

**Maine Revised Statutes**  
**Title 18-A: PROBATE CODE**

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# Title 18-A: PROBATE CODE

## Article 1: GENERAL PROVISIONS, DEFINITIONS AND JURISDICTION

### Part 1: SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS

#### §1-101. SHORT TITLE

This Act shall be known and may be cited as the Probate Code. [1979, c. 540, §1 (NEW).]

##### SECTION HISTORY

1979, c. 540, §1 (NEW).

#### §1-102. PURPOSES; RULE OF CONSTRUCTION

(a). This Code shall be liberally construed and applied to promote its underlying purposes and policies.

[ 1979, c. 540, §1 (NEW) .]

(b). The underlying purposes and policies of this Code are:

(1). to simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors and incapacitated persons; [1979, c. 540, §1 (NEW).]

(2). to discover and make effective the intent of a decedent in the distribution of his property; [1979, c. 540, §1 (NEW).]

(3). to promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to his successors; [1979, c. 540, §1 (NEW).]

(4). to facilitate use and enforcement of certain trusts; [1979, c. 540, §1 (NEW).]

(5). to make uniform the law among the various jurisdictions. [1979, c. 540, §1 (NEW).]

[ 1979, c. 540, §1 (NEW) .]

##### SECTION HISTORY

1979, c. 540, §1 (NEW).

#### §1-103. SUPPLEMENTARY GENERAL PRINCIPLES OF LAW APPLICABLE

Unless displaced by the particular provisions of this Code, the principles of law and equity supplement its provisions. [1979, c. 540, §1 (NEW).]

##### SECTION HISTORY

1979, c. 540, §1 (NEW).

#### §1-104. SEVERABILITY

If any provision of this Code or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the Code which can be given effect without the invalid provision or application, and to this end the provisions of this Code are declared to be severable. [1979, c. 540, §1 (NEW).]

##### SECTION HISTORY

1979, c. 540, §1 (NEW).

## §1-105. CONSTRUCTION AGAINST IMPLIED REPEAL

This Code is a general act intended as a unified coverage of its subject matter and no part of it shall be deemed impliedly repealed by subsequent legislation if it can reasonably be avoided. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## §1-106. EFFECT OF FRAUD AND EVASION

Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this Code or if fraud is used to avoid or circumvent the provisions or purposes of this Code, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud or restitution from any person, other than a bona fide purchaser, benefitting from the fraud, whether innocent or not. Any proceeding must be commenced within 2 years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than 6 years after the time of commission of the fraud. This section has no bearing on remedies relating to fraud practiced on a decedent during his lifetime which affects the succession of his estate. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## §1-107. EVIDENCE AS TO DEATH OR STATUS

In proceedings under this Code the rules of evidence in courts of general jurisdiction including any relating to simultaneous deaths, are applicable unless specifically displaced by the Code or by rules promulgated under section 1-304. In addition, notwithstanding Title 22, section 2707, the following rules relating to determination of death and status are applicable: [1979, c. 540, §1 (NEW).]

(1). a certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie proof of the fact, place, date and time of death and the identity of the decedent;

[ 1979, c. 540, §1 (NEW) .]

(2). a certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that a person is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances and places disclosed by the record or report;

[ 1979, c. 540, §1 (NEW) .]

(3). a person who is absent for a continuous period of 5 years, during which he has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead. His death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

[ 1979, c. 540, §1 (NEW) .]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## §1-108. ACTS BY HOLDER OF GENERAL POWER

For the purpose of granting consent or approval with regard to the acts or accounts of a personal representative or trustee, including relief from liability or penalty for failure to post bond, to register a trust, or to perform other duties, and for purposes of consenting to modification or termination of a trust or to deviation from its terms, the sole holder or all co-holders of a presently exercisable general power of appointment, including one in the form of a power of amendment or revocation, are deemed to act for beneficiaries to the extent their interests, as objects, takers in default, or otherwise, are subject to the power. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## §1-109. MARRIED WOMEN'S STATUS

The marriage of a woman shall have no effect on her legal capacity, nor on the rights, privileges, authority, duties or obligations of the married woman or of her husband under this Code, except as expressly provided by statute. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## §1-110. TRANSFER FOR VALUE

Any recorded instrument described in this Code on which the register of deeds shall note by an appropriate stamp "Maine Real Estate Transfer Tax Paid" shall be prima facie evidence that such transfer was made for value. [1981, c. 367, §1 (NEW).]

### SECTION HISTORY

1981, c. 367, §1 (NEW).

## §1-111. POWERS OF FIDUCIARIES RELATING TO COMPLIANCE WITH ENVIRONMENTAL LAWS

(a). From the inception of the trust or estate, a fiduciary has the following powers, without court authorization, which the fiduciary may use in the fiduciary's sole discretion to comply with environmental law:

- (1). To inspect and monitor property held by the fiduciary, including interests in sole proprietorships, partnerships or corporations and any assets owned by any such business enterprise, for the purpose of determining compliance with environmental law affecting the property and to respond to any actual or threatened violation of any environmental law affecting the property held by the fiduciary; [1993, c. 568, §1 (NEW).]
- (2). To take, on behalf of the estate or trust, any action necessary to prevent, abate or otherwise remedy any actual or threatened violation of any environmental law affecting property held by the fiduciary, either before or after the initiation of an enforcement action by any governmental body; [1993, c. 568, §1 (NEW).]
- (3). To refuse to accept property if the fiduciary determines that any property to be donated to the trust or estate either is contaminated by any hazardous substance or is being used or has been used for any activity directly or indirectly involving any hazardous substance that could result in liability to the trust or estate or otherwise impair the value of the assets held in the trust or estate, except nothing in this paragraph applies to property in the trust or estate at its inception; [1993, c. 568, §1 (NEW).]

(4). To settle or compromise at any time any claims against the trust or estate that may be asserted by any governmental body or private party involving the alleged violation of any environmental law affecting property held in trust or in an estate; [1993, c. 568, §1 (NEW).]

(5). To disclaim any power granted by any document, statute or rule of law that, in the sole discretion of the fiduciary, may cause the fiduciary to incur personal liability under any environmental law; or [1993, c. 568, §1 (NEW).]

(6). To decline to serve or to resign as a fiduciary if the fiduciary reasonably believes that there is or may be a conflict of interest between the fiduciary's fiduciary capacity and the fiduciary's individual capacity because of potential claims or liabilities that may be asserted against the fiduciary on behalf of the trust or estate because of the type or condition of assets held in the trust or estate. [1993, c. 568, §1 (NEW).]

[ 1993, c. 568, §1 (NEW) .]

(b). For purposes of this section, "environmental law" means any federal, state or local law, rule, regulation or ordinance relating to protection of the environment or human health. For purposes of this section, "hazardous substances" has the meaning set forth in Title 38, section 1362, subsection 1.

[ 1993, c. 568, §1 (NEW) .]

(c). The fiduciary may charge the cost of any inspection, review, abatement, response, cleanup or remedial action authorized in this section against the income or principal of the trust or estate. A fiduciary is not personally liable to any beneficiary or other party for any decrease in value of assets in trust or in an estate by reason of the fiduciary's compliance with any environmental law, specifically including any reporting requirement under the law. Neither the acceptance by the fiduciary of property nor a failure by the fiduciary to inspect property creates an inference as to whether there is or may be any liability under any environmental law with respect to the property.

[ 1993, c. 568, §1 (NEW) .]

(d). This section applies to all estates and trusts in existence on and created after July 1, 1994.

[ 1993, c. 568, §1 (NEW) .]

(e). The exercise by a fiduciary of any of the powers granted in this section does not constitute a transaction that is affected by a substantial conflict of interest on the part of the fiduciary.

[ 1993, c. 568, §1 (NEW) .]

#### SECTION HISTORY

1993, c. 568, §1 (NEW).

### §1-112. GUARDIAN AD LITEM

(a). In any proceeding under this Title for which the court may appoint a guardian ad litem for a child involved in the proceeding, at the time of the appointment, the court shall specify the guardian ad litem's length of appointment, duties and fee arrangements.

[ 2005, c. 360, §1 (NEW) .]

(b). A guardian ad litem appointed on or after October 1, 2005 must meet the qualifications established by the Supreme Judicial Court.

[ 2005, c. 360, §1 (NEW) .]



(c). If, in order to perform the guardian ad litem's duties, the guardian ad litem needs information concerning the child or parents, the court may order the parents to sign an authorization form allowing the release of the necessary information. The guardian ad litem must be allowed access to the child by caretakers of the child, whether the caretakers are individuals, authorized agencies or child care providers.

[ 2005, c. 360, §1 (NEW) . ]

(d). The guardian ad litem shall use the standard of the best interest of the child as set forth in Title 19-A, section 1653, subsection 3. The guardian ad litem shall make the wishes of the child known to the court if the child has expressed them, regardless of the recommendation of the guardian ad litem.

[ 2005, c. 360, §1 (NEW) . ]

(e). If required by the court, the guardian ad litem shall make a final written report to the parties and the court reasonably in advance of a hearing. The report is admissible as evidence and subject to cross-examination and rebuttal, whether or not objected to by a party.

[ 2005, c. 360, §1 (NEW) . ]

(f). A person appointed by the court as a guardian ad litem acts as the court's agent and is entitled to quasi-judicial immunity for acts performed within the scope of the duties of the guardian ad litem.

[ 2005, c. 360, §1 (NEW) . ]

(g). A guardian ad litem must be given notice of all civil or criminal hearings and proceedings, including, but not limited to, grand juries, in which the child is a party or a witness. The guardian ad litem shall protect the best interests of the child in those hearings and proceedings, unless otherwise ordered by the court.

[ 2005, c. 360, §1 (NEW) . ]

#### SECTION HISTORY

2005, c. 360, §1 (NEW).

## Part 2: DEFINITIONS

### §1-201. GENERAL DEFINITIONS

Subject to additional definitions contained in the subsequent Articles which are applicable to specific Articles or parts, and unless the context otherwise requires, in this Code: [ 1979, c. 540, §1 (NEW) . ]

(1). "Application" means a written request to the registrar for an order of informal probate or appointment under Part 3 of Article III.

[ 1979, c. 540, §1 (NEW) . ]

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

[ 1979, c. 540, §1 (NEW) . ]

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

[ 1979, c. 540, §1 (NEW) . ]

(4). "Claims", in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person whether arising in contract, in tort or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes, or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

[ 1979, c. 540, §1 (NEW) . ]

(5). "Court" means any one of the several courts of probate of this State established as provided in Title 4, sections 201 and 202.

[ 1979, c. 540, §1 (NEW) . ]

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

[ 1979, c. 540, §1 (NEW) . ]

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

[ 1979, c. 540, §1 (NEW) . ]

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

[ 1979, c. 540, §1 (NEW) . ]

(9). "Disability" means cause for a protective order as described by section 5-401.

[ 1979, c. 540, §1 (NEW) . ]

(10). "Distributee" means any person who has received property of a decedent from his personal representative other than as creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

[ 1979, c. 540, §1 (NEW) . ]

(10-A). "Domestic partner" means one of 2 unmarried adults who are domiciled together under long-term arrangements that evidence a commitment to remain responsible indefinitely for each other's welfare.

[ 2003, c. 672, §2 (NEW) . ]

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

[ 1979, c. 540, §1 (NEW) . ]

(12). "Exempt property" means that property of a decedent's estate which is described in section 2-402.

[ 1979, c. 540, §1 (NEW) . ]

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

[ 1979, c. 540, §1 (NEW) . ]

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

[ 1979, c. 540, §1 (NEW) . ]

(15). "Formal proceedings" means those within the exclusive jurisdiction of the court conducted before a judge with notice to interested persons.

[ 1979, c. 540, §1 (NEW) . ]

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

[ 1979, c. 540, §1 (NEW) . ]

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

[ 2003, c. 672, §3 (AMD) . ]

(18). "Incapacitated person" is as defined in section 5-101.

[ 1979, c. 540, §1 (NEW) . ]

(19). "Informal proceedings" mean those conducted without notice to interested persons by an officer of the Court acting as a registrar for probate of a will or appointment of a personal representative.

[ 1979, c. 540, §1 (NEW) . ]

(20). "Interested person" includes heirs, devisees, children, spouses, domestic partners, creditors, beneficiaries and any others having a property right in or claim against a trust estate or the estate of a decedent, ward or protected person that may be affected by the proceeding. It also includes persons having priority for appointment as personal representative, and other fiduciaries representing interested persons. In any proceeding or hearing under Article 5 affecting a trust estate or estate, when the ward or protected person has received benefits from the Veterans Administration within 3 years, the administrator of Veterans Affairs of the United States is an "interested person." The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

[ 2003, c. 672, §4 (AMD) . ]

**(21).** "Issue" of a person means all his lineal descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in this Code.

[ 1979, c. 540, §1 (NEW) . ]

**(21-A).** "Judge" means the judge of any one of the several courts of probate as defined in paragraph (5).

[ 1979, c. 540, §1 (NEW) . ]

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

[ 1979, c. 540, §1 (NEW) . ]

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

[ 1979, c. 540, §1 (NEW) . ]

**(24).** "Minor" means a person who is under 18 years of age.

[ 1979, c. 540, §1 (NEW) . ]

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

[ 1979, c. 540, §1 (NEW) . ]

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

[ 1979, c. 540, §1 (NEW) . ]

**(26-A).** "Oath" means an oath or affirmation.

[ 1979, c. 663, §§123, 123-A (AMD) . ]

**(27).** "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, 2 or more persons having a joint or common interest, or any other legal entity.

[ 1979, c. 540, §1 (NEW) . ]

**(28).** "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this Code by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

[ 1979, c. 540, §1 (NEW) . ]

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

[ 1979, c. 540, §1 (NEW) . ]

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

[ 1979, c. 540, §1 (NEW) . ]

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

[ 1979, c. 540, §1 (NEW) . ]

**(32).** "Proceeding" includes any civil action in any court of competent jurisdiction.

[ 1979, c. 540, §1 (NEW) . ]

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

[ 1979, c. 540, §1 (NEW) . ]

**(34).** "Protected person" is as defined in section 5-101.

[ 1979, c. 540, §1 (NEW) . ]

**(35).** "Protective proceeding" is as defined in section 5-101.

[ 1979, c. 540, §1 (NEW) . ]

**(36).** "Register" means the official of the court elected or appointed as provided in section 1-501, or any other person performing the functions of register as provided in section 1-307.

[ 1979, c. 540, §1 (NEW) . ]

**(36-A).** "Registered domestic partners" means domestic partners who are registered in accordance with Title 22, section 2710.

[ 2003, c. 672, §5 (NEW) . ]

**(37).** "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing. It shall not include an account as defined in section 6-101, paragraph (1).

[ 1979, c. 540, §1 (NEW) . ]

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

[ 1979, c. 540, §1 (NEW) . ]

**(39).** "Special administrator" means a personal representative as described by sections 3-614 through 3-618.

[ 1979, c. 540, §1 (NEW) . ]

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

[ 1979, c. 540, §1 (NEW) . ]

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

[ 1979, c. 540, §1 (NEW) . ]

(42). "Successors" means those persons, other than creditors, who are entitled to property of a decedent under his will or this Code.

[ 1979, c. 540, §1 (NEW) . ]

(43). "Supervised administration" refers to the proceedings described in Article III, Part 5.

[ 1979, c. 540, §1 (NEW) . ]

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

[ 1979, c. 540, §1 (NEW) . ]

(45). "Trust" includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in Article VI, custodial arrangements pursuant to Title 33, sections 1001 to 1010, or other special custodial arrangements, business trusts provided for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

[ 1979, c. 540, §1 (NEW) . ]

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

[ 1979, c. 540, §1 (NEW) . ]

(47). "Ward" is as defined in section 5-101.

[ 1979, c. 540, §1 (NEW) . ]

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

[ 1979, c. 540, §1 (NEW) . ]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1979, c. 663, §§123,123-A (AMD). 1979, c. 690, §3 (AMD). 2003, c. 672, §§2-5 (AMD).

### Part 3: SCOPE, JURISDICTION AND COURTS

### §1-301. TERRITORIAL APPLICATION

Except as otherwise provided in this Code, this Code applies to (1) the affairs and estates of decedents, missing persons, and persons to be protected, domiciled in this State, (2) the property of nonresidents located in this State or property coming into the control of a fiduciary who is subject to the laws of this State, (3) incapacitated persons and minors in this State, (4) survivorship and related accounts in this State, and (5) trusts subject to administration in this State. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### §1-302. SUBJECT MATTER JURISDICTION

(a). To the full extent provided in sections 3-105, 5-102 and 5-402, the court has jurisdiction over all subject matter relating to (1) estates of decedents, including construction of wills and determination of heirs and successors of decedents and estates of protected persons; (2) protection of minors and incapacitated persons; and (3) trusts.

[ 2003, c. 618, Pt. B, §4 (AMD); 2003, c. 618, Pt. B, §20 (AFF) .]

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

[ 1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 2003, c. 618, §B4 (AMD). 2003, c. 618, §B20 (AFF).

### §1-303. VENUE; MULTIPLE PROCEEDINGS; TRANSFER

(a). Where a proceeding under this Code could be maintained in more than one place in this State, the court in which the proceeding is first commenced has the exclusive right to proceed.

[ 1979, c. 540, §1 (NEW) .]

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

[ 1979, c. 540, §1 (NEW) .]

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

[ 1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

**§1-304. RULE-MAKING POWER**

(a). The Supreme Judicial Court shall have the power to prescribe by general rules the forms, practice and procedure, including rules of evidence, to be followed in all proceedings under this Code and all appeals therefrom; provided that the rules shall be consistent with the provisions of this Code and shall not abridge, enlarge or modify any substantive right.

[ 1979, c. 540, §1 (NEW) .]

(b). These rules shall be promulgated to take effect on the effective date of this Code. After their promulgation, the Supreme Judicial Court may repeal, amend, modify or add to them from time to time with or without a waiting period. After the effective date of the rules as promulgated or amended, all laws in conflict therewith shall be of no further force or effect, except that in the event of conflict with a provision of this Code, the Code provision shall prevail.

[ 1979, c. 540, §1 (NEW) .]

## SECTION HISTORY

1979, c. 540, §1 (NEW).

**§1-305. RECORDS AND CERTIFIED COPIES; JUDICIAL SUPERVISION**

The register shall maintain records and files and provide copies of documents as provided in sections 1-501 through 1-511 and such further records and copies as the Supreme Judicial Court may by rule provide. The register shall be subject to the supervision and authority of the judge of the court in which such register serves. [1979, c. 540, §1 (NEW).]

## SECTION HISTORY

1979, c. 540, §1 (NEW).

**§1-306. NO JURY TRIAL; REMOVAL**

(a). The court shall sit without a jury.

[ 1979, c. 540, §1 (NEW) .]

(b). Upon timely demand by any party any proceeding not within the exclusive jurisdiction of the court may be removed for trial to the Superior Court under such procedures as the Supreme Judicial Court may by rule provide.

[ 1979, c. 540, §1 (NEW) .]

## SECTION HISTORY

1979, c. 540, §1 (NEW).

**§1-307. REGISTER; POWERS**

The register has the power to probate wills and appoint personal representatives as provided in sections 3-302 and 3-307 and to perform other duties as set out in this Title generally. The acts and orders that this Code specifies as performable by the register may also be performed by a judge of the court or by a deputy register appointed under the provisions of section 1-506. [1993, c. 148, §1 (AMD).]

## SECTION HISTORY

1979, c. 540, §1 (NEW). 1993, c. 148, §1 (AMD).



### **§1-308. APPEALS**

Appeals from all final judgments, orders and decrees of the court shall lie to the Supreme Judicial Court, sitting as the law court, as in other civil actions. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§1-309. JUDGES**

A judge of the court shall be chosen and serve as provided in Title 4, sections 301 to 311. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§1-310. OATH OR AFFIRMATION ON FILED DOCUMENTS**

Except as otherwise specifically provided in this Code or by rule, every document filed with the Court under this Code including applications, petitions, and demands for notice, shall be deemed to include an oath, affirmation, or statement to the effect that its representations are true as far as the person executing or filing it knows or is informed, and penalties for perjury may follow deliberate falsification therein. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

## **Part 4: NOTICE, PARTIES AND REPRESENTATION IN ESTATE LITIGATION AND OTHER MATTERS**

### **§1-401. NOTICE**

Whenever notice of any proceeding or any hearing is required under this Code, it shall be given to any interested person in such manner as the Supreme Judicial Court shall by rule provide. Each notice shall include notification of any right to contest or appeal and shall be proved by the filing of an affidavit of notice. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§1-402. NOTICE; WAIVER**

A person, including a guardian ad litem, conservator, or other fiduciary, may waive notice in such manner as the Supreme Judicial Court shall by rule provide. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§1-403. PLEADINGS; WHEN PARTIES BOUND BY OTHERS; NOTICE**

In formal proceedings involving trusts or estates of decedents, minors, protected persons, or incapacitated persons, and in judicially supervised settlements, the following apply: [1979, c. 540, §1 (NEW).]

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

[ 1979, c. 540, §1 (NEW) .]

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

(i). Orders binding the sole holder or all coholders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, bind other persons to the extent their interests, as objects, takers in default, or otherwise, are subject to the power. [1979, c. 540, §1 (NEW) .]

(ii). To the extent there is no conflict of interest between them or among persons represented, orders binding a conservator bind the person whose estate he controls; orders binding a guardian bind the ward if no conservator of his estate has been appointed; orders binding a trustee bind beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust, to review the acts or accounts of a prior fiduciary and in proceedings involving creditors or other third parties; and orders binding a personal representative bind persons interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate. If there is no conflict of interest and no conservator or guardian has been appointed, a parent may represent his minor child. [1979, c. 540, §1 (NEW) .]

(iii). An unborn or unascertained person who is not otherwise represented is bound by an order to the extent his interest is adequately represented by another party having a substantially identical interest in the proceeding. [1979, c. 540, §1 (NEW) .]

[ 1979, c. 540, §1 (NEW) .]

(3). Notice is required as follows:

(i). Notice as prescribed by section 1-401 shall be given to every interested person or to one who can bind an interested person as described in (2)(i) or (2)(ii) above. Notice may be given both to a person and to another who may bind him. [1979, c. 540, §1 (NEW) .]

(ii). Notice is given to unborn or unascertained persons, who are not represented under (2)(i) or (2)(ii) above, by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons. [1979, c. 540, §1 (NEW) .]

[ 1979, c. 540, §1 (NEW) .]

(4). At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record or the proceeding.

[ 1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW) .

## Part 5: REGISTERS OF PROBATE

### §1-501. ELECTION; BOND; VACANCIES; SALARIES; COPIES

Registers of probate are elected or appointed as provided in the Constitution of Maine. Their election is effected and determined as is provided respecting county commissioners by Title 30-A, chapter 1, subchapter II, and they enter upon the discharge of their duties on the first day of January following their election; but the term of those appointed to fill vacancies commences immediately. All registers, before acting, shall give

bond to the treasurer of their county with sufficient sureties in the sum of \$2,500, except that this sum must be \$10,000 for Cumberland County. Every register, having executed such bond, shall file it in the office of the clerk of the county commissioners of that register's county, to be presented to them at their next meeting for approval. After the bond has been so approved, the clerk shall record it and certify the fact thereon, and retaining a copy thereof, deliver the original to the register, who shall deliver it to the treasurer of the county within 10 days after its approval, to be filed in the treasurer's office. Vacancies caused by death, resignation, removal from the county, permanent incapacity as defined in Title 30-A, section 1, subsection 2-A or any other reason must be filled as provided in the Constitution of Maine. In the case of a vacancy in the term of a register of probate who was nominated by primary election before the general election, the register of probate appointed by the Governor to fill the vacancy until a successor is chosen at election must be enrolled in the same political party as the register of probate whose term is vacant. In making the appointment, the Governor shall choose from any recommendations submitted to the Governor by the county committee of the political party from which the appointment is to be made. [1995, c. 683, §2 (AMD).]

Registers of probate in the several counties are entitled to receive annual salaries as set forth in Title 30-A, section 2. [1995, c. 245, §2 (AMD).]

The salaries of the registers of probate must be in full compensation for the performance of all duties required of registers of probate. They may make copies of wills, accounts, inventories, petitions and decrees and furnish the same to persons calling for them and may charge a reasonable fee for such service, which is considered a fee for the use of the county. Exemplified copies of the record of the probate of wills and the granting of administrations, guardianships and conservatorships, copies of petitions and orders of notice thereon for personal service, appeal copies and the statutory fees for abstracts and copies of the waiver of wills and other copies required to be recorded in the registry of deeds are considered official fees for the use of the county. [1995, c. 245, §2 (AMD).]

This section may not be construed to change or repeal any provisions of law requiring the furnishing of certain copies without charge. [1995, c. 245, §2 (AMD).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1987, c. 737, §§C33,C106 (AMD). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,C10 (AMD). 1995, c. 245, §2 (AMD). 1995, c. 683, §2 (AMD).

### **§1-502. CONDITION OF BOND**

The condition of such bond shall be to account, according to law, for all fees received by him or payable to him by virtue of his office and to pay the same to the county treasurer by the 15th day of every month following the month in which they were collected, as provided by law; to keep up, seasonably and in good order, the records of the court; to make and keep correct and convenient alphabets of the records and to faithfully discharge all other duties of the office. If such register forfeits his bond, he is thenceforth disqualified from holding said office, and neglect to complete his records for more than 6 months at any time, sickness or extraordinary casualty excepted, shall be adjudged a forfeiture. [1981, c. 40, §2 (AMD).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1981, c. 40, §2 (AMD).

### **§1-503. DUTIES; RECORDS; BINDING OF PAPERS**

Registers of probate have the care and custody of all files, papers and books belonging to the probate office and shall duly record all wills probated formally or informally, letters of authority of a personal representative, guardianship or conservatorship issued, bonds approved, accounts filed or allowed, all informal applications and findings, all petitions, decrees, orders or judgments of the judge, including all petitions, decrees or orders relating to adoptions and changes of names and other matters, as the judge directs. Registers of probate shall keep a docket of all probate cases and, under the appropriate heading of each case,

make entries of each motion, order, decree and proceeding so that at all times the docket shows the exact condition of each case. Any register may act as an auditor of accounts when requested to do so by the judge and the judge's decision is final unless appeal is taken in the same manner as other probate appeals. The records may be attested by the volume and it is deemed to be a sufficient attestation of those records when each volume bears the attest with the written signature of the register or other person authorized by law to attest those records. The registers of probate may bind in volumes of convenient size original inventories and accounts filed in their respective offices and, when bound and indexed, those inventories and accounts are deemed to be recorded in all cases when the law requires a record to be made and no further record is required. [1993, c. 148, §2 (AMD).]

A facsimile of the signature of the register of probate or deputy register of probate imprinted at his direction upon any instrument, certification or copy which is customarily certified by him or recorded in the probate office, shall have the same validity as his signature. [1981, c. 470, §41 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1981, c. 470, §A41 (AMD). 1993, c. 148, §2 (AMD).

### **§1-504. CERTIFICATION OF WILLS, APPOINTMENTS OF PERSONAL REPRESENTATIVES AND ELECTIVE SHARE PETITIONS INVOLVING REAL ESTATE**

Within 30 days after a will has been proved or allowed, or an appointment of a personal representative has been made upon an assumption of intestate status and where the petition for the appointment indicates that the deceased owned real estate, or a petition for an elective share has been filed where the will or the petition upon which appointment of a personal representative has been granted indicates that the deceased owned real estate, the register shall make out and certify to the register of deeds in the county where any affected real estate is situated (1) a true copy of so much of the will as devises real estate, (2) an abstract of the appointment of the personal representative, or (3) a true copy or abstract of the petition for an elective share, as the case may be. Each certification shall include a description of the real estate, so far as it can be furnished from the probated will or the petition upon which the appointment was made, and the name of the decedent and of the devisees or heirs. In the case of a will, the certification shall also set forth the date of the allowance of the will and designate whether it was probated formally or informally. In the case of the formal probate of a will that was previously informally probated, and of an informally probated will that was subsequently denied probate in formal proceedings, the register of probate shall certify such formal probate or formal denial of probate to the register of deeds to which the prior informally probated will was certified, setting forth the date of the formal probate or denial. The register of deeds receiving such copy or certification shall forthwith file the same, minuting thereon the time of the reception thereof, and record it in the same manner as a deed of real estate. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§1-505. NOTICE TO BENEFICIARIES; FURNISHING OF COPIES**

Registers of probate shall, within 30 days after any will is probated, notify by mail all beneficiaries under that will that devises have been made to them, stating the name of the testator and the name of the personal representative, if one has been appointed at the time this notification is sent. Beneficiaries in a will must, upon application to the register of probate, be furnished with a copy of the probated will upon payment of a fee of \$1 per page. [2003, c. 14, §1 (AMD).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 2003, c. 14, §1 (AMD).

## §1-506. DEPUTY REGISTER OF PROBATE

Any register of probate in this State may appoint a deputy register of probate for the county, subject to the requirements of Title 30-A, section 501. The deputy may perform any of the duties prescribed by law to be performed by the register of probate. His signature as the deputy shall have the same force and effect as the signature of the register. The deputy shall give bond to the county for the faithful discharge of his duties in such sum and in the same manner as the register of probate. The deputy register shall act as register in the event of a vacancy or absence of the register, until the register resumes his duties or another is qualified as register. The deputy register shall receive an annual salary as established by the register and approved by the county commissioners. [1987, c. 737, Pt. C, §§34, 106 (AMD); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8,10 (AMD).]

In case of the absence of the register in any county where no deputy has been appointed as above authorized, or a vacancy in the office of register of probate due to death, resignation or any other cause, the judge shall appoint a suitable person to act as register pro tempore until the register resumes his duties or another is qualified as register. He shall be sworn and, if the judge requires it, give bond as in the case of the register. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW). 1981, c. 394, §1 (AMD). 1987, c. 737, §§C34,C106 (AMD). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,C10 (AMD).

## §1-507. INSPECTION OF REGISTER'S CONDUCT OF OFFICE

Every judge of probate shall constantly inspect the conduct of the register with respect to his records and the duties of his office, and give information in writing of any breach of his bond to the treasurer of his county, who shall bring civil action. The money thus recovered shall be applied toward the expenses of completing the records of such register under the direction of said judge and the surplus, if any, shall inure to the county. If it is not sufficient for that purpose, the treasurer may recover the deficiency from the register in a civil action. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## §1-508. REGISTER INCAPABLE OR NEGLECTS DUTIES

When a register is unable to perform his duties or neglects them, the judge shall certify such inability or neglect to the county treasurer, the time of its commencement and termination, and what person has performed the duties for the time. Such person shall be paid by the treasurer in proportion to the time that he has served and the amount shall be deducted from the register's salary. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## §1-509. RECORDS IN CASE OF VACANCY

When there is a vacancy in the office of register and the records are incomplete, they may be completed and certified by the person appointed to act as register or by the register's successor. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## §1-510. REGISTER OR PROBATE COURT EMPLOYEE; PROHIBITED ACTIVITIES

### 1. Prohibited activities. A register may not:

A. Be an attorney or counselor in or out of court in an action or matter pending in the court of which the register is register or in an appeal in such action or matter; [2003, c. 452, Pt. J, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. Be administrator, guardian, commissioner of insolvency, appraiser or divider of an estate, in a case within the jurisdiction of the court of which the register is register, except as provided in Title 4, section 307, or be in any manner interested in the fees and emoluments arising from such an estate in that capacity; or [2003, c. 452, Pt. J, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

C. Commence or conduct, either personally or by agent or clerk, any matter, petition, process or proceeding in the court of which the register is register, in violation of this section. [2003, c. 452, Pt. J, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[ 2003, c. 452, Pt. J, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

**2. Assistance in drafting.** Except as otherwise provided in this section, a register may not draft or aid in drafting documents or paper that the register is by law required to record in full or in part. A register may aid in drafting applications in informal proceedings, petitions or sworn statements relating to the closing of decedents' estates that have not been contested prior to closing, applications for change of name and petitions for guardians of minors. A register or an employee of the Probate Court may not charge fees or accept anything of value for assisting in the drafting of documents to be used or filed in the court of which the person is the register or an employee.

[ 2003, c. 452, Pt. J, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

### 3. Penalties. The following penalties apply to violations of this section.

A. A register who violates subsection 1 commits a Class E crime. Violation of subsection 1 is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A. [2003, c. 452, Pt. J, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. A register or employee of the Probate Court who violates subsection 2 is subject to a civil penalty of not more than \$100, to be recovered by a complainant in a civil action for the complainant's benefit or by indictment for the benefit of the county. [2003, c. 452, Pt. J, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[ 2003, c. 452, Pt. J, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1981, c. 165, (AMD). 1981, c. 470, §A42 (AMD). 2003, c. 452, §X2 (AFF). 2003, c. 452, §J1 (RPR).

## §1-511. FEES FOR APPROVED BLANKS AND FORMS

For all approved blanks, forms or schedule paper required in probate court proceedings, the register shall charge fees which shall be set by the register and approved by the county commissioners, so as not to incur a loss to the county for such services. Such fees shall be payable by the register to the county treasurer for the use and benefit of the county. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

## Part 6: COSTS AND FEES

### §1-601. COSTS IN CONTESTED CASES IN PROBATE COURT

In contested cases in the original or appellate court of probate, costs may be allowed to either party, including reasonable witness fees, cost of depositions, hospital records or medical reports and attorney's fees, to be paid to either or both parties, out of the estate in controversy, as justice requires. In those cases where a will is being contested on the grounds of undue influence or mental capacity, attorney's fees and costs shall not be allowed to the party contesting the will if he is unsuccessful. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### §1-602. FILING AND CERTIFICATION FEES

The register of probate must receive the following fees for filing or certifying documents: [1997, c. 18, §1 (AMD).]

(1). For making and certifying to the register of deeds copies of devises of real estate, abstracts of petitions for appointment of a personal representative or for an elective share and any other document for which certification is required, \$15, plus the fee for recording as provided by Title 33, section 751, except as otherwise expressly provided by law. The fee must be paid by the personal representative, petitioner or other person filing the document to be certified when the copy of the devise, abstract, petition for elective share or other document for which certification is required is requested. The register of probate shall deliver the certified document to the register of deeds together with the fee for recording as provided by Title 33, section 751;

[ 2005, c. 654, §1 (AMD) .]

(2). For receiving and entering each petition or application for all estates, testate and intestate, including foreign estates, and the filing of a notice by a domiciliary foreign personal representative, except for the filing of a successor personal representative, when the value of the estate is:

(i). [1993, c. 148, §4 (RP).]

(i-a). For filing a will for no probate, no charge; [2005, c. 654, §1 (NEW).]

(ii). For filing a will to be probated and without an appointment, \$15; [2005, c. 654, §1 (AMD).]

(iii). \$10,000 and under, \$20; [2005, c. 654, §1 (AMD).]

(iv). \$10,001 to \$20,000, \$40; [2005, c. 654, §1 (AMD).]

(v). \$20,001 to \$30,000, \$60; [2005, c. 654, §1 (AMD).]

(vi). \$30,001 to \$40,000, \$75; [2005, c. 654, §1 (AMD).]

(vii). \$40,001 to \$50,000, \$95; [2005, c. 654, §1 (AMD).]

(viii). \$50,001 to \$75,000, \$125; [2005, c. 654, §1 (AMD).]

(ix). \$75,001 to \$100,000, \$190; [2005, c. 654, §1 (AMD).]

(x). \$100,001 to \$150,000, \$250; [2005, c. 654, §1 (AMD).]

(xi). \$150,001 to \$200,000, \$325; [2005, c. 654, §1 (AMD).]

(xii). \$200,001 to \$250,000, \$375; [2005, c. 654, §1 (AMD).]

(xiii). \$250,001 to \$300,000, \$450; [2005, c. 654, §1 (AMD).]

(xiv). \$300,001 to \$400,000, \$500; [2005, c. 654, §1 (AMD).]

- (xv). \$400,001 to \$500,000, \$575; [2005, c. 654, §1 (AMD).]
- (xvi). \$500,001 to \$750,000, \$625; [2005, c. 654, §1 (AMD).]
- (xvii). \$750,001 to \$1,000,000, \$700; [2005, c. 654, §1 (AMD).]
- (xviii). \$1,000,001 to \$1,500,000, \$750; [2005, c. 654, §1 (AMD).]
- (xix). \$1,500,001 to \$2,000,000, \$875; or [2005, c. 654, §1 (AMD).]
- (xx). More than \$2,000,000, \$950, and continuing in steps of \$100 for every increase in value of \$500,000 or part thereof above \$2,500,000; [2005, c. 654, §1 (AMD).]

[ 2005, c. 654, §1 (AMD) .]

- (3).** For making copies from the records of the court, \$1 for each page;

[ 2005, c. 654, §1 (AMD) .]

- (4).** For each certificate, under seal of the court, of the appointment and qualification of a personal representative, guardian, conservator or trustee, \$5, and for each double certificate, \$10;

[ 2005, c. 654, §1 (AMD) .]

- (5).** For filing a petition for appointment as guardian, \$50;

[ 2005, c. 654, §1 (AMD) .]

- (6).** For filing application for involuntary hospitalization, \$10;

[ 2005, c. 654, §1 (AMD) .]

- (7).** For filing a joined petition for guardian and conservator, \$75;

[ 2005, c. 654, §1 (AMD) .]

- (8).** For filing any other formal proceeding, \$25;

[ 2005, c. 654, §1 (AMD) .]

- (9).** For filing a petition for appointment of conservator, \$50;

[ 2005, c. 654, §1 (AMD) .]

- (10).** For all other subsequent informal appointments, \$25; and

[ 2005, c. 654, §1 (AMD) .]

- (11).** For filing a petition for elective share, \$120.

[ 2005, c. 654, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1979, c. 719, §§1-3 (AMD). 1981, c. 279, §10 (AMD). 1981, c. 470, §A43 (AMD). 1983, c. 262, §§1,2 (AMD). 1987, c. 392, §§1-4 (AMD). 1993, c. 148, §§3,4 (AMD). 1997, c. 18, §1 (AMD). 2003, c. 383, §1 (AMD). 2005, c. 654, §1 (AMD).



### **§1-603. REGISTERS TO ACCOUNT MONTHLY FOR FEES**

Registers of probate shall account for each calendar month under oath to the county treasurers for all fees received by them or payable to them by virtue of the office, specifying the items, and shall pay the whole amount for each calendar month to the treasurers of their respective counties not later than the 15th day of the following month. [1981, c. 40, §3 (AMD).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1981, c. 40, §3 (AMD).

### **§1-604. EXPENSES OF PARTITION**

When a partition of real estate is made by order of a judge of probate, the expenses thereof shall be paid by the parties interested in proportion to their interests; but when such expenses accrue prior to the closing order or statement of the personal representative of the deceased owner of such real estate, having in his hands sufficient assets for the purpose, he may pay such expenses and allow the same in his account. In case of neglect or refusal of any person liable to pay such expenses, the judge may issue a warrant of distress against such delinquent for the amount due from him and costs of process. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§1-605. COMPENSATION OF REPORTERS**

Reporters appointed under Title 4, sections 751 to 756, shall, if a transcript is requested by the court or a party, file the original transcript with the court and receive the same compensation as provided by law for temporary court reporters, and travel at the rate of 10¢ a mile. [1979, c. 540, §1 (NEW).]

Transcript rates shall be in accordance with Title 4, section 651, for transcript furnished for the files of the court and shall be paid by the county in which the court or examination is held, after the reporter's bill has been allowed by the judge of the court in which the services were rendered. In probate matters, the personal representative, conservator or guardian shall, in each case out of the estate in his hands, pay to the register for the county the amount of the reporter's fees, giving such fees the same priority as provided in section 3-815 for other costs and expenses of administration, or as otherwise provided for in the case of insolvent estates, provided that the court can order payment by the county in case the estate assets are not sufficient. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§1-606. REPORTERS TO FURNISH COPIES**

Reporters shall furnish correct typewritten copies of the oral testimony taken at any hearing or examination, to any person calling for the same, upon payment of transcript rates prescribed in Title 4, section 651. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

## §1-607. SURCHARGE FOR RESTORATION, STORAGE AND PRESERVATION OF RECORDS

(1). In addition to any other fees required by law, a register of probate shall collect a surcharge of \$10 per petition, application or complaint, except for name changes, filed in the Probate Court.

[ 2005, c. 210, §1 (NEW) . ]

(2). The surcharge imposed in subsection (1) must be transferred to the county treasurer, who shall deposit it in a separate, nonlapsing account within 30 days of receipt. Money in the account is not available for use as general revenue of the county. Interest earned on the account must be credited to the account.

[ 2005, c. 210, §1 (NEW) . ]

(3). The money in the account established in subsection (2) must be used for the restoration, storage and preservation of the records filed in the office of the register of probate and in Probate Court. No withdrawals from this account may be made without the express written request or approval of the register of probate.

[ 2005, c. 210, §1 (NEW) . ]

(4). The judge of probate may waive the surcharge in subsection (1) if the judge believes that it will prove a hardship for the individual filing the petition, application or complaint.

[ 2005, c. 210, §1 (NEW) . ]

### SECTION HISTORY

2005, c. 210, §1 (NEW) .

## §1-608. FEES NOT ESTABLISHED IN STATUTE

Unless otherwise specifically stated in statute or in the Rules of Probate Procedure as published by the Supreme Judicial Court, the Probate Court shall charge the same fee as charged by the District Court or the Superior Court for similar procedures. [2005, c. 654, §2 (NEW) . ]

### SECTION HISTORY

2005, c. 654, §2 (NEW) .

## Part 7: CHANGE OF NAME

### §1-701. PETITION TO CHANGE NAME

(a). If a person desires to have that person's name changed, the person may petition the judge of probate in the county where the person resides. If the person is a minor, the person's legal custodian may petition in the person's behalf. If there is a proceeding involving custody or other parental rights with respect to the minor pending in the District Court, the petition must be filed in the District Court.

[ 2015, c. 460, §5 (AMD) . ]

(b). The judge, after due notice, may change the name of the person. To protect the person's safety, the judge may limit the notice required if the person shows by a preponderance of the evidence that:

(1). The person is a victim of abuse; and [2001, c. 163, §1 (NEW) . ]

(2). The person is currently in reasonable fear of the person's safety. [ 2001, c. 163, §1 (NEW) . ]

[ 2001, c. 163, §1 (NEW) . ]

(c). The judge shall make and preserve a record of the name change. If the judge limited the notice required under subsection (b), the judge may seal the records of the name change.

[ 2001, c. 667, Pt. A, §41 (AMD) . ]

(d). The fee for filing the name change petition is \$40.

[ 2005, c. 654, §3 (AMD) . ]

(e). The judge may require the person seeking a name change to undergo one or more of the following background checks: a criminal history record check; a motor vehicle record check; or a credit check. The judge may require the person to pay the cost of each background check required.

[ 2003, c. 538, §1 (NEW) . ]

(f). The judge may not change the name of the person if the judge has reason to believe that the person is seeking the name change for purposes of defrauding another person or entity or for purposes otherwise contrary to the public interest.

[ 2003, c. 538, §1 (NEW) . ]

#### SECTION HISTORY

1995, c. 694, §C5 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 18, §2 (AMD). 1997, c. 18, §6 (AFF). 2001, c. 163, §1 (RPR). 2001, c. 667, §A41 (AMD). 2003, c. 538, §1 (AMD). 2005, c. 654, §3 (AMD). 2015, c. 460, §5 (AMD).

## Part 8: PROBATE AND TRUST LAW ADVISORY COMMISSION

### §1-801. COMMISSION ESTABLISHED

The Probate and Trust Law Advisory Commission, established in Title 5, section 12004-I, subsection 73-B and referred to in this Part as "the commission," is created for the purpose of conducting a continuing study of the probate and trust laws of the State. [ 2009, c. 262, §2 (NEW) . ]

**1. Membership.** The commission is composed of 10 members who have experience in practicing probate and trust law or are knowledgeable about probate and trust law. The membership of the commission must include:

A. Two Probate Court Judges, appointed by the Chief Justice of the Supreme Judicial Court; [ 2009, c. 262, §2 (NEW) . ]

B. One Superior Court Justice, appointed by the Chief Justice of the Supreme Judicial Court; [ 2009, c. 262, §2 (NEW) . ]

C. Five members of the trusts and estates law section of the Maine State Bar Association, appointed by the Chief Justice of the Supreme Judicial Court; [ 2009, c. 262, §2 (NEW) . ]

D. One member representing the interests of older people, appointed by the Governor; and [ 2009, c. 262, §2 (NEW) . ]

E. The Attorney General, or the Attorney General's designee. [2009, c. 262, §2 (NEW).]

[2009, c. 262, §2 (NEW) .]

**2. Terms.** A member is appointed for a term of 3 years and may be reappointed.

[2009, c. 262, §2 (NEW) .]

**3. Vacancies.** In the event of the death or resignation of a member, the appointing authority under subsection 1 shall appoint a qualified person for the remainder of the term.

[2009, c. 262, §2 (NEW) .]

#### SECTION HISTORY

2009, c. 262, §2 (NEW).

### §1-802. CONSULTANTS; EXPERTS

Whenever it considers appropriate, the commission shall seek the advice of consultants or experts, including representatives of the legislative and executive branches, in fields related to the commission's duties. [2009, c. 262, §2 (NEW).]

#### SECTION HISTORY

2009, c. 262, §2 (NEW).

### §1-803. DUTIES

**1. Examine, evaluate and recommend.** The commission shall:

A. Examine this Title and Title 18-B and draft amendments that the commission considers advisable;

[2009, c. 262, §2 (NEW).]

B. Evaluate the operation of this Title and Title 18-B and recommend amendments based on the evaluation; [2009, c. 262, §2 (NEW).]

C. Examine current laws pertaining to probate and trust laws and recommend changes based on the examination; and [2009, c. 262, §2 (NEW).]

D. Examine any other aspects of the State's probate and trust laws, including substantive, procedural and administrative matters, that the commission considers relevant. [2009, c. 262, §2 (NEW).]

[2009, c. 262, §2 (NEW) .]

**2. Propose changes.** The commission may propose to the Legislature, at the start of each session, changes in the probate and trust laws and in related provisions that the commission considers appropriate.

[2009, c. 262, §2 (NEW) .]

#### SECTION HISTORY

2009, c. 262, §2 (NEW).

**§1-804. ORGANIZATION**

The Chief Justice of the Supreme Judicial Court shall notify all members of the commission of the time and place of the first meeting of the commission. At that time the commission shall organize, elect a chair, vice-chair and secretary-treasurer from its membership and adopt rules governing the administration of the commission and its affairs. The commission shall maintain financial records as required by the State Auditor. [2009, c. 262, §2 (NEW).]

