (f) A determination that a basis for appointment of a conservator or other protective order exists
4935 is not a determination of incapacity of the protected person.

4936 (g) The conservator shall have custody of all wills, codicils and other estate planning documents
4937 executed by the protected person.

4938 Section 5-408. [Protective Arrangements and Single Transactions Authorized.]

4939 (a) Upon petition, after notice as provided in section 5-405 and hearing, and if a basis exists as
4940 described in section 5-401 for affecting the property and business affairs of a person, the court,
4941 without appointing a conservator, may authorize, direct or ratify any transaction necessary or
4942 desirable to achieve any arrangement for security, service, or care meeting the foreseeable needs
4943 of the protected person. Protective arrangements include payment, delivery, deposit, or retention
4944 of funds or property; sale, mortgage, lease, or other transfer of tangible or intangible personal
4945 property; entry into an annuity contract, a contract for life care, a deposit contract, or a contract
4946 for training and education; or addition to or establishment of a suitable trust including a trust
4947 created under the uniform custodial trust act.

4948 (b) Upon petition, after notice as provided in section 5-405 and hearing, and if a basis exists as
4949 described in section 5-401 for affecting the property and business affairs of a person, the court,
4950 without appointing a conservator, may authorize, direct, or ratify any contract, trust, or other
4951 transaction relating to the protected person's property and business affairs, including settlement
4952 of a claim, if the court determines that the transaction is in the best interest of the protected
4953 person.

4954 (c) Before approving a protective arrangement or other transaction under this section, the court
4955 shall consider the factors listed in section 5-407(e). The court may appoint a special conservator
4956 to assist in the accomplishment of any protective arrangement or other transaction authorized
4957 under this section who shall have the authority conferred by the order and serve until discharged
4958 by order after report to the court of all matters done pursuant to the order of appointment.

4959 Section 5-409. [Who May Be Appointed Conservator; Priorities.]

4960 (a) Subject to subsection (c), the court may appoint an individual or a corporation with general
4961 power to serve as trustee or conservator of the estate of a protected person. The following are
4962 entitled to consideration for appointment in the order listed:

- 4963 (1) Unless lack of qualification or other good cause dictates the contrary, a person nominated in
4964 the protected person's most recent durable power of attorney;
4965 (2) a conservator, guardian of property, or other like fiduciary appointed or recognized by an
4966 appropriate court of any other jurisdiction in which the protected person resides;
4967 (3) an individual or corporation nominated by the protected person 14 or more years of age and
4968 of sufficient mental capacity to make an intelligent choice;
4969 (4) an agent appointed by the protected person under a durable power of attorney;
4970 (5) a parent of the protected person, or any parental nominee; and
4971 (6) any person deemed appropriate by the court.

4972 (b) The court, acting in the best interest of the protected person, may pass over a person having
4973 priority and appoint a person having a lower priority or no priority.

4974 (c) An owner, operator, or employee of a long-term care institution at which the protected
4975 person is receiving care or a paid caretaker may not be appointed as conservator unless related to

4976 the protected person by blood, marriage, or adoption.

4977 Section 5-410. [Bond.]

4978 (a) A conservator, temporary conservator and special conservator shall furnish a bond
4979 conditioned upon faithful discharge of all duties of the trust according to law and containing a
4980 statement of acceptance of the duties of the office. A surety shall be required on the bond of a
4981 conservator, except the court may waive the requirement of sureties for good cause shown by the
4982 conservator. A bond with sureties shall be in the amount established by the court.

4983 (b) Notwithstanding subsection (a), but subject to section 5-415, a conservator shall not be
4984 required to furnish sureties on his bond if the conservator has a priority for appointment under
4985 section 5-409(a)(1) and the person nominating the conservator expressly waives the requirement.
4986 Section 5-411. [Terms and Requirements of Bonds.]

4987 (a) The following requirements and provisions apply to any bond required under sections 5-208,
4988 5-305 and 5-410:

4989 (1) Bonds shall name the first judge of the court making the appointment and his successors as
4990 obligee for the benefit of the persons interested in the estate and shall be conditioned upon the
4991 faithful discharge by the fiduciary of all duties according to law.

4992 (2) Unless otherwise provided by the terms of the approved bond, sureties are jointly and
4993 severally liable with the guardian or conservator and with each other.

4994 (3) By executing an approved bond of a guardian or conservator, the surety consents to the
4995 jurisdiction of the court that issued letters to the primary obligor in any proceeding pertaining to
4996 the fiduciary duties of the guardian or conservator and naming the surety as a party
4997 respondent. Notice of any proceeding on the bond shall be delivered to the surety or mailed by
4998 registered or certified mail to the address listed with the court at the place where the bond is filed
4999 and to the address as then known to the petitioner.

5000 (4) On petition of a successor guardian or conservator or any interested person, a proceeding
5001 may be initiated against a surety for breach of the obligation of the bond of the guardian or
5002 conservator.

5003 (5) The bond of the guardian or conservator is not void after the first recovery but may be
5004 proceeded against from time to time until the whole penalty is exhausted.

5005 (6) If a new bond is required, the sureties on the prior bond shall be liable for all breaches of the
5006 conditions thereof committed before the new bond is approved and filed.

5007 (7) In no event shall any surety be liable for any claim or cause of action arising out of or in any
5008 way connected with acts or omissions of the guardian or conservator occurring prior to the
5009 appointment of such person as guardian or conservator.

5010 (b) No proceeding may be commenced against the surety on any matter as to which an action or
5011 proceeding against the primary obligor is barred.

5012 Section 5-412. [Acceptance of Appointment; Consent to Jurisdiction.]

5013 Prior to receiving letters, a conservator, temporary conservator and special conservator shall
5014 accept appointment by filing a bond containing a statement of acceptance of the duties of the
5015 office. By accepting appointment, a conservator submits personally to the jurisdiction of the
5016 court in any proceeding relating to the estate which may be instituted by any interested
5017 person. Notice of any proceeding shall be delivered to the conservator or mailed by registered or
5018 certified mail to the address as listed in the petition for appointment or as thereafter reported to
5019 the court and to the address as then known to the petitioner.

5020 Section 5-412A. [Emergency Orders; Temporary Conservators.]

5021 (a) While a petition for appointment of a conservator or other protective order is pending and

5022 after hearing and without notice to others, the court may make orders to preserve and apply the
5023 property of the person to be protected as may be required for the support of the person to be
5024 protected or his dependents.

5025 (b) While a petition for appointment of a conservator is pending, if a person to be protected has
5026 no conservator, and the court finds that following the procedures of this article will likely result
5027 in substantial harm to the property, income or entitlements of the person to be protected or those
5028 entitled to the person's support occurring prior to the return date, and no other person appears to
5029 have authority to act in the circumstances, on appropriate motion the court may appoint a
5030 temporary conservator having the powers who may exercise only those powers granted in the
5031 order. A motion for appointment of a temporary conservator shall state the nature of the
5032 circumstances requiring appointment, the particular harm sought to be avoided, the actions which
5033 will be necessary by the temporary conservator to avoid the occurrence of the harm and the name
5034 and address of any attorney in fact designated under a durable power of attorney of which the
5035 person to be protected is the principal, and the petitioner shall attach a copy of any such durable
5036 power of attorney, if available. Such motion shall be accompanied by an affidavit containing
5037 facts supporting the statements and requests in the motion. The appointment may be for a period
5038 of up to 90 days except that upon a finding of extraordinary circumstances set forth in its order,
5039 the court may order an appointment for a longer period to a date certain. The court may for good
5040 cause shown extend the appointment for additional 90 day periods.

5041 (c) If an appointed conservator is not effectively performing duties and the court further finds
5042 that the welfare of the person to be protected requires immediate action, it may appoint, with or
5043 without notice, a special conservator for the protected person having the powers of a general
5044 conservator, except as limited in the letters of appointment. The authority of any conservator
5045 previously appointed by the court is suspended as long as a special conservator has
5046 authority. The appointment may be for a period of up to 90 days except that upon a finding of
5047 extraordinary circumstances set forth in its order the court may order an appointment for a longer
5048 period to a date certain. The court may for good cause shown extend the appointment for
5049 additional 90 day periods.

5050 (d) The petitioner shall give written notice 7 days prior to any hearing for the appointment of a
5051 temporary conservator in hand to the person to be protected and by delivery or by mail to all
5052 persons named in the petition for appointment of conservator. A certificate that such notice has
5053 been given, setting forth the names and addresses of those to whom notice has been given, shall
5054 be prima facie evidence thereof.

5055 (e) If the court determines that an immediate emergency situation exists which requires the
5056 immediate appointment of a temporary conservator, it may shorten or waive the notice
5057 requirements in whole or in part and grant the motion, provided, however, that prior notice shall
5058 be given to the person to be protected as the court may order and post-appointment notice of any
5059 appointment is given to the person to be protected and those named in the petition for
5060 appointment of conservator stating further that any such person may move to vacate the order of
5061 the court or request that the court take any other appropriate action on the matter, and on said
5062 motion to vacate, the court shall hear said motion as a de novo matter, as expeditiously as
5063 possible. A certificate stating that such notice has been given shall be filed with the court within
5064 7 days following the appointment. Upon failure to file such certificate the court may on its own
5065 motion vacate said order.

5066 (f) In the event that any person to whom notice is required is of parts unknown, such notice shall
5067 be delivered or mailed to that person's last known address, and the fact of such delivery or

5068 mailing shall be recited in the certificate of notice.

5069 (g) Appointment of a temporary conservator, with or without notice, is not a determination of a
5070 persons incapacity or disability.

5071 (h) The court may remove a temporary or special conservator at any time. A temporary
5072 conservator and a special conservator shall make any report the court requires. In other respects
5073 the provisions of parts 1, 2, 3 and 4 of this article concerning conservators apply to temporary
5074 and special conservators.

5075 Section 5-413. [Compensation and Expenses.]

5076 If not otherwise compensated for services rendered, any guardian ad litem, attorney, physician,
5077 licensed psychologist, clinical team, guardian, special guardian, temporary guardian,
5078 conservator, temporary conservator or special conservator appointed in a protective proceeding
5079 and any attorney whose services resulted in a protective order or in an order that was beneficial
5080 to a protected person's estate is entitled to reasonable compensation from the
5081 estate. Compensation may be paid and expenses reimbursed without court order, but, if the court
5082 later determines that the compensation is excessive or the expenses are inappropriate, the
5083 excessive or inappropriate amount shall be repaid to the estate on such terms as the court may
5084 order, including, but not limited to, costs, interest and attorney fees. The court may order that
5085 such compensation be paid by the petitioner.