## SECTION HISTORY

2009, c. 262, §2 (NEW).

**§1-805. FEDERAL FUNDS**

The commission may accept federal funds on behalf of the State. [2009, c. 262, §2 (NEW).]

## SECTION HISTORY

2009, c. 262, §2 (NEW).

## Article 2: INTESTATE SUCCESSION AND WILLS

### Part 1: INTESTATE SUCCESSION

#### §2-101. INTESTATE ESTATE

Any part of the estate of a decedent not effectively disposed of by his will passes to his heirs as prescribed in the following sections of this Code. [1979, c. 540, §1 (NEW).]

##### SECTION HISTORY

1979, c. 540, §1 (NEW).

#### §2-102. SHARE OF SPOUSE OR REGISTERED DOMESTIC PARTNER

The intestate share of the surviving spouse or surviving registered domestic partner is: [2003, c. 672, §6 (AMD).]

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

[ 2003, c. 672, §6 (AMD) .]

- (2). If there is no surviving issue but the decedent is survived by a parent or parents, the first \$50,000, plus 1/2 of the balance of the intestate estate;

[ 1979, c. 540, §1 (NEW) .]

- (3). If there are surviving issue all of whom are issue of the surviving spouse or surviving registered domestic partner also, the first \$50,000, plus 1/2 of the balance of the intestate estate; or

[ 2003, c. 672, §6 (AMD) .]

- (4). If there are surviving issue one or more of whom are not issue of the surviving spouse or surviving registered domestic partner, 1/2 of the intestate estate.

[ 2003, c. 672, §6 (AMD) .]

##### SECTION HISTORY

1979, c. 540, §1 (NEW). 2003, c. 672, §6 (AMD).

#### §2-103. SHARE OF HEIRS OTHER THAN SURVIVING SPOUSE OR SURVIVING REGISTERED DOMESTIC PARTNER

The part of the intestate estate not passing to the surviving spouse or surviving registered domestic partner under section 2-102, or the entire estate if there is no surviving spouse or surviving registered domestic partner, passes as follows: [2003, c. 672, §7 (AMD).]

- (1). To the issue of the decedent; to be distributed per capita at each generation as defined in section 2-106;

[ 1979, c. 540, §1 (NEW) .]

- (2). If there is no surviving issue, to the decedent's parent or parents equally;

[ 1979, c. 540, §1 (NEW) .]

(3). If there is no surviving issue or parent, to the issue of the parents or either of them to be distributed per capita at each generation as defined in section 2-106;

[ 1979, c. 540, §1 (NEW) .]

(4). If there is no surviving issue, parent or issue of a parent, but the decedent is survived by one or more grandparents or issue of grandparents, half of the estate passes to the paternal grandparents if both survive, or to the surviving paternal grandparent, or to the issue of the paternal grandparents if both are deceased to be distributed per capita at each generation as defined in section 2-106; and the other half passes to the maternal relatives in the same manner; but if there is no surviving grandparent or issue of grandparents on either the paternal or maternal side, the entire estate passes to the relatives on the other side in the same manner as the half; or

[ 2003, c. 672, §7 (AMD) .]

(5). If there is no surviving issue, parent or issue of a parent, grandparent or issue of a grandparent, but the decedent is survived by one or more great-grandparents or issue of great-grandparents, half of the estate passes to the paternal great-grandparents who survive, or to the issue of the paternal great-grandparents if all are deceased, to be distributed per capita at each generation as defined in section 2-106; and the other half passes to the maternal relatives in the same manner; but if there is no surviving great-grandparent or issue of a great-grandparent on either the paternal or maternal side, the entire estate passes to the relatives on the other side in the same manner as the half.

[ 2003, c. 672, §7 (AMD) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1981, c. 94, (AMD). 2003, c. 672, §7 (AMD).

### **§2-104. REQUIREMENT THAT HEIR SURVIVE DECEDENT FOR 120 HOURS**

Any person who fails to survive the decedent by 120 hours is deemed to have predeceased the decedent for purposes of homestead allowance, exempt property and intestate succession, and the decedent's heirs are determined accordingly. If the time of death of the decedent or of the person who would otherwise be an heir, or the times of death of both, cannot be determined, and it cannot be established that the person who would otherwise be an heir has survived the decedent by 120 hours, it is deemed that the person failed to survive for the required period. This section is not to be applied where its application would result in a taking of intestate estate by the State under section 2-105. [1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§2-105. NO TAKER**

If there is no taker under the provisions of this Article, the intestate estate passes to the State, except that an amount of funds included in the estate up to the total amount of restitution paid to the decedent pursuant to a court order for a crime of which the decedent was the victim passes to the Elder Victims Restitution Fund established in Title 34-A, section 1214-A. [2011, c. 241, §1 (AMD) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 2011, c. 241, §1 (AMD).

**§2-106. PER CAPITA AT EACH GENERATION**

If per capita at each generation representation is called for by this Code, the estate is divided into as many shares as there are surviving heirs in the nearest degree of kinship which contains any surviving heirs and deceased persons in the same degree who left issue who survived the decedent. Each surviving heir in the nearest of degree which contains any surviving heir is allocated one share and the remainder of the estate is divided in the same manner as if the heirs already allocated a share and their issue had predeceased the decedent. [1979, c. 540, §1 (NEW).]

## SECTION HISTORY

1979, c. 540, §1 (NEW).

**§2-107. KINDRED OF HALF BLOOD**

Relatives of the half blood inherit the same share they would inherit if they were of the whole blood. [1979, c. 540, §1 (NEW).]

## SECTION HISTORY

1979, c. 540, §1 (NEW).

**§2-108. AFTERBORN HEIRS**

Relatives of the decedent conceived before his death but born thereafter inherit as if they had been born in the lifetime of the decedent. [1979, c. 540, §1 (NEW).]

## SECTION HISTORY

1979, c. 540, §1 (NEW).

**§2-109. MEANING OF CHILD AND RELATED TERMS**

If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person: [1979, c. 540, §1 (NEW).]

(1). An adopted person is the child of an adopting parent and not of the natural parents except that an adopted child inherits from the natural parents and their respective kin if the adoption decree so provides, and except that adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and either natural parent. If a natural parent wishes an adopted child to inherit from the natural parents and their respective kin, the adoption decree must provide for that status;

[ 1993, c. 686, §1 (AMD); 1993, c. 686, §13 (AFF) .]

(2). In cases not covered by subsection (1), legal parentage of a child is determined under Title 19-A, chapter 61.

(i). [2015, c. 296, Pt. C, §3 (RP); 2015, c. 296, Pt. D, §1 (AFF).]

(ii). [2015, c. 296, Pt. C, §3 (RP); 2015, c. 296, Pt. D, §1 (AFF).]

(iii). [2015, c. 296, Pt. C, §3 (RP); 2015, c. 296, Pt. D, §1 (AFF).]

[ 2015, c. 296, Pt. C, §3 (AMD); 2015, c. 296, Pt. D, §1 (AFF) .]

(3). A divorce or judicial separation does not bar the issue of the marriage from inheriting.

[ 1995, c. 694, Pt. C, §6 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

## SECTION HISTORY



1979, c. 540, §1 (NEW). 1987, c. 736, §37 (AMD). 1993, c. 686, §1 (AMD). 1993, c. 686, §13 (AFF). 1995, c. 694, §C6 (AMD). 1995, c. 694, §E2 (AFF). 2015, c. 296, Pt. C, §3 (AMD). 2015, c. 296, Pt. D, §1 (AFF).

## §2-110. ADVANCEMENTS

If a person dies intestate as to all his estate, property which he gave in his lifetime to an heir is treated as an advancement against the latter's share of the estate only if declared in a contemporaneous writing by the decedent or acknowledged in writing by the heir to be an advancement. For this purpose the property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of death of the decedent, whichever first occurs. If a contemporaneous writing by the decedent establishes the value of the property advanced, that value shall apply. If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the intestate share to be received by the recipient's issue, unless the declaration or acknowledgment provides otherwise. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## §2-111. DEBTS TO DECEDENT

A debt owed to the decedent is not charged against the intestate share of any person except the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's issue. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## §2-112. ALIENAGE

No person is disqualified to take as an heir because he or a person through whom he claims is or has been an alien. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## §2-113. DOWER AND CURTESY ABOLISHED

The estates of dower and curtesy are abolished. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## §2-114. PERSONS RELATED TO DECEDENT THROUGH 2 LINES

A person who is related to the decedent through 2 lines of relationship is entitled to only a single share based on the relationship which would entitle him to the larger share. In cases where such an heir would take equal shares, he shall be entitled to the equivalent of a single share. The court shall equitably apportion the amount equivalent in value to the share denied such heir by the provisions of this section. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## Part 2: ELECTIVE SHARE OF SURVIVING SPOUSE

### §2-201. RIGHT TO ELECTIVE SHARE

(a). If a married person domiciled in this State dies, the surviving spouse has a right of election to take an elective share of 1/3 of the augmented estate under the limitations and conditions hereinafter stated.

[ 1979, c. 540, §1 (NEW) . ]

(b). If a married person not domiciled in this State dies, the right, if any, of the surviving spouse to take an elective share in property in this State is governed by the law of the decedent's domicile at death; provided that no claim under this subsection shall be made to real property located in this State which was conveyed for value by the decedent during his lifetime.

[ 1983, c. 441, §1 (AMD) . ]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1983, c. 441, §1 (AMD).

### §2-202. AUGMENTED ESTATE

The augmented estate means the estate reduced by funeral and administration expenses, homestead allowance, family allowances and exemptions, and enforceable claims, to which is added the sum of the following amounts: [1979, c. 540, §1 (NEW) . ]

(1). The value of property transferred to anyone other than a bona fide purchaser by the decedent at any time during marriage, to or for the benefit of any person other than the surviving spouse, to the extent that the decedent did not receive adequate and full consideration in money or money's worth for the transfer, if the transfer is of any of the following types:

(i). Any transfer under which the decedent retained at the time of his death the possession or enjoyment of, or right to income from, the property; [1979, c. 540, §1 (NEW) . ]

(ii). Any transfer to the extent that the decedent retained at the time of his death a power, either alone or in conjunction with any other person, to revoke or to consume, invade or dispose of the principal for his own benefit; [1979, c. 540, §1 (NEW) . ]

(iii). Any transfer whereby property is held at the time of decedent's death by decedent and another with right of survivorship; [1979, c. 540, §1 (NEW) . ]

(iv). Any transfer made to a donee within two years of death of the decedent to the extent that the aggregate transfers to any one donee in either of the years exceed \$3,000. [1979, c. 540, §1 (NEW) . ]

Any transfer is excluded if made with the written consent or joinder of the surviving spouse. Property is valued as of the decedent's death except that property given irrevocably to a donee during lifetime of the decedent is valued as of the date the donee came into possession or enjoyment if that occurs first. Nothing herein shall cause to be included in the augmented estate any life insurance, accident insurance, joint annuity, or pension payable to a person other than the surviving spouse. [1979, c. 540, §1 (NEW) . ]

(2). The value of property owned by the surviving spouse at the decedent's death, plus the value of property transferred by the spouse at any time during marriage to any person other than the decedent which would have been includible in the spouse's augmented estate if the surviving spouse had predeceased the decedent to the extent the owned or transferred property is derived from the decedent by any means other than testate or intestate succession without a full consideration in money or money's worth. For purposes of this paragraph:

(i). Property derived from the decedent includes, but is not limited to, any beneficial interest of the surviving spouse in a trust created by the decedent during his lifetime, any property appointed to the spouse by the decedent's exercise of a general or special power of appointment also exercisable in favor of others than the spouse, any proceeds of insurance, including accidental death benefits, on the life of the decedent attributable to premiums paid by him, any lump sum immediately payable and the commuted value of the proceeds of annuity contracts under which the decedent was the primary annuitant attributable to premiums paid by him, the commuted value of amounts payable after the decedent's death under any public or private pension, disability compensation, death benefit or retirement plan, exclusive of the Federal Social Security system, by reason of service performed or disabilities incurred by the decedent, any property held at the time of decedent's death by decedent and the surviving spouse with right of survivorship, any property held by decedent and transferred by contract to the surviving spouse by reason of the decedent's death and the value of the share of the surviving spouse resulting from rights in community property in this or any other state formerly owned with the decedent. Premiums paid by the decedent's employer, his partner, a partnership of which he was a member, or his creditors, are deemed to have been paid by the decedent. [1979, c. 540, §1 (NEW).]

(ii). Property owned by the spouse at the decedent's death is valued as of the date of death. Property transferred by the spouse is valued at the time the transfer became irrevocable, or at the decedent's death, whichever occurred first. Income earned by included property prior to the decedent's death is not treated as property derived from the decedent. [1979, c. 540, §1 (NEW).]

(iii). Property owned by the surviving spouse as of the decedent's death, or previously transferred by the surviving spouse, is presumed to have been derived from the decedent except to the extent that the surviving spouse establishes that it was derived from another source. [1979, c. 540, §1 (NEW).]

[ 1979, c. 540, §1 (NEW) .]

(3). For purposes of this section a bona fide purchaser is a purchaser for value in good faith and without notice of any adverse claim. Any recorded instrument on which the register of deeds shall note by an appropriate stamp "Maine Real Estate Transfer Tax Paid" is prima facie evidence that the transfer described was made to a bona fide purchaser.

[ 1983, c. 441, §2 (AMD) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1983, c. 441, §2 (AMD).

## §2-203. RIGHT OF ELECTION PERSONAL TO SURVIVING SPOUSE

The right of election of the surviving spouse may be exercised only during the lifetime of the surviving spouse by: [2009, c. 571, Pt. UU, §2 (AFF); 2009, c. 571, Pt. UU, §1 (RPR).]

(a). The surviving spouse; or

[ 2009, c. 571, Pt. UU, §1 (NEW); 2009, c. 571, Pt. UU, §2 (AFF) .]

(b). If the surviving spouse is a protected person, by order of the court in which protective proceedings for the surviving spouse are pending, after a finding that exercise is necessary to provide adequate support for the surviving spouse during the probable life expectancy of the surviving spouse. In a proceeding under this subsection, the surviving spouse's present or future eligibility for public assistance does not diminish the need for support.

[ 2009, c. 571, Pt. UU, §1 (NEW); 2009, c. 571, Pt. UU, §2 (AFF) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 2009, c. 571, Pt. UU, §2 (AFF). 2009, c. 571, Pt. UU, §1 (RPR).

## §2-204. WAIVER OF RIGHT TO ELECT AND OF OTHER RIGHTS

The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance, exempt property and family allowance, or any of them, may be waived, wholly or partially, before or after marriage, by a written contract, agreement or waiver signed by the party waiving after fair disclosure. Unless it provides to the contrary, a waiver of "all rights," or equivalent language, in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights to elective share, homestead allowance, exempt property and family allowance by each spouse in the property of the other and a renunciation by each of all benefits which would otherwise pass to him from the other by intestate succession or by virtue of the provisions of any will executed before the waiver or property settlement. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

## §2-205. PROCEEDING FOR ELECTIVE SHARE; TIME LIMIT

(a). The surviving spouse may elect to take his elective share in the augmented estate by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within 9 months after the date of death, or within 6 months after the probate of the decedent's will, whichever limitation last expires. However, that nonprobate transfers, described in section 2-202, paragraph (1), shall not be included within the augmented estate for the purpose of computing the elective share, if the petition is filed later than 9 months after death.

The court may extend the time for election as it sees fit for cause shown by the surviving spouse before the time for election has expired. [1979, c. 540, §1 (NEW).]

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

[ 1979, c. 540, §1 (NEW) .]

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

[ 1979, c. 540, §1 (NEW) .]

(d). After notice and hearing, the court shall determine the amount of the elective share and shall order its payment from the assets of the augmented net estate or by contribution as appears appropriate under section 2-207. If it appears that a fund or property included in the augmented net estate has not come into the possession of the personal representative, or has been distributed by the personal representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has

possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than he would have been if relief had been secured against all persons subject to contribution.

[ 1979, c. 540, §1 (NEW) .]

(e). The order or judgment of the court may be enforced as necessary in suit for contribution or payment in other courts of this State or other jurisdictions.

[ 1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§2-206. EFFECT OF ELECTION ON BENEFITS PROVIDED BY STATUTE**

A surviving spouse is entitled to homestead allowance, exempt property, and family allowance, whether or not he elects to take an elective share. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§2-207. CHARGING SPOUSE WITH GIFTS RECEIVED; LIABILITY OF OTHERS FOR BALANCE OF ELECTIVE SHARE**

(a). In the proceeding for an elective share, values included in the augmented estate which pass or have passed to the surviving spouse, or which would have passed to the spouse but were renounced, are applied first to satisfy the elective share and to reduce any contributions due from other recipients of transfers included in the augmented estate. For purposes of this subsection, the electing spouse's beneficial interest in any life estate or in any trust shall be computed as if worth 1/2 of the total value of the property subject to the life estate, or of the trust estate, unless higher or lower values for these interests are established by proof.

[ 1979, c. 540, §1 (NEW) .]

(b). Remaining property of the augmented estate is so applied that liability for the balance of the elective share of the surviving spouse is equitably apportioned among the recipients of the augmented estate in proportion to the value of their interests therein.

[ 1979, c. 540, §1 (NEW) .]

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

[ 1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

## **Part 3: SPOUSE AND CHILDREN UNPROVIDED FOR IN WILLS**

**§2-301. OMITTED SPOUSE**

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

[ 1979, c. 540, §1 (NEW) . ]

(b). In satisfying a share provided by this section, the devises made by the will abate as provided in section 3-902.

[ 1979, c. 540, §1 (NEW) . ]

## SECTION HISTORY

1979, c. 540, §1 (NEW) .

**§2-302. PRETERMITTED CHILDREN**

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

- (1). It appears from the will that the omission was intentional; [1979, c. 540, §1 (NEW) . ]
- (2). When the will was executed the testator had one or more children and devised substantially all his estate to the other parent of the omitted child; or [1979, c. 540, §1 (NEW) . ]
- (3). The testator provided for the child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence. [1979, c. 540, §1 (NEW) . ]

[ 1979, c. 540, §1 (NEW) . ]

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

[ 1979, c. 540, §1 (NEW) . ]

(c). In satisfying a share provided by this section, the devises made by the will abate as provided in section 3-902.

[ 1979, c. 540, §1 (NEW) . ]

## SECTION HISTORY

1979, c. 540, §1 (NEW) .

**Part 4: EXEMPT PROPERTY AND ALLOWANCES****§2-401. HOMESTEAD ALLOWANCE**

A surviving spouse of a decedent who was domiciled in this State is entitled to a homestead allowance of \$10,000. If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance amounting to \$10,000 divided by the number of minor and dependent children of

the decedent. The homestead allowance is exempt from and has priority over all claims against the estate. Homestead allowance is in addition to any share passing to the surviving spouse or minor or dependent child by the will of the decedent unless otherwise provided, by intestate succession or by way of elective share. The homestead allowance established by this section is the sole exemption available for a decedent's homestead. [2009, c. 150, §1 (AMD).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 2001, c. 57, §1 (AMD). 2009, c. 150, §1 (AMD).

### **§2-402. EXEMPT PROPERTY**

In addition to the homestead allowance, the surviving spouse of a decedent who was domiciled in this State is entitled from the estate to value not exceeding \$7,000 in excess of any security interests in the estate in property exempt under Title 14, chapter 507, subchapter II, Article 7, on the date of death of the decedent. If there is no surviving spouse, children of the decedent are entitled jointly to the same value. If encumbered chattels are selected and if the value in excess of security interests, plus that of other exempt property, is less than \$7,000, or if there is not \$7,000 worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the \$7,000 value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, except that the right to any assets to make up a deficiency of exempt property must abate as necessary to permit prior payment of homestead allowance and family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share. [2001, c. 57, §2 (AMD).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1983, c. 441, §3 (AMD). 1983, c. 480, §A14 (AMD). 1985, c. 506, §A19 (RPR). 2001, c. 57, §2 (AMD).

### **§2-403. FAMILY ALLOWANCE**

In addition to the right to homestead allowance and exempt property, if the decedent was domiciled in this State, the surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by him are entitled to a reasonable allowance in money out of the estate for their maintenance, which allowance may not continue for longer than one year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments. It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children; otherwise to the children, or persons having their care and custody; but in case any minor child or dependent child is not living with the surviving spouse, the allowance may be made partially to the child or his guardian or other person having his care and custody, and partially to the spouse, as their needs may appear. The family allowance is exempt from and has priority over all claims but not over the homestead allowance. [1979, c. 540, §1 (NEW).]

The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share. The death of any person entitled to family allowance terminates his right to allowance not yet paid. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§2-404. SOURCE, DETERMINATION AND DOCUMENTATION**

If the estate is otherwise sufficient, property specifically devised is not used to satisfy rights to homestead and exempt property. Subject to this restriction, the surviving spouse, the guardians of the minor children, or children who are adults may select property of the estate as homestead allowance and

exempt property. The personal representative may make these selections if the surviving spouse, the children or the guardians of the minor children are unable or fail to do so within a reasonable time or if there are no guardians of the minor children. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as homestead allowance or exempt property. The personal representative may determine the family allowance in a lump sum not exceeding \$12,000 or periodic installments not exceeding \$1,000 per month for one year, and may disburse funds of the estate in payment of the family allowance and any part of the homestead allowance payable in cash. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment or failure to act under this section may petition the court for appropriate relief, which relief may provide a family allowance larger or smaller than that which the personal representative determined or could have determined. [2001, c. 57, §3 (AMD).]

## SECTION HISTORY

1979, c. 540, §1 (NEW). 2001, c. 57, §3 (AMD).

**§2-405. ESTATE PROPERTY EXEMPT**

Notwithstanding any provisions to the contrary, any personal property included in the decedent's estate that is exempt under Title 14, section 4422, on the date of the decedent's death, is not liable for payment of debts of the decedent or claims against the decedent's estate, except that nothing in this section affects the provisions of sections 2-401 through 2-404. [2009, c. 150, §2 (AMD).]

## SECTION HISTORY

1979, c. 540, §1 (NEW). 1983, c. 480, §A14 (AMD). RR 2003, c. 1, §11 (COR). 2009, c. 150, §2 (AMD).

**Part 5: WILLS****§2-501. WHO MAY MAKE A WILL**

Any person 18 or more years of age who is of sound mind may make a will. [1979, c. 540, §1 (NEW).]

## SECTION HISTORY

1979, c. 540, §1 (NEW).

**§2-502. EXECUTION**

Except as provided for holographic wills, writings within section 2-513, and wills within section 2-506, every will shall be in writing signed by the testator or in the testator's name by some other person in the testator's presence and by his direction, and shall be signed by at least 2 persons each of whom witnessed either the signing or the testator's acknowledgment of the signature or of the will. [1979, c. 540, §1 (NEW).]

## SECTION HISTORY

1979, c. 540, §1 (NEW).

**§2-503. HOLOGRAPHIC WILL**

A will which does not comply with section 2-502 is valid as a holographic will, whether or not witnessed, if the signature and the material provisions are in the handwriting of the testator. [1979, c. 540, §1 (NEW).]

## SECTION HISTORY

1979, c. 540, §1 (NEW).



**§2-504. SELF-PROVED WILL**

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

I, ....., the testator, on this ..... day of ....., 19.., being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), as my free and voluntary act and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

.....  
Testator

We, ....., the witnesses, being first duly sworn, do hereby declare to the undersigned authority that the testator has signed and executed this instrument as his last will and that he signed it willingly (or willingly directed another to sign for him), and that each of us, in the presence and hearing of the testator, signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is eighteen years of age or older, of sound mind and under no constraint or undue influence.

.....  
Witness

.....  
Witness

The State of .....  
County of .....

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

(Seal)

(Signed) .....

.....  
(Official capacity of officer)

[ 1979, c. 540, §1 (NEW) . ]

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

The State of .....  
County of .....

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

.....  
Testator

.....  
Witness

Witness

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

(Seal)

(Signed) .....  
(Official capacity of officer)

[ 1979, c. 540, §1 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW).

**§2-505. WHO MAY WITNESS**

(a). Any person generally competent to be a witness may act as a witness to a will.

[ 1979, c. 540, §1 (NEW) .]

(b). A will is not invalid because the will is signed by an interested witness.

[ 1979, c. 540, §1 (NEW) .]

(c).

[ 1979, c. 540, §1 (NEW); 1979, c. 690, §4 (RP) .]

SECTION HISTORY

1979, c. 540, §1 (NEW). 1979, c. 690, §4 (AMD).

**§2-506. CHOICE OF LAW AS TO EXECUTION**

A written will is valid if executed in compliance with section 2-502 or 2-503 or if its execution complies with the law at the time of execution of the place where the will is executed, or of the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode or is a national or if executed in compliance with 10 United States Code, Section 1044d. [2005, c. 353, §1 (AMD).]

SECTION HISTORY

1979, c. 540, §1 (NEW). 2005, c. 353, §1 (AMD).

**§2-507. REVOCATION BY WRITING OR BY ACT**

A will or any part thereof is revoked [1979, c. 540, §1 (NEW).]

(1). By a subsequent will which revokes the prior will or part expressly or by inconsistency; or

[ 1979, c. 540, §1 (NEW) .]

(2). By being burned, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking it by the testator or by another person in his presence and by his direction.

[ 1979, c. 540, §1 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW).

## §2-508. REVOCATION BY DIVORCE; NO REVOCATION BY OTHER CHANGES OF CIRCUMSTANCES

If after executing a will the testator is divorced or his marriage annulled, the divorce or annulment revokes any disposition or appointment of property made by the will to the former spouse, any provision conferring a general or special power of appointment on the former spouse, and any nomination of the former spouse as executor, trustee, conservator, or guardian, unless the will expressly provides otherwise. Property prevented from passing to a former spouse because of revocation by divorce or annulment passes as if the former spouse failed to survive the decedent, and other provisions conferring some power or office on the former spouse are interpreted as if the spouse failed to survive the decedent. If provisions are revoked solely by this section, they are revived by testator's remarriage to the former spouse. For purposes of this section, divorce or annulment means any divorce or annulment which would exclude the spouse as a surviving spouse within the meaning of section 2-802, subsection (b). A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section. No change of circumstances other than as described in this section revokes a will. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## §2-509. REVIVAL OF REVOKED WILL

(a). If a 2nd will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked by acts under section 2-507, the first will is revoked in whole or in part unless it is evident from the circumstances of the revocation of the 2nd will or from testator's contemporary or subsequent declarations that he intended the first will to take effect as executed.

[ 1979, c. 540, §1 (NEW) .]

(b). If a 2nd will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked by a 3rd will, the first will is revoked in whole or in part, except to the extent it appears from the terms of the 3rd will that the testator intended the first will to take effect.

[ 1979, c. 540, §1 (NEW) .]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## §2-510. INCORPORATION BY REFERENCE

Any writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## §2-511. TESTAMENTARY ADDITIONS TO TRUSTS

A devise or bequest, the validity of which is determinable by the law of this state, may be made by a will to the trustee of a trust established or to be established by the testator or by the testator and some other person or by some other person, including a funded or unfunded life insurance trust, although the trustor has reserved any or all rights of ownership of the insurance contracts, if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will, executed before or concurrently with the execution of the testator's will or in the valid last will of a person who has predeceased the testator, regardless of the existence, size, or character of the corpus of the trust. The devise is not invalid because the

trust is amendable or revocable, or because the trust was amended after the execution of the will or after the death of the testator. Unless the testator's will provides otherwise, the property so devised (1) is not deemed to be held under a testamentary trust of the testator but becomes a part of the trust to which it is given and (2) shall be administered and disposed of in accordance with the provisions of the instrument or will setting forth the terms of the trust, including any amendments thereto made before the death of the testator, regardless of whether made before or after the execution of the testator's will, and, if the testator's will so provides, including any amendments to the trust made after the death of the testator. A revocation or termination of the trust before the death of the testator causes the devise to lapse. [1979, c. 540, §1 (NEW).]

## SECTION HISTORY

1979, c. 540, §1 (NEW).

## §2-512. EVENTS OF INDEPENDENT SIGNIFICANCE

A will may dispose of property by reference to acts and events which have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of a will of another person is such an event. [1979, c. 540, §1 (NEW).]

## SECTION HISTORY

1979, c. 540, §1 (NEW).

## §2-513. SEPARATE WRITING IDENTIFYING BEQUEST OF TANGIBLE PROPERTY

Whether or not the provisions relating to holographic wills apply, a will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money, evidences of indebtedness, documents of title, and securities, and property used in trade or business. To be admissible under this section as evidence of the intended disposition, the writing must either be in the handwriting of the testator or be signed by him and must describe the items and the devisees with reasonable certainty. The writing may be referred to as one to be in existence at the time of the testator's death; it may be prepared before or after the execution of the will; it may be altered by the testator after its preparation; and it may be a writing which has no significance apart from its effect upon the dispositions made by the will. [1979, c. 540, §1 (NEW).]

## SECTION HISTORY

1979, c. 540, §1 (NEW).

## §2-514. STATUTORY WILLS

(a). Any person may execute a will on the following form and the will shall be presumed to be reasonable. This section does not limit any spousal rights, rights to exempt property or other rights set forth elsewhere in this Code.

### Maine Statutory Will

#### NOTICE TO THE PERSON WHO SIGNS THIS WILL:

1. THIS STATUTORY WILL HAS SERIOUS LEGAL EFFECTS ON YOUR FAMILY AND PROPERTY. IF THERE IS ANYTHING IN THIS WILL THAT YOU DO NOT UNDERSTAND, YOU SHOULD CONSULT A LAWYER AND ASK HIM TO EXPLAIN IT TO YOU.

2. THIS WILL DOES NOT DISPOSE OF PROPERTY WHICH PASSES ON YOUR DEATH TO ANY PERSON BY OPERATION OF LAW OR BY CONTRACT. FOR EXAMPLE, THE WILL DOES NOT DISPOSE OF JOINT TENANCY ASSETS OR YOUR SPOUSE'S ELECTIVE SHARE, AND IT WILL NOT NORMALLY APPLY TO PROCEEDS OF LIFE INSURANCE ON YOUR LIFE OR YOUR RETIREMENT PLAN BENEFITS.

3. THIS WILL IS NOT DESIGNED TO REDUCE DEATH TAXES OR ANY OTHER TAXES. YOU SHOULD DISCUSS THE TAX RESULTS OF YOUR DECISIONS WITH A COMPETENT TAX ADVISOR.

4. YOU CANNOT CHANGE, DELETE, OR ADD WORDS TO THE FACE OF THIS MAINE STATUTORY WILL. YOU SHOULD MARK THROUGH ALL SECTIONS OR PARTS OF SECTIONS WHICH YOU DO NOT COMPLETE. YOU MAY REVOKE THIS MAINE STATUTORY WILL AND YOU MAY AMEND IT BY CODICIL.

5. THIS WILL TREATS ADOPTED CHILDREN AS IF THEY ARE NATURAL CHILDREN.

6. IF YOU MARRY OR DIVORCE AFTER YOU SIGN THIS WILL, YOU SHOULD MAKE AND SIGN A NEW WILL.

7. IF YOU HAVE ANOTHER CHILD AFTER YOU SIGN THIS WILL, YOU SHOULD MAKE AND SIGN A NEW WILL.

8. THIS WILL IS NOT VALID UNLESS IT IS SIGNED BY AT LEAST TWO WITNESSES. YOU SHOULD CAREFULLY READ AND FOLLOW THE WITNESSING PROCEDURE DESCRIBED AT THE END OF THIS WILL.

9. YOU SHOULD KEEP THIS WILL IN YOUR SAFE-DEPOSIT BOX OR OTHER SAFE PLACE.

10. IF YOU HAVE ANY DOUBTS WHETHER OR NOT THIS WILL ADEQUATELY SETS OUT YOUR WISHES FOR THE DISPOSITION OF YOUR PROPERTY, YOU SHOULD CONSULT A LAWYER.

MAINE STATUTORY WILL OF

.....

(Print your name)

Article 1. Declaration

This is my will and I revoke any prior wills and codicils.

Article 2. Disposition of my property

2.1 REAL PROPERTY. I give all my real property to my spouse, if living; otherwise it shall be equally divided among my children who survive me; except as specifically provided below: (specific distribution not valid without signature.)

I leave the following specific real property to the person(s) named:

(name)	(description of item)	(signature)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

2.2 PERSONAL AND HOUSEHOLD ITEMS. I give all my furniture, furnishings, household items, personal automobiles, and personal items to my spouse, if living; otherwise they shall be equally divided among my children who survive me; except as specifically provided below: (specific distribution not valid without signature.)

I leave the following specific items to the person(s) named:

(name)	(description of item)	(signature)
_____	_____	_____

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

2.3 CASH GIFT TO CHARITABLE ORGANIZATIONS OR INSTITUTIONS: I make the following cash gift(s) to the named charitable organizations or institutions in the amount stated. If I fail to sign this provision, no gift is made. If the charitable organization or institution does not survive me or accept the gift, then no gift is made

(name)	(amount)	(signature)
_____	_____	_____
_____	_____	_____
_____	_____	_____

2.4 ALL OTHER ASSETS (MY "RESIDUARY ESTATE"). I adopt only one Property Disposition Clause by placing my initials in the box in front of the letter "A", "B" or "C" signifying which clause I wish to adopt. I place my signature after clause "A" or clause "B", or after each individual distribution in clause "C". If I fail to sign the appropriate distribution(s) or if I sign in more than one clause or if I fail to place my initials in the appropriate box, this paragraph 2.4 will be invalid and I realize that the remainder of my property will be distributed as if I did not make a will. Property Disposition Clauses. (select one) \_\_\_ A. I leave all my remaining property to my spouse, if living. If not living, then in equal shares to my children and the descendants of any deceased child. \_\_\_\_\_ (signature). \_\_\_ B. I leave the following stated amount to my spouse and the remainder in equal shares to my children and the descendants of any deceased child. If my spouse is not living, that share shall be distributed in equal shares to my children and the descendants of any deceased child. \_\_\_\_\_ (signature). \_\_\_ C. I leave the following stated amounts to the persons named:

(name)	(amount)	(signature)
_____	_____	_____
(name)	(amount)	(signature)
_____	_____	_____
(name)	(amount)	(signature)
_____	_____	_____
(name)	(amount)	(signature)
_____	_____	_____
(name)	(amount)	(signature)
_____	_____	_____

2.5 UNDISTRIBUTED PROPERTY. If I have any property which, for any reason, does not pass under the other parts of this will, all of that property shall be distributed as follows: (Draw a line through any unused space.)

\_\_\_\_\_  
(this paragraph only valid if signed)

Article 3. Nomination of guardian, conservator and personal representative

3.1 GUARDIAN. (If you have a child under 18 years of age, you may name at least one person to serve as guardian for the child.)

If a guardian is needed for any child of mine, then I nominate the first guardian named below to serve as guardian of that child. If the person does not serve, then the others shall serve in the order I list them. My nomination of a guardian is not valid without my signature.

FIRST GUARDIAN	_____	_____
		(signature)
SECOND GUARDIAN	_____	_____
		(signature)
THIRD GUARDIAN	_____	_____
		(signature)

3.2 CONSERVATOR. (A conservator may be named to manage the property of a minor child. You do not need to name a conservator if you wish the guardian to act as conservator. If you wish to name a conservator in addition to a guardian, complete this paragraph, 3.2. If you do not wish to name a separate conservator, do not complete this paragraph.)

I nominate the first conservator named below to serve as conservator for any minor children of mine. If the first conservator does not serve, then the others shall serve in the order I list them. My nomination of a conservator is not valid without my signature.

FIRST CONSERVATOR	_____	_____
		(signature)
SECOND CONSERVATOR	_____	_____
		(signature)
THIRD CONSERVATOR	_____	_____
		(signature)

3.3 PERSONAL REPRESENTATIVE. (Name at least one.) I nominate the person or institution named as first personal representative below to administer the provisions of this will. If that person or institution does not serve, then I nominate the others to serve in the order I list them. My nomination of a personal representative is not valid without my signature.

FIRST PERSONAL REPRESENTATIVE	_____	_____
		(signature)
SECOND PERSONAL REPRESENTATIVE	_____	_____
		(signature)
THIRD PERSONAL REPRESENTATIVE	_____	_____
		(signature)

I sign my name to this Maine Statutory Will on \_\_\_\_\_ (date) at \_\_\_\_\_ (city) in the State of \_\_\_\_\_

\_\_\_\_\_  
Your Signature

STATEMENT OF WITNESSES (You must have two witnesses.)

Each of us declares that the person who signed above willingly signed this Maine Statutory Will in our presence or willingly directed another to sign it for him or her or that he or she acknowledged that the signature on this Maine Statutory Will is his or hers or that he or she acknowledged that this Maine Statutory Will is his or her will and we sign below as witnesses to that signing.

Signature \_\_\_\_\_  
 Printed name \_\_\_\_\_  
 Address \_\_\_\_\_  
 Signature \_\_\_\_\_  
 Printed name \_\_\_\_\_  
 Address \_\_\_\_\_

[ 1983, c. 816, Pt. A, §7 (AMD) .]

(b). Forms for executing a statutory will shall be provided at all Probate Courts for a cost equivalent to the reasonable cost of printing and storing the forms. A statutory will shall be deemed to be valid if the blanks are filled in with a typewriter or in the handwriting of the person making the will. Failure to complete

or mark through any section or part of a section in the statutory will shall not invalidate the entire will. Failure to sign any section or part of a section in the statutory will requiring a signature shall only invalidate the part not signed, except as specifically provided in paragraph 2.4.

[ 1983, c. 376, (NEW) .]

SECTION HISTORY

1983, c. 376, (NEW). 1983, c. 816, §A7 (AMD).

## Part 6: RULES OF CONSTRUCTION

### §2-601. REQUIREMENT THAT DEVISEE SURVIVE TESTATOR BY 120 HOURS

A devisee who does not survive the testator by 120 hours is treated as if he predeceased the testator, unless the will of decedent contains some language dealing explicitly with simultaneous deaths or deaths in a common disaster, or requiring that the devisee survive the testator or survive the testator for a stated period in order to take under the will. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

### §2-602. CHOICE OF LAW AS TO MEANING AND EFFECT OF WILLS

The meaning and legal effect of a disposition in a will shall be determined by the local law of a particular state selected by the testator in his instrument unless the application of that law is contrary to the provisions relating to the elective share described in Part 2, the provisions relating to exempt property and allowances described in Part 4 or any other public policy of this State otherwise applicable to the disposition. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

### §2-603. RULES OF CONSTRUCTION AND INTENTION

The intention of a testator as expressed in his will controls the legal effect of his dispositions. The rules of construction expressed in the succeeding sections of this Part apply unless a contrary intention is indicated by the will. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

### §2-604. CONSTRUCTION THAT WILL PASSES ALL PROPERTY; AFTER-ACQUIRED PROPERTY

A will is construed to pass all property which the testator owns at his death including property acquired after the execution of the will. A devise of property conveys all the estate of a devisor unless it appears by his will that he intended to convey a lesser estate. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).



## §2-605. ANTI-LAPSE; DECEASED DEVISEE; CLASS GIFTS

If a devisee who is a grandparent or a lineal descendant of a grandparent of the testator is dead at the time of execution of the will, fails to survive the testator, or is treated as if he predeceased the testator, the issue of the deceased devisee who survive the testator by 120 hours take in place of the deceased devisee, and if they are all of the same degree of kinship they take equally, but if of unequal degree then those of more remote degree take by per capita at each generation as provided in section 2-106. One who would have been a devisee under a class gift if he had survived the testator is treated as a devisee for purposes of this section whether his death occurred before or after the execution of the will. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## §2-606. FAILURE OF TESTAMENTARY PROVISION

(a). Except as provided in section 2-605 if a devise other than a residuary devise fails for any reason, it becomes a part of the residue.

[ 1979, c. 540, §1 (NEW) . ]

(b). Except as provided in section 2-605 if the residue is devised to 2 or more persons and the share of one of the residuary devisees fails for any reason, his share passes to the other residuary devisee, or to other residuary devisees in proportion to their interests in the residue.

[ 1979, c. 540, §1 (NEW) . ]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## §2-607. CHANGE IN SECURITIES; ACCESSIONS; NONADEMPTION

(a). If the will provides for a specific devise of certain securities rather than the equivalent value thereof, the specific devisee is entitled only to:

(1). As much of the devised securities as is a part of the estate at the time of the testator's death; [1979, c. 540, §1 (NEW).]

(2). Any additional or other securities of the same entity owned by the testator that arise from the specifically devised securities by reason of action initiated by the entity excluding any acquired by exercise of purchase options; [1979, c. 540, §1 (NEW).]

(3). Securities of another entity owned by the testator that are received in exchange for the specifically devised securities as a result of a merger, consolidation or reorganization or other similar action initiated by the entity; and [1979, c. 540, §1 (NEW).]

(4). Any additional securities of the entity owned by the testator that arise from the specifically devised securities as a result of a plan of reinvestment if it is a regulated investment company. [1979, c. 540, §1 (NEW).]

[ 1979, c. 540, §1 (NEW) . ]

(b). Distributions prior to death with respect to a specifically devised security not provided for in subsection (a) are not part of the specific devise.

[ 1979, c. 540, §1 (NEW) . ]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## **§2-608. NONADEMPTION OF SPECIFIC DEVISES IN CERTAIN CASES; UNPAID PROCEEDS OF SALE, CONDEMNATION OR INSURANCE; SALE BY CONSERVATOR**

(a). A specific devisee had the right to the remaining specifically devised property and:

(1). Any balance of the purchase price, together with any security interest, owing from a purchaser to the testator at death by reason of sale of the property; [1979, c. 540, §1 (NEW).]

(2). Any amount of a condemnation award for the taking of the property unpaid at death; [1979, c. 540, §1 (NEW).]

(3). Any proceeds unpaid at death on fire or casualty insurance on the property; and [1979, c. 540, §1 (NEW).]

(4). Property owned by testator at his death as a result of foreclosure, or obtained in lieu of foreclosure, of the security for a specifically devised obligation. [1979, c. 540, §1 (NEW).]

[ 1979, c. 540, §1 (NEW) .]

(b). If specifically devised property is sold by a conservator, or if a condemnation award or insurance proceeds are paid to a conservator as a result of condemnation, fire, or casualty, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the condemnation award, or the insurance proceeds. This subsection does not apply if after the sale, condemnation or casualty, it is adjudicated that the disability of the testator has ceased and the testator survives the adjudication by one year. The right of the specific devisee under this subsection is reduced by any right he has under subsection (a).

[ 1979, c. 540, §1 (NEW) .]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## **§2-609. NONEXONERATION**

A specific devise passes subject to any mortgage interest existing at the date of death, without right of exoneration, regardless of a general directive in the will to pay debts. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## **§2-610. EXERCISE OF POWER OF APPOINTMENT**

A general residuary clause in a will, or a will making general disposition of all of the testator's property, does not exercise a power of appointment held by the testator unless specific reference is made to the power or there is some other indication of intention to include the property subject to the power. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## **§2-611. CONSTRUCTION OF GENERIC TERMS IN WILLS AND TRUST INSTRUMENTS**

Halfbloods, adopted persons and persons born out of wedlock are included in class gift terminology and terms of relationship in wills and in trust instruments in accordance with rules for determining relationships for purposes of intestate succession, but a person born out of wedlock is not treated as the child of the father unless the person is openly and notoriously so treated by the father or is so recognized by the testator or settlor of the trust. [1979, c. 540, §1 (NEW).]

A devise to the issue of a person must be distributed per capita at each generation. [1989, c. 695, (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW). 1989, c. 695, (AMD).

## **§2-612. ADEMPMENT BY SATISFACTION**

Property which a testator gave in his lifetime to a person is treated as a satisfaction of a devise to that person in whole or in part, only if the will provides for deduction of the lifetime gift, or the testator declares in a contemporaneous writing that the gift is to be deducted from the devise or is in satisfaction of the devise, or the devisee acknowledges in writing that the gift is in satisfaction. For purpose of partial satisfaction, property given during lifetime is valued as of the time the devisee came into possession or enjoyment of the property or as of the time of death of the testator, whichever occurs first. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## **Part 7: CONTRACTUAL ARRANGEMENTS RELATING TO DEATH SEE ALSO ARTICLE 6**

## **§2-701. CONTRACTS CONCERNING SUCCESSION**

A contract to make a will or devise, or not to revoke a will or devise, or to die intestate, if executed after the effective date of this Act, can be established only by (1) provisions of a will stating material provisions of the contract; (2) an express reference in a will to a contract and extrinsic evidence proving the terms of the contract; or (3) a writing signed by the decedent evidencing the contract. The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## **Part 8: GENERAL PROVISIONS**

## **§2-801. RENUNCIATION OF PROPERTY INTERESTS**

(a). A person, or a person with legal authority to represent an incapacitated or protected person or the estate of a deceased person, to whom an interest in or with respect to property or an interest therein or a power of appointment over such property devolves by whatever means may renounce it in whole or in part by delivering a written renunciation under this section. The right to renounce exists notwithstanding any limitation on the interest of the person renouncing in the nature of a spendthrift provision of similar restriction.

[ 1979, c. 540, §1 (NEW) .]

(b). A renunciation under this section must be an irrevocable and unqualified refusal by a person to accept an interest in property, and must comply with the following requirements:

(1). If the property, interest or power has devolved to the person renouncing under a testamentary instrument or by the laws of intestacy, the renunciation must be received by the personal representative, or other fiduciary, of the decedent or deceased donee of a power of appointment, or by the holder of the legal title to the property to which the interest relates, (i) in the case of a present interest, not later than 9 months after the death of the deceased owner or deceased donee of the power, or (ii) in the case of a future interest, not later than 9 months after the event determining that the taker of the property, interest or power has become finally ascertained and his interest is indefeasibly vested. A copy of the renunciation may be filed in the Registry of Probate of the court in which proceedings for the administration of the deceased owner or deceased donee of the power have been commenced, or if no administration has been commenced, in the court where such proceedings could be commenced. [1979, c. 540, §1 (NEW).]

(2). If the property, interest or power has devolved to the person renouncing under a nontestamentary instrument or contract, the renunciation must be received by the transferor, his legal representative, or the holder of the legal title to the property to which the interest relates (i) in the case of a present interest, not later than 9 months after the effective date of the nontestamentary instrument or contract, or (ii) in the case of a future interest, not later than 9 months after the event determining that the taker of the property, interest or power has become finally ascertained and his interest is indefeasibly vested. If the person entitled to renounce does not have actual knowledge of the existence of his interest, the time limits for receipt of the renunciation shall be extended to not later than 9 months after he has knowledge of the existence of his interest. The effective date of a revocable instrument or contract is the date on which the maker no longer has power to revoke it or to transfer to himself or another the entire legal and equitable ownership of the interest. [1979, c. 540, §1 (NEW).]

[ 1979, c. 540, §1 (NEW) .]

(c). A surviving joint tenant may renounce as a separate interest any property or interest therein devolving to him by right of survivorship. A surviving joint tenant may renounce the entire interest in any property or interest therein that is the subject of a joint tenancy devolving to him, if the joint tenancy was created by act of a deceased joint tenant and the survivor did not join in creating the joint tenancy.

[ 1979, c. 540, §1 (NEW) .]

(d). If real property or an interest therein or a power thereover is renounced, a copy of the renunciation may be recorded in the Registry of Deeds of the county in which the property is located, and the recording or lack of recording shall have the same effect for purposes of the recording act as the recording or lack of recording of other instruments under Title 33, section 201.

[ 1979, c. 540, §1 (NEW) .]

(e). A renunciation under this section shall describe the property, interest or power renounced, declare the renunciation and extent thereof, be signed by the person renouncing, and if within the provisions of subsection (b), paragraph (2), declare the date the person renouncing first had actual knowledge of the existence of his interest whenever that date is material under subsection (b), paragraph (2).

[ 1979, c. 540, §1 (NEW) .]

(f). The devolution of any property or interest renounced under this section is governed by the following provisions of this subsection:

(1). If the property or interest devolved to the person renouncing under a testamentary instrument or under the laws of intestacy and the deceased owner or donee of a power of appointment has not provided for another disposition, it devolves as if the person renouncing had predeceased the decedent or, if the

person renouncing was designated to take under a power of appointment exercised by a testamentary instrument, it devolves as if the person renouncing had predeceased the donee of the power. Any future interest that takes effect in possession or enjoyment after the termination of the estate or interest renounced, takes effect as if the person renouncing had died before the event determining that the taker of the property or interest had become finally ascertained and his interest is indefeasibly vested. A renunciation relates back for all purposes to the date of death of the decedent, or of the donee of the power, or the determinative event, as the case may be. [1979, c. 540, §1 (NEW).]

(2). If the property or interest devolved to the person renouncing under a nontestamentary instrument or contract and the instrument or contract does not provide for another disposition, it devolves as if the person renouncing had died before the effective date of the instrument or contract. Any future interest that takes effect in possession or enjoyment at or after the termination of the renounced estate or interest, takes effect as if the person renouncing had died before the event determining the taker of the property or interest had become finally ascertained and his interest indefeasibly vested. A renunciation relates back for all purposes to the effective date of the instrument or the date of the determinative event, as the case may be. [1979, c. 540, §1 (NEW).]

(3). The renunciation or the written waiver of the right to disclaim is binding upon the person renouncing or waiving and upon all persons claiming through or under him. [1979, c. 540, §1 (NEW).]

[ 1979, c. 540, §1 (NEW) .]

(g). The right to renounce property or an interest therein or a power of appointment is barred by (1) an assignment, conveyance, encumbrance, pledge or transfer of the property or interest, or a contract therefor, (2) a written waiver of the right to renounce, (3) an acceptance of the property or interest or a benefit thereunder, or (4) a sale of the property or interest under judicial sale made before the renunciation is effected.

[ 1979, c. 540, §1 (NEW) .]

(h). This section does not abridge the right of a person to waive, release, disclaim or renounce property or an interest therein or a power of appointment under any other statute.

[ 1979, c. 540, §1 (NEW) .]

(i). An interest in property that exists on the effective date of this section as to which the time for renouncing has not expired under this section, may be renounced by compliance with this section.

[ 1979, c. 540, §1 (NEW) .]

(j). Any renunciation which is effective as a "qualified disclaimer" under section 2518(b) of the Internal Revenue Code is effective as a renunciation under this section, notwithstanding any provisions of this section to the contrary.

[ 1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

## **§2-802. EFFECT OF DIVORCE, ANNULMENT AND DECREE OF SEPARATION**

(a). A person who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, he is married to the decedent at the time of death. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section.

[ 1979, c. 540, §1 (NEW) .]

(b). For purposes of Parts 1, 2, 3 and 4 and of section 3-203, a surviving spouse does not include:

(1). A person who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless they subsequently participate in a marriage ceremony purporting to marry each to the other, or subsequently live together as man and wife; [1979, c. 540, §1 (NEW).]

(2). A person who, following a decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a 3rd person; or [1979, c. 540, §1 (NEW).]

(3). A person who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights. [1979, c. 540, §1 (NEW).]

[ 1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

## **§2-803. EFFECT OF HOMICIDE ON INTESTATE SUCCESSION, WILLS, JOINT ASSETS, LIFE INSURANCE AND BENEFICIARY DESIGNATIONS**

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

[ 1979, c. 540, §1 (NEW) .]

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

[ 1979, c. 540, §1 (NEW) .]

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

[ 1979, c. 540, §1 (NEW) .]

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

[ 1979, c. 540, §1 (NEW) .]

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

[ 1979, c. 540, §1 (NEW) .]

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

[ 1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

## §2-804. ACTIONS FOR WRONGFUL DEATH

(a). Whenever the death of a person shall be caused by a wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then the person or the corporation that would have been liable if death had not ensued shall be liable for damages as provided in this section, notwithstanding the death of the person injured and although the death shall have been caused under such circumstances as shall amount to a felony.

[ 1979, c. 540, §1 (NEW) .]

(b). Every wrongful death action must be brought by and in the name of the personal representative of the deceased person. The amount recovered in every wrongful death action, except as otherwise provided, is for the exclusive benefit of the surviving spouse if no minor children, of the children if no surviving spouse, one-half for the exclusive benefit of the surviving spouse and one-half for the exclusive benefit of the minor children to be divided equally among them if there are both surviving spouse and minor children and to the deceased's heirs to be distributed as provided in section 2-106 if there is neither surviving spouse nor minor children. The jury may give damages as it determines a fair and just compensation with reference to the pecuniary injuries resulting from the death and in addition shall give such damages that will compensate the estate of the deceased person for reasonable expenses of medical, surgical and hospital care and treatment and for reasonable funeral expenses. In addition, the jury may give damages not exceeding \$500,000 for the loss of comfort, society and companionship of the deceased, including any damages for emotional distress arising from the same facts as those constituting the underlying claim, to the persons for whose benefit the action is brought. The jury may also give punitive damages not exceeding \$250,000. An action under this section must be commenced within 2 years after the decedent's death, except that if the decedent's death is caused by a homicide, the action may be commenced within 6 years of the date the personal representative of the decedent discovers that there is a just cause of action against the person who caused the homicide. If a claim under this section is settled without an action having been commenced, the amount paid in settlement must be distributed as provided in this subsection. A settlement on behalf of minor children is not valid unless approved by the court, as provided in Title 14, section 1605.

[ 2015, c. 451, §1 (AMD) .]

(c). Whenever death ensues following a period of conscious suffering, as a result of personal injuries due to the wrongful act, neglect or default of any person, the person who caused the personal injuries resulting in such conscious suffering and death shall, in addition to the action at common law and damages recoverable therein, be liable in damages in a separate count in the same action for such death, brought, commenced and determined and subject to the same limitation as to the amount recoverable for such death and exclusively for the beneficiaries in the manner set forth in subsection (b), separately found, but in such cases there shall be only one recovery for the same injury.

[ 1979, c. 540, §1 (NEW) .]

(d). Any action under this section brought against a governmental entity under Title 14, sections 8101 to 8118, shall be limited as provided in those sections.

[ 1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1981, c. 213, (AMD). 1989, c. 340, (AMD).  
1991, c. 187, (AMD). 1995, c. 577, §1 (AMD). 1999, c. 772, §1 (AMD).  
2007, c. 280, §1 (AMD). 2009, c. 180, §1 (AMD). 2015, c. 451, §1 (AMD).

## §2-805. SIMULTANEOUS DEATH

(a). This section may be cited as the "Uniform Simultaneous Death Act."

[ 1979, c. 540, §1 (NEW) .]

(b). When the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons died otherwise than simultaneously, the property of each person must be disposed of as if that person were the survivor, except as provided otherwise in this part.

[ 1991, c. 824, Pt. A, §26 (AMD) .]

(c). Where a testamentary disposition of property depends upon the priority of death of the designated beneficiaries and there is no sufficient evidence that these beneficiaries died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are designated beneficiaries and these portions shall be distributed respectively to those who would take in the event that each designated beneficiary were the survivor.

[ 1979, c. 540, §1 (NEW) .]

(d). Where there is no sufficient evidence that 2 joint tenants died otherwise than simultaneously, the property so held shall be distributed 1/2 as if one had survived and 1/2 as if the other had survived. If there are more than 2 joint tenants and all of them have so died the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

[ 1979, c. 540, §1 (NEW) .]

(e). Where the decedents are the insured and the beneficiary respectively in policies of life or accident insurance and there is no sufficient evidence that they died otherwise than simultaneously, the proceeds of each policy shall be distributed as if the person whose life was insured therein survived.

[ 1979, c. 540, §1 (NEW) .]

(f). This section shall not apply to the distribution of the property of any person dying before July 26, 1941, nor to the distribution of the proceeds of any policy of life or accident insurance the effective date of which is prior to that date.

[ 1979, c. 540, §1 (NEW) .]

(g). This section shall not apply in the case of wills, deeds or contracts of insurance wherein provision has been made for distribution different from the provisions of said section.

[ 1979, c. 540, §1 (NEW) .]



(h). This section shall be so construed and interpreted as to effectuate their general purpose to make uniform the law in those states which enact them.

[ 1979, c. 540, §1 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW). 1991, c. 824, §A26 (AMD).

**§2-806. EFFECT OF CRIMINAL CONVICTION ON INTESTATE SUCCESSION, WILLS, JOINT ASSETS, BENEFICIARY DESIGNATIONS AND OTHER PROPERTY ACQUISITION WHEN RESTITUTION IS OWED TO THE DECEDENT**

A person who has been convicted of a crime of which the decedent was a victim is not entitled to the following benefits to the extent that the benefits do not exceed the amount of restitution the person owes to the decedent as a result of the sentence for the crime: [2011, c. 241, §2 (NEW) .]

(a). Any benefits under the decedent's will or under this Article;

[ 2011, c. 241, §2 (NEW) .]

(b). Any property owned jointly with the decedent;

[ 2011, c. 241, §2 (NEW) .]

(c). Any benefit as a beneficiary of a bond, life insurance policy or other contractual arrangement in which the principal obligee or the person upon whose life the policy is issued is the decedent; and

[ 2011, c. 241, §2 (NEW) .]

(d). Any benefit from any acquisition of property in which the decedent had an interest.

[ 2011, c. 241, §2 (NEW) .]

SECTION HISTORY

2011, c. 241, §2 (NEW).

**Part 9: CUSTODY AND DEPOSIT OF WILLS**

**§2-901. DISPOSITION OF WILL DEPOSITED WITH COURT**

A will deposited for safekeeping with the court in the office of the register of probate before September 19, 1997 may be delivered only to the testator or to a person authorized in writing signed by the testator to receive the will. A conservator may be allowed to examine a deposited will of a protected testator under procedures designed to maintain the confidential character of the document to the extent possible and to ensure that it will be resealed and left on deposit after the examination. Upon being informed of the testator's death, the court shall notify any person designated to receive the will and deliver it to that designated person on request; or the court may deliver the will to the appropriate court. The court may not accept a will for safekeeping after September 19, 1997. [1997, c. 683, Pt. C, §3 (AMD); 1997, c. 683, Pt. C, §4 (AFF).]

SECTION HISTORY

1979, c. 540, §1 (NEW). 1997, c. 76, §1 (AMD). 1997, c. 683, §C3 (AMD). 1997, c. 683, §C4 (AFF).

**§2-902. DUTY OF CUSTODIAN OF WILL; LIABILITY**

After the death of a testator, any person having custody of a will of the testator shall deliver it with reasonable promptness to a person able to secure its probate and if none is known, to an appropriate court for filing and recording until probate is sought. Any person having custody of a will is not liable, to any person aggrieved, for failure to learn of the death of the testator of that will and the failure, therefore, to deliver that will as required. Any person who willfully fails to deliver a will, or who willfully defaces or destroys any will of a deceased person, is liable to any person aggrieved for the damages, which may be sustained by such failure to deliver, or by such defacement or destruction. Any person who willfully refuses or fails to deliver a will, or who so defaces or destroys it, after being ordered by the court in a proceeding brought for the purpose of compelling delivery is subject to penalty for contempt of court. [1993, c. 148, §5 (AMD).]

## SECTION HISTORY

1979, c. 540, §1 (NEW). 1983, c. 706, (AMD). 1993, c. 148, §5 (AMD).

## Article 3: PROBATE OF WILLS AND ADMINISTRATION

### Part 1: GENERAL PROVISIONS

#### §3-101. DEVOLUTION OF ESTATE AT DEATH; RESTRICTIONS

The power of a person to leave property by will, and the rights of creditors, devisees, and heirs to his property are subject to the restrictions and limitations contained in this Code to facilitate the prompt settlement of estates. Upon the death of a person, his real and personal property devolves to the persons to whom it is devised by his last will or to those indicated as substitutes for them in cases involving lapse, renunciation, or other circumstances affecting the devolution of testate estate, or in the absence of testamentary disposition, to his heirs, or to those indicated as substitutes for them in cases involving renunciation or other circumstances affecting devolution of intestate estates, subject to homestead allowance, exempt property and family allowance, to rights of creditors, elective share of the surviving spouse, and to administration. [1979, c. 540, §1 (NEW).]

##### SECTION HISTORY

1979, c. 540, §1 (NEW).

#### §3-102. NECESSITY OF ORDER OF PROBATE FOR WILL

Except as provided in section 3-1201, to be effective to prove the transfer of any property or to nominate an executor, a will must be declared to be valid by an order of informal probate by the registers or an adjudication of probate by the judge, except that a duly executed and unrevoked will which has not been probated may be admitted as evidence of a devise if (1) no court proceeding concerning the succession or administration of the estate has occurred, and (2) either the devisee or his successors and assigns possessed the property devised in accordance with the provisions of the will, or the property devised was not possessed or claimed by anyone by virtue of the decedent's title during the time period for testacy proceedings. [1979, c. 540, §1 (NEW).]

##### SECTION HISTORY

1979, c. 540, §1 (NEW).

#### §3-103. NECESSITY OF APPOINTMENT FOR ADMINISTRATION

Except as otherwise provided in Article IV, to acquire the powers and undertake the duties and liabilities of a personal representative of a decedent, a person must be appointed by order of the judge or registers, qualify and be issued letters. Administration of an estate is commenced by the issuance of letters. [1979, c. 540, §1 (NEW).]

##### SECTION HISTORY

1979, c. 540, §1 (NEW).

#### §3-104. CLAIMS AGAINST DECEDENT; NECESSITY OF ADMINISTRATION

No proceeding to enforce a claim against the estate of a decedent or his successors may be revived or commenced before the appointment of a personal representative. After the appointment and until distribution, all proceedings and actions to enforce a claim against the estate are governed by the procedure prescribed by this Article. After distribution a creditor whose claim has not been barred may recover from the distributees as provided in section 3-1004 or from a former personal representative individually liable as provided in section

3-1005. This section has no application to a proceeding by a secured creditor of the decedent to enforce his right to his security except as to any deficiency judgment which might be sought therein. [1979, c. 540, §1 (NEW).]

## SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-105. PROCEEDINGS AFFECTING DEVOLUTION AND ADMINISTRATION; JURISDICTION OF SUBJECT MATTER**

Persons interested in decedents' estates may apply to the register for determination in the informal proceedings provided in this Article, and may petition the court for orders in formal proceedings within the court's jurisdiction including but not limited to those described in this Article. The court has exclusive jurisdiction of informal and formal proceedings to determine how decedents' estates subject to the laws of this State are to be administered, expended and distributed. The court has concurrent jurisdiction of any other action or proceeding concerning a succession or to which an estate, through a personal representative, may be a party, including actions to determine title to property alleged to belong to the estate, and of any action or proceeding in which property is distributed by a personal representative or its value is sought to be subjected to rights of creditors or successors of the decedent. [1979, c. 540, §1 (NEW).]

## SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-106. PROCEEDINGS WITHIN THE JURISDICTION OF COURT; SERVICE; JURISDICTION OVER PERSONS**

In proceedings within the exclusive jurisdiction of the court where notice is required by this Code or by rule, and in proceedings to construe probated wills or determine heirs which concern estates that have not been and cannot now be opened for administration, interested persons may be bound by the orders of the court in respect to property in or subject to the laws of this State by notice in conformity with section 1-401. An order is binding as to all who are given notice of the proceeding though less than all interested persons are notified. [1979, c. 540, §1 (NEW).]

## SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-107. SCOPE OF PROCEEDINGS; PROCEEDINGS INDEPENDENT; EXCEPTION**

Unless supervised administration as described in Part 5 is involved, (1) each proceeding before the judge or register is independent of any other proceeding involving the same estate; (2) petitions for formal orders of the judge may combine various requests for relief in a single proceeding if the orders sought may be finally granted without delay. Except as required for proceedings which are particularly described by other sections of this Article, no petition is defective because it fails to embrace all matters which might then be the subject of a final order; (3) proceedings for probate of wills or adjudications of no will may be combined with proceedings for appointment of personal representatives; and (4) a proceeding for appointment of a personal representative is concluded by an order making or declining the appointment. [1979, c. 540, §1 (NEW).]

## SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-108. PROBATE, TESTACY AND APPOINTMENT PROCEEDINGS; ULTIMATE TIME LIMIT**

(a). For a decedent dying on or after January 1, 1981, no informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than 3 years after the decedent's death, except:

(1). If a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding; [1983, c. 256, (NEW).]

(2). Appropriate probate, appointment or testacy proceedings may be maintained in relation to the estate of an absent, disappeared or missing person for whose estate a conservator has been appointed, at any time within 3 years after the conservator becomes able to establish the death of the protected person; [2009, c. 368, §1 (AMD).]

(3). A proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful may be commenced within the later of 12 months from the informal probate or 3 years from the decedent's death; and [2009, c. 368, §2 (AMD).]

(4). Appropriate probate, appointment or testacy proceedings may be commenced in relation to a claim for personal injury made against the decedent by a person without actual notice of the death of the decedent at any time within 6 years after the cause of action accrues. If the proceedings are commenced more than 3 years after the decedent's death, any recovery is limited to applicable insurance. [2009, c. 368, §3 (NEW).]

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

[2009, c. 368, §§1-3 (AMD).]

(b). For a decedent dying before January 1, 1981, no informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than 20 years after the decedent's death, except:

(1). If a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding; [1983, c. 256, (NEW).]

(2). Appropriate probate, appointment or testacy proceedings may be maintained in relation to the estate of an absent, disappeared or missing person for whose estate a conservator has been appointed at any time within the applicable limitation period, as set forth in this section, which shall begin to run after the conservator becomes able to establish the death of the protected person; and [1983, c. 256, (NEW).]

(3). A proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful may be commenced within the later of 12 months from the informal probate or the running of the applicable limitation period. [2005, c. 683, Pt. C, §5 (AMD).]

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

[ 2005, c. 683, Pt. C, §5 (AMD) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1983, c. 256, (RPR). 2005, c. 683, §C5 (AMD).  
2009, c. 368, §§1-3 (AMD).

### **§3-109. STATUTES OF LIMITATION ON DECEDENT'S CAUSE OF ACTION**

No statute of limitation running on a cause of action belonging to a decedent which had not been barred as of the date of his death, shall apply to bar a cause of action surviving the decedent's death sooner than 4 months after death. A cause of action which, but for this section, would have been barred less than 4 months after death, is barred after 4 months unless tolled. [1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW) .

### **§3-110. DISCOVERY OF PROPERTY**

(a). Upon petition by a county attorney, personal representative, heir, devisees, creditor or other person interested in the estate of a decedent, anyone suspected of having concealed, withheld or conveyed away any property of the decedent, or of having fraudulently received any such property, or of aiding others in so doing, may be cited by the judge to appear before him to be examined on oath in relation thereto, and the judge may require him to produce for the inspection of the court and parties all documents within his control relating to the matter under examination. The time for filing such petitions shall be governed by section 1-106.

[ 1979, c. 540, §1 (NEW) .]

(b). If a person duly cited refuses to appear and submit himself to such examination, or to answer all lawful interrogatories, or to produce such documents he shall be subject to contempt of the court and is liable to any injured party in a civil action for all the damages, expenses and charges arising from such refusal.

[ 1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW) .

## **Part 2: VENUE FOR PROBATE AND ADMINISTRATION; PRIORITY TO ADMINISTER; DEMAND FOR NOTICE**

### **§3-201. VENUE FOR FIRST AND SUBSEQUENT ESTATE PROCEEDINGS; LOCATION OF PROPERTY**

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

- (1). In the county where the decedent had his domicile at the time of his death; or [1979, c. 540, §1 (NEW) .]

(2). If the decedent was not domiciled in this State, in any county where property was located either at the time of his death or at any time thereafter. [1979, c. 540, §1 (NEW).]

[ 1979, c. 540, §1 (NEW) .]

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

[ 1979, c. 540, §1 (NEW) .]

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

[ 1979, c. 540, §1 (NEW) .]

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

[ 1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-202. APPOINTMENT OR TESTACY PROCEEDINGS; CONFLICTING CLAIM OF DOMICILE IN ANOTHER STATE**

If conflicting claims as to the domicile of a decedent are made in a formal testacy or appointment proceeding commenced in this State, and in a testacy or appointment proceeding after notice pending at the same time in another state, the court of this State must stay, dismiss, or permit suitable amendment in, the proceeding here unless it is determined that the local proceeding was commenced before the proceeding elsewhere. The determination of domicile in the proceeding first commenced must be accepted as determinative in the proceeding in this State. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-203. PRIORITY AMONG PERSONS SEEKING APPOINTMENT AS PERSONAL REPRESENTATIVE**

(a). Whether the proceedings are formal or informal, persons who are not disqualified have priority for appointment in the following order:

- (1). The person with priority as determined by a probated will including a person nominated by a power conferred in a will; [1979, c. 540, §1 (NEW).]
- (2). The surviving spouse of the decedent who is a devisee of the decedent; [1979, c. 540, §1 (NEW) .]
- (3). Other devisees of the decedent; [1979, c. 540, §1 (NEW) .]

(4). The surviving spouse of the decedent; [1979, c. 540, §1 (NEW).]

(4-A). The surviving domestic partner of the decedent; [2003, c. 672, §8 (NEW).]

(5). Other heirs of the decedent; [1979, c. 540, §1 (NEW).]

(6). Forty-five days after the death of the decedent, any creditor; [1979, c. 540, §1 (NEW).]

(7). Six months after the death of the decedent if no testacy proceedings have been held or no personal representative has been appointed, the State Tax Assessor upon application by that officer. [1979, c. 540, §1 (NEW).]

[ 2003, c. 672, §8 (AMD) .]

**(b).** An objection to an appointment can be made only in formal proceeding. In case of objection the priorities stated in (a) apply except that

(1). If the estate appears to be more than adequate to meet exemptions and costs of administration but inadequate to discharge anticipated unsecured claims, the judge, on petition of creditors, may appoint any qualified person; [1979, c. 540, §1 (NEW).]

(2). In case of objection to appointment of a person other than one whose priority is determined by will by an heir or devisee appearing to have a substantial interest in the estate, the judge may appoint a person who is acceptable to heirs and devisees whose interests in the estate appear to be worth in total more than 1/2 of the probable distributable value, or, in default of this accord any suitable person. [1979, c. 540, §1 (NEW).]

[ 1979, c. 540, §1 (NEW) .]

**(c).** A person entitled to letters under subsection (a), paragraphs (2) through (5) may nominate a qualified person to act as personal representative. Any person may renounce his right to nominate or to an appointment by appropriate writing filed with the court. When 2 or more persons share a priority, those of them who do not renounce must concur in nominating another to act for them or in applying for appointment.

[ 1979, c. 540, §1 (NEW) .]

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

[ 1979, c. 540, §1 (NEW) .]

**(e).** Appointment of one who does not have priority may be made only in formal proceedings. Appointment of one who has priority resulting from renunciation or nomination pursuant to subsection (c) may be made in informal proceedings. Before appointing one without priority, the judge shall determine that those having priority, although given notice of the proceedings, have failed to request appointment or to nominate another for appointment and that administration is necessary.

[ 1993, c. 109, §1 (AMD) .]

**(f).** No person is qualified to serve as a personal representative who is:

(1). Under the age of 18; [1979, c. 540, §1 (NEW).]

(2). A person whom the court finds unsuitable in formal proceedings. [1979, c. 540, §1 (NEW).]

[ 1979, c. 540, §1 (NEW) .]



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

[ 1979, c. 540, §1 (NEW) . ]

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

[ 1979, c. 540, §1 (NEW) . ]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1993, c. 109, §1 (AMD). 2003, c. 672, §8 (AMD).

### **§3-204. DEMAND FOR NOTICE OF ORDER OR FILING CONCERNING DECEDENT'S ESTATE**

Any person desiring notice of an order or filing pertaining to a decedent's estate in which he has a financial or property interest may file a demand for notice with the court at any time after the death of the decedent, and may thereupon have notice of such demand given to the personal representative, and shall thereafter receive service of every filing, notice or order to which the demand relates, in such manner and form as the Supreme Judicial Court shall by rule provide. The validity of an order or notice which is issued or a filing which is accepted without compliance with this requirement shall not be affected by the error, but the person receiving the order, giving notice, or making the filing may be liable for any damage caused by the absence of service. The requirement of notice arising from demand under this provision may be waived by the demandant in such manner and form as the Supreme Judicial Court shall by rule provide, and shall cease upon the termination of his interest in the estate. [1979, c. 540, §1 (NEW) . ]

#### SECTION HISTORY

1979, c. 540, §1 (NEW) .

## **Part 3: INFORMAL PROBATE AND APPOINTMENT PROCEEDINGS**

### **§3-301. INFORMAL PROBATE OR APPOINTMENT PROCEEDINGS; APPLICATION; CONTENTS**

(a). Applications for informal probate or informal appointment shall be directed to the register and be verified by the applicant to be accurate and complete to the best of his knowledge and belief and shall contain the following information and such other information as the Supreme Judicial Court may by rule provide:

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

(i) A statement of the interest of the applicant;

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

(iii) If the decedent was not domiciled in the state at the time of his death, a statement showing venue;

(iv) A statement identifying and indicating the address of any personal representative of the decedent appointed in this state or elsewhere whose appointment has not been terminated;

(v) A statement indicating whether the applicant has received a demand for notice, or is aware of any demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere; and

(vi) That the time limit for informal probate or appointment as provided in this Article has not expired either because 3 years or less have passed since the decedent's death, or, if more than 3 years from death have passed, circumstances as described by section 3-108 authorizing tardy probate or appointment have occurred. [1979, c. 540, §1 (NEW).]

(2). An application for informal probate of a will shall state the following in addition to the statements required by paragraph (1):

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

(ii) That the applicant, to the best of his knowledge, believes the will to have been validly executed;

(iii) That after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the will, and that the applicant believes that the instrument which is the subject of the application is the decedent's last will. [1979, c. 540, §1 (NEW).]

(3). An application for informal appointment of a personal representative to administer an estate under a will shall describe the will by date of execution and state the time and place of probate or the pending application or petition for probate. The application for appointment shall adopt the statements in the application or petition for probate and state the name, address and priority for appointment of the person whose appointment is sought. [1979, c. 540, §1 (NEW).]

(4). An application for informal appointment of an administrator in intestacy shall state in addition to the statements required by paragraph (1):

(i) That after the exercise of reasonable diligence, the applicant is unaware of any unrevoked testamentary instrument relating to property having a situs in this State under section 1-301, or, a statement why any such instrument of which he may be aware is not being probated;

(ii) The priority of the person whose appointment is sought and the names of any other persons having a prior or equal right to the appointment under section 3-203. [1979, c. 540, §1 (NEW).]

(5). An application for appointment of a personal representative to succeed a personal representative appointed under a different testacy status shall refer to the order in the most recent testacy proceeding, state the name and address of the person whose appointment is sought and of the person whose appointment will be terminated if the application is granted, and describe the priority of the applicant. [1979, c. 540, §1 (NEW).]

(6). An application for appointment of a personal representative to succeed a personal representative who has tendered a resignation as provided in section 3-610, subsection (c), or whose appointment has been terminated by death or removal, shall adopt the statements in the application or petition which led to the appointment of the person being succeeded except as specifically changed or corrected, state the name and address of the person who seeks appointment as successor, and describe the priority of the applicant. [1979, c. 540, §1 (NEW).]

[ 1979, c. 540, §1 (NEW) . ]

(b). By verifying an application for informal probate, or informal appointment, the applicant submits personally to the jurisdiction of the court in any proceeding for relief from fraud relating to the application, or for perjury, that may be instituted against him.

[ 1979, c. 540, §1 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-302. INFORMAL PROBATE; DUTY OF REGISTER; EFFECT OF INFORMAL PROBATE**

Upon receipt of an application requesting informal probate of a will, the register upon making the findings required by section 3-303 shall issue a written statement of informal probate if at least 120 hours have elapsed since the decedent's death. Informal probate is conclusive as to all persons until superseded by an order in a formal testacy proceeding. No defect in the application or procedure relating thereto which leads to informal probate of a will renders the probate void. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-303. INFORMAL PROBATE; PROOF AND FINDINGS REQUIRED**

(a). In an informal proceeding for original probate of a will, the register shall determine whether:

(1). The application is complete; [1979, c. 540, §1 (NEW).]

(2). The applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief; [1979, c. 540, §1 (NEW).]

(3). The applicant appears from the application to be an interested person as defined in section 1-201, paragraph (20); [1979, c. 540, §1 (NEW).]

(4). On the basis of the statements in the application, venue is proper; [1979, c. 540, §1 (NEW).]

(5). An original, duly executed and apparently unrevoked will is in the register's possession; [1979, c. 540, §1 (NEW).]

(6). Any notice required by section 3-204 has been given and that the application is not within section 3-304; and [1979, c. 540, §1 (NEW).]

(7). It appears from the application that the time limit for original probate has not expired. [1979, c. 540, §1 (NEW).]

[ 1979, c. 540, §1 (NEW) .]

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

[ 1979, c. 540, §1 (NEW) .]

(c). A will which appears to have the required signatures and which contains an attestation clause showing that requirements of execution under sections 2-502, 2-503 or 2-506 have been met shall be probated without further proof. In other cases, the register may assume execution if the will appears to have been properly executed, or he may accept a sworn statement or affidavit of any person having knowledge of the circumstances of execution, whether or not the person was a witness to the will.

[ 1979, c. 540, §1 (NEW) .]

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

[ 1979, c. 540, §1 (NEW) .]

(e). A will from a foreign jurisdiction, including a place that does not require probate of a will after death and which is not eligible for probate under subsection (a), may be probated in this State upon receipt by the register of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has been probated in the foreign jurisdiction or has otherwise become operative under the law of that place.

[ 1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-304. INFORMAL PROBATE; UNAVAILABLE IN CERTAIN CASES**

Applications for informal probate which relate to one or more of a known series of testamentary instruments, other than a will and its codicil, the latest of which does not expressly revoke the earlier, shall be declined. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-305. INFORMAL PROBATE; REGISTER NOT SATISFIED**

If the register is not satisfied that a will is entitled to be probated in informal proceedings because of failure to meet the requirements of sections 3-303 and 3-304 or any other reason, he may decline the application. A declination of informal probate is not an adjudication and does not preclude formal probate proceedings. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-306. INFORMAL PROBATE; NOTICE REQUIREMENTS**

The moving party shall give notice as described by section 1-401 of the moving party's application for informal probate to any person demanding notice pursuant to section 3-204, to an heir, devisee or personal representative who has not waived notice in a writing filed with the court and to any personal representative of the decedent whose appointment has not been terminated. If the decedent was 55 years of age or older, the moving party shall give notice as described in section 1-401 to the Department of Health and Human Services. No other notice of informal probate is required. [2005, c. 12, Pt. DDD, §1 (AMD); 2005, c. 12, Pt. DDD, §17 (AFF).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1979, c. 690, §5 (AMD). 2005, c. 12, §DDD1 (AMD). 2005, c. 12, §DDD17 (AFF).

### **§3-307. INFORMAL APPOINTMENT PROCEEDINGS; DELAY IN ORDER; DUTY OF REGISTER; EFFECT OF APPOINTMENT**

(a). Upon receipt of an application for informal appointment of a personal representative other than a special administrator as provided in section 3-614, if at least 120 hours have elapsed since the decedent's death, the register, after making the findings required by section 3-308, shall appoint the applicant subject to qualification and acceptance; provided, that if the decedent was a nonresident, the register shall delay the order of appointment until 30 days have elapsed since death unless the personal representative appointed at the decedent's domicile is the applicant, or unless the decedent's will directs that his estate be subject to the laws of this State.

[ 1979, c. 540, §1 (NEW) . ]

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

[ 1979, c. 540, §1 (NEW) . ]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-308. INFORMAL APPOINTMENT PROCEEDINGS; PROOF AND FINDINGS REQUIRED**

(a). In informal appointment proceedings, the register must determine whether:

(1). The application for informal appointment of a personal representative is complete; [1979, c. 540, §1 (NEW).]

(2). The applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief; [1979, c. 540, §1 (NEW).]

(3). The applicant appears from the application to be an interested person as defined in section 1-201, paragraph (20); [1979, c. 540, §1 (NEW).]

(4). On the basis of the statements in the application, venue is proper; [1979, c. 540, §1 (NEW).]

(5). Any will to which the requested appointment relates has been formally or informally probated; but this requirement does not apply to the appointment of a special administrator; [1979, c. 540, §1 (NEW).]

(6). Any notice required by section 3-204 has been given; [1979, c. 540, §1 (NEW).]

(7). From the statements in the application, the person whose appointment is sought has priority entitling him to the appointment. [1979, c. 540, §1 (NEW).]

[ 1979, c. 540, §1 (NEW) . ]

(b). Unless section 3-612 controls, the application must be denied if it indicates that a personal representative who has not filed a written statement of resignation as provided in section 3-610, subsection (c) has been appointed in this or another county of this State, that, unless the applicant is the domiciliary personal

representative or his nominee, the decedent was not domiciled in this State and that a personal representative whose appointment has not been terminated has been appointed by a court in the state of domicile, or that other requirements of this section have not been met.

[ 1979, c. 540, §1 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-309. INFORMAL APPOINTMENT PROCEEDINGS; REGISTER NOT SATISFIED**

If the register is not satisfied that a requested informal appointment of a personal representative should be made because of failure to meet the requirements of sections 3-307 and 3-308, or for any other reason, he may decline the application. A declination of informal appointment is not an adjudication and does not preclude appointment in formal proceedings. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-310. INFORMAL APPOINTMENT PROCEEDINGS; NOTICE REQUIREMENTS**

The moving party shall give notice as described by section 1-401 of the moving party's intention to seek an appointment informally: (1) to any person demanding notice pursuant to section 3-204; (2) to an heir or devisee who has not waived notice in a writing filed with the court; and (3) to any person having a prior or equal right to appointment not waived in writing and filed with the court. If the decedent was 55 years of age or older, the moving party shall give notice as described in section 1-401 to the Department of Health and Human Services. No other notice of an informal appointment proceeding is required. [2005, c. 12, Pt. DDD, §2 (AMD); 2005, c. 12, Pt. DDD, §17 (AFF).]

SECTION HISTORY

1979, c. 540, §1 (NEW). 1979, c. 690, §6 (AMD). 2005, c. 12, §DDD2 (AMD). 2005, c. 12, §DDD17 (AFF).

### **§3-311. INFORMAL APPOINTMENT UNAVAILABLE IN CERTAIN CASES**

If an application for informal appointment indicates the existence of a possible unrevoked testamentary instrument which may relate to property subject to the laws of this State, and which is not filed for probate in this court, the register shall decline the application. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

## **Part 4: FORMAL TESTACY AND APPOINTMENT PROCEEDINGS**

### **§3-401. FORMAL TESTACY PROCEEDINGS; NATURE; WHEN COMMENCED**

A formal testacy proceeding is litigation to determine whether a decedent left a valid will. A formal testacy proceeding may be commenced by an interested person filing a petition as described in section 3-402, subsection (a) in which he requests that the judge, after notice and hearing, enter an order probating a will, or a petition to set aside an informal probate of a will or to prevent informal probate of a will which is the subject of a pending application, or a petition in accordance with section 3-402, subsection (b) for an order that the decedent died intestate. [1979, c. 540, §1 (NEW).]

A petition may seek formal probate of a will without regard to whether the same or a conflicting will has been informally probated. A formal testacy proceeding may, but need not, involve a request for appointment of a personal representative. [1979, c. 540, §1 (NEW).]

During the pendency of a formal testacy proceeding, the register shall not act upon any application for informal probate of any will of the decedent or any application for informal appointment of a personal representative of the decedent. [1979, c. 540, §1 (NEW).]

Unless a petition in a formal testacy proceeding also requests confirmation of the previous informal appointment, a previously appointed personal representative, after receipt of notice of the commencement of a formal probate proceeding, must refrain from exercising his power to make any further distribution of the estate during the pendency of the formal proceeding. A petitioner who seeks the appointment of a different personal representative in a formal proceeding also may request an order restraining the acting personal representative from exercising any of the powers of his office and requesting the appointment of a special administrator. In the absence of a request, or if the request is denied, the commencement of a formal proceeding has no effect on the powers and duties of a previously appointed personal representative other than those relating to distribution. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-402. FORMAL TESTACY OR APPOINTMENT PROCEEDINGS; PETITION; CONTENTS**

(a). Petitions for formal probate of a will, or for adjudication of intestacy with or without request for appointment of a personal representative, must be directed to the judge, request a judicial order after notice and hearing, contain further statements as indicated in this section, and contain such other information and be in such form as the Supreme Judicial Court may by rule provide. A petition for formal probate of a will shall:

- (1). Request an order as to the testacy of the decedent in relation to a particular instrument which may or may not have been informally probated and determining the heirs; [1979, c. 540, §1 (NEW).]
- (2). Contain the statements required for informal applications as stated in the 6 subparagraphs under section 3-301, subsection (a), paragraph (1), and the statements required by section 3-301, subsection (a), paragraph (2), subparagraphs (ii) and (iii); and [1979, c. 540, §1 (NEW).]
- (3). State whether the original of the last will of the decedent is in the possession of the court or accompanies the petition. [1979, c. 540, §1 (NEW).]

If the original will is neither in the possession of the court nor accompanies the petition and no authenticated copy of a will probated in another jurisdiction accompanies the petition, the petition also must state the contents of the will and indicate that it is lost, destroyed or otherwise unavailable. [1979, c. 540, §1 (NEW).]

(b). A petition for adjudication of intestacy and appointment of an administrator in intestacy must request a judicial finding and order that the decedent left no will and determining the heirs, contain the statements required by section 3-301, subsection (a), paragraphs (1) and (4) and indicate whether supervised administration is sought and contain such other information and be in such form as the Supreme Judicial Court may by rule provide. A petition may request an order determining intestacy and heirs without requesting the appointment of an administrator, in which case the statements required by section 3-301, subsection (a), paragraph (4), subparagraph (ii) may be omitted.

[ 1979, c. 540, §1 (NEW) . ]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### §3-403. FORMAL TESTACY PROCEEDING; NOTICE OF HEARING ON PETITION

(a). Upon commencement of a formal testacy proceeding, the court shall fix a time and place of hearing. Notice must be given in the manner prescribed by section 1-401 by the petitioner to the persons enumerated in this subsection and to any additional person who has filed a demand for notice under section 3-204.

Notice must be given to the following persons: the surviving spouse, children and other heirs of the decedent, the devisees and executors named in any will that is being, or has been, probated or offered for informal or formal probate in the county or that is known by the petitioner to have been probated or offered for informal or formal probate elsewhere and any personal representative of the decedent whose appointment has not been terminated. If the decedent was 55 years of age or older, the petitioner shall give notice as described in section 1-401 to the Department of Health and Human Services. Notice may be given to other persons. In addition, the petitioner shall give notice by publication to all unknown persons and to all known persons whose addresses are unknown who have any interest in the matters being litigated. [2005, c. 12, Pt. DDD, §3 (AMD); 2005, c. 12, Pt. DDD, §17 (AFF).]

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

- (1). By inserting in one or more suitable periodicals a notice requesting information from any person having knowledge of the whereabouts of the alleged decedent; [1979, c. 540, §1 (NEW).]
- (2). By notifying law enforcement officials and public welfare agencies in appropriate locations of the disappearance of the alleged decedent; [1979, c. 540, §1 (NEW).]
- (3). By engaging the services of an investigator. The costs of any search so directed shall be paid by the petitioner if there is no administration or by the estate of the decedent in case there is administration. [1979, c. 540, §1 (NEW).]

[ 1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 2005, c. 12, §DDD3 (AMD). 2005, c. 12, §DDD17 (AFF).

### §3-404. FORMAL TESTACY PROCEEDINGS; WRITTEN OBJECTIONS TO PROBATE

Any party to a formal proceeding who opposes the probate of a will for any reason shall state in that party's pleadings that party's objections to probate of the will. [2013, c. 2, §32 (COR).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). RR 2013, c. 2, §32 (COR).

### §3-405. FORMAL TESTACY PROCEEDINGS; UNCONTESTED CASES; HEARINGS AND PROOF

If a petition in a testacy proceeding is unopposed, the court may order probate or intestacy on the strength of the pleadings if satisfied that the conditions of section 3-409 have been met, or conduct a hearing in open court and require proof of the matters necessary to support the order sought. If evidence



concerning execution of the will is necessary, the affidavit or testimony of one of any attesting witnesses to the instrument is sufficient. If the affidavit or testimony of an attesting witness is not available, execution of the will may be proved by other evidence or affidavit. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-406. FORMAL TESTACY PROCEEDINGS; CONTESTED CASES; TESTIMONY OF ATTESTING WITNESSES**

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

[ 1979, c. 540, §1 (NEW) . ]

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

[ 1979, c. 540, §1 (NEW) . ]

SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-407. FORMAL TESTACY PROCEEDINGS; BURDENS IN CONTESTED CASES**

In contested cases, petitioners who seek to establish intestacy have the burden of establishing prima facie proof of death, venue, and heirship. Proponents of a will have the burden of establishing prima facie proof of due execution in all cases, and, if they are also petitioners, prima facie proof of death and venue. Contestants of a will have the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake or revocation. Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof. If a will is opposed by the petition for probate of a later will revoking the former, it shall be determined first whether the later will is entitled to probate, and if a will is opposed by a petition for a declaration of intestacy, it shall be determined first whether the will is entitled to probate. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-408. FORMAL TESTACY PROCEEDINGS; WILL CONSTRUCTION; EFFECT OF FINAL ORDER IN ANOTHER JURISDICTION**

A final order of a court of another state determining testacy, the validity or construction of a will, made in a proceeding involving notice to and an opportunity for contest by all interested persons must be accepted as determinative by the courts of this State if it includes, or is based upon, a finding that the decedent was domiciled at his death in the state where the order was made. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

### §3-409. FORMAL TESTACY PROCEEDINGS; ORDER; FOREIGN WILL

After the time required for any notice has expired, upon proof of notice, and after any hearing that may be necessary, if the court finds that the testator is dead, venue is proper and that the proceeding was commenced within the limitation prescribed by section 3-108, it shall determine the decedent's domicile at death, his heirs and his state of testacy. Any will found to be valid and unrevoked shall be formally probated. Termination of any previous informal appointment of a personal representative, which may be appropriate in view of the relief requested and findings, is governed by section 3-612. The petition shall be dismissed or appropriate amendment allowed if the court is not satisfied that the alleged decedent is dead. A will from a foreign jurisdiction, including a place which does not require probate of a will after death, may be proved for probate in this State by a duly authenticated certificate of its legal custodian that the copy introduced is a true copy and that the will has been probated in the foreign jurisdiction or has otherwise become effective under the law of the other place. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### §3-410. FORMAL TESTACY PROCEEDINGS; PROBATE OF MORE THAN ONE INSTRUMENT

If 2 or more instruments are offered for probate before a final order is entered in a formal testacy proceeding, more than one instrument may be probated if neither expressly revokes the other or contains provisions which work a total revocation by implication. If more than one instrument is probated, the order shall indicate what provisions control in respect to the nomination of an executor, if any. The order may, but need not, indicate how any provisions of a particular instrument are affected by the other instrument. After a final order in a testacy proceeding has been entered, no petition for probate of any other instrument of the decedent may be entertained, except incident to a petition to vacate or modify a previous probate order and subject to the time limits of section 3-412. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### §3-411. FORMAL TESTACY PROCEEDINGS; PARTIAL INTESTACY

If it becomes evident in the course of a formal testacy proceeding that, though one or more instruments are entitled to be probated, the decedent's estate is or may be partially intestate, the court shall enter an order to that effect. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### §3-412. FORMAL TESTACY PROCEEDINGS; EFFECT OF ORDER; VACATION

Subject to appeal and subject to vacation as provided herein and in section 3-413, a formal testacy order under sections 3-409 to 3-411, including an order that the decedent left no valid will and determining heirs, is final as to all persons with respect to all issues concerning the decedent's estate that the court considered or might have considered incident to its rendition relevant to the question of whether the decedent left a valid will, and to the determination of heirs, except that: [1979, c. 540, §1 (NEW).]

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

[ 1979, c. 540, §1 (NEW) .]

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

[ 1979, c. 540, §1 (NEW) . ]

(3). A petition for vacation under either paragraphs (1) or (2) must be filed prior to the earlier of the following time limits:

(i). If a personal representative has been appointed for the estate, the time of entry of any order approving final distribution of the estate, or, if the estate is closed by statement, 6 months after the filing of the closing statement. [1979, c. 540, §1 (NEW) . ]

(ii). Whether or not a personal representative has been appointed for the estate of the decedent, the time prescribed by section 3-108 when it is no longer possible to initiate an original proceeding to probate a will of the decedent. [1979, c. 540, §1 (NEW) . ]

(iii). Twelve months after the entry of the order sought to be vacated. [1979, c. 540, §1 (NEW) . ]

[ 1979, c. 540, §1 (NEW) . ]

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

[ 1979, c. 540, §1 (NEW) . ]

(5). The finding of the fact of death is conclusive as to the alleged decedent only if notice of the hearing on the petition in the formal testacy proceeding was sent by registered or certified mail addressed to the alleged decedent at his last known address and the court finds that a search under section 3-403, subsection (b) was made.