5086 Section 5-414. [Reserved.]

5087 Section 5-415. [Petitions for Orders Subsequent to Appointment.]

5088 (a) Any person interested in the welfare of a person for whom a conservator has been appointed
5089 may file a petition in the appointing court for an order:

5090 (1) requiring sureties or collateral or additional sureties or collateral, or reducing bond;
5091 (2) requiring an inventory or accounting for the administration of the trust;
5092 (3) directing distribution;
5093 (4) removing the conservator and appointing a temporary or successor conservator; or
5094 (5) granting other appropriate relief.

5095 (b) A conservator may petition the appointing court for instructions concerning fiduciary
5096 responsibility.

5097 (c) Upon notice and hearing, the court may give appropriate instructions or make any
5098 appropriate order.

5099 Section 5-416. [General Duty of Conservator; Plan.]

5100 (a) A conservator, in relation to powers conferred by this part, or implicit in the title acquired by
5101 virtue of the proceeding, shall act as a fiduciary and observe the standards of care applicable to
5102 trustees as described by chapter 203C.

5103 (b) A conservator shall exercise authority only as necessitated by the mental and adaptive
5104 limitations of the protected person, and to the extent possible, encourage the person to participate
5105 in decisions, to act in the person's own behalf, and to develop or regain the ability to manage the
5106 person's estate and business affairs.

5107 (c) The court may order a conservator to file with the appointing court a plan for managing,
5108 expending, and distributing the assets of the protected person's estate. The plan shall be based on
5109 the actual needs of the person and take into consideration the best interest of the person. The
5110 conservator shall include in the plan steps to develop or restore the person's ability to manage the
5111 person's property, an estimate of the duration of the conservatorship, and projections for
5112 expenses and resources.

5113 (d) In investing an estate, selecting assets of the estate for distribution, and invoking powers of

5114 revocation or withdrawal available for the use and benefit of the protected person and exercisable
5115 by the conservator, a conservator shall take into account any estate plan of the person known to
5116 the conservator and may examine the will and any other donative, nominative, or other
5117 appointive instrument of the person.

5118 Section 5-417. [Inventory and Records.]

5119 (a) Within 90 days after qualification, each conservator shall prepare and file with the appointing
5120 court a detailed inventory of the estate subject to the conservatorship together with an oath or
5121 affirmation that the inventory is believed to be complete and accurate as far as information
5122 permits. The conservator shall provide a copy thereof to the protected person if the person has
5123 attained the age of 14 years. A copy also shall be provided to any guardian or parent with whom
5124 the protected person resides.

5125 (b) The conservator shall keep suitable records of the administration and exhibit the same on
5126 request of any interested person.

5127 Section 5-418. [Accounts.]

5128 (a) Each conservator shall account to the court for administration of the trust not less than
5129 annually unless the court directs otherwise, upon resignation or removal and at other times as the
5130 court may direct. On termination of the protected person's minority or disability, a conservator
5131 shall account to the court. Subject to appeal or vacation within the time permitted, an order
5132 allowing an intermediate account of a conservator adjudicates as to liabilities of the conservator
5133 concerning the matters set forth therein or shown thereby; and an order allowing a final account
5134 adjudicates as to all previously unsettled liabilities of the conservator to the protected person or
5135 the protected person's successors relating to the conservatorship.

5136 (b) A conservator or any interested person may petition for an order of complete settlement of
5137 an account. Notice shall be given in the manner prescribed by section 1-401 by the petitioner to
5138 all interested persons.

5139 (c) An account shall state or contain:

5140 (1) a listing of the balance of the prior account or inventory, receipts, disbursements and
5141 distributions during the reporting period and the assets of the estate under the conservator's
5142 control at the end of the reporting period;

5143 (2) a listing of the services provided to the protected person; and

5144 (3) any recommended changes in any conservatorship plan as well as a recommendation as to
5145 the continued need for conservatorship and any recommended changes in the scope of the
5146 conservatorship.

5147 (d) If there are persons interested to whom notice has not been given, or if the interests of
5148 persons incapacitated or under disability are not represented except by the accountant, the court
5149 shall appoint as guardian ad litem an individual or any public or charitable agency to review the
5150 account and make appropriate recommendations to the court.

5151 (e) Objections to a conservator's account shall be filed in the manner prescribed by section 1-
5152 401. After the time required for any notice has expired, upon proof of notice, and after any
5153 hearing that may be necessary, the court may enter an order or orders, on appropriate conditions,
5154 determining the persons entitled to distribution of the estate, and, as circumstances require,
5155 approving settlement and directing or approving distribution of the estate and discharging the
5156 conservator from further claim or demand of any interested person.

5157 (f) The court shall establish a system for monitoring of conservatorships, including the filing and
5158 review of conservators' accounts and plans.

5159 Section 5-419. [Conservators; Title By Appointment.]

5160 (a) The appointment of a conservator vests in the conservator title as fiduciary to all property, or
5161 to the part thereof specified in the order, of the protected person, held at the time of appointment
5162 or thereafter acquired. An order vesting title to only a part of the property of the protected
5163 person creates a conservatorship limited to assets specified in the order.

5164 (b) Except as otherwise provided herein, the interest of the protected person in property vested
5165 in a conservator by this section is not transferable or assignable by the protected person. An
5166 attempted transfer or assignment by the protected person, though ineffective to affect property
5167 rights, may generate a claim for restitution or damage.

5168 Section 5-420. [Recording of Conservator's Letters.]

5169 (a) Letters of conservatorship are evidence of transfer of all assets or the part thereof specified in
5170 the letters, of a protected person to the conservator. An order terminating a conservatorship is
5171 evidence of transfer of all assets subjected to the conservatorship from the conservator to the
5172 protected person, or to successors of the person.

5173 (b) Subject to the requirements of general statutes governing the filing or recordation of
5174 documents of title to land or other property, letters of conservatorship and orders terminating
5175 conservatorships, shall be filed or recorded in each registry district in which the protected person
5176 owns real property to give record notice of title as between the conservator and the protected
5177 person.

5178 Section 5-421. [Sale, Encumbrance, or Transaction Involving Conflict of Interest Voidable;
5179 Exceptions.]

5180 Any sale or encumbrance to a conservator, the spouse, agent, attorney of a conservator or any
5181 corporation, trust, or other organization in which the conservator has a substantial beneficial
5182 interest, or any other transaction involving the estate being administered by the conservator
5183 which is affected by a substantial conflict between fiduciary and personal interests is voidable
5184 unless the transaction is approved by the court after notice as directed by the court.

5185 Section 5-422. [Persons Dealing With Conservators; Protection.]

5186 (a) A person who in good faith either assists or deals with a conservator for value in any
5187 transaction other than those requiring a court order as provided in section 5-407 is protected as if
5188 the conservator properly exercised the power. The fact that a person knowingly deals with a
5189 conservator shall not alone require the person to inquire into the existence of a power or the
5190 propriety of its exercise, but restrictions on powers of conservators which are endorsed on letters
5191 as provided in section 5-425 are effective as to third persons. A person is not bound to see to the
5192 proper application of estate assets paid or delivered to a conservator.

5193 (b) The protection expressed in this section extends to any procedural irregularity or
5194 jurisdictional defect occurring in proceedings leading to the issuance of letters and is not a
5195 substitution for protection provided by comparable provisions of the law relating to commercial
5196 transactions or to simplifying transfers of securities by fiduciaries.

5197 Section 5-423. [Powers of Conservator in Administration.]

5198 (a) Subject to limitation provided in section 5-425, a conservator has all of the powers conferred
5199 in this section and any additional powers conferred by law.

5200 (b) A conservator without court authorization or confirmation, may invest and reinvest funds of
5201 the estate as would a trustee.

5202 (c) A conservator, acting reasonably in efforts to accomplish the purpose of the appointment,
5203 may act without court authorization or confirmation, to

5204 (1) collect, hold, and retain assets of the estate including land in this or another state, until
5205 judging that disposition of the assets should be made, and the assets may be retained even though

5206 they include an asset in which the conservator is personally interested;
5207 (2) receive additions to the estate;
5208 (3) continue or participate in the operation of any business or other enterprise;
5209 (4) acquire an undivided interest in an estate asset in which the conservator, in any fiduciary
5210 capacity, holds an undivided interest;
5211 (5) invest and reinvest estate assets in accordance with subsection (b);
5212 (6) deposit estate funds in a state or federally insured financial institution, including one
5213 operated by the conservator, not in excess of \$100,000, or such other amount as is protected by
5214 federal or state insurance, in any single institution;
5215 (7) dispose of tangible and intangible personal property for cash or on credit, at public or private
5216 sale;
5217 (8) subject to court approval, acquire estate assets, including land in this or another state at
5218 public or private sale, and lease, manage, develop, improve, exchange, change the character of,
5219 or abandon an estate asset;
5220 (9) subject to court approval, make repairs or alterations in buildings or other structures;
5221 demolish any structures; and raze existing or erect new party walls or buildings;
5222 (10) subject to court approval, subdivide, develop, or dedicate land to public use; make or obtain
5223 the vacation of plats and adjust boundaries; adjust differences in valuation by giving or receiving
5224 considerations; and dedicate easements to public use without consideration;
5225 (11) subject to court approval, enter for any purpose into a lease as lessor or lessee or renew for
5226 a term within or extending beyond the term of the conservatorship;
5227 (12) subject to court approval, enter into a lease or arrangement for exploration and removal of
5228 minerals or other natural resources or enter into a pooling or unitization agreement;
5229 (13) subject to court approval, grant an option involving disposition of an estate asset and take
5230 an option for the acquisition of any asset;
5231 (14) vote a security, in person or by general or limited proxy;
5232 (15) pay calls, assessments, and any other sums chargeable or accruing against or on account of
5233 securities;
5234 (16) sell or exercise stock-subscription or conversion rights;
5235 (17) consent, directly or through a committee or other agent, to the reorganization,
5236 consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;
5237 (18) hold a security in the name of a nominee or in other form without disclosure of the
5238 conservatorship so that title to the security may pass by delivery, but the conservator is liable for
5239 any act of the nominee in connection with the stock so held;
5240 (19) insure the assets of the estate against damage or loss and the conservator against liability
5241 with respect to third persons;
5242 (20) borrow money to be repaid from estate assets or otherwise; advance money for the
5243 protection of the estate or the protected person and for all expenses, losses, and liability sustained
5244 in the administration of the estate or because of the holding or ownership of any estate assets, for
5245 which the conservator has a lien on the estate as against the protected person for advances so
5246 made;
5247 (21) pay or contest any claim; settle a claim by or against the estate or the protected person by
5248 compromise, arbitration, or otherwise; and release, in whole or in part, any claim belonging to
5249 the estate to the extent the claim is uncollectible;
5250 (22) pay taxes, assessments, compensation of the conservator, and other expenses incurred in the
5251 collection, care, administration, and protection of the estate;