[ 1979, c. 540, §1 (NEW) . ]

If the alleged decedent is not dead, even if notice was sent and search was made, he may recover estate assets in the hands of the personal representative. In addition to any remedies available to the alleged decedent by reason of any fraud or intentional wrongdoing, the alleged decedent may recover any estate or its proceeds from distributees that is in their hands, or the value of distributions received by them, to the extent that any recovery from distributees is equitable in view of all of the circumstances. [1979, c. 540, §1 (NEW) . ]

#### SECTION HISTORY

1979, c. 540, §1 (NEW) .

### **§3-413. FORMAL TESTACY PROCEEDINGS; VACATION OF ORDER FOR OTHER CAUSE**

For good cause shown, an order in a formal testacy proceeding may be modified or vacated within the time allowed for appeal. [1979, c. 540, §1 (NEW) . ]

#### SECTION HISTORY

1979, c. 540, §1 (NEW) .

### **§3-414. FORMAL PROCEEDINGS CONCERNING APPOINTMENT OF PERSONAL REPRESENTATIVE**

(a). A formal proceeding may be brought for adjudication regarding the priority or qualification of one who is an applicant for appointment as personal representative, or of one who previously has been appointed personal representative in informal proceedings. If an issue concerning the testacy of the decedent is or may be involved, such proceeding is governed by section 3-402, as well as by this section. In other cases, the petition shall contain or adopt the statements required by section 3-301, paragraph (1) and describe the question relating to priority or qualification of the personal representative which is to be resolved. If the proceeding precedes any appointment of a personal representative, it shall stay any pending informal appointment proceedings as well as any commenced thereafter. If the proceeding is commenced after appointment, the previously appointed personal representative, after receipt of notice thereof, shall refrain from exercising any power of administration except as necessary to preserve the estate or unless the judge orders otherwise.

[ 1979, c. 540, §1 (NEW) .]

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

[ 1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

## **Part 5: SUPERVISED ADMINISTRATION**

### **§3-501. SUPERVISED ADMINISTRATION; NATURE OF PROCEEDING**

Supervised administration is a single in rem proceeding to secure complete administration and settlement of a decedent's estate under the continuing authority of the court which extends until entry of an order approving distribution of the estate and discharging the personal representative or other order terminating the proceeding. A supervised personal representative is responsible to the court, as well as to the interested parties, and is subject to directions concerning the estate made by the court on its own motion or on the motion of any interested party. Except as otherwise provided in this Part, or as otherwise ordered by the court, a supervised personal representative has the same duties and powers as a personal representative who is not supervised. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-502. SUPERVISED ADMINISTRATION; PETITION; ORDER**

A petition for supervised administration may be filed by any interested person or by a personal representative at any time or the prayer for supervised administration may be joined with a petition in a testacy or appointment proceeding. If the testacy of the decedent and the priority and qualification of any personal representative have not been adjudicated previously, the petition for supervised administration shall include the matters required of a petition in a formal testacy proceeding and the notice requirements and procedures applicable to a formal testacy proceeding apply. If not previously adjudicated, the court shall adjudicate the testacy of the decedent and questions relating to the priority and qualifications of the personal

representative in any case involving a request for supervised administration, even though the request for supervised administration may be denied. After notice to interested persons, the court shall order supervised administration of a decedent's estate: (1) if the decedent's will directs supervised administration, it shall be ordered unless the court finds that circumstances bearing on the need for supervised administration have changed since the execution of the will and that there is no necessity for supervised administration; (2) if the decedent's will directs unsupervised administration, supervised administration shall be ordered only upon a finding that it is necessary for protection of persons interested in the estate; or (3) in other cases if the court finds that supervised administration is necessary under the circumstances. [1979, c. 540, §1 (NEW).]

## SECTION HISTORY

1979, c. 540, §1 (NEW).

**§3-503. SUPERVISED ADMINISTRATION; EFFECT ON OTHER PROCEEDINGS**

(a). The pendency of a proceeding for supervised administration of a decedent's estate stays action on any informal application then pending or thereafter filed.

[ 1979, c. 540, §1 (NEW) .]

(b). If a will has been previously probated in informal proceedings, the effect of the filing of a petition for supervised administration is as provided for formal testacy proceedings by section 3-401.

[ 1979, c. 540, §1 (NEW) .]

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

[ 1979, c. 540, §1 (NEW) .]

## SECTION HISTORY

1979, c. 540, §1 (NEW).

**§3-504. SUPERVISED ADMINISTRATION; POWERS OF PERSONAL REPRESENTATIVE**

Unless restricted by the court, a supervised personal representative has, without interim orders approving exercise of a power, all powers of personal representatives under this Code, but he shall not exercise his power to make any distribution of the estate without prior order of the court. Any other restriction on the power of a personal representative which may be ordered by the court must be endorsed on his letters of appointment and, unless so endorsed, is ineffective as to persons dealing in good faith with the personal representative. [1979, c. 540, §1 (NEW).]

## SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-505. SUPERVISED ADMINISTRATION; INTERIM ORDERS; DISTRIBUTION AND CLOSING ORDERS**

Unless otherwise ordered by the court, supervised administration is terminated by order in accordance with time restrictions, notices and contents of orders prescribed for proceedings under section 3-1001. Interim orders approving or directing partial distributions or granting other relief may be issued by the court at any time during the pendency of a supervised administration on the application of the personal representative or any interested person. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

## **Part 6: PERSONAL REPRESENTATIVE: APPOINTMENT, CONTROL AND TERMINATION OF AUTHORITY**

### **§3-601. QUALIFICATION**

Prior to receiving letters, a personal representative shall qualify by filing with the appointing court any required bond and a statement of acceptance of the duties of the office. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-602. ACCEPTANCE OF APPOINTMENT; CONSENT TO JURISDICTION**

By accepting appointment, a personal representative submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be delivered to the personal representative, or mailed to him by ordinary first class mail at his address as listed in the application or petition for appointment or as thereafter reported to the court and to his address as then known to the petitioner. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-603. BOND NOT REQUIRED WITHOUT COURT ORDER, EXCEPTIONS**

No bond is required of a personal representative appointed in informal proceedings, except (1) upon the appointment of a special administrator; (2) when an executor or other personal representative is appointed to administer an estate under a will containing an express requirement of bond; or (3) when bond is required under section 3-605. Bond may be required by court order at the time of appointment of a personal representative appointed in any formal proceeding except that bond is not required of a personal representative appointed in formal proceedings if the will relieves the personal representative of bond, unless bond has been requested by an interested party and the court is satisfied that it is desirable, or as provided in section 3-619, subsection (g). Bond required by any will or under this section may be dispensed with informal proceedings upon determination by the court that it is not necessary. No bond is required of any personal representative who, pursuant to statute, has deposited cash or collateral with an agency of this State to secure performance of the personal representative's duties. [1997, c. 2, §41 (COR).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1979, c. 663, §124 (AMD). 1979, c. 690, §7 (AMD). 1981, c. 268, §1 (AMD). RR 1997, c. 2, §41 (COR).

### §3-604. BOND AMOUNT; SECURITY; PROCEDURE; REDUCTION

If bond is required and the provisions of the will or order do not specify the amount, unless stated in his application or petition, the person qualifying shall file a statement under oath with the register indicating his best estimate of the value of the personal estate of the decedent and of the income expected from the personal and real estate during the next year, and he shall execute and file a bond with the registers, or give other suitable security, in an amount not less than the estimate. The register shall determine that the bond is duly executed by a corporate surety, or one or more individual sureties whose performance is secured by pledge of personal property, mortgage on real property or other adequate security. The register may permit the amount of the bond to be reduced by the value of assets of the estate deposited with a domestic financial institution, as defined in section 6-101, in a manner that prevents their unauthorized disposition. On petition of the personal representative or another interested person the judge may excuse a requirement of bond, increase or reduce the amount of the bond, release sureties, or permit the substitution of another bond with the same or different sureties. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### §3-605. DEMAND FOR BOND BY INTERESTED PERSON

Any person apparently having an interest in the estate worth in excess of \$1,000, or any creditor having a claim in excess of \$1,000, may make a written demand that a personal representative give bond. The demand must be filed with the register and a copy mailed to the personal representative, if appointment and qualification have occurred. Thereupon, bond is required, but the requirement ceases if the person demanding bond ceases to be interested in the estate, or if bond is excused as provided in sections 3-603 or 3-604. After he has received notice and until the filing of the bond or cessation of the requirement of bond, the personal representative shall refrain from exercising any powers of his office except as necessary to preserve the estate. Failure of the personal representative to meet a requirement of bond by giving suitable bond within 30 days after receipt of notice is cause for his removal and appointment of a successor personal representative. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### §3-606. TERMS AND CONDITIONS OF BONDS

- (a). The following requirements and provisions apply to any bond required by this Part:
- (1). Bonds shall name the judge as obligee for the benefit of the persons interested in the estate and shall be conditioned upon the faithful discharge by the fiduciary of all duties according to law. [1979, c. 540, §1 (NEW).]
  - (2). Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the personal representative and with each other. The address of sureties shall be stated in the bond. [1979, c. 540, §1 (NEW).]
  - (3). By executing an approved bond of a personal representative, the surety consents to the jurisdiction of the court which issued letters to the primary obligor in any proceedings pertaining to the fiduciary duties of the personal representative and naming the surety as a party. Notice of any proceeding shall be delivered to the surety or mailed to him by registered or certified mail at his address as listed with the court where the bond is filed and to his address as then known to the petitioner. [1979, c. 540, §1 (NEW).]
  - (4). On petition of a successor personal representative, any other personal representative of the same decedent, or any interested person, a proceeding in the court may be initiated against a surety for breach of the obligation of the bond of the personal representative. [1979, c. 540, §1 (NEW).]

(5). The bond of the personal representative is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted. [1979, c. 540, §1 (NEW).]

[ 1979, c. 540, §1 (NEW) .]

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

[ 1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-607. ORDER RESTRAINING PERSONAL REPRESENTATIVE**

On petition of any person who appears to have an interest in the estate, the judge by temporary order may restrain a personal representative from performing specified acts of administration, disbursement, or distribution, or exercise of any powers or discharge of any duties of his office, or make any other order to secure proper performance of his duty, if it appears to the judge that the personal representative otherwise may take some action which would jeopardize unreasonably the interest of the applicant or of some other interested person. Persons with whom the personal representative may transact business may be made parties. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-608. TERMINATION OF APPOINTMENT; GENERAL**

Termination of appointment of a personal representative occurs as indicated in sections 3-609 to 3-612, inclusive. Termination ends the right and power pertaining to the office of personal representative as conferred by this Code or any will, except that a personal representative, at any time prior to distribution or until restrained or enjoined by court order, may perform acts necessary to protect the estate and may deliver the assets to a successor representative. Termination does not discharge a personal representative from liability for transactions or omissions occurring before termination, or relieve him of the duty to preserve assets subject to his control, to account therefor and to deliver the assets. Termination does not affect the jurisdiction of the court over the personal representative, but terminates his authority to represent the estate in any pending or future proceeding. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-609. TERMINATION OF APPOINTMENT; DEATH OR DISABILITY**

The death of a personal representative or the appointment of a conservator for the estate of a personal representative, terminates his appointment. Until appointment and qualification of a successor or special representative to replace the deceased or protected representative, the representative of the estate of the deceased or protected personal representative, if any, has the duty to protect the estate possessed and being administered by his decedent or ward at the time his appointment terminates, has the power to perform acts necessary for protection and shall account for and deliver the estate assets to a successor or special personal representative upon his appointment and qualification. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).



### **§3-610. TERMINATION OF APPOINTMENT; VOLUNTARY**

(a). An appointment of a personal representative terminates as provided in section 3-1003, one year after the filing of a closing statement.

[ 1979, c. 540, §1 (NEW) .]

(b). An order closing an estate as provided in section 3-1001 or 3-1002 terminates an appointment of a personal representative.

[ 1979, c. 540, §1 (NEW) .]

(c). A personal representative may resign his position by filing a written statement of resignation with the register after he has given at least 15 days written notice to the persons known to be interested in the estate. If no one applies or petitions for appointment of a successor representative within the time indicated in the notice, the filed statement of resignation is ineffective as a termination of appointment and in any event is effective only upon the appointment and qualification of a successor representative and delivery of the assets to him.

[ 1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-611. TERMINATION OF APPOINTMENT BY REMOVAL; CAUSE; PROCEDURE**

(a). A person interested in the estate may petition for removal of a personal representative for cause at any time. Upon filing of the petition, the court shall fix a time and place for hearing. Notice shall be given by the petitioner to the personal representative, and to other persons as the court may order. Except as otherwise ordered as provided in section 3-607, after receipt of notice of removal proceedings, the personal representative shall not act except to account, to correct maladministration or preserve the estate. If removal is ordered, the court also shall direct by order the disposition of the assets remaining in the name of, or under the control of, the personal representative being removed.

[ 1979, c. 540, §1 (NEW) .]

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

[ 1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### §3-612. TERMINATION OF APPOINTMENT; CHANGE OF TESTACY STATUS

Except as otherwise ordered in formal proceedings, the probate of a will subsequent to the appointment of a personal representative in intestacy or under a will which is superseded by formal probate of another will, or the vacation of an informal probate of a will subsequent to the appointment of the personal representative thereunder, does not terminate the appointment of the personal representative although his powers may be reduced as provided in section 3-401. Termination occurs upon appointment in informal or formal appointment proceedings of a person entitled to appointment under the later assumption concerning testacy. If no request for new appointment is made within 30 days after expiration of time for appeal from the order in formal testacy proceedings, or from the informal probate, changing the assumption concerning testacy, the previously appointed personal representative upon request may be appointed personal representative under the subsequently probated will, or as in intestacy as the case may be. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### §3-613. SUCCESSOR PERSONAL REPRESENTATIVE

Parts 3 and 4 of this Article govern proceedings for appointment of a personal representative to succeed one whose appointment has been terminated. After appointment and qualification, a successor personal representative may be substituted in all actions and proceedings to which the former personal representative was a party, and no notice, process or claim which was given or served upon the former personal representative need be given to or served upon the successor in order to preserve any position or right the person giving the notice or filing the claim may thereby have obtained or preserved with reference to the former personal representative. Except as otherwise ordered by the court, the successor personal representative has the powers and duties in respect to the continued administration which the former personal representative would have had if his appointment had not been terminated. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### §3-614. SPECIAL ADMINISTRATOR; APPOINTMENT

A special administrator may be appointed: [1979, c. 540, §1 (NEW).]

(1). Informally by the register on the application of any interested person when necessary to protect the estate of a decedent prior to the appointment of a general personal representative or if a prior appointment has been terminated as provided in section 3-609;

[ 1979, c. 540, §1 (NEW) .]

(2). In a formal proceeding by order of the court on the petition of any interested person and finding, after notice and hearing, that appointment is necessary to preserve the estate or to secure its proper administration including its administration in circumstances where a general personal representative cannot or should not act. If it appears to the court that an emergency exists, appointment may be ordered without notice.

[ 1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-615. SPECIAL ADMINISTRATOR; WHO MAY BE APPOINTED**

(a). If a special administrator is to be appointed pending the probate of a will which is the subject of a pending application or petition for probate, the person named executor in the will shall be appointed if available, and qualified.

[ 1979, c. 540, §1 (NEW) .]

(b). In other cases, any proper person may be appointed special administrator.

[ 1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-616. SPECIAL ADMINISTRATOR; APPOINTED INFORMALLY; POWERS AND DUTIES**

A special administrator appointed by the register in informal proceedings pursuant to section 3-614, paragraph (1) has the duty to collect and manage the assets of the estate, to preserve them, to account therefor and to deliver them to the general personal representative upon his qualification. The special administrator has the power of a personal representative under the Code necessary to perform his duties. [ 1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-617. SPECIAL ADMINISTRATOR; FORMAL PROCEEDINGS; POWER AND DUTIES**

A special administrator appointed by order of the court in any formal proceeding has the power of a general personal representative except as limited in the appointment and duties as prescribed in the order. The appointment may be for a specified time, to perform particular acts or on other terms as the court may direct. [ 1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-618. TERMINATION OF APPOINTMENT; SPECIAL ADMINISTRATOR**

The appointment of a special administrator terminates in accordance with the provisions of the order of appointment or on the appointment of a general personal representative. In other cases, the appointment of a special administrator is subject to termination as provided in sections 3-608 through 3-611. [ 1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-619. PUBLIC ADMINISTRATORS**

(a). The Governor shall appoint in each county for a term of 4 years, unless sooner removed, a public administrator who shall, upon petition to the court and after notice and hearing, be appointed to administer the estates of persons who die intestate within the county, or who die intestate elsewhere leaving property within the county, and who are not known to have within the state any heirs who can lawfully inherit the estate, and

for whom no other administration has been commenced. The public administrator shall have the same powers and duties of a personal representative under supervised administration as provided in section 3-504, and except as provided in subsection (g), shall give bond as provided for other personal representatives in cases of ordinary administration under sections 3-603 through 3-606. If any person entitled to appointment as personal representative under section 3-203 shall, prior to the appointment of the public administrator, file a petition for informal or formal appointment as personal representative, the court shall withhold any appointment of the public administrator pending denial of the petition for the appointment of the private personal representative.

[ 1981, c. 268, §2 (AMD) .]

(b). The public administrator may be allowed fees and compensation for his services as in the case of ordinary administration as provided in sections 3-719, 3-720 and 3-721, except that no fee for his own services shall be paid without prior approval by the court.

[ 1979, c. 540, §1 (NEW) .]

(c). Pending the appointment of the public administrator, and in the absence of any local administration or any administration by a domiciliary foreign personal representative under sections 4-204 and 4-205, the public administrator may proceed to conserve the property of the estate when it appears necessary or expedient.

[ 1979, c. 540, §1 (NEW) .]

(d). If, before the estate of such deceased in the hands of the public administrator is fully settled, any last will and testament of the decedent is granted informal or formal probate, or if any person entitled under section 3-203 to appointment as personal representative is informally or formally appointed, the appointment of the public administrator is terminated as provided in section 3-608, and he shall account for and deliver the assets of the estate to the private personal representative as provided therein, or to the successors under the will as provided by law if no private personal representative has been appointed.

[ 1979, c. 540, §1 (NEW) .]

(e). When there are assets, other than real property, remaining in the hands of such public administrator after the payment of the decedent's debts and all costs of administration and no heirs have been discovered, the public administrator must be ordered by the judge to deposit them with the Treasurer of State, who shall receive them and dispose of them according to Title 33, chapter 41. These assets must, for the purposes of Title 33, chapter 41, be presumed unclaimed when the judge orders the public administrator to deposit them with the Treasurer of State.

[ 2003, c. 20, Pt. T, §12 (AMD) .]

(f). In all cases where a public administrator is appointed, the register shall immediately send to the Treasurer of State a copy of the petition and the decree thereon, and in all cases where the public administrator is ordered to pay the balance of the estate as provided in subsection (e) the judge shall give notice to the county treasurer of the amount and from what estate it is receivable. If the public administrator neglects for 3 months after the order of the judge to deposit the money, the county treasurer shall petition the court for enforcement of the order or bring a civil action upon any bond of the public administrator for the recovery thereof. The records and accounts of the public administrator shall be audited annually by the Office of the State Auditor.

[ 1979, c. 540, §1 (NEW); 2013, c. 16, §10 (REV) .]

(g). Estates administered under this section having a value at the decedent's death not exceeding \$200 shall be exempt from all notice and filing costs and from giving bond. The cost of notice shall be paid by the court.

[ 1981, c. 268, §4 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1981, c. 268, §§2-4 (AMD). 2003, c. 20, Pt. T, §12 (AMD). 2013, c. 16, §10 (REV).

## Part 7: DUTIES AND POWERS OF PERSONAL REPRESENTATIVES

### §3-701. TIME OF ACCRUAL OF DUTIES AND POWERS

The duties and powers of a personal representative commence upon his appointment. The powers of a personal representative relate back in time to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter. Prior to appointment, a person named executor in a will may carry out written instructions of the decedent relating to his body, funeral and burial arrangements. A personal representative may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative. [1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### §3-702. PRIORITY AMONG DIFFERENT LETTERS

A person to whom general letters are issued first has exclusive authority under the letters until his appointment is terminated or modified. If, through error, general letters are afterwards issued to another, the first appointed representative may recover any property of the estate in the hands of the representative subsequently appointed, but the acts of the latter done in good faith before notice of the first letters are not void for want of validity of appointment. [1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### §3-703. GENERAL DUTIES; RELATION AND LIABILITY TO PERSONS INTERESTED IN ESTATE; STANDING TO SUE

(a). A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this Code, and as expeditiously and efficiently as is consistent with the best interests of the estate. The personal representative shall use the authority conferred upon the personal representative by this Code, the terms of the will, if any, and any order in proceedings to which the personal representative is party for the best interests of successors to the estate. A personal representative is a fiduciary who shall observe the standards of care applicable to trustees as described in Title 18-B, sections 802, 803, 805, 806 and 807 and Title 18-B, chapter 9, except as follows.

(1). A personal representative, in developing an investment strategy, shall take into account the expected duration of the period reasonably required to effect distribution of the estate's assets. [1995, c. 525, §1 (NEW); 1995, c. 525, §4 (AFF) .]

(2). Except as provided in section 3-906, subsection (a), paragraphs (1) and (2), a personal representative may make distribution of an estate's assets in cash or in kind, in accordance with the devisees' best interests, and is not required either to liquidate the estate's assets or to preserve them for distribution. [1997, c. 73, §1 (AMD); 1997, c. 73, §4 (AFF).]

(3). If all devisees whose devises are to be funded from the residue of an estate agree, in a written instrument signed by each of them and presented to the personal representative, on an investment manager to direct the investment of the estate's residuary assets, the personal representative may, but need not, rely on the investment advice of the investment manager so identified or delegate the investment management of the estate's residuary assets to such manager and, in either case, may pay reasonable compensation to the manager from the residue of the estate. A personal representative who relies on the advice of, or delegates management discretion to, an investment manager in accordance with the terms of this section is not liable for the investment performance of the assets invested in the discretion of, or in accordance with the advice of, such investment manager. [1997, c. 73, §4 (AFF); 1997, c. 73, §2 (RPR).]

[ 2005, c. 683, Pt. C, §6 (AMD) .]

(b). A personal representative shall not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration, an informally probated will is authority to administer and distribute the estate according to its terms. An order of appointment of a personal representative, whether issued in informal or formal proceedings, is authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding questioning his appointment or fitness to continue, or a supervised administration proceeding. Nothing in this section affects the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants, the surviving spouse, any minor and dependent children and any pretermitted child of the decedent as described elsewhere in this Code.

[ 1979, c. 540, §1 (NEW) .]

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

[ 1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1995, c. 525, §1 (AMD). 1995, c. 525, §4 (AFF). 1997, c. 73, §§1,2 (AMD). 1997, c. 73, §4 (AFF). 2005, c. 683, §C6 (AMD).

### **§3-704. PERSONAL REPRESENTATIVE TO PROCEED WITHOUT COURT ORDER; EXCEPTION**

A personal representative shall proceed expeditiously with the settlement and distribution of a decedent's estate and, except as otherwise specified or ordered in regard to a supervised personal representative, do so without adjudication, order, or direction of the court, but he may invoke the jurisdiction of the court, in proceedings authorized by this Code, to resolve questions concerning the estate or its administration. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-705. DUTY OF PERSONAL REPRESENTATIVE; INFORMATION TO HEIRS AND DEVISEES**

Not later than 30 days after his appointment every personal representative, except any special administrator, shall give information of his appointment to the heirs and devisees, including, if there has been no formal testacy proceeding and if the personal representative was appointed on the assumption that the decedent died intestate, the devisees in any will mentioned in the application for appointment of a personal representative and, in any case where there has been no formal testacy proceedings, to the devisees in any purported will whose existence and the names of the devisees thereunder are known to the personal representative. The information shall be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the personal representative. The duty does not extend to require information to persons who have been adjudicated in a prior formal testacy proceeding to have no interest in the estate. The information shall include the name and address of the personal representative, indicate that it is being sent to persons who have or may have some interest in the estate being administered, indicate whether bond has been filed, and describe the court where papers relating to the estate are on file. The personal representative's failure to give this information is a breach of his duty to the persons concerned but does not affect the validity of his appointment, his powers or other duties. A personal representative may inform other persons of his appointment by delivery or ordinary first class mail. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-706. DUTY OF PERSONAL REPRESENTATIVE; INVENTORY AND APPRAISAL**

Within 3 months after his appointment, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall prepare and file or furnish an inventory of property owned by the decedent at the time of his death, listing it with reasonable detail, and indicating as to each listed item, its fair market value as of the date of the decedent's death, and the type and amount of any encumbrance that may exist with reference to any item. The inventory shall also include a schedule of credits of the decedent, with the names of the obligors, the amounts due, a description of the nature of the obligation, and the amount of all such credits, exclusive of expenses and risk of settlement or collection. [1979, c. 690, §8 (AMD).]

The personal representative shall furnish a copy of the inventory to interested persons who request it. He may also file the original of the inventory with the court. [1979, c. 690, §9 (AMD).]

When an inventory has not been filed or furnished as required under this section and an interested party makes a prima facie case that property that should have been inventoried is now missing, the personal representative has the burden of proving by a preponderance of the evidence that the specific property would properly be excluded from the inventory. [2003, c. 378, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1979, c. 690, §§8,9 (AMD). 2003, c. 378, §1 (AMD).

### **§3-707. EMPLOYMENT OF APPRAISERS**

The personal representative may employ a qualified and disinterested appraiser to assist him in ascertaining the fair market value of all assets as of the date of the decedent's death; but shall employ an appraiser for determining the value of real estate or securities not regularly traded on recognized exchanges. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser shall be indicated on the inventory with the item or items he appraised. [1979, c. 690, §10 (AMD).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1979, c. 690, §10 (AMD).

### **§3-708. DUTY OF PERSONAL REPRESENTATIVE; SUPPLEMENTARY INVENTORY**

If any property not included in the original inventory comes to the knowledge of a personal representative or if the personal representative learns that the value or description indicated in the original inventory for any item is erroneous or misleading, he shall make a supplementary inventory or appraisal showing the market value as of the date of the decedent's death of the new item or the revised market value or descriptions, and the appraisers or other data relied upon, if any, and file it with the court or furnish copies thereof or information thereof to persons interested in the new information. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-709. DUTY OF PERSONAL REPRESENTATIVE; POSSESSION OF ESTATE**

Except as otherwise provided by a decedent's will, every personal representative has a right to, and shall take possession or control of, the decedent's property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled thereto unless or until, in the judgment of the personal representative, possession of the property by him will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by an heir or devisee is conclusive evidence, in any action against the heir or devisee for possession thereof, that the possession of the property by the personal representative is necessary for purposes of administration. The personal representative shall pay taxes on, and take all steps reasonably necessary for the management, protection and preservation of, the estate in his possession. He may maintain an action to recover possession of property or to determine the title thereto. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-710. POWER TO AVOID TRANSFERS**

The property liable for the payment of unsecured debts of a decedent includes all property transferred by him by any means which is in law void or voidable as against his creditors, and subject to prior liens, the right to recover this property, so far as necessary for the payment of unsecured debts of the decedent, is exclusively in the personal representative. The personal representative is not required to institute such an action unless requested by creditors, who must pay or secure the cost and expenses of litigation. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-711. POWERS OF PERSONAL REPRESENTATIVES; IN GENERAL**

Until termination of his appointment, a personal representative has the same power over the title to property of the estate that an absolute owner would have, in trust however, for the benefit of the creditors and others interested in the estate. This power may be exercised without notice, hearing or order of court, except as limited by this section. The personal representative shall not sell or transfer any interest in real property of the estate without giving notice at least 10 days prior to that sale or transfer to any person succeeding to an interest in that property, unless the personal representative is authorized under the will to sell or transfer real estate without this notice. [1983, c. 583, §9 (RPR).]

#### SECTION HISTORY



1979, c. 540, §1 (NEW). 1983, c. 583, §9 (RPR).

### **§3-712. IMPROPER EXERCISE OF POWER; BREACH OF FIDUCIARY DUTY**

If the exercise of power concerning the estate is improper, the personal representative is liable to interested persons for damage or loss resulting from breach of his fiduciary duty to the same extent as a trustee of an express trust. The rights of purchasers and others dealing with a personal representative shall be determined as provided in sections 3-713 and 3-714. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-713. SALE, ENCUMBRANCE OR TRANSACTION INVOLVING CONFLICT OF INTEREST; VOIDABLE; EXCEPTIONS**

Any sale or encumbrance to the personal representative, his spouse, agent or attorney, or any corporation or trust in which he has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest on the part of the personal representative, is voidable by any person interested in the estate except one who has consented after fair disclosure, unless [1979, c. 540, §1 (NEW).]

- (1). The will or a contract entered into by the decedent expressly authorized the transaction; or

[ 1979, c. 540, §1 (NEW) .]

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

[ 1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-714. PERSONS DEALING WITH PERSONAL REPRESENTATIVE; PROTECTION**

A person who in good faith either assists a personal representative or deals with him for value is protected as if the personal representative properly exercised his power. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise. Except for restrictions on powers of supervised personal representatives which are endorsed on letters as provided in section 3-504, no provision in any will or order of court purporting to limit the power of a personal representative is effective except as to persons with actual knowledge thereof. A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### §3-715. TRANSACTIONS AUTHORIZED FOR PERSONAL REPRESENTATIVES; EXCEPTIONS

Except as restricted or otherwise provided by the will or by an order in a formal proceeding and subject to the priorities stated in section 3-902, a personal representative, acting reasonably for the benefit of the interested persons, may properly: [1979, c. 540, §1 (NEW).]

(1). Retain assets owned by the decedent pending distribution or liquidation including those in which the representative is personally interested or which are otherwise improper for trust investment;

[ 1979, c. 540, §1 (NEW) . ]

(2). Receive assets from fiduciaries, or other sources;

[ 1979, c. 540, §1 (NEW) . ]

(3). Perform, compromise or refuse performance of the decedent's contracts that continue as obligations of the estate, as he may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:

(i). Execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or [1979, c. 540, §1 (NEW).]

(ii). Deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement; [1979, c. 540, §1 (NEW).]

[ 1979, c. 540, §1 (NEW) . ]

(4). Satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;

[ 1979, c. 540, §1 (NEW) . ]

(5). If funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including moneys received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements or other prudent investments which would be reasonable for use by trustees generally;

[ 1979, c. 540, §1 (NEW) . ]

(6). Acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale; and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

[ 1979, c. 540, §1 (NEW) . ]

(7). Make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing or erect new party walls or buildings;

[ 1979, c. 540, §1 (NEW) . ]

**(8).** Subdivide, develop or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; or adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate easements to public use without consideration;

[ 1979, c. 540, §1 (NEW) . ]

**(9).** Enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration;

[ 1979, c. 540, §1 (NEW) . ]

**(10).** Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

[ 1979, c. 540, §1 (NEW) . ]

**(11).** Abandon property when, in the opinion of the personal representative, it is valueless, or is so encumbered, or is in condition that it is of no benefit to the estate;

[ 1979, c. 540, §1 (NEW) . ]

**(12).** Vote stocks or other securities in person or by general or limited proxy;

[ 1979, c. 540, §1 (NEW) . ]

**(13).** Pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;

[ 1979, c. 540, §1 (NEW) . ]

**(14).** Hold a security in the name of a nominee or in other form without disclosure of the interest of the estate but the personal representative is liable for any act of the nominee in connection with the security so held;

[ 1979, c. 540, §1 (NEW) . ]

**(15).** Insure the assets of the estate against damage, loss and liability and himself against liability as to third persons;

[ 1979, c. 540, §1 (NEW) . ]

**(16).** Borrow money with or without security to be repaid from the estate assets or otherwise; and advance money for the protection of the estate;

[ 1979, c. 540, §1 (NEW) . ]

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

[ 1979, c. 540, §1 (NEW) . ]

**(18).** Pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate;

[ 1997, c. 668, §3 (AMD) . ]

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

[ 1979, c. 540, §1 (NEW) . ]

**(20).** Allocate items of income or expense to either estate income or principal, as permitted or provided by law;

[ 1979, c. 540, §1 (NEW) . ]

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

[ 1979, c. 540, §1 (NEW) . ]

**(22).** Prosecute or defend claims, or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of his duties;

[ 1979, c. 540, §1 (NEW) . ]

**(23).** Sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit, or for part cash and part credit, and with or without security for unpaid balances;

[ 1979, c. 540, §1 (NEW) . ]

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

[ 1975, c. 540, §1 (NEW) . ]

**(25).** Incorporate any business or venture in which the decedent was engaged at the time of his death;

[ 1975, c. 540, §1 (NEW) . ]

**(26).** Provide for exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate;

[ 1975, c. 540, §1 (NEW) . ]

(27). Satisfy and settle claims and distribute the estate as provided in this Code.

[ 1975, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1997, c. 668, §3 (AMD).

### **§3-716. POWERS AND DUTIES OF SUCCESSOR PERSONAL REPRESENTATIVE**

A successor personal representative has the same power and duty as the original personal representative to complete the administration and distribution of the estate, as expeditiously as possible, but he shall not exercise any power expressly made personal to the executor named in the will. [1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-717. COREPRESENTATIVES; WHEN JOINT ACTION REQUIRED**

If 2 or more persons are appointed corepresentatives and unless the will provides otherwise, the concurrence of all is required on all acts connected with the administration and distribution of the estate. This restriction does not apply when any corepresentative receives and receipts for property due the estate, when the concurrence of all cannot readily be obtained in the time reasonably available for emergency action necessary to preserve the estate, or when a corepresentative has been delegated to act for the others. Persons dealing with a corepresentative if actually unaware that another has been appointed to serve with that corepresentative or if advised by the personal representative with whom they deal that the personal representative has authority to act alone for any of the reasons mentioned herein, are as fully protected as if the person with whom they dealt had been the sole personal representative. [2011, c. 420, Pt. A, §12 (AMD) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 2011, c. 420, Pt. A, §12 (AMD).

### **§3-718. POWERS OF SURVIVING PERSONAL REPRESENTATIVE**

Unless the terms of the will otherwise provide, every power exercisable by personal corepresentatives may be exercised by the one or more remaining after the appointment of one or more is terminated, and if one of 2 or more nominated as coexecutors is not appointed, those appointed may exercise all the powers incident to the office. [1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-719. COMPENSATION OF PERSONAL REPRESENTATIVE**

A personal representative is entitled to reasonable compensation for his services. If a will provides for compensation of the personal representative and there is no contract with the decedent regarding compensation, he may renounce the provision before qualifying and be entitled to reasonable compensation. A personal representative also may renounce his right to all or any part of the compensation. A written renunciation of fee may be filed with the court. [1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

**§3-720. EXPENSES IN ESTATE LITIGATION**

If any personal representative or person nominated as personal representative defends or prosecutes any proceeding in good faith, whether successful or not he is entitled to receive from the estate his necessary expenses and disbursements including reasonable attorneys' fees incurred. [1975, c. 540, §1 (NEW) .]

## SECTION HISTORY

1979, c. 540, §1 (NEW) .

**§3-721. PROCEEDINGS FOR REVIEW OF EMPLOYMENT OF AGENTS AND COMPENSATION OF PERSONAL REPRESENTATIVES AND EMPLOYEES OF ESTATE**

(a). After notice to all interested persons, on petition of an interested person or on appropriate motion if administration is supervised, the propriety of employment of any person by a personal representative, including the employment of any attorney, auditor, investment advisor or other specialized agent or assistant, the reasonableness of the compensation of any person so employed, or the reasonableness of the compensation determined by the personal representative for his own services, may be reviewed by the court. Any person who has received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.

[ 1979, c. 540, §1 (NEW) .]

(b). Factors to be considered as guides in determining the reasonableness of a fee include the following:

- (1). The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the service properly; [1975, c. 540, §1 (NEW) .]
- (2). The likelihood, if apparent to the personal representative, that the acceptance of the particular employment will preclude the person employed from other employment; [1975, c. 540, §1 (NEW) .]
- (3). The fee customarily charged in the locality for similar services; [1975, c. 540, §1 (NEW) .]
- (4). The amount involved and the results obtained; [1975, c. 540, §1 (NEW) .]
- (5). The time limitations imposed by the personal representative or by the circumstances; [1975, c. 540, §1 (NEW) .]
- (6). The experience, reputation and ability of the person performing the services. [1975, c. 540, §1 (NEW) .]

[ 1979, c. 540, §1 (NEW) .]

## SECTION HISTORY

1979, c. 540, §1 (NEW) .

**Part 8: CREDITORS' CLAIMS**

### §3-801. NOTICE TO CREDITORS

(a). A personal representative upon application for appointment shall pay a fee to the court to permit the register to publish a notice to creditors once a week for 2 successive weeks in a newspaper of general circulation in the county announcing the appointment and the personal representative's address and notifying creditors of the estate to present their claims within 4 months after the date of the first publication of the notice or be forever barred.

[ 2001, c. 559, Pt. X, §1 (AMD) .]

(b). A personal representative may give written notice by mail or other delivery to a creditor, notifying the creditor to present the creditor's claim within 4 months after the published notice, if given as provided in subsection (a), or within 60 days after the mailing or other delivery of the notice, whichever is later, or be forever barred. Written notice must be the notice described in subsection (a) or a similar notice.

[ 1989, c. 661, §2 (NEW) .]

(c). The personal representative is not liable to a creditor or to a successor of the decedent for giving or failing to give notice under this section.

[ 1989, c. 661, §2 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1989, c. 661, §2 (RPR). 2001, c. 559, §X1 (AMD).

### §3-802. STATUTES OF LIMITATIONS

(a). Unless an estate is insolvent, the personal representative, with the consent of all successors whose interests would be affected, may waive any defense of limitations available to the estate. If the defense is not waived, no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid.

[ 1989, c. 661, §2 (NEW) .]

(b). The running of any statute of limitations measured from some other event than death or the giving of notice to creditors is suspended for 4 months after the decedent's death, but resumes thereafter as to claims not barred by other sections.

[ 1989, c. 661, §2 (NEW) .]

(c). For purposes of any statute of limitations, the presentation of a claim pursuant to section 3-804 is equivalent to commencement of a proceeding on the claim.

[ 1989, c. 661, §2 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1989, c. 661, §2 (RPR).

**§3-803. LIMITATIONS ON PRESENTATION OF CLAIMS**

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

(1). The time provided by section 3-801, subsection (b) for creditors who are given actual notice, and the time provided in section 3-801, subsection (a) for all creditors barred by publication; or [1989, c. 661, §3 (RPR).]

(2). Nine months of the decedent's death. [1989, c. 661, §3 (RPR).]

[ 1989, c. 661, §3 (RPR) .]

(a-1). A claim described in subsection (a) which is barred by the nonclaim statute of the decedent's domicile before the giving of notice to creditors in this State is barred in this State.

[ 1989, c. 661, §4 (NEW) .]

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

(1). A claim based on a contract with the personal representative, within four months after performance by the personal representative is due; or [1989, c. 661, §5 (AMD).]

(2). Any other claim, within the later of 4 months after it arises, or the time specified in subsection (a), paragraph (2). [1989, c. 661, §5 (AMD).]

[ 1989, c. 661, §5 (AMD) .]

(c). Nothing in this section affects or prevents:

(1). Any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate; [1989, c. 661, §5 (AMD).]

(2). To the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which the decedent or the personal representative is protected by liability insurance; [2001, c. 559, Pt. X, §2 (AMD).]

(3). Collection of compensation for services rendered and reimbursement for expenses advanced by the personal representative or by the attorney or accountant for the personal representative of the estate; or [2001, c. 559, Pt. X, §3 (AMD).]

(4). The State from filing and enforcing a claim for Medicaid reimbursement under Title 22, section 14. Notwithstanding subsection (a), paragraph (2), if this claim is filed within 4 months of published or actual notice of creditors, the claim is considered timely filed. [2001, c. 559, Pt. X, §4 (NEW).]

[ 2001, c. 559, Pt. X, §§2-4 (AMD) .]

**SECTION HISTORY**

1979, c. 540, §1 (NEW). 1989, c. 661, §§3-5 (AMD). 2001, c. 559, §§X2-4 (AMD).



### §3-804. MANNER OF PRESENTATION OF CLAIMS

Claims against a decedent's estate may be presented as follows: [1979, c. 540, §1 (NEW).]

(1). The claimant may deliver or mail to the personal representative a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed, or may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court. The claim is deemed presented on the first to occur of receipt of the written statement of claim by the personal representative, or the filing of the claim with the court. If a claim is not yet due, the date when it will become due shall be stated. If the claim is contingent or unliquidated, the nature of the uncertainty shall be stated. If the claim is secured, the security shall be described. Failure to describe correctly the security, the nature of any uncertainty, and the due date of a claim not yet due does not invalidate the presentation made.

[1979, c. 540, §1 (NEW) .]

(2). The claimant may commence a proceeding against the personal representative in any court where the personal representative may be subjected to jurisdiction, to obtain payment of his claim against the estate, but the commencement of the proceeding must occur within the time limited for presenting the claim. No presentation of claim is required in regard to matters claimed in proceedings against the decedent which were pending at the time of his death.

[1979, c. 540, §1 (NEW) .]

(3). If a claim is presented under paragraph (1), no proceeding thereon may be commenced more than 60 days after the personal representative has mailed a notice of disallowance; but, in the case of a claim which is not presently due or which is contingent or unliquidated, the personal representative may consent to an extension of the 60-day period, or to avoid injustice the court, on petition, may order an extension of the 60-day period, but in no event shall the extension run beyond the applicable statute of limitations.

[1979, c. 540, §1 (NEW) .]

(4). When a decedent's estate has not been commenced at the time a claimant wishes to present a claim, a claim is deemed presented when the claimant files with the clerk of the court a written statement of claim meeting the requirements of subsection (1) and a demand for notice pursuant to section 3-204. The provisions of subsection (3) apply upon the appointment of a personal representative.

[1997, c. 321, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1997, c. 321, §1 (AMD).

### §3-805. CLASSIFICATION OF CLAIMS

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

(1). Costs and expenses of administration; [1979, c. 540, §1 (NEW).]

(2). Reasonable funeral expenses; [1979, c. 540, §1 (NEW).]

(3). Debts and taxes with preference under federal law; [1979, c. 540, §1 (NEW).]

(4). Medicaid benefits recoverable under Title 22, section 14, subsection 2-I and reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending the decedent; [1993, c. 410, Pt. I, §1 (AMD).]

(5). Debts and taxes with preference under other laws of this State; [1979, c. 540, §1 (NEW) .]

(6). All other claims. [1979, c. 540, §1 (NEW).]

[ 1993, c. 410, Pt. I, §1 (AMD) .]

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

[ 1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1989, c. 397, §1 (AMD). 1993, c. 410, §11 (AMD).

### §3-806. ALLOWANCE OF CLAIMS

(a). As to claims presented in the manner described in section 3-804 within the time limit prescribed in section 3-803, the personal representative may furnish a notice to any claimant stating that the claim has been disallowed. If, after allowing or disallowing a claim, the personal representative changes his decision concerning the claim, he shall notify the claimant. The personal representative may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run and the claim has been barred. Every claim which is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than 60 days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar. Failure of the personal representative to furnish notice to a claimant of action on his claim for 60 days after the time for original presentation of the claim has expired has the effect of a notice of allowance.

[ 1979, c. 690, §§11, 12 (AMD) .]

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

[ 1979, c. 540, §1 (NEW) .]

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

[ 1979, c. 540, §1 (NEW) .]

(d). Unless otherwise provided in any judgment in another court entered against the personal representative, allowed claims bear prejudgment interest at the rate specified in Title 14, section 1602-B for the period commencing 60 days after the time for original presentation of the claim has expired unless based on a contract making a provision for interest, in which case they bear interest in accordance with that provision.

(1). Interest may not accrue on any allowed claims, however allowed, against an insolvent estate, except to the extent that insurance coverage or other nonprobate assets are available to pay the claim in full. This paragraph is effective for estates of decedents who die on or after October 1, 1997. [1997, c. 202, §1 (NEW).]

(2). To the extent that an allowed claim against an insolvent estate is secured by property, the value of which, as determined under section 3-809, is greater than the amount of the claim, the holder of the claim may receive interest on the principal amount of the claim and any reasonable fees, costs or charges provided for under an agreement under which the claim arose. This paragraph is effective for estates of decedents who die on or after October 1, 1997. [1997, c. 202, §1 (NEW).]

[ 2003, c. 460, §9 (AMD) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1979, c. 690, §§11,12 (AMD). 1997, c. 202, §1 (AMD). 2003, c. 460, §9 (AMD).

### §3-807. PAYMENT OF CLAIMS

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

[ 1989, c. 661, §6 (AMD) .]

(b). The personal representative at any time may pay any just claim that has not been barred, with or without formal presentation, but the personal representative is personally liable to any other claimant whose claim is allowed and who is injured by its payment if

(1). Payment was made before the expiration of the time limit stated in subsection (a) and the personal representative failed to require the payee to give adequate security for the refund of any of the payment necessary to pay other claimants; or [1989, c. 661, §6 (AMD).]

(2). Payment was made, due to the negligence or willful fault of the personal representative, in such manner as to deprive the injured claimant of priority. [1989, c. 661, §6 (AMD).]

[ 1989, c. 661, §6 (AMD) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1989, c. 661, §6 (AMD).

### §3-808. INDIVIDUAL LIABILITY OF PERSONAL REPRESENTATIVE

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

[ 1979, c. 540, §1 (NEW) .]

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

[ 1979, c. 540, §1 (NEW) .]

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

[ 1979, c. 540, §1 (NEW) . ]

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

[ 1979, c. 540, §1 (NEW) . ]

#### SECTION HISTORY

1979, c. 540, §1 (NEW) .

### §3-809. SECURED CLAIMS

Payment of a secured claim is upon the basis of the amount allowed if the creditor surrenders his security; otherwise payment is upon the basis of one of the following: [ 1979, c. 540, §1 (NEW) . ]

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

[ 1979, c. 540, §1 (NEW) . ]

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

[ 1979, c. 540, §1 (NEW) . ]

#### SECTION HISTORY

1979, c. 540, §1 (NEW) .

### §3-810. CLAIMS NOT DUE AND CONTINGENT OR UNLIQUIDATED CLAIMS

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

[ 1979, c. 540, §1 (NEW) . ]

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

(1). If the claimant consents, he may be paid the present or agreed value of the claim, taking any uncertainty into account; [ 1979, c. 540, §1 (NEW) . ]

(2). Arrangement for future payment, or possible payment, on the happening of the contingency or on liquidation may be made by creating a trust, giving a mortgage, obtaining a bond or security from a distributee, or otherwise. [ 1979, c. 540, §1 (NEW) . ]

[ 1979, c. 540, §1 (NEW) . ]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-811. COUNTERCLAIMS**

In allowing a claim the personal representative may deduct any counterclaim which the estate has against the claimant. In determining a claim against an estate a court shall reduce the amount allowed by the amount of any counterclaims and, if the counterclaims exceed the claim, render a judgment against the claimant in the amount of the excess. A counterclaim, liquidated or unliquidated, may arise from a transaction other than that upon which the claim is based. A counterclaim may give rise to relief exceeding in amount or different in kind from that sought in the claim. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-812. EXECUTION AND LEVIES PROHIBITED**

No execution may issue upon nor may any levy be made against any property of the estate under any judgment against a decedent or a personal representative, but this section shall not be construed to prevent the enforcement of mortgages, pledges or liens upon real or personal property in an appropriate proceeding. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-813. COMPROMISE OF CLAIMS**

When a claim against the estate has been presented in any manner, the personal representative may, if it appears for the best interest of the estate, compromise the claim, whether due or not due, absolute or contingent, liquidated or unliquidated. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-814. ENCUMBERED ASSETS**

If any assets of the estate are encumbered by mortgage, pledge, lien, or other security interest, the personal representative may pay the encumbrance or any part thereof, renew or extend any obligation secured by the encumbrance or convey or transfer the assets to the creditor in satisfaction of his lien, in whole or in part, whether or not the holder of the encumbrance has presented a claim, if it appears to be for the best interest of the estate. Payment of an encumbrance does not increase the share of the distributee entitled to the encumbered assets unless the distributee is entitled to exoneration. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-815. ADMINISTRATION IN MORE THAN ONE STATE; DUTY OF PERSONAL REPRESENTATIVE**

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

[ 1979, c. 540, §1 (NEW) . ]

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

[ 1979, c. 540, §1 (NEW) .]

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

[ 1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW) .

### §3-816. FINAL DISTRIBUTION TO DOMICILIARY REPRESENTATIVE

The estate of a non-resident decedent being administered by a personal representative appointed in this State shall, if there is a personal representative of the decedent's domicile willing to receive it, be distributed to the domiciliary personal representative for the benefit of the successors of the decedent unless (1) by virtue of the decedent's will, if any, and applicable choice of law rules, the successors are identified pursuant to the local law of this State without reference to the local law of the decedent's domicile; (2) the personal representative of this State, after reasonable inquiry, is unaware of the existence or identity of a domiciliary personal representative; or (3) the court orders otherwise in a proceeding for a closing order under section 3-1001 or incident to the closing of a supervised administration. In other cases, distribution of the estate of a decedent shall be made in accordance with the other Parts of this Article. [1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW) .

### §3-817. SURVIVAL OF ACTIONS

(a). No personal action or cause of action is lost by the death of either party, but the same survives for and against the personal representative of the deceased, except that actions or causes of action for the recovery of penalties and forfeitures of money under penal statutes do not survive the death of the defendant. A personal representative may seek relief from a judgment in an action to which the deceased was a party to the same extent that the deceased might have done so.

[ 2001, c. 217, §2 (AMD) .]

(b). When the only plaintiff or defendant dies while an action that survives is pending, or after its commencement and before entry of judgment, his personal representative may appear and enter the action or any appeal that has been made, and suggest on the record the death of the party. If the personal representative does not appear within 90 days after his appointment, he may be cited to appear, and after due notice judgment may be entered against him by dismissal or default if no such appearance is made.

[ 1979, c. 540, §1 (NEW) . ]

(c). When either of several plaintiffs or defendants in an action that survives dies, the death may be suggested on the record, and the personal representative of the deceased may appear or be cited to appear as provided in subsection (b). The action may be further prosecuted or defended by the survivors and the personal representative jointly or by either of them. The survivors, if any, on both sides of the action may testify as witnesses.

[ 1979, c. 540, §1 (NEW) . ]

(d). When a judgment creditor dies before the first execution issues or before an execution issued in his lifetime is fully satisfied, such execution may be issued or be effective in favor of the deceased judgment creditor's personal representative, but no execution shall issue or be effective beyond the time within which it would have been effective or issued if the party had not died.

[ 1979, c. 540, §1 (NEW) . ]

(e). An execution issued under subsection (d) shall set forth the fact that the judgment creditor has died since the rendition of the judgment and that the substituted party is the personal representative of the decedent's estate.

[ 1979, c. 540, §1 (NEW) . ]

(f). The personal representative proceeding under this section shall be liable, and shall hold any recovered property or award, in his representative capacity, except as otherwise provided in section 3-808.

[ 1979, c. 540, §1 (NEW) . ]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 2001, c. 217, §2 (AMD).

### **§3-818. DAMAGES LIMITED TO ACTUAL DAMAGES**

In any tort action against the personal representative of a decedent's estate, in his representative capacity, the plaintiff can recover only the value of the goods taken or damage actually sustained. [ 1979, c. 540, §1 (NEW) . ]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

## **Part 9: SPECIAL PROVISIONS RELATING TO DISTRIBUTION**

### **§3-901. SUCCESSORS' RIGHTS IF NO ADMINISTRATION**

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

Successors take subject to all charges incident to administration, including the claims of creditors and allowances of surviving spouse and dependent children, and subject to the rights of others resulting from abatement, retainer, advancement, and ademption. [1979, c. 540, §1 (NEW).]

## SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-902. DISTRIBUTION; ORDER IN WHICH ASSETS APPROPRIATED; ABATEMENT**

(a). Except as provided in subsection (b) and except as provided in connection with the share of the surviving spouse who elects to take an elective share, shares of distributees abate, without any preference or priority as between real and personal property, in the following order: (1) property not disposed of by the will; (2) residuary devises; (3) general devises; (4) specific devises. For purposes of abatement, a general devise charged on any specific property or fund is a specific devise to the extent of the value of the property on which it is charged, and upon the failure or insufficiency of the property on which it is charged, a general devise to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.

[ 1979, c. 540, §1 (NEW) .]

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

[ 1979, c. 540, §1 (NEW) .]

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

[ 1979, c. 540, §1 (NEW) .]

## SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-903. RIGHT OF RETAINER**

The amount of a noncontingent indebtedness of a successor to the estate if due, or its present value if not due, shall be offset against the successor's interest; but the successor has the benefit of any defense which would be available to him in a direct proceeding for recovery of the debt. Such debt constitutes a lien on the successor's interest in favor of the estate, having priority over any attachment or transfer of the interest by the successor. [1979, c. 540, §1 (NEW).]

## SECTION HISTORY

1979, c. 540, §1 (NEW).



### §3-904. INTEREST ON GENERAL PECUNIARY DEVISE

General pecuniary devises bear interest at the legal rate of 5% per year beginning one year after the first appointment of a personal representative until payment, unless a contrary intent is indicated in the will or is implicit in light of the unproductive or underproductive nature or decline in value, during the administration of the estate, of the portion of the estate out of which such devise is payable. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### §3-905. PENALTY CLAUSE FOR CONTEST

A provision in a will purporting to penalize any interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### §3-906. DISTRIBUTION IN KIND; VALUATION; METHOD

(a). Unless a contrary intention is indicated by the will, the distributable assets of a decedent's estate must be distributed as follows.

- (1). A specific devisee must receive the thing devised to that devisee, and a spouse or child who has selected particular assets of an estate as provided in section 2-402 must receive the items selected. [1997, c. 73, §3 (AMD); 1997, c. 73, §4 (AFF).]
- (2). Any homestead or family allowance or pecuniary devise may be satisfied by value in kind, in the personal representative's discretion, if:
  - (i) The person entitled to the payment has not demanded payment in cash;
  - (ii) The property distributed in kind is valued at fair market value as of the date of its distribution; and
  - (iii) No residuary devisee has requested that the asset to be distributed remain a part of the residue of the estate or if, a residuary devisee has requested that the asset to be distributed remain a part of the residue of the estate, there are insufficient other assets to which no residuary devisee has made such a request to permit satisfaction of the estate's obligations and funding of all pecuniary devises made under the decedent's will. [1997, c. 73, §3 (AMD); 1997, c. 73, §4 (AFF).]
- (3). For the purpose of valuation under paragraph (2), securities regularly traded on recognized exchanges, if distributed in kind, are valued at the price for the last sale of like securities traded on the business day prior to distribution or, if there was no sale on that day, at the median between amounts bid and offered at the close of that day. Assets consisting of sums owed the decedent or the estate by solvent debtors as to which there is no known dispute or defense are valued at the sum due with accrued interest or discounted to the date of distribution. For assets that do not have readily ascertainable values, a valuation as of a date not more than 30 days prior to the date of distribution, if otherwise reasonable, controls. For purposes of facilitating distribution, the personal representative may ascertain the value of the assets as of the time of the proposed distribution in any reasonable way, including the employment of qualified appraisers, even if the assets may have been previously appraised. [1997, c. 73, §3 (AMD); 1997, c. 73, §4 (AFF).]

(4). The residuary estate may be distributed by the personal representative in cash or in kind, in accordance with the best interests of the residuary devisees. Residuary assets may be distributed, at the personal representative's discretion, in pro rata or non pro rata shares; except that residuary assets not distributed pro rata must be valued as of the date on which they are distributed. [1997, c. 73, §3 (AMD); 1997, c. 73, §4 (AFF).]

[ 1997, c. 73, §3 (AMD); 1997, c. 73, §4 (AFF) .]

(b). After the probable charges against the estate are known, the personal representative may mail or deliver a proposal for distribution to all persons who have a right to object to the proposed distribution. The right of any distributee to object to the proposed distribution on the basis of the kind or value of asset he is to receive, if not waived earlier in writing, terminates if he fails to object in writing received by the personal representative within 30 days after mailing or delivery of the proposal.

[ 1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1979, c. 690, §§13-16 (AMD). 1993, c. 371, §3 (AMD). 1997, c. 73, §3 (AMD). 1997, c. 73, §4 (AFF).

### **§3-907. DISTRIBUTION IN KIND; EVIDENCE**

If distribution in kind is made, the personal representative shall execute an instrument or deed of distribution assigning, transferring or releasing the assets to the distributee as evidence of the distributee's title to the property. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-908. DISTRIBUTION; RIGHT OR TITLE OF DISTRIBUTE**

Proof that a distributee has received an instrument or deed of distribution of assets in kind, or payment in distribution, from a personal representative, is conclusive evidence that the distributee has succeeded to the interest of the estate in the distributed assets, as against all persons interested in the estate, except that the personal representative may recover the assets or their value if the distribution was improper. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-909. IMPROPER DISTRIBUTION; LIABILITY OF DISTRIBUTE**

Unless the distribution or payment no longer can be questioned because of adjudication, estoppel, or limitation, a distributee of property improperly distributed or paid, or a claimant who was improperly paid, is liable to return the property improperly received and its income since distribution if he has the property. If he does not have the property, then he is liable to return the value as of the date of disposition of the property improperly received and its income and gain received by him. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### §3-910. PURCHASERS FROM DISTRIBUTEES PROTECTED

If property distributed in kind or a security interest therein is acquired for value by a purchaser from or lender to a distributee who has received an instrument or deed of distribution from the personal representative, or is so acquired by a purchaser from or lender to a transferee from such distributee, the purchaser or lender takes title free of rights of any interested person in the estate and incurs no personal liability to the estate, or to any interested person, whether or not the distribution was proper or supported by court order or the authority of the personal representative was terminated before execution of the instrument or deed. This section protects a purchaser from or lender to a distributee who, as personal representative, has executed a deed of distribution to himself, as well as a purchaser from or lender to any other distributee or his transferee. To be protected under this provision, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind, even if the personal representative and the distributee are the same person, or whether the authority of the personal representative had terminated before the distribution. Any recorded instrument described in this section on which the register of deeds notes by an appropriate stamp "Maine Real Estate Transfer Tax Paid" shall be prima facie evidence that the transfer was made for value. [1983, c. 441, §4 (AMD).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1983, c. 441, §4 (AMD).

### §3-911. PARTITION FOR PURPOSE OF DISTRIBUTION

When 2 or more heirs or devisees are entitled to distribution of undivided interests in any real or personal property of the estate, the personal representative or one or more of the heirs or devisees may petition the court prior to the formal or informal closing of the estate, to make partition. After notice to the interested heirs or devisees, the court shall partition the property in the same manner as provided by the law for civil actions of partition. The court may direct the personal representative to sell any property which cannot be partitioned without prejudice to the owners and which cannot conveniently be allotted to any one party. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### §3-912. PRIVATE AGREEMENTS AMONG SUCCESSORS TO DECEDENT BINDING ON PERSONAL REPRESENTATIVE

Subject to the rights of creditors and taxing authorities competent successors may agree among themselves to alter the interests, shares, or amounts to which they are entitled under the will of the decedent, or under the laws of intestacy, in any way that they provide in a written contract executed by all who are affected by its provisions. The personal representative shall abide by the terms of the agreement subject to his obligation to administer the estate for the benefit of creditors, to pay all taxes and costs of administration, and to carry out the responsibilities of his office for the benefit of any successors of the decedent who are not parties. Personal representatives of decedents' estates are not required to see to the performance of trusts if the trustee thereof is another person who is willing to accept the trust. Accordingly, trustees of a testamentary trust are successors for the purposes of this section. Nothing herein relieves trustees of any duties owed to beneficiaries of trust. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### §3-913. DISTRIBUTIONS TO TRUSTEE

(a).

[2003, c. 618, Pt. B, §20 (AFF); 2003, c. 618, Pt. B, §5 (RP).]

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

[ 1979, c. 540, §1 (NEW) .]

(c). No inference of negligence on the part of the personal representative may be drawn from the personal representative's failure to exercise the authority conferred by subsection (b).

[ 2003, c. 618, Pt. B, §6 (AMD); 2003, c. 618, Pt. B, §20 (AFF) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 2003, c. 618, §§B5,6 (AMD). 2003, c. 618, §B20 (AFF) .

### §3-914. DISPOSITION OF UNCLAIMED ASSETS

(A). If an heir, devisee or claimant can not be found, the personal representative shall distribute the share of the missing person to the person's conservator, if any; otherwise it must be disposed of according to Title 33, chapter 41.

[ 2003, c. 20, Pt. T, §13 (AMD) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 2003, c. 20, §T13 (AMD) .

### §3-915. DISTRIBUTION TO PERSON UNDER DISABILITY

A personal representative may discharge his obligation to distribute to any person under legal disability by distributing to his conservator, or any other person authorized by this Code or otherwise to give a valid receipt and discharge for the distribution. [1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW) .

### §3-916. APPORTIONMENT OF ESTATE TAXES

(a). For purposes of this section:

(1). "Estate" means the gross estate of a decedent as determined for the purpose of federal estate tax and the estate tax payable to this State; [1979, c. 540, §1 (NEW) .]

(2). "Person" means any individual, partnership, association, joint stock company, corporation, government, political subdivision, governmental agency, or local governmental agency; [1979, c. 540, §1 (NEW) .]

(3). "Person interested in the estate" means any person entitled to receive, or who has received, from a decedent or by reason of the death of a decedent any property or interest therein included in the decedent's estate. It includes a personal representative, conservator, and trustee; [1979, c. 540, §1 (NEW) .]

(4). "State" means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; [1979, c. 540, §1 (NEW) .]

(5). "Tax" means the federal estate tax, the Maine estate tax whenever it is imposed, and interest and penalties imposed in addition to the tax. [1979, c. 540, §1 (NEW) .]

(6). "Fiduciary" means personal representative or trustee. [1979, c. 540, §1 (NEW).]

[ 1979, c. 540, §1 (NEW) .]

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

[ 1979, c. 540, §1 (NEW) .]

(c).

(1). The court in which venue lies for the administration of the estate of a decedent, on petition for the purpose may determine the apportionment of the tax. [1979, c. 540, §1 (NEW).]

(2). If the court finds that it is inequitable to apportion interest and penalties in the manner provided in subsection (b), because of special circumstances, it may direct apportionment thereof in the manner it finds equitable. [1979, c. 540, §1 (NEW).]

(3). If the court finds that the assessment of penalties and interest assessed in relation to the tax is due to delay caused by the negligence of the fiduciary, the court may charge him with the amount of the assessed penalties and interest. [1979, c. 540, §1 (NEW).]

(4). In any action to recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this Code the determination of the court in respect thereto shall be prima facie correct. [1979, c. 540, §1 (NEW).]

[ 1979, c. 540, §1 (NEW) .]

(d).

(1). The personal representative or other person in possession of the property of the decedent required to pay the tax may withhold from any property distributable to any person interested in the estate, upon its distribution to him, the amount of tax attributable to his interest. If the property in possession of the personal representative or other person required to pay the tax and distributable to any person interested in the estate is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the personal representative or other person required to pay the tax may recover the deficiency from the person interested in the estate. If the property is not in the possession of the personal representative or the other person required to pay the tax, the personal representative or the other person required to pay the tax may recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this Act. [1979, c. 540, §1 (NEW).]

(2). If property held by the personal representative is distributed prior to final apportionment of the tax, the distributee shall provide a bond or other security for the apportionment liability in the form and amount prescribed by the personal representative. [1979, c. 540, §1 (NEW).]

[ 1979, c. 540, §1 (NEW) .]

(e).

(1). In making an apportionment, allowances shall be made for any exemptions granted, any classification made of persons interested in the estate and for any deductions and credits allowed by the law imposing the tax. [1979, c. 540, §1 (NEW).]

(2). Any exemption or deduction allowed by reason of the relationship of any person to the decedent or by reason of the purposes of the gift inures to the benefit of the person bearing such relationship or receiving the gift; but if an interest is subject to a prior present interest which is not allowable as a deduction, the tax apportionable against the present interest shall be paid from principal. [ 1979 , c . 540 , §1 (NEW) . ]

(3). Any deduction for property previously taxed and any credit for gift taxes or death taxes of a foreign country paid by the decedent or his estate inures to the proportionate benefit of all persons liable to apportionment. [ 1979 , c . 540 , §1 (NEW) . ]

(4). Any credit for inheritance, succession or estate taxes or taxes in the nature thereof applicable to property or interests includable in the estate, inures to the benefit of the persons or interests chargeable with the payment thereof to the extent proportionately that the credit reduces the tax. [ 1979 , c . 540 , §1 (NEW) . ]

(5). To the extent that property passing to or in trust for a surviving spouse or any charitable, public or similar purpose is not an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property is not included in the computation provided for in subsection (b), and to that extent no apportionment is made against the property. The sentence immediately preceding does not apply to any case if the result would be to deprive the estate of a deduction otherwise allowable under Section 2053(d) of the Internal Revenue Code of 1954, as amended, of the United States, relating to deduction for state death taxes on transfers for public, charitable, or religious uses. [ 1979 , c . 540 , §1 (NEW) . ]

[ 1979 , c . 540 , §1 (NEW) . ]

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

[ 1979 , c . 540 , §1 (NEW) . ]

(g). Neither the personal representative nor other person required to pay the tax is under any duty to institute any action to recover from any person interested in the estate the amount of the tax apportioned to the person until the expiration of the 3 months next following final determination of the tax. A personal representative or other person required to pay the tax who institutes the action within a reasonable time after the 3 months' period is not subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the estate was collectible at a time following the death of the decedent but thereafter became uncollectible. If the personal representative or other person required to pay the tax cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be equitably apportioned among the other persons interested in the estate who are subject to apportionment.

[ 1979 , c . 540 , §1 (NEW) . ]

(h). A personal representative acting in another state or a person required to pay the tax domiciled in another state may institute an action in the courts of this State and may recover a proportionate amount of the federal estate tax, of an estate tax payable to another state or of a death duty due by a decedent's estate to another state, from a person interested in the estate who is either domiciled in this State or who owns

property in this State subject to attachment or execution. For the purposes of the action the determination of apportionment by the court having jurisdiction of the administration of the decedent's estate in the other state is prima facie correct.

[ 1979, c. 540, §1 (NEW) . ]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

## Part 10: CLOSING ESTATES

### **§3-1001. FORMAL PROCEEDINGS TERMINATING ADMINISTRATION; TESTATE OR INTESTATE; ORDER OF GENERAL PROTECTION**

(a). A personal representative or any interested person may petition for an order of complete settlement of the estate. The personal representative may petition at any time, and any other interested person may petition after one year from the appointment of the original personal representative except that no petition under this section may be entertained until the time for presenting claims which arose prior to the death of the decedent has expired. The petition may request the court to determine testacy, if not previously determined, to consider the final account or compel or approve an accounting and distribution, to construe any will or determine heirs and adjudicate the final settlement and distribution of the estate. After notice to all interested persons and hearing the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate, and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any interested person.

[ 1979, c. 540, §1 (NEW) . ]

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

[ 1979, c. 540, §1 (NEW) . ]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-1002. FORMAL PROCEEDINGS TERMINATING TESTATE ADMINISTRATION; ORDER CONSTRUING WILL WITHOUT ADJUDICATING TESTACY**

A personal representative administering an estate under an informally probated will or any devisee under an informally probated will may petition for an order of settlement of the estate which will not adjudicate the testacy status of the decedent. The personal representative may petition at any time, and a devisee may petition after one year, from the appointment of the original personal representative, except that no petition under this section may be entertained until the time for presenting claims which arose prior to the death of the decedent has expired. The petition may request the court to consider the final account or compel or approve an accounting and distribution, to construe the will and adjudicate final settlement and distribution

of the estate. After notice to all devisees and the personal representative and hearing, the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate under the will, and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any devisee who is a party to the proceeding and those he represents. If it appears that a part of the estate is intestate, the proceedings shall be dismissed or amendments made to meet the provisions of section 3-1001. [1979, c. 540, §1 (NEW).]

## SECTION HISTORY

1979, c. 540, §1 (NEW).

### §3-1003. CLOSING ESTATES; BY SWORN STATEMENT OF PERSONAL REPRESENTATIVE

(a). Unless prohibited by order of the court and except for estates being administered in supervised administration proceedings, a personal representative may close an estate by filing with the court no earlier than 6 months after the date of original appointment of a general personal representative for the estate, a verified statement stating that the personal representative, or a previous personal representative, has:

(1). Determined that the time limited for presentation of creditors' claims has expired; [1989, c. 661, §7 (RPR).]

(2). Fully administered the estate of the decedent by making payment, settlement, or other disposition of all claims that were presented, expenses of administration and estate, inheritance and other death taxes, except as specified in the statement, and that the assets of the estate have been distributed to the persons entitled. If any claims remain undischarged, the statement must state whether the personal representative has distributed the estate subject to possible liability with the agreement of the distributees or it shall state in detail other arrangements which have been made to accommodate outstanding liabilities; and [1989, c. 661, §7 (AMD).]

(3). Sent a copy of the statement to all distributees, to all persons who would have a claim to succession under the testacy status upon which the personal representative is authorized to proceed, and to all creditors or other claimants of whom the personal representative is aware whose claims are neither paid nor barred and has furnished a full account in writing of the personal representative's administration to the distributees whose interests are affected thereby. [1989, c. 661, §7 (AMD).]

[1989, c. 661, §7 (AMD).]

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

[1979, c. 540, §1 (NEW).]

## SECTION HISTORY

1979, c. 540, §1 (NEW). 1989, c. 661, §7 (AMD).

### §3-1004. LIABILITY OF DISTRIBUTEES TO CLAIMANTS

After assets of an estate have been distributed and subject to section 3-1006, an undischarged claim not barred may be prosecuted in a proceeding against one or more distributees. No distributee shall be liable to claimants for amounts received as exempt property, homestead or family allowances, or for amounts in excess of the value of his distribution as of the time of distribution. As between distributees, each shall bear the cost of satisfaction of unbarred claims as if the claim had been satisfied in the course of administration. Any



distributee who shall have failed to notify other distributees of the demand made upon him by the claimant in sufficient time to permit them to join in any proceeding in which the claim was asserted against him loses his right of contribution against other distributees. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-1005. LIMITATIONS ON PROCEEDINGS AGAINST PERSONAL REPRESENTATIVE**

Unless previously barred by adjudication and except as provided in the closing statement, the rights of successors and of creditors whose claims have not otherwise been barred against the personal representative for breach of fiduciary duty are barred unless a proceeding to assert the same is commenced within 6 months after the filing of the closing statement. The rights thus barred do not include rights to recover from a personal representative for fraud, misrepresentation, or inadequate disclosure related to the settlement of the decedent's estate. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-1006. LIMITATIONS ON ACTIONS AND PROCEEDINGS AGAINST DISTRIBUTEES**

Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling the accounts of a personal representative or otherwise barred, the claim of any claimant to recover from a distributee who is liable to pay the claim, and the right of an heir or devisee, or of a successor personal representative acting in the heir's or devisee's behalf, to recover property improperly distributed or its value from any distributee is forever barred at the later of 3 years after the decedent's death or one year after the time of its distribution, but all claims of creditors of the decedent are barred 9 months after the decedent's death. This section does not bar an action to recover property or value received as the result of fraud. [1991, c. 2, §51 (COR).]

SECTION HISTORY

1979, c. 540, §1 (NEW). 1989, c. 661, §8 (AMD). RR 1991, c. 2, §51 (COR). 1991, c. 188, (AMD).

### **§3-1007. CERTIFICATE DISCHARGING LIENS SECURING FIDUCIARY PERFORMANCE**

After his appointment has terminated, the personal representative, his sureties, or any successor of either, upon the filing of a verified application showing, so far as is known by the applicant, that no action concerning the estate is pending in any court, is entitled to receive a certificate from the Registrar that the personal representative appears to have fully administered the estate in question. The certificate evidences discharge of any lien on any property given to secure the obligation of the personal representative in lieu of bond or any surety, but does not preclude action against the personal representative or the surety. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-1008. SUBSEQUENT ADMINISTRATION**

If other property of the estate is discovered after an estate has been settled and the personal representative discharged or after one year after a closing statement has been filed, the court upon petition of any interested person and upon notice as it directs may appoint the same or a successor personal

representative to administer the subsequently discovered estate. If a new appointment is made, unless the court orders otherwise, the provisions of this Code apply as appropriate; but no claim previously barred may be asserted in the subsequent administration. [1979, c. 540, §1 (NEW).]

## SECTION HISTORY

1979, c. 540, §1 (NEW).

## Part 11: COMPROMISE OF CONTROVERSIES

### §3-1101. EFFECT OF APPROVAL OF AGREEMENTS INVOLVING TRUSTS INALIENABLE INTERESTS, OR INTERESTS OR THIRD PERSONS

A compromise of any controversy as to admission to probate of any instrument offered for formal probate as the will of a decedent, the construction, validity, or effect of any probated will, the rights or interests in the estate of the decedent, of any successor, or the administration of the estate, if approved in a formal proceeding in the court for that purpose, is binding on all the parties thereto including those unborn, unascertained or who could not be located. An approved compromise is binding even though it may affect a trust or an inalienable interest. A compromise does not impair the rights of creditors or of taxing authorities who are not parties to it. [1979, c. 540, §1 (NEW).]

## SECTION HISTORY

1979, c. 540, §1 (NEW).

### §3-1102. PROCEDURE FOR SECURING COURT APPROVAL OF COMPROMISE

The procedure for securing court approval of a compromise is as follows: [1979, c. 540, §1 (NEW).]

(1). The terms of the compromise shall be set forth in an agreement in writing which shall be executed by all competent persons, and parents or legal guardians who have both actual custody and legal responsibility for a minor child acting for any such minor child, who have beneficial interests or claims which will or may be affected by the compromise. Execution is not required by any person whose identity cannot be ascertained or whose whereabouts is unknown and cannot reasonably be ascertained.

[ 1979, c. 540, §1 (NEW) .]

(2). Any interested person, including the personal representative or a trustee, then may submit the agreement to the court for its approval and for execution by the personal representative, the trustee of every affected testamentary trust, and other fiduciaries and representatives.

[ 1979, c. 540, §1 (NEW) .]

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

[ 1979, c. 540, §1 (NEW) .]

## SECTION HISTORY

1979, c. 540, §1 (NEW).

## **Part 12: COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT AND SUMMARY ADMINISTRATION PROCEDURES FOR SMALL ESTATES**

### **§3-1201. COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT**

(a). Thirty days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating that:

(1). The value of the entire estate, wherever located, less liens and encumbrances, does not exceed \$20,000; [2007, c. 30, §1 (AMD).]

(2). Thirty days have elapsed since the death of the decedent; [1979, c. 540, §1 (NEW).]

(3). No application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and [1979, c. 540, §1 (NEW).]

(4). The claiming successor is entitled to payment or delivery of the property. [1979, c. 540, §1 (NEW).]

[ 2007, c. 30, §1 (AMD) .]

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

[ 1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 2007, c. 30, §1 (AMD).

### **§3-1202. EFFECT OF AFFIDAVIT**

The person paying, delivering, transferring, or issuing personal property or the evidence thereof pursuant to affidavit is discharged and released to the same extent as if he dealt with a personal representative of the decedent. He is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit. If any person to whom an affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled thereto. Any person to whom payment, delivery, transfer or issuance is made is answerable and accountable therefor to any personal representative of the estate or to any other person having a superior right. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§3-1203. SMALL ESTATES; SUMMARY ADMINISTRATIVE PROCEDURE**

If it appears from the inventory and appraisal that the value of the entire estate, less liens and encumbrances, does not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses

of the last illness of the decedent, the personal representative, without giving notice to creditors, may immediately disburse and distribute the estate to the persons entitled thereto and file a closing statement as provided in section 3-1204. [1979, c. 540, §1 (NEW).]

## SECTION HISTORY

1979, c. 540, §1 (NEW).

**§3-1204. SMALL ESTATES; CLOSING BY SWORN STATEMENT OF PERSONAL REPRESENTATIVE**

(a). Unless prohibited by order of the court and except for estates being administered by supervised personal representatives, a personal representative may close an estate administered under the summary procedures of section 3-1203 by filing with the court, at any time after disbursement and distribution of the estate, a verified statement stating that:

(1). To the best knowledge of the personal representative, the value of the entire estate, less liens and encumbrances, did not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable, necessary medical and hospital expenses of the last illness of the decedent; [1979, c. 540, §1 (NEW).]

(2). The personal representative has fully administered the estate by disbursing and distributing it to the persons entitled thereto; and [1979, c. 540, §1 (NEW).]

(3). The personal representative has sent a copy of the closing statement to all distributees of the estate and to all creditors or other claimants of whom he is aware whose claims are neither paid nor barred and has furnished a full account in writing of his administration to the distributees whose interests are affected. [1979, c. 540, §1 (NEW).]

[ 1979, c. 540, §1 (NEW) .]

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

[ 1979, c. 540, §1 (NEW) .]

(c). A closing statement filed under this section has the same effect as one filed under section 3-1003.

[ 1979, c. 540, §1 (NEW) .]

## SECTION HISTORY

1979, c. 540, §1 (NEW).

**§3-1205. SOCIAL SECURITY PAYMENTS**

If, (1) not less than 30 days after the death of a Maine resident entitled, at the time of his death, to a monthly benefit or benefits under Title II of the Social Security Act, all or part of the amount of such benefit or benefits not in excess of \$1,000 is paid by the United States to the surviving spouse, one or more of the deceased's children, or descendants of his deceased children, the deceased's father or mother, or the deceased's brother or sister, preference being given in the order named if more than one request for payment shall have been made by or for such individuals, upon an affidavit made and filed with the Department of Health, Education and Welfare by the surviving spouse or other relative by whom or on whose behalf request for payment is made, and (2) the affidavit shows the date of death of the deceased, the relationship of the affiant to the deceased, that no personal representative for the deceased has been appointed and qualified, and that, to the affiant's knowledge, there exists at the time of filing of the affidavit, no relative of a closer degree of kindred to the deceased than the affiant, then such payment pursuant to the affidavit shall be deemed to be a payment to the legal representative of the decedent and, regardless of the truth or falsity of the statements

made therein, shall constitute a full discharge and release of the United States from any further claim for such payment to the same extent as if such payment had been made to the personal representative of the decedent's estate. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

## Article 4: FOREIGN PERSONAL REPRESENTATIVE; ANCILLARY

### Part 1: DEFINITIONS

#### §4-101. DEFINITIONS

(1). "Local administration" means administration by a personal representative appointed in this State pursuant to appointment proceedings described in Article III.

[ 1979, c. 540, §1 (NEW) .]

(2). "Local personal representative" includes any personal representative appointed in this State pursuant to appointment proceedings described in Article III and excludes foreign personal representatives who acquire the power of a local personal representative pursuant to section 4-205.

[ 1979, c. 540, §1 (NEW) .]

(3). "Resident creditor" means a person domiciled in, or doing business in this State, who is, or could be, a claimant against an estate of a non-resident decedent.

[ 1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### Part 2: POWERS OF FOREIGN PERSONAL REPRESENTATIVES

#### §4-201. PAYMENT OF DEBT AND DELIVERY OF PROPERTY TO DOMICILIARY FOREIGN PERSONAL REPRESENTATIVE WITHOUT LOCAL ADMINISTRATION

At any time after the expiration of 60 days from the death of a nonresident decedent, any person indebted to the estate of the nonresident decedent or having possession or control of personal property, or of an instrument evidencing a debt, obligation, stock or chose in action belonging to the estate of the nonresident decedent may pay the debt, deliver the personal property, or the instrument evidencing the debt, obligation, stock or chose in action, to the domiciliary foreign personal representative of the nonresident decedent upon being presented with proof of his appointment and an affidavit made by or on behalf of the representative stating: [1979, c. 540, §1 (NEW).]

(1). The date of the death of the nonresident decedent,

[ 1979, c. 540, §1 (NEW) .]

(2). That no local administration, or application or petition therefor, is pending in this State,

[ 1979, c. 540, §1 (NEW) .]

(3). That the domiciliary foreign personal representative is entitled to payment or delivery.

[ 1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

## §4-202. PAYMENT OR DELIVERY DISCHARGES

Payment or delivery made in good faith on the basis of the proof of authority and affidavit releases the debtor or person having possession of the personal property to the same extent as if payment or delivery had been made to a local personal representative. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## §4-203. RESIDENT CREDITOR NOTICE

Payment or delivery under section 4-201 may not be made if a resident creditor of the nonresident decedent has notified the debtor of the nonresident decedent or the person having possession of the personal property belonging to the nonresident decedent that the debt should not be paid nor the property delivered to the domiciliary foreign personal representative. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## §4-204. PROOF OF AUTHORITY; BOND

If no local administration or application or petition therefor is pending in this State, a domiciliary foreign personal representative may file with a court in this State in a county in which property belonging to the decedent is located, authenticated copies of his appointment, of any official bond he has given and a certificate, dated within 60 days, proving his current authority. [1987, c. 392, §5 (AMD).]

### SECTION HISTORY

1979, c. 540, §1 (NEW). 1987, c. 392, §5 (AMD).

## §4-205. POWERS

A domiciliary foreign personal representative who has complied with section 4-204 may exercise as to assets in this State all powers of a local personal representative and may maintain actions and proceedings in this State subject to any conditions imposed upon nonresident parties generally. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## §4-206. POWER OF REPRESENTATIVES IN TRANSITION

The power of a domiciliary foreign personal representative under section 4-201 or 4-205 shall be exercised only if there is no administration or application therefor pending in this State. An application or petition for local administration of the estate terminates the power of the foreign personal representative to act under section 4-205, but the local court may allow the foreign personal representative to exercise limited powers to preserve the estate. No person who, before receiving actual notice of a pending local administration, has changed his position in reliance upon the powers of a foreign personal representative shall be prejudiced by reason of the application or petition for, or grant of, local administration. The local personal representative is subject to all duties and obligations which have accrued by virtue of the exercise of the powers by the foreign personal representative and may be substituted for him in any action or proceedings in this State. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## **§4-207. ANCILLARY AND OTHER LOCAL ADMINISTRATIONS; PROVISIONS GOVERNING**

In respect to a nonresident decedent, the provisions of Article III of this Code govern (1) proceedings, if any, in a court of this State for probate of the will, appointment, removal, supervision, and discharge of the local personal representative, and any other order concerning the estate; and (2) the status, powers, duties and liabilities of any local personal representative and the rights of claimants, purchasers, distributees and others in regard to a local administration. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## **Part 3: JURISDICTION OVER FOREIGN REPRESENTATIVES**

### **§4-301. JURISDICTION BY ACT OF FOREIGN PERSONAL REPRESENTATIVE**

A foreign personal representative submits personally to the jurisdiction of the courts of this State in any proceeding relating to the estate by (1) filing authenticated copies of his appointment as provided in section 4-204, (2) receiving payment of money or taking delivery of personal property under section 4-201, or (3) doing any act as a personal representative in this State which would have given the State jurisdiction over him as an individual. Jurisdiction under (2) is limited to the money or value of personal property collected. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§4-302. JURISDICTION BY ACT OF DECEDENT**

In addition to jurisdiction conferred by section 4-301, a foreign personal representative is subject to the jurisdiction of the courts of this State to the same extent that his decedent was subject to jurisdiction immediately prior to death. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§4-303. SERVICE ON FOREIGN PERSONAL REPRESENTATIVE**

Service of process may be made upon the foreign personal representative in such manner as the Supreme Judicial Court shall by rule provide. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## **Part 4: JUDGMENTS AND PERSONAL REPRESENTATIVE**

### **§4-401. EFFECT OF ADJUDICATION FOR OR AGAINST PERSONAL REPRESENTATIVE**

An adjudication rendered in any jurisdiction in favor of or against any personal representative of the estate is as binding on the local personal representative as if he were a party to the adjudication. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).



## Article 5: PROTECTION OF PERSONS UNDER DISABILITY AND THEIR PROPERTY

### Part 1: GENERAL PROVISIONS

#### §5-101. DEFINITIONS AND USE OF TERMS

Unless otherwise apparent from the context, in this Code: [ 1979 , c . 540 , §1 (NEW) . ]

(1). "Incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause except minority to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person;

[ 1979 , c . 540 , §1 (NEW) . ]

(1-A). The "best interest of the child" is determined according to this subsection.

(a). In determining the best interest of the child the court shall consider the following factors:

- (1) The wishes of the party or parties as to custody;
- (2) The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference;
- (3) The child's primary caregiver;
- (4) The bonding and attachment between each party and the child;
- (5) The interaction and interrelationship of the child with a party or parties, siblings and any other person who may significantly affect the child's best interest;
- (6) The child's adjustment to home, school and community;
- (7) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
- (8) The permanence, as a family unit, of the existing or proposed home;
- (9) The mental and physical health of all individuals involved;
- (10) The child's cultural background;
- (11) The capacity and disposition of the parties to give the child love, affection and guidance and to continue educating and raising the child in the child's culture and religion or creed, if any;
- (12) The effect on the child of the actions of an abuser if related to domestic violence that has occurred between the parents or other parties; and
- (13) All other factors having a reasonable bearing on the physical and psychological well-being of the child. [ 2005 , c . 371 , §1 (NEW) . ]

(b). The court may not consider any one of the factors set out in paragraph (a) to the exclusion of all others; [ 2005 , c . 371 , §1 (NEW) . ]

[ 2005 , c . 371 , §1 (NEW) . ]

(1-B). "De facto guardian" means an individual with whom, within the 24 months immediately preceding the filing of a petition under section 5-204, subsection (d), a child has resided for the following applicable period and during which period there has been a demonstrated lack of consistent participation by the parent or legal custodian:

(a). If the child at the time of filing the petition is under 3 years of age, 6 months or more, which need not be consecutive; or [2005, c. 371, §1 (NEW).]

(b). If the child at the time of filing the petition is at least 3 years of age, 12 months or more, which need not be consecutive. [2005, c. 371, §1 (NEW).]

"De facto guardian" does not include an individual who has a guardian's powers delegated to the individual by a parent or guardian of a child under section 5-104, adopts a child under Article 9 or has a child placed in the individual's care under Title 22, chapter 1071;

[ 2005, c. 371, §1 (NEW) .]

**(1-C).** "Demonstrated lack of consistent participation" means refusal or failure to comply with the duties imposed upon a parent by the parent-child relationship, including but not limited to providing the child necessary food, clothing, shelter, health care, education, a nurturing and consistent relationship and other care and control necessary for the child's physical, mental and emotional health and development.

In determining whether there has been a demonstrated lack of consistent participation in the child's life by the parent or legal custodian, the court shall consider at least the following factors:

(a). The intent of the parent, parents or legal custodian in placing the child with the person petitioning as a de facto guardian; [2005, c. 371, §1 (NEW).]

(b). The amount of involvement the parent, parents or legal custodian had with the child during the parent's, parents' or legal custodian's absence; [2005, c. 371, §1 (NEW).]

(c). The facts and circumstances of the parent's, parents' or legal custodian's absence; [2005, c. 371, §1 (NEW).]

(d). The parent's, parents' or legal custodian's refusal to comply with conditions for retaining custody set forth in any previous court orders; and [2005, c. 371, §1 (NEW).]

(e). Whether the nonconsenting parent, parents or legal custodian was previously prevented from participating in the child's life as a result of domestic violence or child abuse or neglect. [2005, c. 371, §1 (NEW).]

Serving as a member of the United States Armed Forces may not be considered demonstration of lack of consistent participation;

[ 2005, c. 371, §1 (NEW) .]

**(1-D).** "Parent" means a person who has established a parent-child relationship with the child under Title 19-A, chapter 61.

[ 2015, c. 296, Pt. C, §4 (NEW); 2015, c. 296, Pt. D, §1 (AFF) .]

**(2).** A "protective proceeding" is a proceeding under the provisions of section 5-401 to determine that a person cannot effectively manage or apply his estate to necessary ends, either because he lacks the ability or is otherwise inconvenienced, or because he is a minor, and to secure administration of his estate by a conservator or other appropriate relief;

[ 1979, c. 540, §1 (NEW) .]

**(3).** A "protected person" is a minor or other person for whom a conservator has been appointed or other protective order has been made;

[ 1979, c. 540, §1 (NEW) .]

(4). A "ward" is a person for whom a guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority.

[ 1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 2005, c. 371, §1 (AMD). 2015, c. 296, Pt. C, §4 (AMD). 2015, c. 296, Pt. D, §1 (AFF).

### **§5-102. JURISDICTION OF SUBJECT MATTER; CONSOLIDATION OF PROCEEDINGS**

(a). Subject to Title 4, section 152, subsection 5-A, the court has exclusive jurisdiction over guardianship proceedings and has jurisdiction over protective proceedings to the extent provided in section 5-402.

[ 2015, c. 460, §6 (AMD) .]

(b). When both guardianship and protective proceedings as to the same person are commenced or pending in the same court, the proceedings may be consolidated.

[ 1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 2015, c. 460, §6 (AMD).

### **§5-103. FACILITY OF PAYMENT OR DELIVERY**

Any person under a duty to pay or deliver money or personal property to a minor may perform this duty, in amounts not exceeding \$5,000 per year, by paying or delivering the money or property to (1) the minor, if married; (2) any person having the care and custody of the minor with whom the minor resides; (3) a guardian of the minor; or (4) a financial institution incident to a deposit in a federally insured savings account in the sole name of the minor and giving notice of the deposit to the minor. This section does not apply if the person making payment or delivery has actual knowledge that a conservator has been appointed or proceedings for appointment of a conservator of the estate of the minor are pending. Persons who pay or deliver money or property in accordance with the provisions of this section are not responsible for actions taken by another after payment or delivery. The persons, other than the minor or any financial institution under (4) above, receiving money or property for a minor, are obligated to apply the money to the support and education of the minor, but may not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the minor's support. Any excess sums must be preserved for future support of the minor and any balance not so used and any property received for the minor must be turned over to the minor when the minor attains majority. Prior to distribution, the custodian of the money or property shall account to the court and the minor. [1991, c. 641, §1 (AMD).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1991, c. 641, §1 (AMD).

### **§5-104. DELEGATION OF POWERS BY PARENT OR GUARDIAN**

(a). A parent or guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding 12 months, any of that parent's or guardian's powers regarding care, custody or property of the minor child or ward, except the power to consent to marriage, adoption of a minor ward or termination of parental rights to the minor. A delegation by a court-

appointed guardian becomes effective only when the power of attorney is filed with the court. A delegation of powers under this section does not deprive the parent or guardian of any parental or legal authority regarding the care and custody of the minor or incapacitated person.

[ 2015, c. 467, §1 (AMD) . ]

(b). Notwithstanding subsection (a), unless otherwise stated in the power of attorney, if the parent or guardian is a member of the National Guard or Reserves of the United States Armed Forces under an order to active duty for a period of more than 30 days, a power of attorney that would otherwise expire is automatically extended until 30 days after the parent or guardian is no longer under those active duty orders or until an order of the court so provides.

This subsection applies only if the parent or guardian's service is in support of:

- (1). An operational mission for which members of the reserve components have been ordered to active duty without their consent; or [1997, c. 455, §7 (NEW) . ]
- (2). Forces activated during a period of war declared by Congress or a period of national emergency declared by the President or Congress. [1997, c. 455, §7 (NEW) . ]

[ 2003, c. 583, §2 (AMD) . ]

(c). This subsection applies when a parent or guardian executes a power of attorney under subsection (a) for the purpose of providing for the temporary care of a minor.

- (1). The execution of a power of attorney under subsection (a), without other evidence, does not constitute abandonment, abuse or neglect. A parent or guardian of a minor may not execute a power of attorney with the intention of permanently avoiding or divesting the parent or guardian of parental and legal responsibility for the care of the minor. Upon the expiration or termination of the power of attorney, the minor must be returned to the custody of the parent or guardian as soon as reasonably possible unless otherwise ordered by the court. [2015, c. 467, §2 (NEW) . ]
- (2). Unless the power of attorney is terminated, the agent named in the power of attorney shall exercise parental or legal authority on a continuous basis without compensation from the State for the duration of the power of attorney authorized by subsection (a). Nothing in this subsection disqualifies the agent from applying for and receiving benefits from any state or federal program of assistance for the minor or the agent. Nothing in this subsection prevents individuals or religious, community or other charitable organizations from voluntarily providing the agent with support related to the care of the minor while the minor is in the temporary care of the agent. [2015, c. 467, §2 (NEW) . ]
- (3). A minor may not be considered placed in foster care or in any way a ward of the State by virtue of the parent's or guardian's execution of a power of attorney authorized by subsection (a). The agent named in the power of attorney may not be considered a family foster home by virtue of the parent's or guardian's execution of a power of attorney authorized by subsection (a) and is not subject to any laws regarding the licensure or regulation of family foster homes unless licensed as a family foster home. Nothing in this subsection disqualifies the agent from being or becoming a family foster home licensed by the State or prevents the placement of the minor in the agent's care if the minor enters state custody. [2015, c. 467, §2 (NEW) . ]
- (4). An organization, other than an organization whose primary purpose is to provide free legal services, that is exempt from federal income taxation under Section 501(a) of the United States Internal Revenue Code of 1986 as an organization described by Section 501(c)(3) and that assists parents or guardians with the process of executing a power of attorney for the temporary care of a minor shall ensure that a background check is conducted for the agent and any adult members of the agent's household, whether by completing the background check directly or by verifying that a current background check has already been conducted. The background check must include the following sources, and the results must be shared with the parent or guardian and the proposed agent:

- (i) A screening for child and adult abuse, neglect or exploitation cases in the records of the Department of Health and Human Services; and
- (ii) A criminal history record check that includes information obtained from the Federal Bureau of Investigation.