5252 (23) allocate items of income or expense to either estate income or principal, as provided by
5253 law, including creation of reserves out of income for depreciation, obsolescence, or amortization,
5254 or for depletion in mineral or timber properties;

5255 (24) pay any sum distributable to a protected person or individual who is dependent on the
5256 protected person by paying the sum to the distributee or by paying the sum for the use of the
5257 distributee:

5258 (A) to the guardian of the distributee;

5259 (B) to a distributee's custodian under the uniform transfers to minors act or custodial trustee
5260 under the uniform custodial trust act; or

5261 (C) if there is no guardian, custodian or custodial trustee, to a relative or other person having
5262 custody of the distributee;

5263 (25) employ persons, including attorneys, auditors, investment advisors, or agents, even though
5264 they are associated with the conservator, to advise or assist in the performance of administrative
5265 duties; act upon their recommendation without independent investigation;

5266 (26) commence, prosecute or defend actions, claims, or proceedings in any jurisdiction for the
5267 protection of estate assets and of the conservator in the performance of fiduciary duties;

5268 (27) make funeral and burial arrangements and enter into pre-paid funeral contracts;

5269 (28) resign the office of fiduciary held by the protected or incapacitated or person pursuant to
5270 any court appointment or written instrument; and

5271 (29) execute and deliver all instruments that will accomplish or facilitate the exercise of the
5272 powers vested in the conservator.

5273 (c) A conservator may not sell, mortgage or grant options in real estate, except as provided in
5274 chapter 202.

5275 Section 5-423A. [Delegation.]

5276 (a) A conservator may not delegate to an agent or another conservator the entire administration
5277 of the estate, but a conservator may otherwise delegate the management of investments that a
5278 prudent conservator of comparable skills may delegate under similar circumstances.

5279 (b) The conservator shall exercise reasonable care, skill, and caution in:

5280 (1) selecting an agent;

5281 (2) establishing the scope and terms of a delegation, consistent with the purposes and terms of
5282 the conservatorship; and

5283 (3) periodically reviewing an agent's actions in order to monitor the agent's performance and
5284 compliance with the terms of the delegation.

5285 (c) In performing a delegated function, an agent owes a duty to the estate to exercise reasonable
5286 care to comply with the terms of the delegation.

5287 (d) A conservator who complies with subsections (a) and (b) is not liable to the protected
5288 person or to the estate for the decisions or actions of the agent to whom a function was delegated.

5289 (e) By accepting a delegation from a conservator subject to the law of the commonwealth, an
5290 agent submits to the jurisdiction of the courts of the commonwealth.

5291 Section 5-424. [Distributive Duties and Powers of Conservator.]

5292 (a) Unless otherwise specified in the order of appointment and endorsed on the letters of
5293 appointment or contrary to the plan filed pursuant to section 5-416, a conservator may expend or
5294 distribute income or principal of the estate without court authorization or confirmation for the
5295 support, education, care, or benefit of the protected person and dependents in accordance with
5296 the following principles:

5297 (1) The conservator shall consider recommendations relating to the appropriate standard of

5298 support, education, and benefit for the protected person or dependent made by a parent or
5299 guardian, if any. The conservator may not be surcharged for sums paid to persons or
5300 organizations furnishing support, education, or care to the protected person or a dependent
5301 pursuant to the recommendations of a parent or guardian of the protected person unless the
5302 conservator knows that the parent or guardian derives undue or disproportionate personal
5303 financial benefit therefrom, including relief from any personal duty of support or the
5304 recommendations are clearly not in the best interest of the protected person.

5305 (2) The conservator shall expend or distribute sums reasonably necessary for the support,
5306 education, care, or benefit of the protected person and dependents with due regard to (i) the size
5307 of the estate, the probable duration of the conservatorship, and the likelihood that the protected
5308 person, at some future time, may be fully able to be wholly self-sufficient and able to manage
5309 business affairs and the estate; (ii) the accustomed standard of living of the protected person and
5310 dependents; and (iii) other funds or sources used for the support of the protected person.

5311 (3) The conservator may expend funds of the estate for the support, funeral expenses and burial
5312 expenses of persons legally dependent on the protected person and others who are members of
5313 the protected person's household who are unable to support themselves, and who are in need of
5314 support.

5315 (4) Funds expended under this subsection may be paid by the conservator to any person,
5316 including the protected person, to reimburse for expenditures that the conservator might have
5317 made, or in advance for services to be rendered to the protected person if it is reasonable to
5318 expect the services will be performed and advance payments are customary or reasonably
5319 necessary under the circumstances.

5320 (5) A conservator, in discharging the responsibilities conferred by court order and this part, shall
5321 implement the principles described in section 5-407(a), to the extent possible.

5322 (b) If the estate is ample to provide for the purposes implicit in the distributions authorized by
5323 the preceding subsections, a conservator for a protected person other than a minor has power to
5324 make gifts to charity and persons which the protected person has expressed an intent to benefit,
5325 in amounts that do not exceed in total for any year 10 per cent of the income from the estate.

5326 (c) When a minor who has not been adjudged disabled under section 5-401(c) attains majority,
5327 the conservator, after meeting all claims and expenses of administration, shall pay over and
5328 distribute all funds and properties to the formerly protected person as soon as possible.

5329 (d) If satisfied that a protected person's disability, other than minority, has ceased, the
5330 conservator, after meeting all claims and expenses of administration, shall pay over and
5331 distribute all funds and properties to the formerly protected person as soon as possible.

5332 (e) If a protected person dies, the conservator shall deliver to the court for safekeeping any will
5333 of the deceased protected person which may have come into the conservator's possession, inform
5334 the personal representative or beneficiary named therein of the delivery, and retain the estate for
5335 delivery to a duly appointed personal representative of the decedent or other persons entitled
5336 thereto. If, 40 days after the death of the protected person, no other person has been appointed
5337 personal representative and no application or petition for appointment is before the court, the
5338 conservator may apply to exercise the powers and duties of a personal representative in order to
5339 be able to proceed to administer and distribute the decedent's estate. Upon application for an
5340 order granting the powers of a personal representative to a conservator, after notice to any person
5341 nominated personal representative by any will of which the applicant is aware, the court may
5342 grant the application upon determining that there is no objection and endorse the letters of the
5343 conservator to note that the formerly protected person is deceased and that the conservator has

5344 acquired all of the powers and duties of a personal representative. The making and entry of an
5345 order under this section has the effect of an order of appointment of a personal representative as
5346 provided in section 3-308 and parts 6 to 10, inclusive, of article III, but the estate in the name of
5347 the conservator, after administration, may be distributed to the decedent's successors without
5348 prior re-transfer to the conservator as personal representative.

5349 Section 5-425. [Enlargement or Limitation of Powers of Conservator.]

5350 Subject to the restrictions in section 5-407(c), the court may confer on a conservator at the time
5351 of appointment or later, in addition to the powers conferred by sections 5-423 and 5-424, any
5352 power that the court itself could exercise under sections 5-407(c) and 5-407(d). The court, at the
5353 time of appointment or later, may limit the powers of a conservator otherwise conferred by
5354 sections 5-423 and 5-424 or previously conferred by the court and may at any time remove or
5355 modify any limitation. If the court limits any power conferred on the conservator by section 5-
5356 423 or section 5-424, or specifies, as provided in section 5-419(a), that title to some but not all
5357 assets of the protected person vest in the conservator, the limitation or specification of assets
5358 subject to the conservatorship shall be endorsed upon the letters of appointment.

5359 Section 5-426. [Preservation of Estate Plan; Right to Examine.]

5360 In (i) investing the estate, (ii) selecting assets of the estate for distribution under subsections
5361 (a) and (b) of section 5-424, and (iii) utilizing powers of revocation or withdrawal available for
5362 the support of the protected person and exercisable by the conservator or the court, the
5363 conservator and the court shall take into account any estate plan of the protected person known to
5364 them, including a will, any revocable trust of which the person is settlor, and any contract,
5365 transfer, or joint ownership arrangement originated by the protected person with provisions for
5366 payment or transfer of benefits or interests at the person's death to another or others.

5367 Section 5-427. [Claims Against Protected Person.]

5368 A conservator may pay or secure from the estate claims against the estate or against the protected
5369 person arising before or after the conservatorship.

5370 Section 5-428. [Personal Liability of Conservator.]

5371 (a) Unless otherwise provided in the contract, a conservator is not personally liable on a contract
5372 properly entered into in fiduciary capacity in the course of administration of the estate unless the
5373 conservator fails to reveal the representative capacity and identify the estate in the contract.

5374 (b) The conservator is not personally liable unless the conservator is personally at fault for either
5375 (i) obligations arising from ownership or control of property of the estate, or (ii) torts committed
5376 in the course of administration of the estate.

5377 (c) Claims based on (i) contracts entered into by a conservator in fiduciary capacity,
5378 (ii) obligations arising from ownership or control of the estate, or (iii) torts committed in the
5379 course of administration of the estate, may be asserted against the estate by proceeding against
5380 the conservator in fiduciary capacity, whether or not the conservator is personally liable therefor.

5381 (d) Any question of liability between the estate and the conservator personally may be
5382 determined in a proceeding for accounting, surcharge, or indemnification, or other appropriate
5383 proceeding or action.

5384 Section 5-429. [Removal or Resignation of Conservator; Termination of Disability; Termination
5385 of Proceedings.]

5386 (a) On petition of the protected person or any person interested in the protected person's welfare,
5387 the court, after notice and hearing, may remove a conservator if the person under conservatorship
5388 is no longer disabled or for other good cause. On petition of the conservator, the court, after
5389 hearing, may accept a resignation.

5390 (b) An order adjudicating disability may specify a minimum period, not exceeding 6 months,
5391 during which a petition for an adjudication that the protected person is no longer incapacitated
5392 may not be filed without special leave. Subject to that restriction, the protected person or any
5393 person interested in the welfare of the protected person may petition for an order that the person
5394 is no longer disabled and for termination of the conservatorship. A request for an order may also
5395 be made informally to the court and any person who knowingly interferes with transmission of
5396 the request may be adjudged guilty of contempt of court.

5397 (c) Upon removal, resignation, or death of the conservator, or if the conservator is determined to
5398 be incapacitated or disabled, the court may appoint a successor conservator and make any other
5399 appropriate order. Before appointing a successor conservator, or ordering that a person's
5400 disability has terminated, the court shall follow the same procedures to safeguard the rights of the
5401 protected person that apply to a petition for appointment of a conservator.

5402 (d) A conservatorship terminates upon the death of the protected person or upon order of the
5403 court.

5404 (e) Upon the death of a protected person, the conservator shall conclude the administration of
5405 the estate by distribution to the person's successors. The conservator shall file a final accounting
5406 and petition for discharge within 30 days after distribution.

5407 (f) Unless created for reasons other than minority, a conservatorship created for a minor
5408 terminates when the protected person attains majority or is emancipated.

5409 (g) On petition of a protected person, a conservator, or another person interested in a protected
5410 person's welfare, the court may terminate the conservatorship if the protected person no longer
5411 needs the assistance or protection of a conservator. Termination of the conservatorship shall not
5412 affect a conservator's liability for previous acts or the obligation to account for funds and assets
5413 of the protected person.

5414 (h) Upon termination of a conservatorship and whether or not formally distributed by the
5415 conservator, title to assets of the estate passes to the formerly protected person or the person's
5416 successors. The order of termination shall provide for expenses of administration and direct the
5417 conservator to execute appropriate instruments to evidence the transfer of title or confirm a
5418 distribution previously made and to file a final accounting and a petition for discharge upon
5419 approval of the final accounting.

5420 (i) The court shall enter a final order of discharge upon the approval of the final accounting and
5421 satisfaction by the conservator of any other conditions placed by the court on the conservator's
5422 discharge.

5423 Section 5-430. [Payment of Debt and Delivery of Property to Foreign Conservator without
5424 Local Proceedings.]

5425 (a) Any person indebted to a protected person or having possession of property or of an
5426 instrument evidencing a debt, stock, or chose in action belonging to a protected person may pay
5427 or deliver it to a conservator, guardian of the estate, or other like fiduciary appointed by a court
5428 of the state of residence of the protected person upon being presented with proof of appointment
5429 and an affidavit made by or on behalf of the fiduciary stating:

5430 (1) that no protective proceeding relating to the protected person is pending in the
5431 commonwealth; and

5432 (2) that the foreign fiduciary is entitled to payment or to receive delivery.

5433 (b) If the person to whom the affidavit is presented is not aware of any protective proceeding
5434 pending in the commonwealth, payment or delivery in response to the demand and affidavit
5435 discharges the debtor or possessor.

5436 Section 5-431. [Foreign Conservator; Proof of Authority; Bond; Powers.]

5437 (a) If a conservator has not been appointed in the commonwealth and no petition in a protective
5438 proceeding is pending in the commonwealth, a conservator appointed in the state in which the
5439 protected person resides may file in a court of the commonwealth in a county in which property
5440 belonging to the protected person is located, authenticated copies of letters of appointment and of
5441 any bond. Thereafter, the domiciliary foreign conservator may exercise as to assets in the
5442 commonwealth all powers of a conservator appointed in the commonwealth and may maintain
5443 actions and proceedings in the commonwealth subject to any conditions imposed upon non-
5444 resident parties generally.

5445 (b) If a ward, incapacitated or protected person removes from or resides out of the
5446 commonwealth, a guardian or conservator appointed within the commonwealth may transfer and
5447 pay over the whole or any part of the personal property of such person to a guardian,
5448 conservator, trustee or committee or other official appointed by competent authority in the state
5449 or country where such person resides, upon such terms and such manner as the court by which he
5450 or she was appointed may, after notice to all parties interested, order upon petition filed therefor.

5451 PART 5

5452 DURABLE POWER OF ATTORNEY

5453 Section 5-501. [Definition.]

5454 (a) A durable power of attorney is a power of attorney by which a principal designates another
5455 his attorney in fact in writing and the writing contains the words "This power of attorney shall
5456 not be affected by subsequent disability or incapacity of the principal, or lapse of time," or "This
5457 power of attorney shall become effective upon the disability or incapacity of the principal," or
5458 similar words showing the intent of the principal that the authority conferred shall be exercisable
5459 notwithstanding the principal's subsequent disability or incapacity, and, unless it states a time of
5460 termination, notwithstanding the lapse of time since the execution of the instrument.

5461 (b) References in this part to the disability or incapacity of the principal shall mean the mental
5462 illness or other disability of the principal recognized under the General Laws.

5463 Section 5-502. [Durable Power of Attorney Not Affected By Lapse of Time, Disability or
5464 Incapacity.]

5465 All acts done by an attorney in fact pursuant to a durable power of attorney during any period of
5466 disability or incapacity of the principal have the same effect and inure to the benefit of and bind
5467 the principal and his successors in interest as if the principal were competent and not
5468 disabled. Unless the instrument states a time of termination, the power is exercisable
5469 notwithstanding the lapse of time since the execution of the instrument.

5470 Section 5-503. [Relation of Attorney in Fact to Court-appointed Fiduciary.]

5471 (a) If, following execution of a durable power of attorney, a court of the principal's domicile
5472 appoints a conservator, guardian of the estate, or other fiduciary charged with the management of
5473 all of the principal's property or all of his property except specified exclusions, the attorney in
5474 fact is accountable to the fiduciary as well as to the principal. The fiduciary has the same power
5475 to revoke or amend the power of attorney that the principal would have had if such principal
5476 were not disabled or incapacitated.

5477 (b) A principal may nominate, by a durable power of attorney, the conservator, or guardian of
5478 the person for consideration by the court if protective proceedings for the principal's person or
5479 estate are thereafter commenced. A principal may in a nomination of a conservator or guardian
5480 request that sureties on any bond of a conservator or guardian be waived. The court shall make
5481 its appointment in accordance with the principal's most recent nomination in a durable power of

5482 attorney except for good cause or disqualification.
5483 Section 5-504. [Power of Attorney Not Revoked Until Notice.]
5484 (a) The death of a principal who has executed a written power of attorney, durable or otherwise,
5485 shall not revoke or terminate the agency as to the attorney in fact or other person, who, without
5486 actual knowledge of the death of the principal, acts in good faith under the power. Any action so
5487 taken, unless otherwise invalid or unenforceable, binds successors in interest of the principal.
5488 (b) The disability or incapacity of a principal who has previously executed a written power of
5489 attorney that is not a durable power shall not revoke or terminate the agency as to the attorney in
5490 fact or other person, who, without actual knowledge of the disability or incapacity of the
5491 principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or
5492 unenforceable, binds the principal and his successors in interest.
5493 Section 5-505. [Proof of Continuance of Durable and Other Powers of Attorney by Affidavit.]
5494 As to acts undertaken in good faith reliance thereon, an affidavit executed by the attorney in fact
5495 under a power of attorney, durable or otherwise, stating that he did not have at the time of
5496 exercise of the power actual knowledge of the termination of the power by revocation or of the
5497 principal's death, disability, or incapacity is conclusive proof of the nonrevocation or
5498 nontermination of the power at that time. If the exercise of the power of attorney requires
5499 execution and delivery of any instrument that is recordable, the affidavit when authenticated for
5500 record is likewise recordable. This section shall not affect any provision in a power of attorney
5501 for its termination by expiration of time or occurrence of an event other than express revocation
5502 or a change in the principal's capacity.
5503 Section 5-506. [Enforcement.]

5504 The attorney in fact under a durable power of attorney is authorized to prosecute legal action for
5505 damages in behalf of the principal in the event of an unreasonable refusal of a third party to
5506 honor the authority of a valid durable power of attorney.

5507 Section 5-507. [Protection; Third Parties.]

5508 No third party acting in good faith reliance on a durable power of attorney shall be held liable for
5509 action taken in such reliance.

5510 ARTICLE VI

5511 NONPROBATE TRANSFERS ON DEATH

5512 PART 1

5513 PROVISIONS RELATING TO EFFECT OF DEATH

5514 Section 6-101. [Nonprobate Transfers on Death.]

5515 (a) A provision for a nonprobate transfer on death in an insurance policy, contract of
5516 employment, bond, mortgage promissory note, certificated or uncertificated security, account,
5517 agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual
5518 retirement plan, employee benefit plan, trust, conveyance, deed of gift, marital property
5519 agreement, or any other written instrument effective as a contract, gift, conveyance or trust, is
5520 nontestamentary.

5521 (b) This subsection includes a written provision that:

5522 (1) money or other benefits or property due to, controlled by, or owned by a decedent before
5523 death shall be paid after the decedent's death to a person whom the decedent designates either in
5524 the instrument or in a separate writing, including a will, executed either before, after, or at the
5525 same time as the instrument if:

5526 (i) the original document specifically provides for disposition in accordance with the later

5527 instrument; or
5528 (ii) the later instrument has independent significance such as a contract, gift, conveyance,
5529 trust or will.

5530 (2) money due or to become due under the instrument ceases to be payable in the event of death
5531 of the promisee or the promisor before payment or demand.

5532 (c) This section shall not limit rights of creditors under other laws of the commonwealth.

5533 PART 2

5534 MULTIPLE-PERSON ACCOUNTS

5535 SUBPART 1

5536 DEFINITIONS AND GENERAL PROVISIONS

5537 Section 6-201 to 6-206. [Reserved]

5538

5539

5540 SUBPART 2
5541 OWNERSHIP AS BETWEEN PARTIES AND OTHERS
5542 Section 6-211 to 6-216. [Reserved]

5543

5544

5545 SUBPART 3
5546 PROTECTION OF FINANCIAL INSTITUTIONS
5547 Section 6-221 to 6-227. [Reserved]

5548

5549 PART 3
5550 UNIFORM TOD SECURITY REGISTRATION ACT
5551 Section 6-301. [Definitions.]

5552 In this part:

5553 (1) “Beneficiary form”, a registration of a security which indicates the present owner of the
5554 security and the intention of the owner regarding the person who will become the owner of the
5555 security upon the death of the owner.

5556 (2) “Register”, including its derivatives, is to issue a certificate showing the ownership of a
5557 certificated security or, in the case of an uncertificated security, to initiate or transfer an account
5558 showing ownership of securities.