The organization shall maintain records on the training and background checks of agents, including the content and dates of training and full transcripts of background checks, for a period of not less than 5 years after the minor attains 18 years of age. The organization shall make the records available to a parent or guardian executing a power of attorney under this subsection and to the ombudsman under Title 22, section 4087-A and any local, state or federal authority conducting an investigation involving the agent, the parent or guardian or the minor. [ 2015, c. 467, §2 (NEW) . ]

(5). An employee or volunteer for an organization described in paragraph (4) may not further assist with a process that results in the completion of a power of attorney for the temporary care of a minor if the background checks conducted pursuant to paragraph (4), subparagraphs (i) and (ii) disclose any substantiated allegations of child abuse, neglect or exploitation or any crimes that would disqualify the agent from becoming a licensed family foster home in the State. [ 2015, c. 467, §2 (NEW) . ]

(6). The following penalties apply to violations of this subsection.

(i) An organization that knowingly fails to perform or verify the background checks or fails to share the background check information as required by this subsection is subject to a civil penalty not to exceed \$5,000, payable to the State and recoverable in a civil action.

(ii) An organization or an employee or volunteer of an organization that continues to assist a parent, guardian or agent in completing a power of attorney under this subsection if the background checks conducted pursuant to paragraph (4) disclose any substantiated allegations of child abuse, neglect or exploitation or any crimes that would disqualify the agent from becoming a licensed family foster home is subject to a civil penalty not to exceed \$5,000, payable to the State and recoverable in a civil action.

(iii) An organization or an employee or volunteer of an organization that knowingly fails to maintain records or to disclose information as required by this subsection is subject to a civil penalty not to exceed \$5,000, payable to the State and recoverable in a civil action. [ 2015, c. 467, §2 (NEW) . ]

[ 2015, c. 467, §2 (NEW) . ]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1979, c. 690, §17 (AMD). 1997, c. 455, §7 (RPR). 2003, c. 583, §2 (AMD). 2011, c. 43, §1 (AMD). 2015, c. 467, §§1, 2 (AMD).

## **§5-105. LIMITED GUARDIANSHIPS**

In any case in which a guardian can be appointed by the court, the judge may appoint a limited guardian with fewer than all of the legal powers and duties of a guardian. The specific duties and powers of a limited guardian shall be enumerated in the decree or court order. A person for whom a limited guardian has been appointed retains all legal and civil rights except those which have been suspended by the decree or order. [ 1979, c. 540, §1 (NEW) . ]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

## **Part 2: GUARDIANS OF MINORS**

**§5-201. STATUS OF GUARDIAN OF MINOR; GENERAL**

A person becomes a guardian of a minor by acceptance of a testamentary appointment or upon appointment by the court. The guardianship status continues until terminated, without regard to the location from time to time of the guardian and minor ward. This section does not apply to permanency guardians appointed in District Court child protective proceedings. If a minor has a permanency guardian, the court may not appoint another guardian without leave of the District Court in which the child protective proceeding is pending. [2005, c. 372, §1 (AMD).]

## SECTION HISTORY

1979, c. 540, §1 (NEW). 2005, c. 372, §1 (AMD).

**§5-202. TESTAMENTARY APPOINTMENT OF GUARDIAN OF MINOR**

The parent of a minor may appoint by will a guardian of an unmarried minor. Subject to the right of the minor under section 5-203, a testamentary appointment becomes effective upon filing the guardian's acceptance in the court in which the will is probated, if before acceptance, both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority. This State recognizes a testamentary appointment effected by filing the guardian's acceptance under a will probated in another state which is the testator's domicile. Upon acceptance of appointment, written notice of acceptance must be given by the guardian to the minor and to the person having his care, or to his nearest adult relation. [1979, c. 540, §1 (NEW).]

## SECTION HISTORY

1979, c. 540, §1 (NEW).

**§5-203. OBJECTION BY MINOR OF 14 OR OLDER TO TESTAMENTARY APPOINTMENT**

A minor of 14 or more years may prevent an appointment of his testamentary guardian from becoming effective, or may cause a previously accepted appointment to terminate, by filing with the court in which the will is probated a written objection to the appointment before it is accepted or within 30 days after notice of its acceptance. An objection may be withdrawn. An objection does not preclude appointment by the court in a proper proceeding of the testamentary nominee, or any other suitable person. [1979, c. 540, §1 (NEW).]

## SECTION HISTORY

1979, c. 540, §1 (NEW).

**§5-204. COURT APPOINTMENT OF GUARDIAN OF MINOR; CONDITIONS FOR APPOINTMENT**

The court may appoint a guardian or coguardians for an unmarried minor if: [1995, c. 623, §1 (RPR).]

(a). All parental rights of custody have been terminated or suspended by circumstance or prior court order;

[ 1995, c. 623, §1 (NEW) .]

(b). Each living parent whose parental rights and responsibilities have not been terminated or the person who is the legal custodian of the unmarried minor consents to the guardianship and the court finds that the consent creates a condition that is in the best interest of the child;

[ 2005, c. 371, §2 (AMD) .]

(c). The person or persons whose consent is required under subsection (b) do not consent, but the court finds by clear and convincing evidence that the person or persons have failed to respond to proper notice or a living situation has been created that is at least temporarily intolerable for the child even though the living situation does not rise to the level of jeopardy required for the final termination of parental rights, and that the proposed guardian will provide a living situation that is in the best interest of the child; or

[ 2005, c. 371, §2 (AMD) . ]

(d). The person or persons whose consent is required under subsection (b) do not consent, but the court finds by a preponderance of the evidence that there is a de facto guardian and a demonstrated lack of consistent participation by the nonconsenting parent or legal custodian of the unmarried minor. The court may appoint the de facto guardian as guardian if the appointment is in the best interest of the child.

[ 2005, c. 371, §2 (NEW) . ]

A guardian appointed by will as provided in section 5-202 whose appointment has not been prevented or nullified under section 5-203 has priority over any guardian who may be appointed by the court but the court may proceed with an appointment upon a finding that the testamentary guardian has failed to accept the testamentary appointment within 30 days after notice of the guardianship proceeding. [1995, c. 623, §1 (NEW) . ]

If a proceeding is brought under subsection (c) or subsection (d), the nonconsenting parent or legal custodian is entitled to court-appointed legal counsel if indigent. In a contested action, the court may also appoint counsel for any indigent de facto guardian, guardian or petitioner when a parent or legal custodian has counsel. [2005, c. 371, §2 (AMD) . ]

If a proceeding is brought under subsection (b), subsection (c) or subsection (d), the court may order a parent to pay child support in accordance with Title 19-A, Part 3. When the Department of Health and Human Services provides child support enforcement services, the Commissioner of Health and Human Services may designate employees of the department who are not attorneys to represent the department in court if a hearing is held. The commissioner shall ensure that appropriate training is provided to all employees who are designated to represent the department under this paragraph. [2005, c. 371, §2 (AMD) . ]

If the court appoints a limited guardian, the court shall specify the duties and powers of the guardian, as required in section 5-105, and the parental rights and responsibilities retained by the parent of the minor. [1995, c. 623, §1 (NEW) . ]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1995, c. 623, §1 (RPR). 1999, c. 46, §1 (AMD). 2001, c. 554, §2 (AMD). 2003, c. 689, §§B6,7 (REV). 2005, c. 371, §2 (AMD) .

### **§5-205. COURT APPOINTMENT OF GUARDIAN OF MINOR; VENUE**

The venue for guardianship proceedings for a minor is in the place where the minor resides or is present. [1979, c. 540, §1 (NEW) . ]

#### SECTION HISTORY

1979, c. 540, §1 (NEW) .

### **§5-206. COURT APPOINTMENT OF GUARDIAN OF MINOR; QUALIFICATIONS; PRIORITY OF MINOR'S NOMINEE**

The court may appoint as guardian any person, or as coguardians more than one person, whose appointment is in the best interest of the minor. The court shall set forth in the order of appointment the basis for determining that the appointment is in the best interest of the minor. The court shall appoint a person

nominated by the minor, if the minor is 14 years of age or older, unless the court finds the appointment contrary to the best interest of the minor. The court may not appoint a guardian for a minor child who will be removed from this State for the purpose of adoption. [2005, c. 371, §3 (AMD).]

## SECTION HISTORY

1979, c. 540, §1 (NEW). 1993, c. 686, §2 (AMD). 1993, c. 686, §13 (AFF). 2005, c. 371, §3 (AMD).

**§5-207. COURT APPOINTMENT OF GUARDIAN OF MINOR; PROCEDURE**

(a). Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor is to be given by the petitioner in the manner prescribed by court rule under section 1-401 to:

- (1). The minor, if he is 14 or more years of age; [1979, c. 540, §1 (NEW).]
- (2). The person who has had the principal care and custody of the minor during the 60 days preceding the date of the petition; and [1979, c. 540, §1 (NEW).]
- (3). Any living parent of the minor. [1979, c. 540, §1 (NEW).]

[ 1979, c. 540, §1 (NEW) .]

(b). Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of section 5-204 have been met, and the welfare and best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases the court may dismiss the proceedings, or make any other disposition of the matter that will best serve the interest of the minor.

[ 1979, c. 540, §1 (NEW) .]

(c). If necessary, the court may appoint a temporary guardian, with the status of an ordinary guardian of a minor, but the authority of a temporary guardian may not last longer than 6 months, except as provided in subsection (c-1).

Notice of hearing on the petition for the appointment of a temporary guardian must be served as provided under subsection (a), except that the notice must be given at least 5 days before the hearing, and notice need not be given to any person whose address and present whereabouts are unknown and can not be ascertained by due diligence. Upon a showing of good cause, the court may waive service of the notice of hearing on any person, other than the minor, if the minor is at least 14 years of age.

[ 2003, c. 583, §3 (AMD) .]

(c-1). If one of the parents of a minor is a member of the National Guard or the Reserves of the United States Armed Forces under an order to active duty for a period of more than 30 days, a temporary guardianship that would otherwise expire is automatically extended until 30 days after the parent is no longer under those active duty orders or until an order of the court so provides. This subsection applies only if the parent's service is in support of:

- (1). An operational mission for which members of the reserve components have been ordered to active duty without their consent; or [2003, c. 583, §4 (NEW).]
- (2). Forces activated during a period of war declared by Congress or a period of national emergency declared by the President or Congress. [2003, c. 583, §4 (NEW).]

[ 2003, c. 583, §4 (NEW) .]



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

[ 1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1999, c. 303, §1 (AMD). 2003, c. 583, §§3,4 (AMD).

### **§5-208. CONSENT TO SERVICE BY ACCEPTANCE OF APPOINTMENT; NOTICE**

By accepting a testamentary or court appointment as guardian, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. Notice of any proceeding shall be delivered to the guardian, or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to the petitioner. Letters of guardianship must indicate whether the guardian was appointed by will or by court order. [1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§5-209. POWERS AND DUTIES OF GUARDIAN OF MINOR**

A guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of a minor and unemancipated child, except that a guardian is not legally obligated to provide from the guardian's own funds for the ward and is not liable to 3rd persons by reason of the parental relationship for acts of the ward. In particular, and without qualifying the foregoing, a guardian has the following powers and duties. [1993, c. 349, §40 (RPR) .]

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

[ 1991, c. 719, §1 (AMD) .]

(b). The guardian may receive money payable for the support of the ward to the ward's parent, guardian or custodian under the terms of any statutory benefit or insurance system, or any private contract, devise, trust, conservatorship or custodianship. The guardian also may receive money or property of the ward paid or delivered by virtue of section 5-103. Any sums so received must be applied to the ward's current needs for support, care and education. The guardian must exercise due care to conserve any excess for the ward's future needs unless a conservator has been appointed for the estate of the ward, in which case excess must be paid over at least annually to the conservator. Sums so received by the guardian may not be used for compensation for the guardian's services except as approved by order of court or as determined by a duly appointed conservator other than the guardian. If there is no conservator, the excess funds must be turned over to the minor when the minor attains majority. A guardian may institute proceedings to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward.

[ 1993, c. 349, §41 (RPR) .]

(c). The guardian is empowered to facilitate the ward's education, social or other activities and to give or withhold consents or approvals related to medical, health or other professional care, counsel, treatment or service for the ward. The guardian is empowered to withhold or withdraw life-sustaining treatment as set forth in section 5-312, subsection (a), paragraph (3). A guardian is not liable by reason of such giving or

withholding of consent for injury to the ward resulting from the negligence or acts of 3rd persons unless it would have been illegal for a parent to have so given or withheld consent. A guardian may consent to the marriage or adoption of the ward.

[ 1995, c. 378, Pt. B, §1 (AMD) .]

(d). A guardian must report the condition of the ward and the ward's estate that has been subject to that guardian's possession or control, as ordered by court on petition of any person interested in the minor's welfare or as required by court rule. If the guardian has received any funds pursuant to section 5-103, the guardian shall account to the court and the minor regarding how the funds were expended prior to the termination of that person's responsibilities as guardian.

[ 1993, c. 349, §41 (RPR) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1991, c. 641, §§2,3 (AMD). 1991, c. 719, §1 (AMD). 1993, c. 349, §§40,41 (AMD). 1995, c. 378, §B1 (AMD).

### **§5-210. TERMINATION OF APPOINTMENT OF GUARDIAN; GENERAL**

A guardian's authority and responsibility terminates upon the death, resignation or removal of the guardian or upon the minor's death, adoption, marriage or attainment of majority, but termination does not affect his liability for prior acts, nor his obligation to account for funds and assets of his ward. Resignation of a guardian does not terminate the guardianship until it has been approved by the court. A testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§5-211. PROCEEDINGS SUBSEQUENT TO APPOINTMENT; VENUE**

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

[ 1979, c. 540, §1 (NEW) .]

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

[ 2005, c. 371, §4 (AMD) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 2005, c. 371, §4 (AMD).

## §5-212. RESIGNATION OR REMOVAL PROCEEDINGS

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

[ 1979, c. 540, §1 (NEW) . ]

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

[ 1979, c. 540, §1 (NEW) . ]

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

[ 1979, c. 540, §1 (NEW) . ]

(d). The court may not terminate the guardianship in the absence of the guardian's consent unless the court finds by a preponderance of the evidence that the termination is in the best interest of the ward. The petitioner has the burden of showing by a preponderance of the evidence that termination of the guardianship is in the best interest of the ward. If the court does not terminate the guardianship, the court may dismiss subsequent petitions for termination of the guardianship unless there has been a substantial change of circumstances.

[ 2005, c. 371, §5 (AMD) . ]

(e). In a contested action, the court may appoint counsel for any indigent guardian or petitioner.

[ 2005, c. 371, §6 (NEW) . ]

### SECTION HISTORY

1979, c. 540, §1 (NEW). 1995, c. 623, §2 (NEW). 2005, c. 371, §§5,6 (AMD).

## §5-213. TRANSITIONAL ARRANGEMENTS FOR MINORS

In issuing, modifying or terminating an order of guardianship for a minor, the court may enter an order providing for transitional arrangements for the minor if the court determines that such arrangements will assist the minor with a transition of custody and are in the best interest of the child. Orders providing for transitional arrangements may include, but are not limited to, rights of contact, housing, counseling or rehabilitation.

[ 2011, c. 43, §2 (NEW) . ]

### SECTION HISTORY

2011, c. 43, §2 (NEW).

## Part 3: GUARDIANS OF INCAPACITATED PERSONS

## §5-301. TESTAMENTARY APPOINTMENT OF GUARDIAN FOR INCAPACITATED PERSON

(a). The parent of an incapacitated person may by will appoint a guardian of the incapacitated person. A testamentary appointment by a parent becomes effective when, after having given 7 days prior written notice of his intention to do so to the incapacitated person and to the person having his care or to his nearest adult relative, the guardian files acceptance of appointment in the court in which the will is formally or informally probated, if prior thereto both parents are dead or the surviving parent is judged incapacitated, and if the incapacitated person is not under the care of his spouse. If both parents are dead, an effective appointment by the parent who died later has priority unless it is terminated by the denial of probate in formal proceedings.

[ 1979, c. 540, §1 (NEW) .]

(b). The spouse of a married incapacitated person may by will appoint a guardian of the incapacitated person. The appointment becomes effective when, after having given 7 days prior written notice of his intention to do so to the incapacitated person and to the person having his care or to his nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or formally probated. An effective appointment by a spouse has priority over an appointment by a parent unless it is terminated by the denial of probate in formal proceedings.

[ 1979, c. 540, §1 (NEW) .]

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

[ 1979, c. 540, §1 (NEW) .]

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

[ 1979, c. 540, §1 (NEW) .]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## §5-302. VENUE

The venue for guardianship proceedings for an incapacitated person is in the place where the incapacitated person resides or is present. If the incapacitated person is admitted to an institution pursuant to order of a court of competent jurisdiction, venue is also in the county in which that court sits. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§5-303. PROCEDURE FOR COURT APPOINTMENT OF A GUARDIAN OF AN INCAPACITATED PERSON**

(a). The incapacitated person or any person interested in his welfare may petition for a finding of incapacity and appointment of a guardian. The person nominated to serve as guardian shall file a plan which, where relevant, shall include, but not be limited to, the type of proposed living arrangement for the ward, how the ward's financial needs will be met, how the ward's medical and other remedial needs will be met, how the ward's social needs will be met and a plan for the ward's continuing contact with relatives and friends.

[ 1985, c. 440, §§1, 13 (AMD) .]

(b). Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity and unless the allegedly incapacitated person is already represented by an attorney, the court shall appoint one or more of the following: a visitor, a guardian ad litem or an attorney to represent the allegedly incapacitated person in the proceeding. If it comes to the court's attention that the allegedly incapacitated person wishes to contest any aspect of the proceeding or to seek any limitation of the proposed guardian's powers, the court shall appoint an attorney to represent the allegedly incapacitated person. The cost of this appointment of the visitor, guardian ad litem or attorney must be paid from the estate of the allegedly incapacitated person if the court is satisfied sufficient funds are available. The person alleged to be incapacitated must be examined by a physician or by a licensed psychologist acceptable to the court who shall submit a report in writing to the court, providing diagnoses, a description of the person's actual mental and functional limitations and prognoses.

[ 1995, c. 203, §1 (AMD) .]

(c). If appointed, the visitor or guardian ad litem shall interview the allegedly incapacitated person and the person who is seeking appointment as guardian, and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that the person will reside if the requested appointment is made. The visitor or guardian ad litem shall submit a report in writing to the court. The visitor or guardian ad litem shall explain the meaning and possible consequences of the requested appointment to the allegedly incapacitated person and inquire if the person wishes to attend the hearing, to contest any aspect of the proceeding or to seek any limitation of the proposed guardian's powers. If the visitor or guardian ad litem determines that the person wants to contest any issue or seek a limited appointment and that the person does not have counsel of that person's own choice, the visitor or guardian ad litem shall so indicate in the written report to the court. The person alleged to be incapacitated is entitled to be present at the hearing in person, and to see and hear all evidence bearing upon the person's condition. The person alleged to be incapacitated is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including the physician, the visitor and the guardian ad litem. The issue may be determined at a closed hearing if the person alleged to be incapacitated or the person's counsel so requests.

[ 1995, c. 203, §1 (AMD) .]

(d). Except as otherwise provided by law, all reports and plans required by this section shall be submitted to the court, and all parties of record, at least 10 days before any hearing on the petition.

[ 1985, c. 440, §§1, 13 (NEW) .]

(e). When there has been an allegation of abuse, neglect or exploitation of an allegedly incapacitated person in a petition or other papers filed with the court, the court may hear the testimony of the allegedly incapacitated person in chambers with only the guardian ad litem and counsel present if the statements made are a matter of record.

[ 1989, c. 858, §2 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1983, c. 176, §A7 (AMD). 1983, c. 241, §1 (AMD). 1983, c. 816, §A8 (AMD). 1985, c. 440, §§1,13 (AMD). 1989, c. 858, §2 (AMD). 1993, c. 652, §1 (AMD). 1995, c. 203, §1 (AMD).

### §5-304. FINDINGS; ORDER OF APPOINTMENT

(a). The court shall exercise the authority conferred in Parts 3 and 6 so as to encourage the development of maximum self reliance and independence of the incapacitated person and make appointive and other orders only to the extent necessitated by the incapacitated person's actual mental and adaptive limitations or other conditions warranting the procedure.

[ 1985, c. 440, §§2, 13 (NEW) .]

(b). The court may appoint a guardian or coguardians as requested if the court finds by clear and convincing evidence that the person for whom a guardian is sought is incapacitated and that the appointment is necessary or desirable as a means of providing continuing care and supervision of the incapacitated person.

[ 2009, c. 349, §1 (AMD) .]

(b-1). If the allegedly incapacitated person files voluntary written consent to the appointment of a guardian with the court or appears in court and consents to the appointment, unless the court finds the consent suspect, the court may appoint a guardian or coguardians as requested upon a finding by a preponderance of the evidence that the person for whom a guardian is sought is incapacitated and that the appointment is necessary or desirable as a means of providing continuing care and supervision of the incapacitated person. For the purposes of this subsection, voluntary written consent is valid only if the consent was obtained by a visitor, a guardian ad litem or an attorney representing the allegedly incapacitated person and the allegedly incapacitated person gave the consent outside the presence of the person or persons seeking guardianship.

[ 2009, c. 349, §2 (NEW) .]

(b-2). If the allegedly incapacitated person has not attended the hearing, the court must determine if an inquiry has been made as to whether that person wished to attend the hearing.

[ 2009, c. 349, §3 (NEW) .]

(c). In its order, the court may make separate findings of fact and conclusions of law. If a party requests separate findings and conclusions, within 5 days of notice of the decision, the court shall make them. As an alternative to the appointment of a guardian under subsection (b) or (b-1), the court may dismiss the proceeding or enter any other appropriate order.

[ 2009, c. 349, §4 (AMD) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1979, c. 690, §18 (AMD). 1985, c. 440, §§2,13 (RPR). 2003, c. 323, §1 (AMD). 2009, c. 349, §§1-4 (AMD).

### **§5-305. ACCEPTANCE OF APPOINTMENT; CONSENT TO JURISDICTION**

By accepting appointment, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. Notice of any proceeding shall be delivered to the guardian or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to the petitioner. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§5-306. TERMINATION OF GUARDIANSHIP FOR INCAPACITATED PERSON**

The authority and responsibility of a guardian for an incapacitated person terminates upon the death of the guardian or ward, the determination of incapacity of the guardian, or upon removal or resignation as provided in section 5-307. Testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding. Termination does not affect his liability for prior acts nor his obligation to account for funds and assets of his ward. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§5-307. REMOVAL OR RESIGNATION OF GUARDIAN; TERMINATION OF GUARDIANSHIP**

(a). On petition of the ward or any person interested in the ward's welfare, the court may remove a guardian and appoint a successor if in the best interests of the ward. On petition of the guardian, the court may accept the guardian's resignation and make any other order that may be appropriate.

[ 2009, c. 349, §5 (AMD) . ]

(b). The ward or any person interested in the ward's welfare may petition for an order that the ward is no longer incapacitated, and for removal or resignation of the guardian. A request for this order may be made by informal letter to the court or judge and any person who knowingly interferes with transmission of this kind of request to the court or judge may be adjudged guilty of contempt of court.

[ 2009, c. 349, §5 (AMD) . ]

(c). Before removing a guardian or accepting the resignation of a guardian, the court, following the same procedures to safeguard the rights of the ward as apply to a petition for appointment of a guardian, may send a visitor to the residence of the present guardian and to the place where the ward resides or is detained, to observe conditions and report in writing to the court.

[ 2009, c. 349, §5 (AMD) . ]

(d). In an action by the ward, upon presentation by the petitioner of evidence establishing a prima facie case that the ward is not incapacitated or the appointment is no longer necessary or desirable as a means of providing continuing care and supervision of the ward, the court shall order the termination unless the respondent proves by clear and convincing evidence that the ward is incapacitated and guardianship is necessary or desirable as a means of providing continuing care and supervision of the ward.

[ 2009, c. 349, §5 (NEW) . ]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1979, c. 690, §19 (AMD). 2009, c. 349, §5 (AMD).

## §5-308. VISITOR IN GUARDIANSHIP PROCEEDINGS

A visitor is, with respect to guardianship proceedings, a person who is trained in law, nursing, social work, or has other significant qualifications that make him suitable to perform the function, and is an officer, employee or special appointee of the court with no personal interest in the proceedings. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## §5-309. NOTICES IN GUARDIANSHIP PROCEEDINGS

(a). In a proceeding for the appointment or removal of a guardian of an incapacitated person other than the appointment of a temporary guardian or temporary suspension of a guardian, notice of hearing shall be given to each of the following:

- (1). The ward or the person alleged to be incapacitated and the ward's or person's spouse, parents, adult children and any domestic partner known to the court; [2003, c. 672, §9 (AMD).]
- (2). Any person who is serving as his guardian, conservator or who has his care and custody; and [1979, c. 540, §1 (NEW).]
- (3). In case no other person is notified under paragraph (1), at least one of his closest adult relatives or, if none, an adult friend, if any can be found. [1985, c. 440, §§3, 13 (AMD).]

[ 2003, c. 672, §9 (AMD) .]

(b). Notice shall be served personally on the ward or the allegedly incapacitated person at least 14 days before the date of the hearing. Waiver of notice by the ward or the person alleged to be incapacitated is not effective unless he attends the hearing or his waiver of notice is confirmed by his counsel or by his guardian ad litem or in an interview with the visitor. Representation of the ward or the allegedly incapacitated person by a guardian ad litem is not mandatory. The court may order that the petition and hearing notice be served by the visitor.

[ 1985, c. 656, §1 (RPR) .]

(c). Notice to the spouse, adult children, domestic partner and parents required by subsection (a) must be served by certified mail, with restricted delivery and return receipt requested, at least 14 days before the date of the hearing.

If the certified mail to the spouse or domestic partner is not delivered and that person can be found within the State, notice must be served personally on that person.

If the certified mail to the spouse or domestic partner is not delivered, that person can not be found within the State and the certified mail is not delivered to any adult children, notice must be served personally on an adult child who can be found within the State.

If the certified mail to the spouse or domestic partner and adult children is not delivered, the spouse or domestic partner and all adult children can not be found within the State and the certified mail is not delivered to any parent, notice must be served personally on a parent who can be found within the State.

If no spouse, domestic partner, adult child or parent is served by certified mail or personally, notice to the closest adult relative required by subsection (a) must be served by certified mail, with restricted delivery and return receipt requested. If the certified mail to the adult relative is not delivered and the adult relative can be found within the State, notice must be served personally on the adult relative. If no adult relative is served by certified mail or personally, notice to an adult friend required by subsection (a) must be served by



certified mail, with restricted delivery and return receipt requested. If the certified mail to the adult friend is not delivered and the adult friend can be found within the State, notice must be served personally on the adult friend.

Notice required by subsection (a) to any person serving as a guardian or conservator or who has a person's care and custody must be served by certified mail, with restricted delivery and return receipt requested.

Except as otherwise provided in this section, notice must be given as prescribed by court rule under section 1-401.

[ 2003, c. 672, §10 (AMD) . ]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1985, c. 440, §§3-5,13 (AMD). 1985, c. 656, §§1,2 (AMD). 2003, c. 672, §§9,10 (AMD).

### **§5-310. TEMPORARY GUARDIANS**

*(REPEALED)*

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1983, c. 72, (AMD). 1983, c. 620, (AMD). 1993, c. 652, §2 (RP).

### **§5-310-A. TEMPORARY GUARDIANS**

(a). When a person alleged to be incapacitated has no guardian and an emergency exists and no other person appears to have authority to act in the circumstances, upon appropriate petition, the court may exercise the power of a guardian or may enter an order, ex parte or otherwise, appointing a temporary guardian in order to prevent serious, immediate and irreparable harm to the health or financial interests of the person alleged to be incapacitated. A petition for temporary guardianship must be accompanied by an affidavit that sets forth the factual basis for the emergency and the specific powers requested by the proposed guardian. In the order and in the letters of temporary guardianship, the court shall specify the powers and duties of the temporary guardian, limiting the powers and duties to those necessary to address the emergency.

(1). Except as otherwise provided in this section, prior to filing a petition under this subsection the petitioner shall provide notice orally or in writing to the following:

(i) The allegedly incapacitated person and the person's spouse, parents, adult children and any domestic partner known to the court;

(ii) Any person who is serving as guardian or conservator or who has care and custody of the allegedly incapacitated person; and

(iii) In case no other person is notified under subparagraph (i), at least one of the closest adult relatives of the allegedly incapacitated person or, if none, an adult friend, if any can be found.

[ 2005, c. 625, §1 (NEW) . ]

(2). Notice under paragraph (1) must include the following information:

(i) The temporary authority that the petitioner is requesting;

(ii) The location and telephone number of the court in which the petition is being filed; and

(iii) The name of the petitioner and the intended date of filing. [ 2005, c. 625, §1

(NEW) . ]

(3). The petitioner shall state in the affidavit required under this subsection the date, time, location and method of providing the required notice under paragraph (1) and to whom the notice was provided. The court shall make a determination as to the adequacy of the method of providing notice and whether the petitioner complied with the notice requirements of this subsection. The requirements of section 5-309 do not apply to this section. [2005, c. 625, §1 (NEW).]

(4). Notice is not required under this subsection in the following circumstances:

- (i) Giving notice will place the allegedly incapacitated person at substantial risk of abuse, neglect or exploitation;
- (ii) Notice, if provided, would not be effective; or
- (iii) Other good cause as determined by the court. [2005, c. 625, §1 (NEW).]

(5). If, prior to filing the petition, the petitioner did not provide notice as required under this subsection, the petitioner must state in the affidavit the reasons for not providing notice. If notice has not been provided, the court shall make a determination as to the sufficiency of the reason for not providing notice before issuing a temporary order. [2005, c. 625, §1 (NEW).]

[ 2005, c. 625, §1 (AMD) .]

**(a-1).** If the court takes action to exercise the powers of a guardian or to appoint a temporary guardian under subsection (a), then the court, within 2 days, excluding Saturdays, Sundays and legal holidays, of taking the action, shall appoint a visitor or a guardian ad litem to visit the allegedly incapacitated person and make a report to the court within 10 days of the appointment of the visitor or guardian ad litem. The visitor or guardian ad litem shall serve the allegedly incapacitated person with a copy of the order appointing the temporary guardian and shall explain the meaning and consequences of the appointment. The visitor or guardian ad litem shall inquire of the allegedly incapacitated person whether that person wishes to contest any aspect of the temporary guardianship or seek any limitation of the temporary guardian's powers. The visitor or guardian ad litem shall advise the allegedly incapacitated person of that person's right to contest the temporary guardianship by requesting a hearing under subsection (b) and shall advise the allegedly incapacitated person of that person's right to be represented in the proceeding by counsel of that person's own choice or by counsel appointed by the court. The visitor or guardian ad litem shall also interview the temporary guardian, except in cases where the court itself has taken action to exercise the powers of a temporary guardian. In the report to the court, the visitor or guardian ad litem shall inform the court that the allegedly incapacitated person has received a copy of the order appointing the temporary guardian. The visitor or guardian ad litem shall advise the court if circumstances indicate the allegedly incapacitated person wishes to contest any aspect of the temporary guardianship or seek a limitation of the temporary guardian's powers and whether the allegedly incapacitated person is already represented by counsel. The visitor or guardian ad litem shall also advise the court whether any issue exists with respect to whether the appointment of the temporary guardian is in the allegedly incapacitated person's best interest.

[ 2005, c. 625, §2 (AMD) .]

**(b).** If the court has exercised temporary guardianship powers or has issued an ex parte order under subsection (a), and if it comes to the court's attention, through the report of the visitor or guardian ad litem or otherwise, that the allegedly incapacitated person wishes to contest any aspect of the temporary guardianship or seek a limitation of the temporary guardian's powers, or that an issue exists with respect to whether the temporary guardianship is in the allegedly incapacitated person's best interest, the court shall hold an expedited hearing within 40 days of the entry of the ex parte order under subsection (a). The court may continue the expedited hearing if the petitioner and the attorney for the allegedly incapacitated person, or, if none, the visitor or the guardian ad litem, agree to such a continuance. The court may continue the hearing on its own motion due to circumstances beyond the control of the court and the parties, provided the hearing is held within 60 days of the signing of the ex parte order. If the appointment of a guardian is contested by the allegedly incapacitated person and the person is not already represented by an attorney, the court shall appoint counsel to represent the allegedly incapacitated person in the proceeding. The cost of the appointment of the

visitor, guardian ad litem or attorney must be paid from the estate of the allegedly incapacitated person if the court is satisfied that sufficient funds are available. At the hearing, the petitioner has the burden of showing, by a preponderance of the evidence, that temporary guardianship continues to be necessary to provide the person with continuing care, protection or support pending a final hearing. Notice of the expedited hearing must be served as provided in section 5-309, except that the notice must be given at least 5 days before the expedited hearing, and notice need not be served on any person whose address or present whereabouts is unknown and can not be ascertained by due diligence. The court may waive service of the expedited hearing on any person, other than the allegedly incapacitated person, upon a showing of good cause.

[ 1995, c. 203, §3 (AMD) . ]

(c). At the expedited hearing, the court may render a judgment authorizing the temporary guardianship to continue for a period not to exceed 6 months from the date of entry of the ex parte order. The temporary guardianship terminates on the date specified in the order or, if no date is specified in the order, 6 months following the date of entry of the ex parte order or at any prior time if the court determines the circumstances leading to the order for temporary guardianship no longer exist or if a judgment has been entered following a hearing pursuant to section 5-303 with findings made pursuant to section 5-304.

[ 2009, c. 349, §6 (AMD) . ]

(d). If the court denies the request for an ex parte order pursuant to subsection (a), the court may enter, in its discretion, an order for an expedited hearing pursuant to subsection (b). If the petitioner requests the entry of an order of temporary guardianship pursuant to subsection (a) without requesting an ex parte order, the court may hold an expedited hearing pursuant to subsection (b).

[ 1993, c. 652, §3 (NEW) . ]

(e). If an appointed guardian is not effectively performing that guardian's duties and the court finds that the welfare of the incapacitated person requires immediate action, it may appoint, with or without notice, a temporary guardian for the incapacitated person for a specified period not to exceed 6 months.

[ 1993, c. 652, §3 (NEW) . ]

(f). A temporary guardian is entitled to the care and custody of the ward and the authority of any permanent guardian previously appointed by the court is suspended as long as a temporary guardian has authority. A temporary guardian may not seek the involuntary hospitalization of this ward in any institution outside the State. A temporary guardian may be removed at any time. A temporary guardian shall make any report the court requires. In other respects, the provisions of this Code concerning guardians apply to temporary guardians.

[ 1993, c. 652, §3 (NEW) . ]

(g). A petition for temporary guardianship may be brought before any judge if the judge of the county in which venue properly lies is unavailable. If a judge, other than the judge of the county in which venue properly lies, acts on a petition for temporary guardianship, that judge shall issue a written order and endorse upon it the date and time of the order. The judge shall then immediately transmit or cause to be transmitted that order to the register of the county in which venue properly lies. An order issued by a judge of a county, other than the county in which venue properly lies, is deemed to have been entered in the docket on the date and at the time endorsed upon it.

[ 1993, c. 652, §3 (NEW) . ]

#### SECTION HISTORY

1993, c. 652, §3 (NEW). 1995, c. 203, §§2,3 (AMD). 1997, c. 35, §1 (AMD). 2005, c. 625, §§1,2 (AMD). 2009, c. 349, §6 (AMD).

**§5-311. WHO MAY BE GUARDIAN; PRIORITIES**

(a). Any competent person or a suitable institution may be appointed guardian of an incapacitated person, except as provided in subsection (c).

[ 1979, c. 540, §1 (NEW) .]

(b). Subject to a determination by the court of the best interests of the incapacitated person, persons who are not disqualified have priority for appointment as guardian in the following order:

- (1). The person or institution nominated in writing by the incapacitated person; [1979, c. 540, §1 (NEW) .]
- (2). The spouse of the incapacitated person; [1979, c. 540, §1 (NEW) .]
- (2-A). The domestic partner of the incapacitated person; [2003, c. 672, §11 (NEW) .]
- (3). An adult child of the incapacitated person; [1979, c. 540, §1 (NEW) .]
- (3-A). A person who served as guardian, permanency guardian or legal custodian of the incapacitated person when the incapacitated person was a child, if the person was actively serving in that capacity immediately before the incapacitated person's 18th birthday; [2007, c. 284, §1 (NEW) .]
- (4). A parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent; [1979, c. 540, §1 (NEW) .]
- (5). Any relative of the incapacitated person with whom the incapacitated person resided for more than 6 months prior to the filing of the petition; or [2007, c. 284, §2 (AMD) .]
- (6). A person nominated by the person who is caring for the incapacitated person or paying benefits to the incapacitated person. [2007, c. 284, §3 (AMD) .]

[ 2007, c. 284, §§1-3 (AMD) .]

(c). An owner, proprietor, administrator, employee or other person with a substantial financial interest in a facility or institution licensed under Title 22, sections 1817 and 7801 may not act as guardian of an incapacitated person who is a resident, as defined in Title 22, section 7852, subsection 13, unless the person requesting to be appointed guardian is one of the following:

- (1). The spouse of the incapacitated person; [1995, c. 51, §1 (NEW) .]
- (1-A). The domestic partner of the incapacitated person; [2003, c. 672, §12 (NEW) .]
- (2). An adult child of the incapacitated person; [1995, c. 51, §1 (NEW) .]
- (2-A). A person who served as guardian, permanency guardian or legal custodian of the incapacitated person when the incapacitated person was a child, if the person was actively serving in that capacity immediately before the incapacitated person's 18th birthday; [2007, c. 284, §4 (NEW) .]
- (3). A parent of the incapacitated person or a person nominated by the will of a deceased parent; or [1995, c. 51, §1 (NEW) .]
- (4). A relative of the incapacitated person with whom the incapacitated person has resided for more than 6 months prior to the filing of the petition for appointment. [1995, c. 51, §1 (NEW) .]

[ 2007, c. 284, §4 (AMD) .]

**SECTION HISTORY**

1979, c. 540, §1 (NEW). 1985, c. 770, §1 (AMD). 1995, c. 51, §1 (AMD). 2001, c. 596, §B2 (AMD). 2001, c. 596, §B25 (AFF). 2003, c. 672, §§11,12 (AMD). 2007, c. 284, §§1-4 (AMD).

**§5-312. GENERAL POWERS AND DUTIES OF GUARDIAN**

(a). A guardian of an incapacitated person has the same powers, rights and duties respecting his ward that a parent has respecting his unemancipated minor child, except that a guardian is not legally obligated to provide from his own funds for the ward and is not liable to 3rd persons for acts of the ward solely by reason of the parental relationship. In particular, and without qualifying the foregoing, a guardian has the following powers and duties, except as modified by order of the court:

- (1). To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, he is entitled to custody of the person of his ward and may establish the ward's place of abode within or without this State, and may place the ward in any hospital or other institution for care in the same manner as otherwise provided by law. [1979, c. 540, §1 (NEW).]
- (2). If entitled to custody of his ward he shall make provision for the care, comfort and maintenance of his ward and, whenever appropriate, arrange for his training and education. Without regard to custodial rights of the ward's person, he shall take reasonable care of his ward's clothing, furniture, vehicles and other personal effects and commence protective proceedings if other property of his ward is in need of protection. [1979, c. 540, §1 (NEW).]
- (3). A guardian may give or withhold consents or approvals related to medical or other professional care, counsel, treatment or service for the ward. Except as authorized by a court of competent jurisdiction, a guardian shall make a health-care decision in accordance with the ward's individual instructions, if any, and other wishes expressed while the ward had capacity to the extent known to the guardian. Otherwise, the guardian shall make the decision in accordance with the guardian's determination of the ward's best interest. In determining the ward's best interest, the guardian shall consider the ward's personal values to the extent known to the guardian. A decision of a guardian to withhold or withdraw life-sustaining treatment is effective without court approval unless the guardian's decision is made against the advice of the ward's primary physician and in the absence of instructions from the ward made while the ward had capacity. [1995, c. 378, Pt. B, §2 (AMD).]
- (4). If no conservator for the estate of the ward has been appointed, he may:
  - (i) Institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform his duty;
  - (ii) Receive money and tangible property deliverable to the ward and apply the money and property for support, care and education of the ward; but, he may not use funds from his ward's estate for room and board which he, his spouse, parent, or child have furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the ward, if notice is possible. He must exercise care to conserve any excess for the ward's needs. [1979, c. 540, §1 (NEW).]
- (5). A guardian is required to report the condition of his ward and of the estate which has been subject to his possession or control, as specified by the court at the time of the initial order or at the time of a subsequent order or as provided by court rule.

The court on its own motion, or on the petition of any interested person, may appoint a visitor to review the guardian's report and determine if appropriate provisions for the care, comfort and maintenance of his ward and for the care and protection of his ward's property have been made. The visitor shall report his findings to the court in writing. [1985, c. 440, §§6, 13 (AMD).]
- (6). If a conservator has been appointed, all of the ward's estate received by the guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward must be paid to the conservator for management as provided in this code, and the guardian must account to the conservator for funds expended. [1979, c. 540, §1 (NEW).]

[ 1995, c. 378, Pt. B, §2 (AMD) .]

(b). Any guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward, and is entitled to receive reasonable sums for his services and for room and board furnished to the ward as agreed upon between him and the conservator, provided the amounts agreed upon are reasonable under the circumstances. The guardian may request the conservator to expend the ward's estate by payment to 3rd persons or institutions for the ward's care and maintenance.

[ 1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1985, c. 440, §§6,13 (AMD). 1991, c. 719, §2 (AMD). 1995, c. 378, §B2 (AMD).

### **§5-313. PROCEEDINGS SUBSEQUENT TO APPOINTMENT; VENUE**

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

[ 1979, c. 540, §1 (NEW) .]

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

[ 1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

## **Part 4: PROTECTION OF PROPERTY OF PERSONS UNDER DISABILITY AND MINORS**

### **§5-401. PROTECTIVE PROCEEDINGS**

Upon petition and after notice and hearing in accordance with the provisions of this Part, the court may appoint a conservator, coconservator or make other protective order for cause as follows. [ 2003, c. 323, §2 (AMD) .]

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

[ 1979, c. 540, §1 (NEW) .]

(2). Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a person if the court determines: by clear and convincing evidence that the person is unable to manage the person's property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance; and by a preponderance of the evidence that the person has property that will be

wasted or dissipated unless proper management is provided or that funds are needed for the support, care and welfare of the person or those entitled to be supported by the person and that protection is necessary or desirable to obtain or provide funds. If the allegedly incapacitated person files voluntary written consent to the appointment of a conservator with the court or appears in court and consents to the appointment, unless the court finds the consent suspect, the court may appoint a conservator or coconservator as requested upon a finding by a preponderance of the evidence that the person is unable to manage the person's property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power or disappearance. For the purposes of this subsection, voluntary written consent is valid only if the consent was obtained by a visitor, a guardian ad litem or an attorney representing the allegedly incapacitated person and the allegedly incapacitated person gave the consent outside the presence of the person or persons seeking conservatorship.

[ 2009, c. 349, §7 (AMD) . ]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 2003, c. 323, §2 (AMD). 2009, c. 349, §7 (AMD).

### **§5-402. PROTECTIVE PROCEEDINGS; JURISDICTION OF AFFAIRS OF PROTECTED PERSONS**

After the service of notice in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the court in which the petition is filed has: [1979, c. 540, §1 (NEW) . ]

(1). Exclusive jurisdiction to determine the need for a conservator or other protective order until the proceedings are terminated;

[ 1979, c. 540, §1 (NEW) . ]

(2). Exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this State shall be managed, expended or distributed to or for the use of the protected person or any of his dependents;

[ 1979, c. 540, §1 (NEW) . ]

(3). Concurrent jurisdiction to determine the validity of claims against the person or estate of the protected person and his title to any property or claim.

[ 1979, c. 540, §1 (NEW) . ]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§5-403. VENUE**

Venue for proceedings under this Part is: [1979, c. 540, §1 (NEW) . ]

(1). In the place in this State where the person to be protected resides whether or not a guardian has been appointed in another place; or

[ 1979, c. 540, §1 (NEW) . ]

(2). If the person to be protected does not reside in this State, in any place where he has property.

[ 1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### §5-404. ORIGINAL PETITION FOR APPOINTMENT OR PROTECTIVE ORDER

(a). The person to be protected, any person who is interested in the estate, affairs or welfare of the person to be protected including the parent, guardian, custodian or domestic partner of the person to be protected or any person who would be adversely affected by lack of effective management of the property and affairs of the person to be protected may petition for the appointment of a conservator or for other appropriate protective order.

[ 2003, c. 672, §13 (AMD) .]

(b). The petition shall contain such information and be in such form as the Supreme Judicial Court shall by rule provide.

[ 1979, c. 540, §1 (NEW) .]

(c). A petition for a protective order made under oath may be used to initiate court consideration, accounting and remediation of the actions of any individual responsible for the management of the property or affairs of another. In the case of an emergency, the petition must be given priority scheduling by the court.

(1). The petition must include the following information and may include other information required by rule:

(i) Name, address and telephone number of the petitioner;

(ii) Name, address and telephone number of the principal;

(iii) Name, address and telephone number of the person with actual or apparent authority to manage the property or affairs of the principal;

(iv) Facts concerning the extent and nature of the principal's inability to manage the principal's property or affairs effectively and any facts supporting an allegation that an emergency exists;

(v) Facts concerning the extent and nature of the actual or apparent agent's lack of management of the principal's property or affairs. If applicable, facts describing how the petitioner has already been adversely affected by the lack of management of the principal's property or affairs; and

(vi) Names, addresses and relationships of all persons who are required to receive notice of the petition. [2005, c. 283, §1 (NEW).]

(2). This subsection does not limit any other purpose for the use of a petition for a protective order or any other remedy available to the court. [2005, c. 283, §1 (NEW).]

[ 2005, c. 283, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 2003, c. 672, §13 (AMD). 2005, c. 283, §1 (AMD).