5559 (3) “Registering entity”, a person who originates or transfers a security title by registration, and
5560 includes a broker maintaining security accounts for customers and a transfer agent or other
5561 person acting for or as an issuer of securities.

5562 (4) “Security”, has the same meaning as provided in clause (k) of section 401 of chapter 110A
5563 and includes a security account.

5564 (5) “Security account”, (i) a reinvestment account associated with a security, a securities account

5565 with a broker, a cash balance in a brokerage account, cash, interest, earnings, or dividends earned
5566 or declared on a security in an account, a reinvestment account, or a brokerage account, whether
5567 or not credited to the account before the owner's death, or (ii) a cash balance or other property
5568 held for or due to the owner of a security as a replacement for or product of an account security,
5569 whether or not credited to the account before the owner's death.

5570 Section 6-302. [Registration in Beneficiary Form; Sole or Joint Tenancy Ownership.]

5571 Only individuals whose registration of a security shows sole ownership by 1 individual or
5572 multiple ownership by 2 or more with rights of survivorship, rather than as tenants in common,
5573 may obtain registration in beneficiary form. Multiple owners of a security registered in
5574 beneficiary form hold as joint tenants with rights of survivorship, or as tenants by the entireties,
5575 and not as tenants in common.

5576 Section 6-303. [Registration in Beneficiary Form; Applicable Law.]

5577 A security may be registered in beneficiary form if the form is authorized by this part or a similar
5578 law of the state of organization of the issuer or registering entity, the location of the registering
5579 entity's principal office, the office of its transfer agent or its office making the registration, or by
5580 this part or a similar law of the state listed as the owner's address at the time of registration. A
5581 registration governed by the law of a jurisdiction in which this part or similar law is not in force
5582 or was not in force when a registration in beneficiary form was made is nevertheless presumed to
5583 be valid and authorized as a matter of contract law.

5584 Section 6-304. [Origination of Registration in Beneficiary Form.]

5585 A security, whether evidenced by certificate or account, is registered in beneficiary form when
5586 the registration includes a designation of a beneficiary to take the ownership at the death of the
5587 owner or the deaths of all multiple owners.

5588 Section 6-305. [Form of Registration in Beneficiary Form.]

5589 Registration in beneficiary form may be shown by the words "transfer on death" or the
5590 abbreviation "TOD", or by the words "pay on death" or the abbreviation "POD", after the name
5591 of the registered owner and before the name of a beneficiary.

5592 Section 6-306. [Effect of Registration in Beneficiary Form.]

5593 The designation of a transfer on death beneficiary on a registration in beneficiary form shall have
5594 no effect on ownership until the owner's death. A registration of a security in beneficiary form
5595 may be canceled or changed at any time by the sole owner or all surviving owners without the
5596 consent of the beneficiary.

5597 Section 6-307. [Ownership on Death of Owner.]

5598 On death of a sole owner or the last to die of all multiple owners, ownership of securities
5599 registered in beneficiary form passes to the beneficiary or beneficiaries who survive all
5600 owners. On proof of death of all owners and compliance with any applicable requirements of the
5601 registering entity, a security registered in beneficiary form may be reregistered in the name of the
5602 beneficiary or beneficiaries who survived the death of all owners. Until division of the security
5603 after the death of all owners, multiple beneficiaries surviving the death of all owners hold their
5604 interests as tenants in common. If no beneficiary survives the death of all owners, and if no anti-
5605 lapse statute applies, the security belongs to the estate of the deceased sole owner or the estate of
5606 the last to die of all multiple owners.

5607 Section 6-308. [Protection of Registering Entity.]

5608 (a) A registering entity is not required to offer or to accept a request for security registration in
5609 beneficiary form. If a registration in beneficiary form is offered by a registering entity, the
5610 owner requesting registration in beneficiary form assents to the protections given to the

5611 registering entity by this part.

5612 (b) By accepting a request for registration of a security in beneficiary form, the registering entity
5613 agrees that the registration will be implemented on death of the deceased owner as provided in
5614 this part.

5615 (c) A registering entity is discharged from all claims to a security by the estate, creditors, heirs,
5616 or devisees of a deceased owner if it registers a transfer of the security in accordance with
5617 section 6-307 and does so in good faith reliance (i) on the registration, (ii) on this part, and
5618 (iii) on information provided to it by affidavit of the personal representative of the deceased
5619 owner, or by the surviving beneficiary or by the surviving beneficiary's representatives, or other
5620 information available to the registering entity. The protections of this part shall not extend to a
5621 reregistration or payment made after a registering entity has received written notice from any
5622 claimant to any interest in the security objecting to implementation of a registration in
5623 beneficiary form. No other notice or other information available to the registering entity shall
5624 affect its right to protection under this part.

5625 (d) The protection provided by this part to the registering entity of a security shall not affect the
5626 rights of beneficiaries in disputes between themselves and other claimants to ownership of the
5627 security transferred or its value or proceeds.

5628 Section 6-309. [Nontestamentary Transfer on Death.]

5629 (a) A transfer on death resulting from a registration in beneficiary form is effective by reason of
5630 the contract regarding the registration between the owner and the registering entity and this part
5631 and is not testamentary.

5632 (b) This part shall not limit the rights of creditors of security owners against beneficiaries and
5633 other transferees under other laws of the commonwealth.

5634 Section 6-310. [Terms, Conditions, and Forms for Registration.]

5635 (a) A registering entity offering to accept registrations in beneficiary form may establish the
5636 terms and conditions under which it will receive requests (i) for registrations in beneficiary form,
5637 and (ii) for implementation of registrations in beneficiary form, including requests for
5638 cancellation of previously registered transfer on death beneficiary designations and requests for
5639 reregistration to effect a change of beneficiary. The terms and conditions so established may
5640 provide for proving death, avoiding or resolving any problems concerning fractional shares,
5641 designating primary and contingent beneficiaries, and substituting a named beneficiary's
5642 descendants to take in the place of the named beneficiary in the event of the beneficiary's
5643 death. Substitution may be indicated by appending to the name of the primary beneficiary the
5644 letters LDPS, standing for "lineal descendants per stirpes." This designation substitutes a
5645 deceased beneficiary's descendants who survive the owner for a beneficiary who fails to so
5646 survive, the descendants to be identified and to share in accordance with the law of the
5647 beneficiary's domicile at the owner's death governing inheritance by descendants of an
5648 intestate. Other forms of identifying beneficiaries who are to take on 1 or more contingencies,
5649 and rules for providing proofs and assurances needed to satisfy reasonable concerns by
5650 registering entities regarding conditions and identities relevant to accurate implementation of
5651 registrations in beneficiary form, may be contained in a registering entity's terms and conditions.

5652 (b) The following are examples of registrations in beneficiary form which a registering entity
5653 may authorize:

5654 (1) Sole owner-sole beneficiary: John S Brown TOD (or POD) John S Brown Jr.

5655 (2) Multiple owners-sole beneficiary: John S Brown Mary B Brown JT TEN TOD John S
5656 Brown Jr.

5657 (3) Multiple owners-primary and secondary (substituted) beneficiaries: (example 1) John S
5658 Brown Mary B Brown JT TEN TOD John S Brown Jr SUB BENE Peter Q Brown (example
5659 2) John S Brown Mary B Brown JT TEN TOD John S Brown Jr LDPS.

5660 Section 6-311. [Rights of Creditors and Others.]

- 5661 (a) If other assets of the estate are insufficient, a transfer resulting from registration under this
5662 part shall not be effective against the estate of a deceased party to the extent needed to pay
5663 claims against the estate and statutory allowances to the surviving spouse and children.
- 5664 (b) A surviving party or beneficiary who receives payment of a security registered in accordance
5665 with this part shall be liable to account to the personal representative of the decedent for a
5666 proportionate share of the amount received to which the decedent, immediately before death, was
5667 beneficially entitled to the extent necessary to discharge the claims and allowances described in
5668 subsection (a) remaining unpaid after application of the decedent's estate. A proceeding to assert
5669 the liability may not be commenced unless a claim is presented pursuant to section 3-804, or the
5670 personal representative has received a written demand for statutory allowance by the surviving
5671 spouse, a child, or a person acting for a child of the decedent. The proceeding shall be
5672 commenced within 1 year after death of the decedent. Sums recovered by the personal
5673 representative shall be administered as part of the decedent's estate.
- 5674 (c) A personal representative, surviving party or beneficiary against whom a proceeding is
5675 brought may join as a party to the proceeding a surviving party or beneficiary of this or of any
5676 other security of the decedent.

5677 ARTICLE VII

5678 TRUST ADMINISTRATION

5679 PART 1

5680 SITUS OF TRUSTS

5681 Section 7-101. [Principal Place of Administration.]

5682 A trust shall be subject to the jurisdiction of the court of the commonwealth for the county in
5683 which is located its principal place of administration. The principal place of administration of a
5684 testamentary trust shall be deemed to be the location of the court of the commonwealth in which
5685 the will creating the trust was granted informal or formal probate. Unless otherwise designated
5686 in the trust instrument, the principal place of administration of an inter vivos trust is the trustee's
5687 usual place of business where the records pertaining to the trust are kept, or at the trustee's
5688 residence if the trustee has no such place of business. In the case of co-trustees, the principal
5689 place of administration, if not otherwise designated in the trust instrument, is (1) the usual place
5690 of business of the corporate trustee if there is but 1 corporate co-trustee, or (2) the usual place of
5691 business or residence of the individual trustee who is a professional fiduciary if there is but 1
5692 such person and no corporate co-trustee, and otherwise (3) the usual place of business or
5693 residence of any of the co-trustees as agreed upon by them.

5694 Section 7-102. [Reserved.]

5695 Section 7-103. [Effect of Trusteeship.]

5696 (a) By accepting the trusteeship of a trust, the trustee submits personally to the jurisdiction of the
5697 court in any proceeding under section 7-201 of this code relating to the trust that may be initiated
5698 by any interested person. Notice of any proceeding shall be delivered to the trustee, or mailed to
5699 the trustee by ordinary first class mail at the trustee's address as reported to the court and to the
5700 trustee's address as then known to the petitioner.

5701 (b) To the extent of their interests in the trust, all beneficiaries of a trust administered in the
5702 commonwealth are subject to the jurisdiction of the court of the commonwealth for the county in

5703 which is located the principal place of administration of the trust, for the purposes of proceedings
5704 under section 7-201, provided notice is given pursuant to section 1-401.

5705 Section 7-104. [Reserved.]

5706 Section 7-105. [Qualification of Foreign Trustee.]

5707 A foreign corporate trustee is required to qualify as a foreign corporation doing business in the
5708 commonwealth if it maintains the principal place of administration of any trust within the
5709 commonwealth. A foreign co-trustee is not required to qualify in the commonwealth solely
5710 because its co-trustee maintains the principal place of administration in the
5711 commonwealth. Unless otherwise doing business in the commonwealth, local qualification by a
5712 foreign trustee, corporate or individual, is not required in order for the trustee to receive
5713 distribution from a local estate, to hold, invest in, manage or acquire property located in the
5714 commonwealth, or to maintain litigation. Nothing in this section affects a determination of what
5715 other acts require qualification as doing business in the commonwealth.

5716 PART 2

5717 JURISDICTION OF COURT CONCERNING TRUSTS

5718 Section 7-201. [Court; Jurisdiction of Trusts.]

5719 (a) The court has jurisdiction of proceedings initiated by interested parties concerning the
5720 internal affairs of testamentary and inter vivos trusts. Proceedings which may be maintained
5721 under this section are those concerning the administration and distribution of trusts, the
5722 declaration of rights and the determination of other matters involving trustees and beneficiaries
5723 of trusts. These include, but are not limited to, proceedings:

5724 (1) to appoint or remove a trustee;

5725 (2) to review trustees' fees and to review and settle interim or final accounts; and

5726 (3) to ascertain beneficiaries, to determine any question arising in the administration or
5727 distribution of any trust including questions of construction of trust instruments, to instruct
5728 trustees, to authorize the sale of real or personal property, to order the consolidation or the
5729 termination and distribution of uneconomic trusts, to authorize compromise of controversies
5730 affecting trusts under the procedure described in sections 3-1101 and 3-1102, and to determine
5731 the existence or nonexistence of any immunity, power, privilege, duty or right.

5732 (b) Neither accepting trusteeship of a testamentary or inter vivos trust nor a proceeding under
5733 this section results in continuing supervisory proceedings. The management and distribution of a
5734 trust estate, submission of accounts and reports to beneficiaries, payment of trustee's fees and
5735 other obligations of a trust, acceptance and change of trusteeship, and other aspects of the
5736 administration of a trust shall proceed expeditiously consistent with the terms of the trust, free of
5737 judicial intervention and without order, approval or other action of any court, subject to the
5738 jurisdiction of the court as invoked by interested parties or as otherwise exercised as provided by
5739 law.

5740 Section 7-202. [Trust Proceedings; Venue.]

5741 Venue for proceedings under section 7-201 involving trusts in the commonwealth is in the
5742 principal place of administration of the trust, and otherwise by the rules of civil procedure.

5743 Section 7-203. [Trust Proceedings; Dismissal of Matters Relating to Foreign Trusts.]

5744 The court will not, over the objection of a party, entertain proceedings under section 7-201
5745 involving a trust registered or having its principal place of administration in another state, unless
5746 (1) when all appropriate parties could not be bound by litigation in the courts of the state where
5747 the trust is registered or has its principal place of administration or (2) when the interests of
5748 justice otherwise would seriously be impaired. The court may condition a stay or dismissal of a

5749 proceeding under this section on the consent of any party to jurisdiction of the state in which the
5750 trust is registered or has its principal place of business, or the court may grant a continuance or
5751 enter any other appropriate order.

5752 Section 7-204. [Reserved]

5753 Section 7-205. [Proceedings for Review of Employment of Agents and Review of
5754 Compensation of Trustee and Employees of Trust.]

5755 On petition of an interested person, after notice to all interested persons, the court may review
5756 the propriety of employment of any person by a trustee including any attorney, auditor,
5757 investment advisor or other specialized agent or assistant, and the reasonableness of the
5758 compensation of any person so employed, and the reasonableness of the compensation
5759 determined by the trustee for the trustee's own services. Any person who has received excessive
5760 compensation from a trust may be ordered to make appropriate refunds.

5761 Section 7-206. [Trust Proceedings; Initiation by Notice; Necessary Parties.]

5762 Proceedings under section 7-201 are initiated by filing a petition in the court and giving notice
5763 pursuant to section 1-401 to interested parties. The court may order notification of additional
5764 persons. A decree is valid as to all who are given notice of the proceeding though fewer than all
5765 interested parties are notified.

5766 PART 3

5767 DUTIES AND LIABILITIES OF TRUSTEES

5768 Section 7-301. [General Duties Not Limited.]

5769 Except as specifically provided, the general duty of the trustee to administer a trust expeditiously
5770 for the benefit of the beneficiaries shall not be altered by this code.

5771 Section 7-302. [Reserved.]

5772 Section 7-303. [Duty to Inform and Account to Beneficiaries.]

5773 The trustee shall keep the donor of a revocable trust and the beneficiaries of an irrevocable trust
5774 reasonably informed of the trust and its administration. In addition, unless the trust is revocable:

5775 (a) Within 30 days after his acceptance of the trust or the trust becomes irrevocable,
5776 whichever is later, the trustee shall inform in writing the current beneficiaries and if possible, 1
5777 or more persons who under section 1-403 may represent beneficiaries with future interests, of the
5778 court having jurisdiction over the trust and of the trustee's name and address. The information
5779 shall be delivered or sent by ordinary first class mail.

5780 (b) Upon reasonable request, the trustee shall provide the beneficiary with a copy of the trust
5781 and with relevant information about the assets of the trust and the particulars relating to its
5782 administration.

5783 (c) Upon reasonable request, a beneficiary is entitled to a statement of the accounts of the trust
5784 annually and on termination of the trust or change of the trustee.

5785 Section 7-304. [Duty to Provide Bond.]

5786 In the case of a testamentary trust, a trustee shall furnish a bond for the performance of the
5787 trustee's fiduciary duties and a surety shall be required unless waived by the terms of the trust, or
5788 found by the court to be not necessary to protect the interests of the beneficiaries. On petition of
5789 the trustee or other interested person the court may excuse a requirement of bond, reduce the
5790 amount of the bond, release the surety, or permit the substitution of another bond with the same
5791 or different sureties. When the instrument creating the trust exempts the trustee from furnishing
5792 a bond or limits the amount thereof, or the court determines that the bond is insufficient, the
5793 court may if it concludes that a bond be necessary or that a bond of a larger amount is necessary,

5794 require the furnishing of such bond.
5795 Section 7-305. [Trustee's Duties; Appropriate Place of Administration; Deviation.]
5796 A trustee is under a continuing duty to administer the trust at a place appropriate to the purposes
5797 of the trust and to its sound, efficient management. If the principal place of administration
5798 becomes inappropriate for any reason, the court may enter any order furthering efficient
5799 administration and the interests of beneficiaries, including, if appropriate, removal of the trustee
5800 and appointment of a trustee in another state or country. Trust provisions relating to the place of
5801 administration and to changes in the place of administration or of trustee control unless
5802 compliance would be contrary to efficient administration or the purposes of the trust. Views of
5803 adult beneficiaries shall be given weight in determining the suitability of the trustee and the place
5804 of administration.
5805 Section 7-306. [Personal Liability of Trustee to Third Parties.]
5806 (a) Unless otherwise provided in the contract, a trustee is not personally liable on contracts
5807 properly entered into in the trustee's fiduciary capacity in the course of administration of the trust
5808 estate unless the trustee fails to reveal his representative capacity and identify the trust estate in
5809 the contract.
5810 (b) A trustee is not personally liable unless the trustee is personally at fault for either
5811 (i) obligations arising from ownership or control of property of the trust estate, or (ii) torts
5812 committed in the course of administration of the trust estate.
5813 (c) Claims based on contracts entered into by a trustee in the trustee's fiduciary capacity, on
5814 obligations arising from ownership or control of the trust estate, or on torts committed in the
5815 course of trust administration may be asserted against the trust estate by proceeding against the
5816 trustee in a fiduciary capacity, whether or not the trustee is personally liable therefor.
5817 (d) The question of liability as between the trust estate and the trustee individually may be
5818 determined in a proceeding for accounting, surcharge or indemnification or other appropriate
5819 proceeding.
5820 Section 7-307. [Limitations on Proceedings Against Trustees After Final Account.]
5821 Unless previously barred by adjudication, consent or limitation, any claim against a trustee for
5822 breach of trust is barred as to any beneficiary who has received a final account or other statement
5823 fully disclosing the matter and showing termination of the trust relationship between the trustee
5824 and the beneficiary unless a proceeding to assert the claim is commenced within 6 months after
5825 receipt of the final account or statement. In any event and notwithstanding lack of full disclosure
5826 a trustee who has issued a final account or statement received by the beneficiary and has
5827 informed the beneficiary of the location and availability of records for examination by the
5828 beneficiary is protected after 3 years. A beneficiary is deemed to have received a final account
5829 or statement if, being an adult, it is received by the beneficiary personally or if, being a minor or
5830 disabled person, it is received by the beneficiary's representative as described in section
5831 1-403(1) and (2).
5832 Section 7-308. [Resignation or Removal of Trustee; Appointment to Fill Vacancy.]
5833 (a) A trustee may resign the office or be removed as provided by the terms of the will or other
5834 instrument creating the trust. Any vacancy caused by such resignation, removal or otherwise
5835 may be filled as so provided.
5836 (b) A trustee may resign the office by filing a written statement of resignation with a petition for
5837 permission to resign with the court having jurisdiction of the trust.
5838 (c) A trustee or any person interested in a trust may at any time petition for removal of a trustee
5839 on the ground that removal would be in the best interest of the beneficiaries of the trust or for

5840 cause. Cause for removal exists if it is shown that the trustee has disregarded an order of the
5841 court, has become incapacitated or otherwise incapable of discharging the duties of the office, or
5842 has mismanaged the property or failed to perform any duty pertaining to the office.

5843 (d) A trustee or any person interested in a trust may at any time petition for the appointment of a
5844 trustee to fill a vacancy which is not filled as provided by the terms of the will or other
5845 instrument creating the trust.

5846 (e) Upon filing of the petition, the court shall fix a time and place for hearing. Notice shall be
5847 given by the petitioner to the trustees, the beneficiaries and to other persons as the court may
5848 order. After notice and hearing, the court may terminate the appointment of a trustee by ordering
5849 removal or by accepting the resignation and, if the petition contains a prayer therefor, may
5850 appoint a successor trustee to fill the vacancy caused by such resignation, removal or otherwise.

5851 Section 7-309. [Petition for Transfers of Trust Property Whose Disposition Depends Upon the
5852 Death of an Absentee.]