**§5-405. NOTICE**

(a). On a petition for appointment of a conservator or other protective order or on a petition under section 5-416, the person to be protected or the protected person must be served personally with notice of the proceeding at least 14 days before the date of the hearing. Waiver by the person to be protected or the protected person is not effective unless he attends the hearing or, unless minority is the reason for the proceeding, waiver is confirmed in an interview with the visitor. The court may order that the petition and hearing notice be served by the visitor.

[ 1985, c. 656, §3 (RPR) . ]

(a-1). The spouse or domestic partner and all adult children of the person to be protected or the protected person or, if none, the person's parents or closest adult relative or, if none, a friend must be given notice of the proceeding. Notice under this subsection must be served by certified mail, restricted delivery and return receipt requested, at least 14 days before the date of the hearing.

If the certified mail to the spouse or domestic partner is not delivered and that person can be found within the State, notice must be served personally on that person.

If the certified mail to the spouse or domestic partner is not delivered, that person can not be found within the State and the certified mail is not delivered to any adult children, notice must be served personally on an adult child who can be found within the State.

If notice is served on the person's parents or closest adult relative and the certified mail is not delivered, notice must be served personally on a parent or the adult relative if a parent or adult relative can be found within the State.

If notice is served on the person's friend and the certified mail is not delivered, notice must be served personally on the friend if the friend can be found within the State.

Except as otherwise provided in this subsection and subsection (a), notice must be given as prescribed by court rule under section 1-401.

[ 2003, c. 672, §14 (AMD) . ]

(b). Notice of a petition for appointment of a conservator or other initial protective order, and of any subsequent hearing, must be given to any person who has filed a request for notice under section 5-406 and to interested persons and other persons as the court may direct. Except as otherwise provided in subsections (a) and (a-1), notice shall be given as prescribed by court rule under section 1-401.

[ 1985, c. 656, §5 (AMD) . ]

## SECTION HISTORY

1979, c. 540, §1 (NEW). 1985, c. 440, §§7,13 (AMD). 1985, c. 656, §§3-5 (AMD). 2003, c. 672, §14 (AMD).

**§5-406. PROTECTIVE PROCEEDINGS; REQUEST FOR NOTICE; INTERESTED PERSON**

Any interested person who desires to receive notice of any filing, hearing or order in a protective proceeding may file a demand for notice with the court, shall thereupon have notice of such demand given to any conservator who has been appointed, and shall thereafter receive notice of every filing, notice or order to which the demand relates, in such manner and form as the Supreme Judicial Court shall by rule provide. Any governmental agency paying or planning to pay benefits to the person to be protected is an interested person in protective proceedings. [1979, c. 540, §1 (NEW).]

## SECTION HISTORY

1979, c. 540, §1 (NEW).

## §5-407. PROCEDURE CONCERNING HEARING AND ORDER ON ORIGINAL PETITION

(a). Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the choice of the minor if 14 years of age or older. A lawyer appointed by the court to represent a minor has the powers and duties of a guardian ad litem.

[ 1979, c. 540, §1 (NEW) .]

(b). Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected is already represented by an attorney, the court shall appoint one or more of the following: a visitor; a guardian ad litem or a lawyer to represent the person to be protected in the proceedings. If it comes to the court's attention that the person to be protected wishes to contest any aspect of the proceeding or to seek any limitation of the proposed conservator's powers, the court shall appoint an attorney to represent the person to be protected. The cost of the appointment of the visitor, guardian ad litem or attorney must be paid from the estate of the person to be protected if the court is satisfied sufficient funds are available. If the alleged disability is physical illness or disability, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician acceptable to the court, preferably a physician who is not connected with any institution in which the person is a patient or is detained. If the alleged disability is mental illness or mental deficiency, the court may direct that the person to be protected be examined by a physician or by a licensed psychologist acceptable to the court; preferably the physician or psychologist shall not be connected with any institution in which the person is a patient or is detained. The physician or psychologist shall submit a report in writing to the court, providing diagnoses, a description of the person's actual mental and functional limitations and prognoses.

[ 1995, c. 203, §4 (AMD) .]

(b-1). If appointed, the visitor or guardian ad litem shall interview the person to be protected and the person who is seeking appointment as conservator. The visitor or guardian ad litem shall submit a report in writing to the court. The visitor or guardian ad litem shall explain the meaning and possible consequences of the requested appointment to the person to be protected and inquire if the person wishes to attend the hearing, to contest any aspect of the proceedings or to seek any limitation of the proposed conservator's powers. If the visitor or guardian ad litem determines that the person wants to contest any issue or seek a limited appointment and that the person is not already represented by an attorney, the visitor or guardian ad litem shall so indicate in the written report to the court. The person to be protected is entitled to be present at the hearing in person and to see and hear all evidence bearing upon the person's condition. The person to be protected is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including the physician, the visitor and the guardian ad litem. The issue may be determined at a closed hearing if the person to be protected or the person's counsel so requests.

[ 1995, c. 203, §5 (AMD) .]

(b-2). The person nominated to serve as conservator shall file a plan which, where relevant and to the extent pertinent information is reasonably available to the nominee, shall include, but not be limited to, how the protected person's financial needs will be met, as well as a plan for the management of the protected person's estate.

[ 1985, c. 440, §§ 9, 13 (NEW) .]

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

[ 1979, c. 540, §1 (NEW) .]

(d). Except as otherwise provided by law, all reports and plans required by this section shall be submitted to the court and all parties of record at least 10 days before any hearing on the petition.

[ 1985, c. 440, §§ 10, 13 (NEW) .]

(e). When there has been an allegation of abuse, neglect or exploitation of an allegedly incapacitated person in a petition or other papers filed with the court, the court may hear the testimony of the allegedly incapacitated person in chambers with only the guardian ad litem and counsel present if the statements made are a matter of record.

[ 1989, c. 858, §3 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1983, c. 241, §2 (AMD). 1985, c. 440, §§8-10,13 (AMD). 1989, c. 858, §3 (AMD). 1993, c. 652, §§4,5 (AMD). 1995, c. 203, §§4,5 (AMD).

### **§5-408. PERMISSIBLE COURT ORDERS**

The court shall exercise the authority conferred in Parts 4 and 6 to encourage the development of maximum self reliance and independence of the protected person and make protective orders only to the extent necessitated by the protected person's actual mental and adaptive limitations and other conditions warranting the procedure. [1985, c. 440, §§11, 13 (NEW).]

The court has the following powers which may be exercised directly or through a conservator in respect to the estate and affairs of protected persons; [1979, c. 540, §1 (NEW).]

(1). While a petition for appointment of a conservator or other protective order is pending and after preliminary hearing and without notice to others, the court has power to preserve and apply the property of the person to be protected as may be required for the person's benefit or the benefit of the person's dependents, in accordance with the procedures set forth in section 5-408-A.

[ 1993, c. 652, §6 (AMD) .]

(2). After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor without other disability, the court has all those powers over the estate and affairs of the minor which are or might be necessary for the best interests of the minor, his family and members of his household.

[ 1979, c. 540, §1 (NEW) .]

(3). After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a person for reasons other than minority, the court has, for the benefit of the person and members of his household, all the powers over his estate and affairs which he could exercise if present and not under disability, except the power to make a will. These powers include, but are not limited to power to make gifts, to convey or release his contingent and expectant interests in property including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety, to exercise or release his powers as trustee, personal representative, custodian for minors, conservator, or donee of a power of appointment, to enter into contracts, to create revocable or irrevocable trusts of property of the estate which may extend beyond his disability or life, to exercise options of the disabled person to purchase securities or

other property, to exercise his rights to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value, to exercise his right to an elective share in the estate of his deceased spouse and to renounce any interest by testate or intestate succession or by inter vivos transfer.

[ 1979, c. 540, §1 (NEW) . ]

(4). The court may exercise or direct the exercise of, its authority to exercise or release powers of appointment of which the protected person is donee, to renounce interests, to make gifts in trust or otherwise exceeding 20% of any year's income of the estate or to change beneficiaries under insurance and annuity policies, only if satisfied, after notice and hearing, that it is in the best interests of the protected person, and that he either is incapable of consenting or has consented to the proposed exercise of power.

[ 1979, c. 540, §1 (NEW) . ]

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

[ 1979, c. 540, §1 (NEW) . ]

(6). The court may authorize a gift or other transfer for less than fair market value from the protected person's estate if the court finds:

(a). That the remaining estate assets of the protected person are sufficient for the protected person's care and maintenance for the next 60 months, including due provision for the protected person's established standard of living and for the support of any persons the protected person is legally obligated to support and any dependents of the protected person; and [ 2011, c. 155, §1 (AMD) . ]

(b). That the gift or other transfer will not hasten the date of eligibility for MaineCare coverage of the protected person's long-term care expenses during the next 60 months. [ 2011, c. 155, §1 (AMD) . ]

If the gift or other transfer is being made to the protected person's spouse or blind or disabled child or to a trust established pursuant to 42 United States Code, Section 1396p(d)(4), or is otherwise specifically allowed without a transfer penalty by law governing the federal Medicaid program under 42 United States Code, the court may authorize the gift or other transfer without making the findings under paragraphs (a) and (b).

[ 2011, c. 155, §1 (AMD) . ]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1985, c. 440, §§11,13 (AMD). 1993, c. 652, §6 (AMD). 2005, c. 12, §DDD4 (AMD). 2005, c. 12, §DDD17 (AFF). 2011, c. 155, §1 (AMD).

### §5-408-A. TEMPORARY CONSERVATOR

(a). When a person is alleged to be in need of protection and an emergency exists and no other person appears to have authority to act in the circumstances, upon appropriate petition, the court may exercise the power of a conservator or may enter an order, ex parte or otherwise, appointing a temporary conservator in order to prevent serious, immediate and irreparable harm to the health or financial interests of the person alleged to be in need of protection and to preserve and apply the property of the person to be protected as may be required for that person's benefit or the benefit of that person's dependents. The petition must be accompanied by an affidavit that sets forth the factual basis for the emergency and the specific powers requested by the proposed conservator. In the order and in the letters of temporary conservatorship, the court shall specify the powers and duties of the temporary conservator, limiting the powers and duties to those necessary to address the emergency.

- (1). Except as otherwise provided in this section, prior to filing a petition under this subsection the petitioner shall provide notice orally or in writing to the following:
- (i) The person alleged to be in need of protection and the person's spouse, parents, adult children and any domestic partner known to the court;
  - (ii) Any person who is serving as guardian or conservator or who has care and custody of the person alleged to be in need of protection; and
  - (iii) In case no other person is notified under subparagraph (i), at least one of the closest adult relatives of the person alleged to be in need of protection or, if none, an adult friend, if any can be found. [ 2005, c. 625, §3 (NEW) . ]
- (2). Notice under paragraph (1) must include the following information:
- (i) The temporary authority that the petitioner is requesting;
  - (ii) The location and telephone number of the court in which the petition is being filed; and
  - (iii) The name of the petitioner and the intended date of filing. [ 2005, c. 625, §3 (NEW) . ]
- (3). The petitioner shall state in the affidavit required under this subsection the date, time, location and method of providing the required notice under paragraph (1) and to whom the notice was provided. The court shall make a determination as to the adequacy of the method of providing notice and whether the petitioner complied with the notice requirements of this subsection. The requirements of section 5-405 do not apply to this section. [ 2005, c. 625, §3 (NEW) . ]
- (4). Notice is not required under this subsection in the following circumstances:
- (i) Giving notice will place the person alleged to be in need of protection at substantial risk of abuse, neglect or exploitation;
  - (ii) Notice, if provided, would not be effective; or
  - (iii) Other good cause as determined by the court. [ 2005, c. 625, §3 (NEW) . ]
- (5). If, prior to filing the petition, the petitioner did not provide notice as required under this subsection, the petitioner must state in the affidavit the reasons for not providing notice. If notice has not been provided, the court shall make a determination as to the sufficiency of the reason for not providing notice before issuing a temporary order. [ 2005, c. 625, §3 (NEW) . ]

[ 2005, c. 625, §3 (AMD) . ]

**(a-1).** If the court takes action to exercise the powers of a conservator or to appoint a temporary conservator under subsection (a), then the court, within 2 days, excluding Saturdays, Sundays and legal holidays, of taking the action, shall appoint a visitor or a guardian ad litem to visit the protected person and make a report to the court within 10 days of the appointment of the visitor or guardian ad litem. The visitor or guardian ad litem shall serve the protected person with a copy of the order appointing the temporary conservator and shall explain the meaning and consequences of the appointment. The visitor or guardian ad litem shall inquire of the protected person whether that person wishes to contest any aspect of the temporary conservatorship or seek any limitation of the temporary conservator's powers. The visitor or guardian ad litem shall advise the protected person of that person's right to contest the temporary conservatorship by requesting an expedited hearing under subsection (b) and shall advise the protected person of that person's right to be represented by counsel of that person's own choice or by counsel appointed by the court. The visitor or guardian ad litem shall also interview the temporary conservator, except in cases where the court itself has taken action to exercise the powers of a temporary conservator. In the report to the court, the visitor or guardian ad litem shall inform the court that the protected person has received a copy of the order appointing the temporary conservator and shall advise the court if circumstances indicate that the protected person wishes to contest any aspect of the temporary conservatorship or seek a limitation of the temporary conservator's

powers and whether the protected person is already represented by counsel. The visitor or guardian ad litem shall also advise the court whether any issue exists with respect to whether the appointment of the temporary conservator is in the protected person's best interest.

[ 2005, c. 625, §4 (AMD) . ]

(b). If the court has exercised temporary guardianship powers or has issued an ex parte order under subsection (a), and if it comes to the court's attention, through the report of the visitor or guardian ad litem or otherwise, that the protected person wishes to contest any aspect of the temporary conservatorship or to seek a limitation of the temporary conservator's powers, or if it appears that there is an issue with respect to whether the temporary conservatorship is in the protected person's best interest, the court shall hold an expedited hearing within 40 days of the signing of the ex parte order under subsection (a). The court may continue the expedited hearing if the petitioner and the attorney for the protected person, or, if none, the visitor or guardian ad litem, agree to such a continuance. The court may continue the hearing on its own motion due to circumstances beyond the control of the court and the parties, provided the hearing is held within 60 days of the signing of the ex parte order. If the appointment of a conservator is contested by the protected person and the person is not already represented by an attorney, the court shall appoint counsel to represent the person in the proceeding. The cost of the appointment of the visitor, guardian ad litem or attorney must be paid from the estate of the protected person if the court is satisfied that sufficient funds are available. At that hearing, the petitioner has the burden of showing, by a preponderance of the evidence, that temporary conservatorship continues to be necessary to protect and preserve the person's estate pending final hearing. Notice of the expedited hearing must be served as provided in section 5-405, except that the notice must be given at least 5 days before the expedited hearing, and notice need not be served on any person whose address or present whereabouts is unknown and can not be ascertained by due diligence. The court may waive service of the expedited hearing on any person, other than the person to be protected, upon a showing of good cause.

[ 1995, c. 203, §7 (AMD) . ]

(c). At the expedited hearing, the court may render a judgment authorizing the temporary conservatorship to continue for a period not to exceed 6 months from the date of entry of the ex parte order. The temporary conservatorship terminates on the date specified in the order or, if no date is specified in the order, 6 months following the date of entry of the ex parte order, or at any prior time if the court determines the circumstances leading to the order for temporary conservatorship no longer exist or if a judgment has been entered following a hearing pursuant to section 5-407 with findings made pursuant to section 5-401.

[ 2009, c. 349, §8 (AMD) . ]

(d). If the court denies the request for an ex parte order pursuant to subsection (a), the court may enter, in its discretion, an order for an expedited hearing pursuant to subsection (b). If the petitioner requests the entry of an order of temporary conservatorship pursuant to subsection (a) without requesting an ex parte order, the court may hold an expedited hearing pursuant to subsection (b).

[ 1993, c. 652, §7 (NEW) . ]

(e). If an appointed conservator is not effectively performing that conservator's duties and the court finds that an emergency exists that requires the appointment of a temporary successor conservator in order to preserve and apply the property of the protected person for the protected person's benefit or the benefit of the protected person's dependents, it may appoint, with or without notice, a temporary successor conservator for the protected person for a specified period not to exceed 6 months.

[ 1993, c. 652, §7 (NEW) . ]

(f). A temporary conservator has all the powers of a permanent conservator provided in this code, unless expressly limited by the court. A temporary successor conservator has the same powers as the previously appointed conservator, unless the court indicates otherwise in the letters of appointment. The

authority of a previously appointed conservator is suspended as long as the temporary conservator has authority. A temporary conservator may be removed at any time. A temporary conservator shall account to the court at the termination of the temporary conservatorship.

[ 1993, c. 652, §7 (NEW) .]

(g). A petition for temporary conservatorship may be brought before any judge if the judge of the county in which venue properly lies is unavailable. If a judge other than the judge of the county in which venue properly lies acts on a petition for temporary conservatorship, that judge shall issue a written order and endorse upon it the date and time of the order. The judge shall then immediately transmit or cause to be transmitted that order to the register of the county in which venue properly lies. An order issued by a judge of a county other than the county in which venue properly lies is deemed to have been entered in the docket on the date and at the time endorsed upon it.

[ 1995, c. 203, §8 (NEW) .]

#### SECTION HISTORY

1993, c. 652, §7 (NEW). 1995, c. 203, §§6-8 (AMD). 1997, c. 35, §2 (AMD). 2005, c. 625, §§3,4 (AMD). 2009, c. 349, §8 (AMD).

### **§5-409. PROTECTIVE ARRANGEMENTS AND SINGLE TRANSACTIONS AUTHORIZED**

(a). If it is established in a proper proceeding that a basis exists as described in section 5-401 for affecting the property and affairs of a person the court, without appointing a conservator, may authorize, direct or ratify any transaction necessary or desirable to achieve any security, service, or care arrangement meeting the foreseeable needs of the protected person. Protective arrangements include, but are not limited to, payment, delivery, deposit or retention of funds or property, sale, mortgage, lease or other transfer of property, entry into an annuity contract, a contract for life care, a deposit contract, a contract for training and education, or addition to or establishment of a suitable trust.

[ 1979, c. 540, §1 (NEW) .]

(b). If it has been established in a proper proceeding that a basis exists as described in section 5-401 for affecting the property and affairs of a person, the court, without appointing a conservator, may authorize, direct or ratify any contract, trust or other transaction relating to the protected person's financial affairs or involving the protected person's estate if the court determines that the transaction is in the best interests of the protected person, subject to the provisions of subsection (d).

[ 2005, c. 12, Pt. DDD, §5 (AMD); 2005, c. 12, Pt. DDD, §17 (AFF) .]

(c). Before approving a protective arrangement or other transaction under this section, the court shall consider the interests of creditors and dependents of the protected person and, in view of his disability, whether the protected person needs the continuing protection of a conservator. The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized under this section who shall have the authority conferred by the order and serve until discharged by order after report to the court of all matters done pursuant to the order of appointment.

[ 1979, c. 540, §1 (NEW) .]

(d). The court may authorize a gift or other transfer for less than fair market value from the protected person's estate if the court finds:

(1). That the remaining estate assets of the protected person are sufficient for the protected person's care and maintenance for the next 60 months, including due provision for the protected person's established standard of living and for the support of any persons the protected person is legally obligated to support and any dependents of the protected person; and [2011, c. 155, §2 (AMD).]

(2). That the gift or other transfer will not hasten the date of eligibility for MaineCare coverage of the protected person's long-term care expenses during the next 60 months. [2011, c. 155, §2 (AMD).]

If the gift or other transfer is being made to the protected person's spouse or blind or disabled child or to a trust established pursuant to 42 United States Code, Section 1396p(d)(4), or is otherwise specifically allowed without a transfer penalty by law governing the federal Medicaid program under 42 United States Code, the court may authorize the gift or other transfer without making the findings under paragraphs (1) and (2).

[2011, c. 155, §2 (AMD).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 2005, c. 12, §§DDD5,6 (AMD). 2005, c. 12, §DDD17 (AFF). 2011, c. 155, §2 (AMD).

### §5-410. WHO MAY BE APPOINTED CONSERVATOR; PRIORITIES

(a). The court may appoint an individual, or a corporation with general power to serve as trustee, as conservator of the estate of a protected person. The following are entitled to consideration for appointment in the order listed:

(1). A conservator, guardian of property or other like fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the protected person resides; [1979, c. 540, §1 (NEW).]

(2). An individual or corporation nominated by the protected person if he is 14 or more years of age and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice; [1979, c. 540, §1 (NEW).]

(3). The spouse of the protected person; [1979, c. 540, §1 (NEW).]

(3-A). The domestic partner of the protected person; [2003, c. 672, §15 (NEW).]

(4). An adult child of the protected person; [1979, c. 540, §1 (NEW).]

(5). A parent of the protected person, or a person nominated by the will of a deceased parent; [1979, c. 540, §1 (NEW).]

(6). Any relative of the protected person with whom he has resided for more than 6 months prior to the filing of the petition; [1979, c. 540, §1 (NEW).]

(7). A person nominated by the person who is caring for him or paying benefits to him. [1979, c. 540, §1 (NEW).]

[2003, c. 672, §15 (AMD).]

(b). A person in subsection (a), paragraphs (1), (3), (4), (5), or (6) may nominate in writing a person to serve in his stead. With respect to persons having equal priority, the court is to select the one who is best qualified of those willing to serve. The court, for good cause, may pass over a person having priority and appoint a person having less priority or no priority.

[1979, c. 540, §1 (NEW).]



(c). A facility or institution licensed under Title 22, sections 1817 and 7801, or an owner, proprietor, administrator, employee or other person with substantial financial interest in the facility or institution, may not act as conservator of the estate of a resident of that facility or institution, unless he is entitled to appointment under subsection (a), paragraph (3), (4), (5) or (6).

[ 1985, c. 770, §2 (AMD) .]

(d). When appointed by the court, the conservator shall inform the court as to the conservator's residence. If the residence changes, the conservator shall inform the court of that change. If the conservator is a corporation, the corporate offices are considered the conservator's residence for the purposes of this section.

[ 1995, c. 291, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1979, c. 690, §20 (AMD). 1985, c. 770, §2 (AMD). 1995, c. 291, §1 (AMD). 2003, c. 672, §15 (AMD).

### §5-411. BOND

The following provisions govern bonds for conservators. [1997, c. 453, §2 (RPR) .]

(a). The Probate Court shall require a conservator of an estate of \$25,000 or more to furnish a bond conditioned upon faithful discharge of all duties of the trust according to law, with sureties as it specifies, unless the court makes a specific finding as to why a bond should not be required. With respect to estates of less than \$25,000, the court may in its discretion require a bond or other surety. In making a finding as to why a bond is not required, the court shall consider the person's creditworthiness, financial solvency or past financial management.

[ 1997, c. 453, §2 (NEW) .]

(b). A conservator who moves out of State while serving as conservator shall notify the Probate Court regarding the change of residence. The court may require a conservator who moves or locates out of State while serving as conservator to furnish a bond at that time. Unless otherwise directed, the bond must be in the amount of the aggregate capital value of the property of the estate in the conservator's control plus one year's estimated income minus the value of securities deposited under arrangements requiring an order of the court for their removal and the value of any land that the fiduciary, by express limitation of power, lacks power to sell or convey without court authorization. In lieu of sureties on a bond, the court may accept other security for the performance of the bond, including a pledge of securities or a mortgage of land.

[ 1997, c. 453, §2 (NEW) .]

(c). The following persons wishing to serve as conservators are exempt from the bonding requirements of this section:

(1). Spouses; [1997, c. 453, §2 (NEW) .]

(2). Financial institutions authorized to do business in this State as defined in Title 9-B, section 131, subsection 17-A, or their employees; and [2009, c. 415, Pt. B, §6 (AMD) .]

(3). Persons who are already bonded in their course of business if the bond is sufficient to cover the duties of conservator. [1997, c. 453, §2 (NEW) .]

[ 2009, c. 415, Pt. B, §6 (AMD) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1995, c. 291, §2 (AMD). 1997, c. 453, §2 (RPR). 2009, c. 415, Pt. B, §6 (AMD).

## §5-412. TERMS AND REQUIREMENTS OF BONDS

(a). The following requirements and provisions apply to any bond required under section 5-411:

(1). Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the conservator and with each other; [1979, c. 540, §1 (NEW).]

(2). By executing an approved bond of a conservator, the surety consents to the jurisdiction of the court which issued letters to the primary obligor in any proceeding pertaining to the fiduciary duties of the conservator and naming the surety as a party defendant. Notice of any proceeding shall be delivered to the surety or mailed to him by registered or certified mail at his address as listed with the court where the bond is filed and to his address as then known to the petitioner; [1979, c. 540, §1 (NEW).]

(3). On petition of a successor conservator or any interested person, a proceeding may be initiated against a surety for breach of the obligation of the bond of the conservator; [1979, c. 540, §1 (NEW).]

(4). The bond of the conservator is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted. [1979, c. 540, §1 (NEW).]

[ 1979, c. 540, §1 (NEW) .]

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

[ 1979, c. 540, §1 (NEW) .]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## §5-413. ACCEPTANCE OF APPOINTMENT; CONSENT TO JURISDICTION

By accepting appointment, a conservator submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be delivered to the conservator, or mailed to him by registered or certified mail at his address as listed in the petition for appointment or as thereafter reported to the court and to his address as then known to the petitioner. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## §5-414. COMPENSATION AND EXPENSES

If not otherwise compensated for services rendered, any visitor, lawyer, physician, conservator or special conservator appointed in a protective proceeding is entitled to reasonable compensation from the estate. The factors set forth in section 3-721, subsection (b) should be considered as guides in determining the reasonableness of compensation under this section. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## §5-415. DEATH, RESIGNATION OR REMOVAL OF CONSERVATOR

The court may remove a conservator for good cause, upon notice and hearing, or accept the resignation of a conservator. After his death, resignation or removal, the court may appoint another conservator. A conservator so appointed succeeds to the title and powers of his predecessor. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## §5-416. PETITIONS FOR ORDERS SUBSEQUENT TO APPOINTMENT

(a). Any person interested in the welfare of a person for whom a conservator has been appointed may file a petition in the appointing court for an order (1) requiring bond or security or additional bond or security, or reducing bond, (2) requiring an accounting for the administration of the trust, (3) directing distribution, (4) removing the conservator and appointing a temporary or successor conservator, or (5) granting other appropriate relief.

[ 1979, c. 540, §1 (NEW) .]

(b). A conservator may petition the appointing court for instructions concerning his fiduciary responsibility.

[ 1979, c. 540, §1 (NEW) .]

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

[ 1979, c. 540, §1 (NEW) .]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## §5-417. GENERAL DUTY OF CONSERVATOR

In the exercise of the conservator's powers, a conservator is to act as a fiduciary and shall observe the standards of care applicable to trustees as described by Title 18-B, sections 802 to 807 and chapter 9. [2003, c. 618, Pt. B, §7 (AMD); 2003, c. 618, Pt. B, §20 (AFF).]

### SECTION HISTORY

1979, c. 540, §1 (NEW). 2003, c. 618, §B7 (AMD). 2003, c. 618, §B20 (AFF).

## §5-418. INVENTORY AND RECORDS

(a). Within 90 days following a conservator's appointment, the conservator shall prepare and file with the appointing court a complete inventory of the estate of the protected person together with the conservator's oath or affirmation that it is complete and accurate so far as the conservator is informed. The conservator shall provide a copy of the completed inventory to the protected person if the person can be located, has attained 14 years of age and has sufficient mental capacity to understand these matters, and to any parent or guardian with whom the protected person resides.

[ 2001, c. 280, §1 (NEW) .]

(b). A conservator shall keep suitable records of the conservator's administration and exhibit the same on request of any interested person.

[ 2001, c. 280, §1 (NEW) .]

(c). If a conservator fails without good cause to file an inventory, the court may require the conservator or the conservator's surety to pay to the protected person's estate a minimum of \$100 and a maximum of the amount the court determines is just to compensate the estate for any damage resulting from the failure to file the inventory. The payments required by this subsection are in addition to any other award or remedy available at law or in equity for fiduciary misconduct of the conservator.

[ 2001, c. 280, §1 (NEW) .]

(d). If any property not included in the original inventory comes to the knowledge of the conservator or if the conservator or court learns that the value or description indicated in the original inventory for any item is erroneous or misleading, the conservator shall make a supplementary inventory or appraisal showing the market value of the new item or the revised market value or descriptions and the appraisers or other data relied upon, if any, and file it with the court and furnish copies to persons interested in the new information.

[ 2003, c. 377, §1 (NEW) .]

(e). When an inventory has not been filed under this section and an interested party makes a prima facie case that property that should have been inventoried is now missing, the conservator has the burden of proving by a preponderance of the evidence that the specific property would properly be excluded from the inventory.

[ 2003, c. 377, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 2001, c. 280, §1 (RPR). 2003, c. 377, §1 (NEW).

## §5-419. ACCOUNTS

(a). Every conservator shall account to the court for the administration of the trust as specified by the court at the time of the initial order or at the time of a subsequent order or as provided by court rule and upon resignation or removal. Notwithstanding any other duty to render an accounting, a private conservator appointed after January 1, 2008 shall file an annual account with the court for approval. The court, for good cause shown by a conservator who is the spouse or domestic partner of the protected person, may waive or modify the duty to file an annual account. The annual account must be approved by the court before the conservator's obligation to file the annual account ends.

Prior to the termination of the protected person's minority, the conservator shall account to the court and the protected person. On termination of the protected person's minority or disability, a conservator shall file a final accounting with the court and that accounting must be approved by the court before the conservator's obligation to account ends. The conservator shall provide a copy of the final accounting to the former protected person or that person's personal representative at the time it is filed with the court.

[ 2007, c. 308, §1 (AMD) .]

(b). Subject to appeal or vacation within the time permitted, an order, made upon notice and hearing, allowing an intermediate account of a conservator, adjudicates as to the conservator's liabilities concerning the matters considered in connection therewith; and an order, made upon notice and hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected person or the

protected person's successors relating to the conservatorship. In connection with any account, the court may require a conservator to submit to a physical check of the estate in the conservator's control, to be made in any manner the court may specify.

[ 2001, c. 280, §2 (AMD) .]

(c). The court may appoint a visitor to review the conservator's accounts and determine if appropriate provision for the use, care and protection of the protected person's property has been made. The visitor shall report the findings to the court in writing.

[ 2001, c. 280, §2 (AMD) .]

(d). If the conservator fails without good cause to file the accounting required by the court, the court may require the conservator or the conservator's surety to pay to the protected person's estate a minimum of \$100 and a maximum of the amount the court determines is just to compensate the estate for any damage resulting from the failure to file the accounting. The payments required by this subsection are in addition to any other award or remedy available at law or in equity for fiduciary misconduct of the conservator.

[ 2001, c. 280, §2 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1985, c. 440, §§12,13 (RPR). 1991, c. 641, §4 (AMD). 1995, c. 462, §A39 (AMD). 2001, c. 280, §2 (AMD). 2007, c. 308, §1 (AMD).

### **§5-420. CONSERVATORS; TITLE BY APPOINTMENT**

The appointment of a conservator vests in him title as trustee to all property of the protected person, presently held or thereafter acquired, including title to any property theretofore held for the protected person by custodians or attorneys in fact. The appointment of a conservator is not a transfer or alienation within the meaning of general provisions of any federal or state statute or regulation, insurance policy, pension plan, contract, will or trust instrument, imposing restrictions upon or penalties for transfer or alienation by the protected person of his rights or interest, but this section does not restrict the ability of persons to make specific provision by contract or dispositive instrument relating to a conservator. [1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§5-421. RECORDING OF CONSERVATOR'S LETTERS**

Letters of conservatorship are evidence of transfer of all assets of a protected person to the conservator. An order terminating a conservatorship is evidence of transfer of all assets of the estate from the conservator to the protected person, or his successors. Subject to the requirements of general statutes governing the filing or recordation of documents of title to land or other property, letters of conservatorship, and orders terminating conservatorships, may be filed or recorded to give record notice of title as between the conservator and the protected person. [1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

## §5-422. SALE, ENCUMBRANCE OR TRANSACTION INVOLVING CONFLICT OF INTEREST; VOIDABLE; EXCEPTIONS

Any sale or encumbrance to a conservator, his spouse, agent or attorney, or any corporation or trust in which he has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest is voidable unless the transaction is approved by the court after notice to interested persons and others as directed by the court. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## §5-423. PERSONS DEALING WITH CONSERVATORS; PROTECTION

A person who in good faith either assists a conservator or deals with him for value in any transaction other than those requiring a court order as provided in section 5-408, is protected as if the conservator properly exercised the power. The fact that a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise, except that restrictions on powers of conservators which are endorsed on letters as provided in section 5-426 are effective as to third persons. A person is not bound to see to the proper application of estate assets paid or delivered to a conservator. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## §5-424. POWERS OF CONSERVATOR IN ADMINISTRATION

(a). A conservator has all of the powers conferred herein and any additional powers conferred by law on trustees in this State. In addition, a conservator of the estate of an unmarried minor, as to whom no one has parental rights, has the duties and powers of a guardian of a minor described in section 5-209 until the minor attains the age of 18 or marries, but the parental rights so conferred on a conservator do not preclude appointment of a guardian as provided by Part 2.

[ 1979, c. 540, §1 (NEW) .]

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

[ 1979, c. 540, §1 (NEW) .]

(b-1). A conservator may remove items of tangible property that are assets of the estate to a location out of this State only with court authorization.

[ 1995, c. 291, §3 (NEW) .]

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

(1). Collect, hold and retain assets of the estate including land in another state, until, in his judgment, disposition of the assets should be made, and the assets may be retained even though they include an asset in which he is personally interested; [1979, c. 540, §1 (NEW).]

(2). Receive additions to the estate; [1979, c. 540, §1 (NEW).]

- (3). Continue or participate in the operation of any business or other enterprise; [1979, c. 540, §1 (NEW).]
- (4). Acquire an undivided interest in an estate asset in which the conservator, in any fiduciary capacity, holds an undivided interest; [1979, c. 540, §1 (NEW).]
- (5). Invest and reinvest estate assets in accordance with subsection (b); [1979, c. 540, §1 (NEW).]
- (6). Deposit estate funds in a bank including a bank operated by the conservator; [1979, c. 540, §1 (NEW).]
- (7). Acquire or dispose of an estate asset including land in another state for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset; [1979, c. 540, §1 (NEW).]
- (8). Make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings; [1979, c. 540, §1 (NEW).]
- (9). Subdivide, develop, or dedicate land to public use; to make or obtain the vacation of plats and adjust boundaries; to adjust differences in valuation on exchange or to partition by giving or receiving considerations; and to dedicate easements to public use without consideration; [1979, c. 540, §1 (NEW).]
- (10). Enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the conservatorship; [1979, c. 540, §1 (NEW).]
- (11). Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement; [1979, c. 540, §1 (NEW).]
- (12). Grant an option involving disposition of an estate asset, to take an option for the acquisition of any asset; [1979, c. 540, §1 (NEW).]
- (13). Vote a security, in person or by general or limited proxy; [1979, c. 540, §1 (NEW).]
- (14). Pay calls, assessments, and any other sums chargeable or accruing against or on account of securities; [1979, c. 540, §1 (NEW).]
- (15). Sell or exercise stock subscription or conversion rights; to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise; [1979, c. 540, §1 (NEW).]
- (16). Hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery, but the conservator is liable for any act of the nominee in connection with the stock so held; [1979, c. 540, §1 (NEW).]
- (17). Insure the assets of the estate against damage or loss, and the conservator against liability with respect to third persons; [1979, c. 540, §1 (NEW).]
- (18). Borrow money to be repaid from estate assets or otherwise; to advance money for the protection of the estate or the protected person, and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of any estate assets and the conservator has a lien on the estate as against the protected person for advances so made; [1979, c. 540, §1 (NEW).]
- (19). Pay or contest any claim; to settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise; and to release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible; [1979, c. 540, §1 (NEW).]
- (20). Pay taxes, assessments, compensation of the conservator, and other expenses incurred in the collection, care, administration and protection of the estate; [1979, c. 540, §1 (NEW).]

(21). Allocate items of income or expense to either estate income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties; [1979, c. 540, §1 (NEW).]

(22). Pay any sum distributable to a protected person or his dependent without liability to the conservator, by paying the sum to the distributee or by paying the sum for the use of the distributee either to his guardian or if none, to a relative or other person with custody of his person; [1979, c. 540, §1 (NEW).]

(23). Employ persons, including attorneys, auditors, investment advisors, or agents, even though they are associated with the conservator to advise or assist him in the performance of his administrative duties; to act upon their recommendation without independent investigation; and instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary; [1979, c. 540, §1 (NEW).]

(24). Prosecute or defend actions, claims or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of his duties; and [1979, c. 540, §1 (NEW).]

(25). Execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the conservator. [1979, c. 540, §1 (NEW).]

[ 1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1995, c. 291, §3 (AMD).

### §5-425. DISTRIBUTIVE DUTIES AND POWERS OF CONSERVATOR

(a). A conservator may expend or distribute income or principal of the estate without court authorization or confirmation for the support, education, care or benefit of the protected person and his dependents in accordance with the following principles:

(1). The conservator is to consider recommendations relating to the appropriate standard of support, education and benefit for the protected person made by a parent or guardian, if any. He may not be surcharged for sums paid to persons or organizations actually furnishing support, education or care to the protected person pursuant to the recommendations of a parent or guardian of the protected person unless he knows that the parent or guardian is deriving personal financial benefit therefrom, including relief from any personal duty of support, or unless the recommendations are clearly not in the best interests of the protected person. [1979, c. 540, §1 (NEW).]

(2). The conservator is to expend or distribute sums reasonably necessary for the support, education, care or benefit of the protected person with due regard to (i) the size of the estate, the probable duration of the conservatorship and the likelihood that the protected person, at some future time, may be fully able to manage his affairs and the estate which has been conserved for him; (ii) the accustomed standard of living of the protected person and members of his household; (iii) other funds or sources used for the support of the protected person. [1979, c. 540, §1 (NEW).]

(3). The conservator may expend funds of the estate for the support of persons legally dependent on the protected person and others who are members of the protected person's household who are unable to support themselves, and who are in need of support. [1979, c. 540, §1 (NEW).]

(4). Funds expended under this subsection may be paid by the conservator to any person, including the protected person to reimburse for expenditures which the conservator might have made, or in advance for services to be rendered to the protected person when it is reasonable to expect that they will be performed and where advance payments are customary or reasonably necessary under the circumstances. [1979, c. 540, §1 (NEW).]

[ 1979, c. 540, §1 (NEW) .]



(b). If the estate is ample to provide for the purposes implicit in the distributions authorized by the preceding subsections, a conservator for a protected person other than a minor has power to make gifts to charity and other objects as the protected person might have been expected to make, in amounts that do not exceed in total for any year 20% of the income from the estate, subject to the provisions of subsection (b-1).

[ 2005, c. 12, Pt. DDD, §7 (AMD); 2005, c. 12, Pt. DDD, §17 (AFF) . ]

(b-1). The court may authorize a gift or other transfer for less than fair market value from the protected person's estate if the court finds:

(1). That the remaining estate assets of the protected person are sufficient for the protected person's care and maintenance for the next 60 months, including due provision for the protected person's established standard of living and for the support of any persons the protected person is legally obligated to support and any dependents of the protected person; and [ 2011, c. 155, §3 (AMD) . ]

(2). That the gift or other transfer will not hasten the date of eligibility for MaineCare coverage of the protected person's long-term care expenses during the next 60 months. [ 2011, c. 155, §3 (AMD) . ]

If the gift or other transfer is being made to the protected person's spouse or blind or disabled child or to a trust established pursuant to 42 United States Code, Section 1396p(d)(4), or is otherwise specifically allowed without a transfer penalty by law governing the federal Medicaid program under 42 United States Code, the court may authorize the gift or other transfer without making the findings under paragraphs (1) and (2).

[ 2011, c. 155, §3 (AMD) . ]

(c). When a minor who has not been adjudged disabled under section 5-401, paragraph (2) attains his majority, his conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.

[ 1979, c. 540, §1 (NEW) . ]

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

[ 1979, c. 540, §1 (NEW) . ]

(e). If a protected person dies, the conservator shall deliver to the court for safekeeping any will of the deceased protected person which may have come into his possession, inform the executor or a beneficiary named therein that he has done so, and retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled thereto. If after 40 days from the death of the protected person no other person has been appointed personal representative and no application or petition for appointment is before the court, the conservator may apply to exercise the powers and duties of a personal representative so that he may proceed to administer and distribute the decedent's estate without additional or further appointment. Upon application for an order granting the powers of a personal representative to a conservator, after notice to any person demanding notice under section 3-204 and to any person nominated executor in any will of which the applicant is aware, the court may order the conferral of the power upon determining that there is no objection, and endorse the letters of the conservator to note that the formerly protected person is deceased and that the conservator has acquired all of the powers and duties of a personal representative. The making and entry of an order under this section shall have the effect of an order of

appointment of a personal representative as provided in section 3-308 and Parts 6 through 10 of Article III except that estate in the name of the conservator, after administration, may be distributed to the decedent's successors without prior retransfer to the conservator as personal representative.

[ 1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 2005, c. 12, §§DDD7,8 (AMD). 2005, c. 12, §DDD17 (AFF). 2011, c. 155, §3 (AMD).

### **§5-426. ENLARGEMENT OR LIMITATION OF POWERS OF CONSERVATOR**

Subject to the restrictions in section 5-408, paragraph (4), the court may confer on a conservator at the time of appointment or later, in addition to the powers conferred on him by sections 5-424 and 5-425, any power which the court itself could exercise under sections 5-408, paragraph (2) and 5-408, paragraph (3). The court may, at the time of appointment or later, limit the powers of a conservator otherwise conferred by sections 5-424 and 5-425, or previously conferred by the court, and may at any time relieve him of any limitation. If the court limits any power conferred on the conservator by section 5-424 or section 5-425, the limitation shall be endorsed upon his letters of appointment. [1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW) .

### **§5-427. PRESERVATION OF ESTATE PLAN**

In investing the estate, and in selecting assets of the estate for distribution under section 5-425, subsections (a) and (b), in utilizing powers of revocation or withdrawal available for the support of the protected person, and exercisable by the conservator or the court, the conservator and the court should take into account any known estate plan of the protected person, including his will, any revocable trust of which he is settlor, and any contract, transfer or joint ownership arrangement with provisions for payment or transfer of benefits or interests at his death to another or others which he may have originated. The conservator may examine the will of the protected person. [1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW) .

### **§5-428. CLAIMS AGAINST PROTECTED PERSON; ENFORCEMENT**

(a). A conservator must pay from the estate all just claims against the estate and against the protected person arising before or after the conservatorship upon their presentation and allowance. A claim may be presented by either of the following methods: (1) the claimant may deliver or mail to the conservator a written statement of the claim indicating its basis, the name and address of the claimant and the amount claimed; (2) the claimant may file a written statement of the claim, in the form prescribed by rule, with the clerk of court and deliver or mail a copy of the statement to the conservator. A claim is deemed presented on the first to occur of receipt of the written statement of claim by the conservator, or the filing of the claim with the court. A presented claim is allowed if it is not disallowed by written statement mailed by the conservator to the claimant within 60 days after its presentation. The presentation of a claim tolls any statute of limitation relating to the claim until thirty days after its disallowance.

[ 1979, c. 540, §1 (NEW) .]

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

[ 1979, c. 540, §1 (NEW) . ]

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

[ 1979, c. 540, §1 (NEW) . ]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§5-429. INDIVIDUAL LIABILITY OF CONSERVATOR**

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

[ 1979, c. 540, §1 (NEW) . ]

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

[ 1979, c. 540, §1 (NEW) . ]

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

[ 1979, c. 540, §1 (NEW) . ]

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

[ 1979, c. 540, §1 (NEW) . ]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§5-430. TERMINATION OF PROCEEDING**

The protected person, the protected person's personal representative, the conservator or any other interested person may petition the court to terminate the conservatorship. In an action to terminate a conservatorship brought by the protected person, upon presentation by the petitioner of evidence establishing a prima facie case that the person is able to manage the person's property and affairs, the court shall order the termination unless the respondent proves by clear and convincing evidence that the person is unable to manage the person's property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power or disappearance. The court, upon determining that a conservatorship is no longer necessary, shall

terminate the conservatorship upon approval of a final account. Upon termination, title to assets of the estate passes to the former protected person or to the former protected person's successors subject to provision in the order for expenses of administration or to conveyances from the conservator to the former protected person or the former protected person's successors, to evidence the transfer. [2009, c. 349, §9 (AMD).]

## SECTION HISTORY

1979, c. 540, §1 (NEW). 2007, c. 308, §2 (AMD). 2009, c. 349, §9 (AMD).

### **§5-431. PAYMENT OF DEBT AND DELIVERY OF PROPERTY TO FOREIGN CONSERVATOR WITHOUT LOCAL PROCEEDINGS**

Any person indebted to a protected person, or having possession of property or of an instrument evidencing a debt, stock, or chose in action belonging to a protected person may pay or deliver to a conservator, guardian of the estate or other like fiduciary appointed by a court of the state of residence of the protected person, upon being presented with proof of his appointment and an affidavit made by him or on his behalf stating: [1979, c. 540, §1 (NEW).]

- (1). That no protective proceeding relating to the protected person is pending in this State; and

[ 1979, c. 540, §1 (NEW) .]

- (2). That the foreign conservator is entitled to payment or to receive delivery.

[ 1979, c. 540, §1 (NEW) .]

If the person to whom the affidavit is presented is not aware of any protective proceeding pending in this State, payment or delivery in response to the demand and affidavit discharges the debtor or possessor. [1979, c. 540, §1 (NEW).]

## SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§5-432. FOREIGN CONSERVATOR; PROOF OF AUTHORITY; BOND; POWERS**

If no local conservator has been appointed and no petition in a protective proceeding is pending in this State, a domiciliary foreign conservator may file with a court in this State in a county in which property belonging to the protected person is located, authenticated copies of his appointment, of any official bond he has given and a certificate, dated within 60 days, proving his current authority. Thereafter, he may exercise as to assets in this State all powers of a local conservator and may maintain actions and proceedings in this State subject to any conditions imposed upon nonresident parties generally. [1987, c. 392, §6 (AMD).]

## SECTION HISTORY

1979, c. 540, §1 (NEW). 1987, c. 392, §6 (AMD).

## **Part 5: DURABLE POWER OF ATTORNEY**

### **§5-501. DEFINITION**

*(REPEALED)*

## SECTION HISTORY

1979, c. 540, §1 (NEW). 1985, c. 645, §2 (RPR). 1991, c. 719, §3 (RPR). 2009, c. 292, §6 (AFF). 2009, c. 292, §1 (RP).