5853 (a) If a trustee holds trust property the disposition of which depends upon the death of an
5854 absentee whose death has not been determined under paragraph (1), (2) or (3) of section 1-107,
5855 on or after the day 5 years after the date of the absentee's disappearance the trustee, or any person
5856 who would be interested in the trust property were the absentee dead, may petition the court
5857 having jurisdiction of the trust for an order that the trust property be disposed of to the persons to
5858 whom and in the shares or proportions in which it would be distributed under the provisions of
5859 the trust if the absentee had died on that day.

5860 (b) The court may direct the petitioner to report the results of, or make and report back
5861 concerning, a reasonably diligent search for the absentee in any manner that may seem advisable,
5862 including any or all of the following methods:

5863 (1) by inserting in 1 or more suitable periodicals a notice requesting information from any
5864 person having knowledge of the whereabouts of the absentee;

5865 (2) by notifying law enforceable officials, public welfare agencies and registers of deaths in
5866 appropriate locations of the disappearance of the absentee;

5867 (3) by engaging the services of an investigator.

5868 The costs of any search so directed shall be paid from the trust property.

5869 (c) After any such report directed by the court under paragraph (b) above has been completed to
5870 the satisfaction of the court, notice of the hearing on the petition shall be given as provided in
5871 section 1-401.

5872 (d) If after the hearing the court finds that the facts warrant a presumption of death under
5873 paragraph (4) of section 1-107, it shall enter an appropriate order of disposition of the trust
5874 property and any undistributed net income.

5875 Section 7-310. [Receipts of Trustees.]

5876 The receipt of a trustee, or of any 1 or more of several trustees, for any money, securities or other
5877 personal property or effects payable, transferable or deliverable to him or them under any trust or
5878 power shall be a sufficient discharge therefor to the person paying, transferring or delivering it,
5879 and no such person shall be bound to see to the application thereof.

5880 Section 7-311. [Duties of Purchasers.]

5881 A company or corporation, public or private, or quasi corporation, or unincorporated association,
5882 or the managers of any trust, or any transfer agent, registrar or other agent of such company,
5883 corporation, quasi corporation, unincorporated association or managers, shall not be bound to see
5884 to the execution of any trust, express, implied or constructive, to which any of its shares, bonds
5885 or securities are subject, or to ascertain or inquire whether the trust authorizes a transfer thereof

5886 by the holder, but this section shall not be a protection against liability for participating with
5887 actual knowledge in a breach of trust, and the fact that the trust is of record shall not constitute
5888 such actual knowledge.

5889 PART 4

5890 POWERS OF FIDUCIARY

5891 Section 7-401. [Powers of Fiduciary.]

5892 Except as restricted or otherwise provided by the will, deed or other instrument creating a trust or
5893 by an order in a formal proceeding, a trustee acting reasonably for the benefit of the interested
5894 persons may, without court authorization or confirmation, properly:

5895 (1) hold and retain property of the trust including land in another state, until judging that
5896 disposition of the property should be made, and the property may be retained even though it
5897 includes property in which the trustee is personally interested;

5898 (2) receive additions to the trust from fiduciaries or other sources;

5899 (3) continue or participate in the operation of any business or other enterprise;

5900 (4) acquire an undivided interest in property in which the trustee, in any fiduciary capacity,
5901 holds an undivided interest;

5902 (5) invest and reinvest principal and income in any property the trustee determines, and without
5903 limiting the generality of the foregoing, invest in (i) shares of an investment company or in
5904 shares or undivided portions of any common trust fund established by the trustee and (ii) policies
5905 of life or endowment insurance or annuity contracts on the life of any beneficiary of the trust or
5906 of any person in whose life such beneficiary has an insurable interest;

5907 (6) deposit trust funds in a state or federally insured financial institution, including 1 operated by
5908 the trustee;

5909 (7) acquire or dispose of property, including land in another state, for cash or on credit, at public
5910 or private sale, and manage, develop, improve, exchange, partition, change the character of,
5911 abandon or demolish property;

5912 (8) make ordinary or extraordinary repairs or alterations in buildings or other structures;
5913 demolish any improvements; and raze existing or erect new party walls or buildings;

5914 (9) subdivide, develop, or dedicate land to public use; adjust boundaries; adjust differences in
5915 valuation on exchange or partition by giving or receiving considerations; and dedicate easements
5916 to public use without consideration;

5917 (10) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or
5918 renew, for a term within or extending beyond the term of the trust;

5919 (11) enter into a lease or arrangement for exploration and removal of minerals or other natural
5920 resources or enter into a pooling or unitization agreement;

5921 (12) grant an option involving disposition of an estate asset and take an option for the
5922 acquisition of any asset;

5923 (13) vote a security, in person or by general or limited proxy;

5924 (14) pay calls, assessments, and any other sums chargeable or accruing against or on account of
5925 securities;

5926 (15) sell or exercise stock subscription or conversion rights;

5927 (16) consent, directly or through a committee or other agent, to the reorganization,
5928 consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

5929 (17) hold uncertificated securities as more fully provided in section 14B of chapter 203;

5930 (18) insure the property of the trust against damage or loss and the trustee against liability with
5931 respect to third persons;

5932 (19) borrow money with or without security to be repaid from the trust property or otherwise
5933 and in connection therewith mortgage or otherwise encumber any property on any conditions the
5934 trustee determines even if the term of the loan may extend beyond the term of the trust;
5935 (20) pay or contest any claim; settle a claim by or against the trust or its property by
5936 compromise, arbitration, or otherwise; and release, in whole or in part, any claim belonging to
5937 the trust to the extent the claim is uncollectible;
5938 (21) pay taxes, assessments, compensation of the trustee, and other expenses incurred in the
5939 collection, care, administration, and protection of the estate;
5940 (22) allocate items of income or expense to either income or principal, as permitted or provided
5941 by law, including creation of reserves out of income for depreciation, obsolescence, or
5942 amortization, or for depletion in mineral or timber properties;
5943 (23) allot in or towards satisfaction of any payment, distribution, or division, in any manner the
5944 trustee determines, any property at its then current fair market value;
5945 (24) hold trusts and shares undivided or at any time hold them or any of them set apart one from
5946 another;
5947 (25) pay any sum distributable to a beneficiary by paying the sum to the beneficiary or by
5948 paying the sum for the use of the beneficiary to the guardian, conservator or custodian of the
5949 beneficiary or, if none, to a relative or other person having custody of the beneficiary;
5950 (26) employ persons, including attorneys, auditors, investment advisors, or agents, even though
5951 they are associated with the trustee, to advise or assist in the performance of administrative
5952 duties; act upon their recommendation without independent investigation, and instead of acting
5953 personally, employ agents to perform any act of administration, whether or not discretionary;
5954 (27) prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of
5955 trust property and of the trustee in the performance of fiduciary duties; and
5956 (28) execute and deliver all instruments that will accomplish or facilitate the exercise of the
5957 powers vested in the trustee.

5958 PART 5

5959 STATUTORY CUSTODIANSHIP TRUSTS

5960 Section 7-501. [Transfer of Property; Statutory Custodianship Trustee; Revocability.]

5961 An adult person may, during his lifetime, transfer any property owned by him, in any manner
5962 otherwise consistent with law, to 1 or more named persons designated, in substance, as a
5963 “statutory custodianship trustee”. Such transfer shall be sufficient to create a trust upon the
5964 terms set forth in this part 5 as it is in effect at the date of the transfer without any further trust
5965 instrument or designation of terms and without appointment or qualification by any court, and
5966 shall be complete upon acceptance of the trust by the trustee or trustees manifested in any
5967 form. The trustee or trustees shall serve without giving bond or surety unless the transferor by
5968 written instrument, or the court upon the application of any person interested in the estate of the
5969 transferor and upon good cause shown, shall provide for a bond. All transfers in trust under this
5970 part 5 shall be revocable by the transferor at any time the transferor has legal capacity by a
5971 writing signed by the transferor and delivered to the person, or if more than 1 to any person
5972 serving as trustee.

5973 Section 7-502. [Application of Income and Principal; Accounting by Trustee.]

5974 During the life of the transferor the trustee or trustees shall apply the income and principal, by
5975 payment to the transferor or by direct expenditure, as may be necessary for the comfortable and
5976 suitable maintenance and support of the transferor and the transferor's family in accordance with
5977 the principles applicable to a conservator. Upon the death of the transferor the remaining

5978 property shall be delivered and paid over to the estate of the transferor. With respect to the
5979 property in the trust, except as modified in the instrument of transfer, the trustee or trustees shall
5980 have the fiduciary powers provided in section 7-401, and such additional rights and powers as
5981 the transferor may provide by written instrument. The trustee or trustees shall account at least
5982 annually to the transferor or to the transferor's guardian or conservator, if any, and after the death
5983 of the transferor to the transferor's personal representative. In the event of the incompetency of
5984 the transferor the trustee or trustees may apply to the court in the same manner as a guardian or
5985 conservator for authority to deal with property held in trust in any manner in which the court
5986 might authorize a guardian or conservator to deal with property of the transferor.

5987 Section 7-503. [Resignation or Removal of Trustee; Appointment to Fill Vacancy.]

5988 A trustee may resign by an instrument in writing delivered to the transferor or to the transferor's
5989 guardian or conservator, if any. A trustee may be removed by the transferor by an instrument in
5990 writing delivered to such trustee. If there is more one person serving as trustee, a vacancy need
5991 not be filled, and until a successor is appointed the remaining trustee or trustees may act
5992 alone. In the event of a vacancy a successor may be appointed by the transferor, if legally
5993 competent, or as the transferor shall have provided by a written instrument, and otherwise by the
5994 transferor's guardian or conservator, if any, and if none, by the transferor's heirs presumptive,
5995 and such appointment shall become effective upon acceptance.

5996 SECTION 10. Sections 1 to 14, inclusive, and sections 17 to 30, inclusive, of chapter 191 of the
5997 General Laws are hereby repealed.

5998 SECTION 11. Chapter 191A of the General Laws is hereby repealed.

5999 SECTION 12. Chapter 192 of the General Laws is hereby repealed.

6000 SECTION 13. Chapter 193 of the General Laws is hereby repealed.

6001 SECTION 14. Chapter 195 of the General Laws is hereby repealed.

6002 SECTION 15. Chapter 196 of the General Laws is hereby repealed.

6003 SECTION 16. Chapter 197 of the General Laws is hereby repealed.

6004 SECTION 17. Sections 1 to 7, inclusive, of chapter 198 of the General Laws are hereby
6005 repealed.

6006 SECTION 18. Sections 8 to 10, inclusive, of said 198 of the General Laws are hereby repealed.

6007 SECTION 19. Sections 11 to 33, inclusive, of said chapter 198 of the General Laws are hereby
6008 repealed.

6009 SECTION 20. Chapter 199A of the General Laws is hereby repealed.

6010 SECTION 21. Chapter 201 of the General Laws is hereby repealed.

6011 SECTION 22. Chapter 201B of the General Laws is hereby repealed.

6012 SECTION 23. Chapter 201C of the General Laws is hereby repealed.

6013 SECTION 24. Chapter 201E of the General Laws is hereby repealed.

6014 SECTION 25. Section 3B of chapter 203 of the General Laws is hereby repealed.

6015 SECTION 26. Sections 5 to 14A, inclusive, of said chapter 203 are hereby repealed.

6016 SECTION 27. Sections 15 to 39, inclusive, of chapter 203 are hereby repealed.

6017 SECTION 28. Sections 3 and 3A of chapter 204 of the General Laws are hereby repealed.

6018 SECTION 29. Sections 13 to 18, inclusive, of said chapter 204 are hereby repealed.

6019 SECTION 30. Section 37 of said chapter 204 is hereby repealed.

6020 SECTION 31. Chapter 205 is hereby amended by striking out section 1, as appearing in the
6021 2006 Official Edition, and inserting in place thereof the following section:-

6022 Section 1. An executor, temporary executor or temporary administrator with the will annexed,
6023 administrator, administrator with the will annexed, special administrator, receiver of an absentee,

6024 conservator, temporary guardian and, unless otherwise expressly provided, a guardian or trustee
6025 under a will or appointed by the probate court, including a trustee under a will holding property
6026 for public charitable purposes, before entering upon the duties of his trust, shall give bond with
6027 sufficient sureties, in such sum as the probate court may order, payable to the judge of said court
6028 and his successors, and with condition substantially as follows:

6029 1. In the case of an executor or administrator with the will annexed:

6030 First, To make and return to the probate court within three months a true inventory of all the
6031 testator's real and personal property which at the time of making such inventory shall have come
6032 to his possession or knowledge;

6033 Second, To administer according to law and to the will of the testator all personal property of the
6034 testator which may come into his possession or into the possession of any person for him, and
6035 also the proceeds of any of the real estate of the testator which may be sold or mortgaged by him;

6036 Third, To render upon oath a true account of his administration at least once a year until his trust
6037 is fulfilled, unless he is excused therefrom in any year by the court, and also to render such
6038 account at such other times as the court may order.

6039 2. In the case of an administrator:

6040 First, To make and return to the probate court within three months a true inventory of all the
6041 intestate's real and personal property which at the time of making such inventory shall have
6042 come to his possession or knowledge;

6043 Second, To administer according to law all the personal property of the deceased which may
6044 come into his possession or into the possession of any person for him, and also the proceeds of
6045 any of the real property of the deceased which may be sold or mortgaged by him;

6046 Third, To render upon oath a true account of his administration at least once a year until his trust
6047 is fulfilled, unless he is excused therefrom in any year by the court, and also to render such
6048 account at such other times as the court orders;

6049 Fourth, To pay to such persons as the court orders any balance remaining in his hands upon the
6050 settlement of his accounts;

6051 Fifth, To deliver his letters of administration into the court if a will of the deceased is thereafter
6052 duly proved and allowed.

6053 3. In the case of a special administrator:

6054 That he will make and return to the probate court within such time as it orders a true inventory of
6055 all the personal property of the deceased which at the time of making such inventory shall have
6056 come to his possession or knowledge, and that he will, whenever required by the probate court,
6057 truly account on oath for all the property of the deceased which may be received by him as such
6058 special administrator, and will deliver the same to any person who may be appointed executor or
6059 administrator of the deceased, or may be otherwise lawfully authorized to receive the same.

6060 4. In the case of a receiver of an absentee under chapter two hundred:

6061 With condition substantially as provided for the bond of an executor or administrator, and with
6062 the further condition to obey all orders and decrees made by the probate court.

6063 5. In the case of a trustee under a will or appointed by the probate court:

6064 First, To make and return to the probate court at such time as it orders a true inventory of all the
6065 real and personal property belonging to him as trustee which at the time of the making of such
6066 inventory shall have come to his possession or knowledge;

6067 Second, To manage and dispose of all such property, and faithfully to perform his trust relative
6068 thereto according to law and to the will of the testator or the terms of the trust as the case may
6069 be;

6070 Third, To render upon oath at least once a year until his trust is fulfilled, unless he is excused
6071 therefrom in any year by the court, a true account of the property in his hands and of the
6072 management and disposition thereof, and also to render such account at such other times as said
6073 court orders;

6074 Fourth, At the expiration of his trust to settle his account in the probate court, and to pay over
6075 and deliver all the property remaining in his hands, or due from him on such settlement, to the
6076 person or persons entitled thereto.

6077 6. In the case of a temporary executor appointed under section thirteen of chapter one hundred
6078 and ninety-two or a temporary administrator with the will annexed appointed under section seven
6079 A of chapter one hundred and ninety-three:

6080 First, when required by the provisions of chapter one hundred and ninety-two and whenever
6081 required by the probate court, to make and return to the probate court a true inventory of all the
6082 deceased's real and personal property which at the time of making such inventory shall have
6083 come to his possession or knowledge, and to render upon oath a true account of his
6084 administration;

6085 Second, to deliver all the property of the deceased which may be received by him as such
6086 temporary executor or temporary administrator with the will annexed to any person who may be
6087 appointed executor, administrator or administrator with the will annexed of the deceased, or may
6088 be otherwise lawfully authorized to receive the same.

6089 SECTION 32. Said chapter 205 is hereby amended by striking out section 1, as so appearing, and
6090 inserting in place thereof the following section:—

6091 Section 1. A receiver of an absentee, and, unless otherwise expressly provided, a guardian
6092 before entering upon the duties of his trust, shall give bond with sufficient sureties, in such sum
6093 as the probate court may order payable to the judge of said court and his successors, and with
6094 condition substantially as follows:

6095 1. In the case of a receiver of an absentee under chapter 200:

6096 With condition substantially as provided for the bond of an executor or administrator, and with
6097 the further condition to obey all orders and decrees made by the probate court.

6098 SECTION 33. Sections 2 to 5, inclusive, of said chapter 205 are hereby repealed.

6099 SECTION 34. Said chapter 205 is hereby further amended by striking out section 5 and
6100 inserting in place thereof the following section:-

6101 "Section 5. A trustee under a will shall be exempt from giving sureties on his bond, if the
6102 testator has ordered or requested such exemption, or that no bond be required, or if all the
6103 persons beneficially interested in the trust, of full age and legal capacity, other than creditors,
6104 request such exemption; but not until the conservator of any person under disability interested
6105 therein and such other persons as the court orders have been notified and had opportunity to
6106 show cause against the same. The probate court may, however, at any time require such trustee,
6107 or a trustee appointed by the probate court, to give a bond with sureties. The court may, with or
6108 without notice, exempt a trustee under a will holding property for public charitable purposes
6109 from giving surety on his bond."

6110 SECTION 35. Section 6 of said chapter 205 of the General Laws is hereby repealed.

6111 SECTION 36. Said chapter 205 is hereby further amended by striking out section 6A, as
6112 appearing in the 2006 Official Edition, and inserting in place thereof the following section:—

6113 Section 6A. No surety shall be required upon bonds filed by national banks, located in the
6114 commonwealth and duly permitted to act in a fiduciary capacity, as receiver, assignee, guardian,
6115 conservator except that the court appointing such a bank as such a fiduciary, other than as

6116 trustee, may upon application of an interested person require the bank so appointed to give such
6117 security, in addition to the lien or security provided by the laws of the United States, as the court
6118 may consider proper, and upon failure of such bank to give the security required may revoke
6119 such appointment and remove such bank.

6120 SECTION 37. Sections 7 to 8, inclusive, of said chapter 205 are hereby repealed.

6121 SECTION 38. Sections 1, 16, 18, 20 to 22, inclusive, 23A to 30, inclusive, of chapter 206 of the
6122 General Laws are hereby repealed.

6123 SECTION 39. Section 7 of chapter 210 of the General Laws, as appearing in the 2006 Official
6124 Edition, is hereby amended by striking out, in lines 6 and 7, the words “chapters one hundred
6125 ninety and one hundred and ninety-six,” and inserting in place thereof the following:— chapter
6126 190B.

6127 SECTION 40. Section 8 of chapter 215 of the General Laws is hereby repealed.

6128 SECTION 41. Section 30B of said chapter 215 is hereby repealed.

6129 SECTION 42. Sections 5 and 5A of chapter 259 of the General Laws are hereby repealed.

6130 SECTION 43. Except as provided elsewhere in this act, on the effective date of this act:

6131 1. this act shall apply to pre-existing governing instruments, except that it shall not apply to
6132 governing instruments which became irrevocable prior to the effective date of this act;

6133 2. this act shall apply to any proceedings in court then pending or thereafter commenced
6134 regardless of the time of the death of decedent except to the extent that in the opinion of the court
6135 the former procedure should be made applicable in a particular case in the interest of justice or
6136 because of infeasibility of application of the procedure of this act;

6137 3. every personal representative including a person administering an estate of a minor or
6138 incompetent holding an appointment on that date, continues to hold the appointment but has only
6139 the powers conferred by this act and is subject to the duties imposed with respect to any act
6140 occurring or done thereafter;

6141 4. an act done before the effective date in any proceeding and any accrued right is not impaired
6142 by this act. If a right is acquired, extinguished or barred upon the expiration of a prescribed
6143 period of time which has commenced to run by the provisions of any statute before the effective
6144 date, the provisions shall remain in force with respect to that right;

6145 5. any rule of construction or presumption provided in this act applies to governing instruments
6146 executed before the effective date unless there is a clear indication of a contrary intent, except
6147 that it shall not apply to governing instruments which became irrevocable prior to the effective
6148 date of this act.

6149 SECTION 44. Sections 1-201, 1-401, 1-404 and Article V of chapter 190B of the General Laws,
6150 inserted by section 9, and sections 21, 22, 30, 31, 34, 35 and 41 shall take effect on July 1, 2009.

6151 The remainder of this act shall take effect on July 1, 2011.

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6153