**§5-502. DURABLE POWER OF ATTORNEY NOT AFFECTED BY DISABILITY OR INCAPACITY***(REPEALED)*

## SECTION HISTORY

1979, c. 540, §1 (NEW). 1991, c. 719, §3 (RPR). 2009, c. 292, §6 (AFF).  
2009, c. 292, §1 (RP).

**§5-503. RELATION OF ATTORNEY-IN-FACT TO COURT-APPOINTED FIDUCIARY***(REPEALED)*

## SECTION HISTORY

1991, c. 719, §3 (NEW). 2009, c. 292, §6 (AFF). 2009, c. 292, §1 (RP).

**§5-504. POWER OF ATTORNEY NOT REVOKED UNTIL NOTICE***(REPEALED)*

## SECTION HISTORY

1991, c. 719, §3 (NEW). 2009, c. 292, §6 (AFF). 2009, c. 292, §1 (RP).

**§5-505. PROOF OF CONTINUANCE OF DURABLE AND OTHER POWERS OF ATTORNEY BY AFFIDAVIT***(REPEALED)*

## SECTION HISTORY

1991, c. 719, §3 (NEW). 2009, c. 292, §6 (AFF). 2009, c. 292, §1 (RP).

**§5-506. DURABLE HEALTH CARE POWER OF ATTORNEY***(REPEALED)*

## SECTION HISTORY

1991, c. 719, §3 (NEW). 1995, c. 378, §B3 (AMD). 2003, c. 618, §C1 (AMD). 2009, c. 292, §6 (AFF). 2009, c. 292, §1 (RP).

**§5-508. DURABLE FINANCIAL POWER OF ATTORNEY***(REPEALED)*

## SECTION HISTORY

RR 1997, c. 1, §13 (RNU). 1997, c. 453, §3 (NEW). 1997, c. 683, §C6 (RPR). 1999, c. 66, §1 (AMD). 1999, c. 118, §1 (AMD). 2003, c. 618, §B8 (AMD). 2003, c. 618, §B20 (AFF). 2005, c. 184, §1 (AMD). 2005, c. 284, §§1,2 (AMD). 2005, c. 353, §2 (AMD). 2009, c. 292, §6 (AFF). 2009, c. 292, §1 (RP).

**§5-509. IN-PERSON SIGNATURE REQUIRED***(REPEALED)*

## SECTION HISTORY

1999, c. 711, §1 (NEW). 2009, c. 292, §6 (AFF). 2009, c. 292, §1 (RP).

## §5-510. RECOGNITION OF POWERS OF ATTORNEY FROM OTHER JURISDICTIONS

(REPEALED)

### SECTION HISTORY

2005, c. 284, §3 (NEW). 2009, c. 292, §6 (AFF). 2009, c. 292, §1 (RP).

## Part 5-A: UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

### Subpart 1: GENERAL PROVISIONS

#### §5-511. SHORT TITLE

This Part may be known and cited as "the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act." [2011, c. 564, §1 (NEW).]

### SECTION HISTORY

2011, c. 564, §1 (NEW).

#### §5-512. DEFINITIONS

As used in this Part, unless the context otherwise indicates, the following terms have the following meanings. [2011, c. 564, §1 (NEW).]

(a). "Adult" means an individual who has attained 18 years of age.

[ 2011, c. 564, §1 (NEW) .]

(b). "Conservator" means a person appointed by the court to administer the property of an adult, including a person appointed under Part 4.

[ 2011, c. 564, §1 (NEW) .]

(c). "Guardian" means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under Part 3.

[ 2011, c. 564, §1 (NEW) .]

(d). "Guardianship order" means an order appointing a guardian.

[ 2011, c. 564, §1 (NEW) .]

(e). "Guardianship proceeding" means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued.

[ 2011, c. 564, §1 (NEW) .]

(f). "Incapacitated person" means an adult for whom a guardian has been appointed or an adult who is an incapacitated person within the meaning of section 5-101, subsection (1).

[ 2011, c. 564, §1 (NEW) .]

(g). "Party" means an interested person within the meaning of section 1-201, subsection (20), including the respondent, petitioner, guardian, conservator or any other person allowed by the court to participate in a guardianship or protective proceeding.

[ 2011, c. 564, §1 (NEW) . ]

(h). "Person," except in the term "incapacitated person" or "protected person," means: an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; public corporation; government or governmental subdivision, agency or instrumentality; or any other legal or commercial entity.

[ 2011, c. 564, §1 (NEW) . ]

(i). "Protected person" means an adult for whom a protective order has been issued.

[ 2011, c. 564, §1 (NEW) . ]

(j). "Protective order" means an order appointing a conservator or other order related to management or disposition of an adult's property.

[ 2011, c. 564, §1 (NEW) . ]

(k). "Protective proceeding" means a judicial proceeding in which a protective order is sought or has been issued.

[ 2011, c. 564, §1 (NEW) . ]

(l). "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

[ 2011, c. 564, §1 (NEW) . ]

(m). "Respondent" means an adult for whom a protective order or the appointment of a guardian is sought.

[ 2011, c. 564, §1 (NEW) . ]

(n). "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

[ 2011, c. 564, §1 (NEW) . ]

#### SECTION HISTORY

2011, c. 564, §1 (NEW).

### **§5-513. INTERNATIONAL APPLICATION OF PART**

A court of this State may treat a foreign country as if it were a state for the purpose of applying this subpart and subparts 2, 3 and 5. [ 2011, c. 564, §1 (NEW) . ]

#### SECTION HISTORY

2011, c. 564, §1 (NEW).

## §5-514. COMMUNICATION BETWEEN COURTS

(a). A court of this State may communicate with a court in another state concerning a proceeding arising under this Part. The court may allow the parties to participate in the communication. Except as otherwise provided in subsection (b), the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

[ 2011, c. 564, §1 (NEW) .]

(b). Courts may communicate concerning schedules, calendars, court records and other administrative matters without making a record.

[ 2011, c. 564, §1 (NEW) .]

### SECTION HISTORY

2011, c. 564, §1 (NEW).

## §5-515. COOPERATION BETWEEN COURTS

(a). In a guardianship or protective proceeding in this State, a court of this State may request the appropriate court of another state to do any of the following:

- (1). Hold an evidentiary hearing; [2011, c. 564, §1 (NEW).]
- (2). Order a person in that state to produce evidence or give testimony pursuant to procedures of that state; [2011, c. 564, §1 (NEW).]
- (3). Order that an evaluation or assessment be made of the respondent; [2011, c. 564, §1 (NEW).]
- (4). Order any appropriate investigation of a person involved in a proceeding; [2011, c. 564, §1 (NEW).]
- (5). Forward to the court of this State a certified copy of the transcript or other record of a hearing under paragraph (1) or any other proceeding, any evidence otherwise produced under paragraph (2) and any evaluation or assessment prepared in compliance with an order under paragraph (3) or (4); [2011, c. 564, §1 (NEW).]
- (6). Issue any order necessary to ensure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated person or protected person; [2011, c. 564, §1 (NEW).]
- (7). Issue an order authorizing the release of medical, financial, criminal or other relevant information in that state, including protected health information as defined in 45 Code of Federal Regulations, Section 160.103, as amended. [2011, c. 564, §1 (NEW).]

[ 2011, c. 564, §1 (NEW) .]

(b). If a court of another state in which a guardianship or protective proceeding is pending requests assistance of the kind provided in subsection (a), a court of this State has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

[ 2011, c. 564, §1 (NEW) .]

### SECTION HISTORY

2011, c. 564, §1 (NEW).



**§5-516. TAKING TESTIMONY IN ANOTHER STATE**

(a). In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in this State for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

[ 2011, c. 564, §1 (NEW) . ]

(b). In a guardianship or protective proceeding, a court in this State may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court of this State shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

[ 2011, c. 564, §1 (NEW) . ]

(c). Documentary evidence transmitted from another state to a court of this State by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the best evidence rule.

[ 2011, c. 564, §1 (NEW) . ]

## SECTION HISTORY

2011, c. 564, §1 (NEW) .

**Subpart 2: JURISDICTION****§5-521. DEFINITIONS; SIGNIFICANT CONNECTION FACTORS**

(a). As used in this subpart, unless the context otherwise indicates, the following terms have the following meanings.

(1). "Emergency" means a circumstance that likely will result in substantial harm to a respondent's health, safety or welfare, and for which the appointment of a guardian is necessary. [ 2011, c. 564, §1 (NEW) . ]

(2). "Home state" means the state in which the respondent was physically present, including any period of temporary absence, for at least 6 consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian or, if none, the state in which the respondent was physically present, including any period of temporary absence, for at least 6 consecutive months ending within the 6 months prior to the filing of the petition. [ 2011, c. 564, §1 (NEW) . ]

(3). "Significant-connection state" means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available. [ 2011, c. 564, §1 (NEW) . ]

[ 2011, c. 564, §1 (NEW) . ]

(b). In determining under section 5-523 and section 5-531, subsection (e) whether a respondent has a significant connection with a particular state, the court shall consider:

(1). The location of the respondent's family and other persons required to be notified of the guardianship or protective proceeding; [ 2011, c. 564, §1 (NEW) . ]

(2). The length of time the respondent at any time was physically present in the state and the duration of any absence; [ 2011, c. 564, §1 (NEW) . ]

(3). The location of the respondent's property; and [2011, c. 564, §1 (NEW).]

(4). The extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship and receipt of services. [2011, c. 564, §1 (NEW).]

[2011, c. 564, §1 (NEW).]

#### SECTION HISTORY

2011, c. 564, §1 (NEW).

### §5-522. EXCLUSIVE BASIS

This subpart provides the exclusive jurisdictional basis for a court of this State to appoint a guardian or issue a protective order for an adult. [2011, c. 564, §1 (NEW).]

#### SECTION HISTORY

2011, c. 564, §1 (NEW).

### §5-523. JURISDICTION

A court of this State has jurisdiction to appoint a guardian or issue a protective order for a respondent if: [2011, c. 564, §1 (NEW).]

(a). This State is the respondent's home state;

[2011, c. 564, §1 (NEW).]

(b). On the date the petition is filed, this State is a significant-connection state and:

(1). The respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because this State is a more appropriate forum; [2011, c. 564, §1 (NEW).]

(2). The respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state and, before the court makes the appointment or issues the order:

(i) A petition for an appointment or order is not filed in the respondent's home state;

(ii) An objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and

(iii) The court in this State concludes that it is an appropriate forum under the factors set forth in section 5-526; [2011, c. 564, §1 (NEW).]

(3). This State does not have jurisdiction under either paragraph (1) or (2), the respondent's home state and all significant-connection states have declined to exercise jurisdiction because this State is the more appropriate forum and jurisdiction in this State is consistent with the constitutions of this State and the United States; or [2011, c. 564, §1 (NEW).]

(4). The requirements for special jurisdiction under section 5-524 are met. [2011, c. 564, §1 (NEW).]

[2011, c. 564, §1 (NEW).]

#### SECTION HISTORY

2011, c. 564, §1 (NEW).

## §5-524. SPECIAL JURISDICTION

(a). If this State is not the respondent's home state and not a significant-connection state, a court of this State has special jurisdiction to do any of the following:

- (1). Appoint a guardian in an emergency for a term not exceeding 6 months for a respondent who is physically present in this State; [2011, c. 564, §1 (NEW).]
- (2). Issue a protective order with respect to real or tangible personal property located in this State; or [2011, c. 564, §1 (NEW).]
- (3). Appoint a guardian or conservator for an incapacitated person or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to section 5-531. [2011, c. 564, §1 (NEW).]

[ 2011, c. 564, §1 (NEW) .]

(b). If a petition for the appointment of a guardian in an emergency is brought in this State and this State was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.

[ 2011, c. 564, §1 (NEW) .]

### SECTION HISTORY

2011, c. 564, §1 (NEW).

## §5-525. EXCLUSIVE AND CONTINUING JURISDICTION

Except as otherwise provided in section 5-524, a court that has appointed a guardian or issued a protective order consistent with this Part has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms. [2011, c. 564, §1 (NEW).]

### SECTION HISTORY

2011, c. 564, §1 (NEW).

## §5-526. APPROPRIATE FORUM

(a). A court of this State having jurisdiction under section 5-523 to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

[ 2011, c. 564, §1 (NEW) .]

(b). If a court of this State declines to exercise its jurisdiction under subsection (a), it shall either:

- (1). Dismiss or stay the proceeding; or [2011, c. 564, §1 (NEW).]
- (2). Impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state. [2011, c. 564, §1 (NEW).]

[ 2011, c. 564, §1 (NEW) .]

(c). In determining whether it is an appropriate forum, the court shall consider all relevant factors, which may include:

- (1). Any expressed preference of the respondent; [2011, c. 564, §1 (NEW).]
- (2). Whether abuse, neglect or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect or exploitation; [2011, c. 564, §1 (NEW).]
- (3). The length of time the respondent was physically present in or was a legal resident of this State or another state; [2011, c. 564, §1 (NEW).]
- (4). The distance of the respondent from the court in each state; [2011, c. 564, §1 (NEW).]
- (5). The financial circumstances of the respondent's estate; [2011, c. 564, §1 (NEW).]
- (6). The nature and location of the evidence; [2011, c. 564, §1 (NEW).]
- (7). The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence; [2011, c. 564, §1 (NEW).]
- (8). The familiarity of the court of each state with the facts and issues in the proceeding; and [2011, c. 564, §1 (NEW).]
- (9). If an appointment were made, the court's ability to monitor the conduct of the guardian or conservator. [2011, c. 564, §1 (NEW).]

[ 2011, c. 564, §1 (NEW) .]

#### SECTION HISTORY

2011, c. 564, §1 (NEW).

### **§5-527. JURISDICTION DECLINED BY REASON OF CONDUCT**

(a). If at any time a court of this State determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:

- (1). Decline to exercise jurisdiction; [2011, c. 564, §1 (NEW).]
- (2). Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or [2011, c. 564, §1 (NEW).]
- (3). Continue to exercise jurisdiction after considering:
  - (i) The extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;
  - (ii) Whether it is a more appropriate forum than the court of any other state under the factors set forth in section 5-526, subsection (c); and
  - (iii) Whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of section 5-523. [2011, c. 564, §1 (NEW).]

[ 2011, c. 564, §1 (NEW) .]

(b). If a court of this State determines that it acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney's fees, investigative fees, court

costs, communication expenses, witness fees and expenses and travel expenses. The court may not assess fees, costs or expenses of any kind against this State or a governmental subdivision, agency or instrumentality of this State unless authorized by law other than this Part.

[ 2011, c. 564, §1 (NEW) .]

SECTION HISTORY

2011, c. 564, §1 (NEW).

### **§5-528. NOTICE OF PROCEEDING**

If a petition for the appointment of a guardian or issuance of a protective order is brought in this State and this State was not the respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of this State, notice of the petition must be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice must be given in the same manner as notice is required to be given in this State. [2011, c. 564, §1 (NEW) .]

SECTION HISTORY

2011, c. 564, §1 (NEW).

### **§5-529. PROCEEDINGS IN MORE THAN ONE STATE**

Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in this State under section 5-524, subsection (a), paragraph (1) or (2), if a petition for the appointment of a guardian or issuance of a protective order is filed in this State and in another state and neither petition has been dismissed or withdrawn, the following apply: [2011, c. 564, §1 (NEW) .]

(a). If the court in this State has jurisdiction under section 5-523, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to section 5-523 before the appointment or issuance of the order.

[ 2011, c. 564, §1 (NEW) .]

(b). If the court in this State does not have jurisdiction under section 5-523, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this State shall dismiss the petition unless the court in the other state determines that the court in this State is a more appropriate forum.

[ 2011, c. 564, §1 (NEW) .]

SECTION HISTORY

2011, c. 564, §1 (NEW).

## **Subpart 3: TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP**

## §5-531. TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP TO ANOTHER STATE

(a). A guardian or conservator appointed in this State may petition the court to transfer the guardianship or conservatorship to another state.

[ 2011, c. 564, §1 (NEW) . ]

(b). Notice of a petition under subsection (a) must be given to the persons that would be entitled to notice of a petition in this State for the appointment of a guardian or conservator.

[ 2011, c. 564, §1 (NEW) . ]

(c). On the court's own motion or on request of the guardian or conservator, the incapacitated person or protected person or other person required to be notified of the petition, the court shall hold a hearing or provide an opportunity for a hearing to be held on a petition filed pursuant to subsection (a).

[ 2011, c. 564, §1 (NEW) . ]

(d). The court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court in the other state and the court finds that:

(1). The incapacitated person is physically present in or is reasonably expected to move permanently to the other state; [2011, c. 564, §1 (NEW).]

(2). An objection to the transfer has not been made or, if an objection has been made, the objector has not established by a preponderance of the evidence that the transfer would be contrary to the best interests of the incapacitated person; and [2011, c. 564, §1 (NEW).]

(3). Plans for care and services for the incapacitated person in the other state are reasonable and sufficient. [2011, c. 564, §1 (NEW).]

[ 2011, c. 564, §1 (NEW) . ]

(e). The court shall issue a provisional order granting a petition to transfer a conservatorship and shall direct the conservator to petition for conservatorship in the other state if the court is satisfied that the conservatorship will be accepted by the court of the other state and the court finds that:

(1). The protected person is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state considering the factors in section 5-521, subsection (b); [2011, c. 564, §1 (NEW).]

(2). An objection to the transfer has not been made or, if an objection has been made, the objector has not established by a preponderance of the evidence that the transfer would be contrary to the best interests of the protected person; and [2011, c. 564, §1 (NEW).]

(3). Adequate arrangements will be made for management or disposition of the protected person's property. [2011, c. 564, §1 (NEW).]

[ 2011, c. 564, §1 (NEW) . ]

(f). The court shall issue a final order confirming the transfer and terminating the guardianship or conservatorship upon its receipt of:

(1). A provisional order accepting the proceeding from the court to which the proceeding is to be transferred that is issued under provisions similar to section 5-532; and [2011, c. 564, §1 (NEW).]

(2). The documents required to terminate a guardianship or conservatorship in this State. [ 2011, c. 564, §1 (NEW). ]

[ 2011, c. 564, §1 (NEW) . ]

#### SECTION HISTORY

2011, c. 564, §1 (NEW).

### **§5-532. ACCEPTING GUARDIANSHIP OR CONSERVATORSHIP TRANSFERRED FROM ANOTHER STATE**

(a). To confirm transfer of a guardianship or conservatorship transferred to this State under provisions similar to section 5-531, the guardian or conservator must petition the court in this State to accept the guardianship or conservatorship. The petition must include a certified copy of the other state's provisional order of transfer.

[ 2011, c. 564, §1 (NEW) . ]

(b). Notice of a petition under subsection (a) must be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this State. The notice must be given in the same manner as notice is required to be given in this State.

[ 2011, c. 564, §1 (NEW) . ]

(c). On the court's own motion or on request of the guardian or conservator, the incapacitated person or protected person or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to subsection (a).

[ 2011, c. 564, §1 (NEW) . ]

(d). The court shall issue an order provisionally granting a petition filed under subsection (a) unless:

(1). An objection is made and the objector establishes by a preponderance of the evidence that transfer of the proceeding would be contrary to the best interests of the incapacitated person or protected person; or [ 2011, c. 564, §1 (NEW). ]

(2). The guardian or conservator is ineligible for appointment in this State. [ 2011, c. 564, §1 (NEW) . ]

[ 2011, c. 564, §1 (NEW) . ]

(e). The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in this State upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to section 5-531 transferring the proceeding to this State.

[ 2011, c. 564, §1 (NEW) . ]

(f). In granting a petition under this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated person's or protected person's incapacity and the appointment of the guardian or conservator.

[ 2011, c. 564, §1 (NEW) . ]

(g). The denial by a court of this State of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in this State under Part 3 or 4 if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

[ 2011, c. 564, §1 (NEW) .]

SECTION HISTORY

2011, c. 564, §1 (NEW).

## Subpart 4: REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES

### §5-541. REGISTRATION OF GUARDIANSHIP

If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this State, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in this State by filing as a foreign judgment in a court, in any appropriate county of this State, certified copies of the order and letters of office and the guardian's notification to the appointing court of an intent to register in this State. [2011, c. 564, §1 (NEW).]

SECTION HISTORY

2011, c. 564, §1 (NEW).

### §5-542. REGISTRATION OF PROTECTIVE ORDERS

If a conservator has been appointed in another state and a petition for a protective order is not pending in this State, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in this State by filing as a foreign judgment in a court of this State, in any county in which property belonging to the protected person is located, certified copies of the order and letters of office, of the conservator's notification to the appointing court of an intent to register in this State and of any bond. [2011, c. 564, §1 (NEW).]

SECTION HISTORY

2011, c. 564, §1 (NEW).

### §5-543. EFFECT OF REGISTRATION

(a). Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in this State all powers authorized in the order of appointment except as prohibited under the laws of this State, including maintaining actions and proceedings in this State and, if the guardian or conservator is not a resident of this State, subject to any conditions imposed upon nonresident parties.

[ 2011, c. 564, §1 (NEW) .]

(b). A court of this State may grant any relief available under this Part and other law of this State to enforce a registered order.

[ 2011, c. 564, §1 (NEW) .]

SECTION HISTORY

2011, c. 564, §1 (NEW).

## Subpart 5: MISCELLANEOUS PROVISIONS



## §5-551. UNIFORMITY OF APPLICATION AND CONSTRUCTION

In applying and construing this Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [2011, c. 564, §1 (NEW).]

### SECTION HISTORY

2011, c. 564, §1 (NEW).

## §5-552. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT

This Part modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 United States Code, Section 7001 et seq., but does not modify, limit or supersede 15 United States Code, Section 7001(c) or authorize electronic delivery of any of the notices described in 15 United States Code, Section 7003(b). [2011, c. 564, §1 (NEW).]

### SECTION HISTORY

2011, c. 564, §1 (NEW).

## §5-553. TRANSITIONAL PROVISIONS

- (a). This Part applies to guardianship and protective proceedings begun on or after July 1, 2013.

[ 2011, c. 564, §1 (NEW) .]

- (b). Subparts 1, 3 and 4 and sections 5-551 and 5-552 apply to proceedings begun before July 1, 2013, regardless of whether a guardianship or protective order has been issued.

[ 2011, c. 564, §1 (NEW) .]

### SECTION HISTORY

2011, c. 564, §1 (NEW).

## §5-554. EFFECTIVE DATE

This Part takes effect July 1, 2013. [2011, c. 564, §1 (NEW).]

### SECTION HISTORY

2011, c. 564, §1 (NEW).

## Part 6: PUBLIC GUARDIAN AND CONSERVATOR

### §5-601. PUBLIC GUARDIANS AND CONSERVATORS; GENERAL

- (a). In any case in which a guardian or conservator may be appointed by the court under this Article, the court may appoint a public guardian or conservator as provided in this Part for incapacitated persons as defined in section 5-101, subsection (1) who are in need of protective services.

[ 2011, c. 542, Pt. A, §14 (AMD) .]

- (b). The Department of Health and Human Services shall act as the public guardian or conservator for incapacitated persons in need of protective services.

[ 2011, c. 542, Pt. A, §15 (AMD) .]

(c). Except as otherwise provided in this Part, the appointment, termination, rights and duties, and other provisions for guardians and conservators in this Article shall apply to public guardians and conservators.

[ 1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1993, c. 410, §CCC4 (AMD). 1995, c. 560, §K4 (AMD). 1995, c. 560, §K83 (AFF). 2001, c. 354, §3 (AMD). 2005, c. 397, §A12 (AMD). 2011, c. 542, Pt. A, §§14, 15 (AMD).

### §5-602. PRIORITY OF PRIVATE GUARDIAN OR CONSERVATOR

No public guardian or conservator shall be appointed if the court determines that a suitable private guardian or conservator is available and willing to assume responsibilities for such service. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### §5-603. EXCLUSIVENESS OF PUBLIC GUARDIAN OR CONSERVATOR

When the court has appointed a public guardian or conservator under this Part, no other guardian or conservator, as the case may be, shall be appointed for the same ward or protected person during the continuation of the public guardianship or public conservatorship. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### §5-604. NOMINATION OF PUBLIC GUARDIAN OR CONSERVATOR

(a). Any person who is eligible to petition for appointment of a guardian under section 5-303, subsection (a), including the commissioner of any state department, the head of any state institution, the overseers of the poor, and the welfare director or health officer of any municipality may nominate the public guardian.

[ 1979, c. 540, §1 (NEW) .]

(b). Any person who is eligible to petition for appointment of a conservator under section 5-404, subsection (a), including the commissioner of any state department, the head of any state institution, the overseer of the poor, and the welfare director or health officer of any municipality may nominate the public conservator.

[ 1979, c. 540, §1 (NEW) .]

(c). Except as supplemented by section 5-605, the proceedings for determining the appointment of a public guardian or conservator shall be governed by the provisions of this Article for the appointment of guardians and conservators generally.

[ 1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

**§5-605. ACCEPTANCE BY PUBLIC GUARDIAN OR CONSERVATOR; PLAN**

Prior to the appointment of a public guardian or conservator, the appropriate agency nominated shall accept or reject the nomination in writing within 30 days of its receipt of notification that it has been nominated, and if the nomination is accepted shall file a detailed plan which, where relevant, shall include but not be limited to the type of proposed living arrangement for the ward, how the ward's financial needs will be met, how the ward's medical and other remedial needs will be met, how the ward's social needs will be met, and a plan for the ward's continuing contact with relatives and friends, as well as a plan for the management of the ward's or protected person's estate in the case of a public conservatorship. [1979, c. 540, §1 (NEW).]

## SECTION HISTORY

1979, c. 540, §1 (NEW).

**§5-606. OFFICIALS AUTHORIZED TO ACT AS PUBLIC GUARDIAN OR CONSERVATOR**

(a).

[ 2011, c. 542, Pt. A, §16 (RP) .]

(b). When the Department of Health and Human Services is appointed public guardian or conservator of an incapacitated person, the authority of the public guardian or conservator must be exercised by the Commissioner of Health and Human Services and by any persons duly delegated by the commissioner to exercise such authority.

[ 2011, c. 542, Pt. A, §16 (AMD) .]

(c). Persons duly delegated by the officials authorized to act under subsection (b) may include a staff of competent social workers, or competent social workers assigned to the public guardian or conservator by the Department of Health and Human Services. In the event that the delegation is to an individual, such individual must be qualified therefor by reason of education or experience, or both, in administering to the needs of the individual or individuals over whom the individual is to exercise administrative or supervisory authority under the public guardian.

[ 2011, c. 542, Pt. A, §16 (AMD) .]

## SECTION HISTORY

1979, c. 540, §1 (NEW). 1981, c. 493, §2 (AMD). 1985, c. 437, §1 (AMD). 1993, c. 410, §CCC5 (AMD). 1995, c. 560, §§K5,82 (AMD). 1995, c. 560, §K83 (AFF). 2001, c. 354, §3 (AMD). RR 2003, c. 2, §29 (COR). 2003, c. 689, §§B6,7 (REV). 2011, c. 542, Pt. A, §16 (AMD).

**§5-607. DUTIES AND POWERS OF A PUBLIC GUARDIAN OR CONSERVATOR**

A public guardian or conservator has the same powers, rights and duties respecting his ward or the protected person as provided for guardians and conservators by the other parts of this Article except as otherwise specifically provided in this Part, including the following particular provisions: [1979, c. 540, §1 (NEW).]

(1). If a public guardian places his ward in any facility described in Title 22, sections 5 and 1811, such placement shall be made only if the facility is duly licensed. In the event that the license of any such facility is suspended or revoked, the public guardian having any ward placed therein shall remove such ward and effect an appropriate placement of the ward as soon as practicable after knowledge of the suspension or revocation of the license.

[ 1979, c. 540, §1 (NEW) . ]

(2). The public guardian or conservator at least annually, and at any time when ordered by the court, shall review the case of every person for whom the public guardian or conservator is acting under this Part. A report of each review shall be filed with the court. Each review shall contain an examination and evaluation of the plan for the ward or protected person and recommendations for a modification thereof, as deemed appropriate or necessary.

[ 1979, c. 540, §1 (NEW) . ]

(3). The public guardian or conservator shall keep books of account or other records showing separately the principal amount received, increments thereto and disbursements therefrom for the benefit of the ward or protected person, and such other records as are appropriate for the particular situation, together with the name of the ward or protected person, the source from which the money was received and the purpose for which the money was expended.

[ 1979, c. 540, §1 (NEW) . ]

(4). The public guardian, in the absence of available next of kin, may authorize the performance of an autopsy upon the body of the deceased ward. The public guardian, in the absence of available next of kin, or in the event that next of kin refuses to assume responsibility therefor, shall cause any deceased ward to be suitably buried and shall have authority to expend funds of the ward for that purpose, and in the event the ward is without funds at the time of death, the public guardian shall cause him to be suitably buried at public expense, as in the case of the burial of any other deceased indigent person.

[ 1979, c. 540, §1 (NEW) . ]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§5-608. DETERMINATION OF NEED FOR GUARDIANSHIP OF MENTALLY RETARDED PERSONS IN INSTITUTIONS AND RESIDENCE FACILITIES**

*(REPEALED)*

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1995, c. 395, §G6 (AMD). 1995, c. 395, §G20 (AFF). 2011, c. 542, Pt. A, §17 (RP).

### **§5-609. NO CHANGE IN RIGHTS TO SERVICES**

The appointment of a public guardian or conservator in no way enlarges or diminishes the ward's or protected person's right to services made available to all incapacitated persons in the State except for the provision of guardianship or conservatorship services as provided under this Article. [2011, c. 542, Pt. A, §18 (AMD).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 2011, c. 542, Pt. A, §18 (AMD).

## §5-610. NO CHANGE IN POWERS AND DUTIES OF AGENCY HEADS AND TRUSTEES

Nothing in this Article shall abrogate any other powers or duties vested by law in the head of any public institution, or vested by the settlor of a trust in the trustee thereof, for the benefit of any ward or protected person for whom the public guardian or conservator is appointed. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## §5-611. BOND

The public guardian or conservator shall not be required to file bonds in individual guardianships or conservatorships, but shall give a surety bond for the joint benefit of the wards or protected persons placed under the responsibility of the public guardian or conservator and the State of Maine, with a surety company or companies authorized to do business within the State, in an amount not less than the total value of all assets held by the public guardian or conservator, which amount shall be computed at the end of each state fiscal year and approved by the judge of the probate court for Kennebec County. At no time shall the bond of each of the public guardians or conservators be less than \$500 respectively. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## §5-612. COMPENSATION

(a). The public guardian or conservator shall receive such reasonable amounts for its expenses as guardian or conservator as the Probate Court may allow. The amounts so allowed shall be allocated to an account from which may be drawn expenses for filing fees, bond premiums, court costs and other expenses required in the administration of the functions of the public guardian or conservator. No amounts thus received may inure to the benefit of any employee of the public guardian or conservator. Any balance in the account at the end of a fiscal year shall not lapse but shall be carried forward from year to year and used for the purposes provided for in this subsection.

[1987, c. 295, (AMD) .]

(b). Any personal expenditures made on the ward's or protected person's behalf by the public guardian or conservator shall, when properly evidenced, be reimbursed out of the ward's or protected person's estate. Claims for services rendered by state agencies shall be submitted to the probate judge for approval before payment.

[1987, c. 295, (AMD) .]

### SECTION HISTORY

1979, c. 540, §1 (NEW). 1987, c. 295, (AMD).

## §5-613. INCAPACITATED PERSONS; GUARDIAN AD LITEM COSTS

(1). When the following occur, the costs of the guardian ad litem or any other special costs may be paid by the Department of Health and Human Services, within the limits of the department's budget:

(a). An allegedly incapacitated person is in need of protective services and:

(1) A guardian ad litem is appointed under the provisions of this Code; or

(2) A court incurs special costs in a proceeding concerning such a person; and [1995, c. 560, Pt. K, §6 (AMD); 1995, c. 560, Pt. K, §83 (AFF).]

(b). Appointment of a public guardian or conservator is sought or the allegedly incapacitated person, within 3 months prior to the filing of the petition:

- (1) Is or has been a client of the Department of Health and Human Services; or
- (3) Has received services from a worker from the Department of Health and Human Services. [2005, c. 397, Pt. A, §13 (AMD).]

[ 2005, c. 397, Pt. A, §13 (AMD) .]

(2). Exception. The Department of Health and Human Services is not liable for the costs set out in subsection (1) if the department can demonstrate that the allegedly incapacitated person has assets against which the costs may be assessed or that another more appropriate funding source is available and subject to the court's jurisdiction.

[ 2011, c. 542, Pt. A, §19 (AMD) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1983, c. 241, §3 (AMD). 1985, c. 817, (RPR). 1993, c. 410, §CCC6 (AMD). 1995, c. 560, §K6 (AMD). 1995, c. 560, §K83 (AFF). 2001, c. 354, §3 (AMD). 2003, c. 689, §B6 (REV). 2005, c. 397, §A13 (AMD). 2011, c. 542, Pt. A, §19 (AMD).

### §5-614. LIMITED PUBLIC GUARDIANSHIPS

The provisions of section 5-105 apply to the appointment of public guardians. [1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

## Part 7: LIVING WILLS

### §5-701. SHORT TITLE AND DEFINITIONS

*(REPEALED)*

#### SECTION HISTORY

1989, c. 830, §1 (NEW). 1991, c. 441, §1 (RPR). 1991, c. 719, §4 (AMD). 1995, c. 378, §B4 (RP).

### §5-702. DECLARATION RELATING TO USE OF LIFE-SUSTAINING TREATMENT

*(REPEALED)*

#### SECTION HISTORY

1989, c. 830, §1 (NEW). 1991, c. 191, (AMD). 1991, c. 441, §2 (AMD). 1991, c. 719, §5 (AMD). 1995, c. 378, §B4 (RP).

### §5-703. WHEN DECLARATION OPERATIVE

*(REPEALED)*

#### SECTION HISTORY

1989, c. 830, §1 (NEW). 1991, c. 719, §6 (AMD). 1995, c. 378, §B4 (RP).

**§5-704. REVOCATION OF DECLARATION***(REPEALED)*

## SECTION HISTORY

1989, c. 830, §1 (NEW). 1995, c. 378, §B4 (RP).

**§5-705. RECORDING DETERMINATION OF TERMINAL CONDITION OR PERSISTENT VEGETATIVE STATE AND DECLARATION***(REPEALED)*

## SECTION HISTORY

1989, c. 830, §1 (NEW). 1991, c. 719, §7 (AMD). 1995, c. 378, §B4 (RP).

**§5-706. TREATMENT OF QUALIFIED PATIENTS***(REPEALED)*

## SECTION HISTORY

1989, c. 830, §1 (NEW). 1995, c. 378, §B4 (RP).

**§5-707. CONSENT BY OTHERS TO WITHDRAWAL OR WITHHOLDING OF TREATMENT***(REPEALED)*

## SECTION HISTORY

1989, c. 830, §1 (NEW). 1991, c. 441, §3 (AMD). 1991, c. 719, §§8,9 (AMD). 1995, c. 378, §B4 (RP).

**§5-708. TRANSFER OF PATIENTS***(REPEALED)*

## SECTION HISTORY

1989, c. 830, §1 (NEW). 1995, c. 378, §B4 (RP).

**§5-709. IMMUNITIES***(REPEALED)*

## SECTION HISTORY

1989, c. 830, §1 (NEW). 1995, c. 378, §B4 (RP).

**§5-710. PENALTIES***(REPEALED)*

## SECTION HISTORY

1989, c. 830, §1 (NEW). 1995, c. 378, §B4 (RP).

**§5-711. MISCELLANEOUS PROVISIONS***(REPEALED)*

## SECTION HISTORY

1989, c. 830, §1 (NEW). 1991, c. 719, §10 (AMD). 1995, c. 378, §B4 (RP).

## **§5-712. WHEN HEALTH-CARE PROVIDER MAY PRESUME VALIDITY OF DECLARATION**

*(REPEALED)*

### SECTION HISTORY

1989, c. 830, §1 (NEW). 1995, c. 378, §B4 (RP).

## **§5-713. RECOGNITION OF DECLARATION EXECUTED IN ANOTHER STATE**

*(REPEALED)*

### SECTION HISTORY

1989, c. 830, §1 (NEW). 1995, c. 378, §B4 (RP).

## **§5-714. EFFECT OF PREVIOUS DECLARATION**

*(REPEALED)*

### SECTION HISTORY

1989, c. 830, §1 (NEW). 1995, c. 378, §B4 (RP).

# **Part 8: UNIFORM HEALTH-CARE DECISIONS ACT**

## **§5-801. DEFINITIONS**

As used in this Part, unless the context otherwise indicates, the following terms have the following meanings. [1995, c. 378, Pt. A, §1 (NEW).]

(a). "Advance health-care directive" means an individual instruction from, or a power of attorney for health care by, an individual with capacity.

[ 1995, c. 378, Pt. A, §1 (NEW) .]

(b). "Agent" means an individual with capacity designated in a power of attorney for health care to make a health-care decision for the individual granting the power.

[ 1995, c. 378, Pt. A, §1 (NEW) .]

(c). "Capacity" means the ability to have a basic understanding of the diagnosed condition and to understand the significant benefits, risks and alternatives to the proposed health care and the consequences of foregoing the proposed treatment, the ability to make and communicate a health care decision and the ability to understand the consequences of designating an agent or surrogate to make health-care decisions.

[ 1995, c. 378, Pt. A, §1 (NEW) .]

(d). "Guardian" means a judicially appointed guardian or conservator having authority to make a health-care decision for an individual.

[ 1995, c. 378, Pt. A, §1 (NEW) .]



(e). "Health care" means any care, treatment, service or procedure to maintain, diagnose or otherwise affect an individual's physical or mental condition.

[ 1995, c. 378, Pt. A, §1 (NEW) . ]

(f). "Health-care decision" means a decision made by an individual with capacity or by the individual's agent, guardian or surrogate, regarding the individual's health care, including:

(1). Selection and discharge of health-care providers and institutions; [1995, c. 378, Pt. A, §1 (NEW) . ]

(2). Approval or disapproval of diagnostic tests, surgical procedures, programs of medication and orders not to resuscitate; and [1995, c. 378, Pt. A, §1 (NEW) . ]

(3). Directions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care, including life-sustaining treatment. [1995, c. 378, Pt. A, §1 (NEW) . ]

[ 1995, c. 378, Pt. A, §1 (NEW) . ]

(g). "Health-care institution" means an institution, facility or agency licensed, certified or otherwise authorized or permitted by law to provide health care in the ordinary course of business.

[ 1995, c. 378, Pt. A, §1 (NEW) . ]

(h). "Health-care provider" means an individual licensed, certified or otherwise authorized or permitted by law to provide health care in the ordinary course of business or practice of a profession.

[ 1995, c. 378, Pt. A, §1 (NEW) . ]

(i). "Individual instruction" means a direction from an individual with capacity concerning a health-care decision for the individual.

[ 1995, c. 378, Pt. A, §1 (NEW) . ]

(j). "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

[ 1995, c. 378, Pt. A, §1 (NEW) . ]

(k). "Physician" means an individual authorized to practice medicine under Title 32.

[ 1995, c. 378, Pt. A, §1 (NEW) . ]

(l). "Power of attorney for health care" means the designation of an agent with capacity to make health-care decisions for the individual granting the power.

[ 1995, c. 378, Pt. A, §1 (NEW) . ]

(m). "Primary physician" means a physician designated by an individual with capacity or by the individual's agent, guardian or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes the responsibility.

[ 1995, c. 378, Pt. A, §1 (NEW) . ]

(n). "Reasonably available" means readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the patient's health-care needs.

[ 1995, c. 378, Pt. A, §1 (NEW) . ]

(o). "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico or a territory or insular possession subject to the jurisdiction of the United States.

[ 1995, c. 378, Pt. A, §1 (NEW) . ]

(p). "Supervising health-care provider" means the primary physician or, if there is no primary physician or the primary physician is not reasonably available, the health-care provider who has undertaken primary responsibility for an individual's health care.

[ 1995, c. 378, Pt. A, §1 (NEW) . ]

(q). "Surrogate" means an individual with capacity, other than a patient's agent or guardian, authorized under this Part to make health care decisions as provided in section 5-805.

[ 1999, c. 411, §1 (AMD) . ]

(r). "Life-sustaining treatment" means any medical procedure or intervention that, when administered to a person without capacity and in either a terminal condition or a persistent vegetative state, will serve only to prolong the process of dying. "Life-sustaining treatment" may include artificially administered nutrition and hydration, which is the provision of nutrients and liquids through the use of tubes, intravenous procedures or similar medical interventions.

[ 1995, c. 378, Pt. A, §1 (NEW) . ]

(s). "Persistent vegetative state" means a state that occurs after coma in which the patient totally lacks higher cortical and cognitive function, but maintains vegetative brain stem processes, with no realistic possibility of recovery, as diagnosed in accordance with acceptable medical standards.

[ 1995, c. 378, Pt. A, §1 (NEW) . ]

(t). "Terminal condition" means an incurable and irreversible condition that, without the administration of life-sustaining treatment, in the opinion of the primary physician, will result in death within a relatively short time.

[ 1995, c. 378, Pt. A, §1 (NEW) . ]

#### SECTION HISTORY

1995, c. 378, §A1 (NEW). 1999, c. 411, §1 (AMD).

## §5-802. ADVANCE HEALTH-CARE DIRECTIVES

(a). An adult or emancipated minor with capacity may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises. An oral instruction is valid only if made to a health-care provider or to an individual who may serve as a surrogate under section 5-805, subsection (b).

[ 1995, c. 378, Pt. A, §1 (NEW) . ]

**(b).** An adult or emancipated minor with capacity may execute a power of attorney for health care, which may authorize the agent to make any health-care decision the principal could have made while having capacity. The power must be in writing and signed by the principal and 2 witnesses. Notwithstanding any law validating electronic or digital signatures, signatures of the principal and witnesses must be made in person and not by electronic means. The power remains in effect notwithstanding the principal's later incapacity and may include individual instructions. Unless related to the principal by blood, marriage or adoption, an agent may not be an owner, operator or employee of a residential long-term health-care institution at which the principal is receiving care.

[ 1999, c. 711, §2 (AMD) .]

**(c).** Unless otherwise specified in a power of attorney for health care, the authority of an agent becomes effective only upon a determination that the principal lacks capacity, and ceases to be effective upon a determination that the principal has recovered capacity.

[ 1995, c. 378, Pt. A, §1 (NEW) .]

**(d).** Unless otherwise specified in a written advance health-care directive, a determination that an individual lacks or has recovered capacity or that another condition exists that affects an individual instruction, the authority of an agent or the validity of an advance health-care directive must be made by the primary physician, by a court of competent jurisdiction or, for an individual who has included a directive authorizing mental health treatment in an advance health-care directive, by a person qualified to conduct an examination pursuant to Title 34-B, section 3863.

[ 1999, c. 423, §1 (AMD) .]

**(e).** An agent shall make a health-care decision in accordance with the principal's individual instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the agent's determination of the principal's best interest. In determining the principal's best interest, the agent shall consider the principal's personal values to the extent known to the agent.

[ 1995, c. 378, Pt. A, §1 (NEW) .]

**(f).** A health-care decision made by an agent for a principal is effective without judicial approval.

[ 1995, c. 378, Pt. A, §1 (NEW) .]

**(g).** A written advance health-care directive may include the individual's nomination of a guardian of the person.

[ 1995, c. 378, Pt. A, §1 (NEW) .]

**(h).** An advance health-care directive is valid for purposes of this Part if it complies with this Part, regardless of when or where executed or communicated, or if valid under the laws of the state in which it was executed. An advance health-care directive that is valid where executed or communicated is valid for the purposes of this Part.

[ 2005, c. 284, §4 (AMD) .]

**(i).** An advance health care directive is valid for purposes of directing mental health treatment. The terms of the directive must be construed in accordance with this Part and Title 34-B, sections 3831 and 3862.

[ 1999, c. 423, §2 (NEW) .]

(j). A surrogate or an agent named in an advance health-care directive has the power and authority to serve as the personal representative of the patient who executed the health care directive for all purposes of the federal Health Insurance Portability and Accountability Act of 1996, 42 United States Code, Section 1320d et seq. and its regulations, 45 Code of Federal Regulations 160-164. The surrogate or agent has all the rights of the patient with respect to the use and disclosure of the individually identifiable health information and other medical records of the patient.

[ 2003, c. 618, Pt. C, §2 (NEW) .]

#### SECTION HISTORY

1995, c. 378, §A1 (NEW). 1999, c. 423, §§1,2 (AMD). 1999, c. 711, §2 (AMD). 2003, c. 618, §C2 (AMD). 2005, c. 284, §4 (AMD).

### §5-803. REVOCATION OF ADVANCE HEALTH-CARE DIRECTIVE

(a). An individual with capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising health-care provider.

[ 1995, c. 378, Pt. A, §1 (NEW) .]

(b). An individual with capacity may revoke all or part of an advance health-care directive, other than the designation of an agent, at any time and in any manner that communicates an intent to revoke.

[ 1995, c. 378, Pt. A, §1 (NEW) .]

(c). A health-care provider, agent, guardian or surrogate who is informed of a revocation by an individual with capacity shall promptly communicate the fact of the revocation to the supervising health-care provider and to any health-care institution at which the patient is receiving care.

[ 1995, c. 378, Pt. A, §1 (NEW) .]

(d). A decree of annulment, divorce, dissolution of marriage or legal separation revokes a previous designation of a spouse as agent unless otherwise specified in the decree or in a power of attorney for health care.

[ 1995, c. 378, Pt. A, §1 (NEW) .]

(e). An advance health-care directive that conflicts with an earlier advance health-care directive revokes the earlier directive to the extent of the conflict.

[ 1995, c. 378, Pt. A, §1 (NEW) .]

#### SECTION HISTORY

1995, c. 378, §A1 (NEW).

### §5-804. OPTIONAL FORM

The following form may, but need not, be used to create an advance health-care directive. The other sections of this Part govern the effect of this or any other writing used to create an advance health-care directive. An individual with capacity may complete or modify all or any part of the following form.

#### ADVANCE HEALTH-CARE DIRECTIVE

##### Explanation

[1995, c. 378, Pt. A, §1 (NEW).]

You have the right to give instructions about your own health care. You also have the right to name someone else to make health-care decisions for you. This form lets you do either or both of these things. It also lets you express your wishes regarding donation of organs and the designation of your primary physician. If you use this form, you may complete or modify all or any part of it. You are free to use a different form. [1995, c. 378, Pt. A, §1 (NEW).]

Part 1 of this form is a power of attorney for health care. Part 1 lets you name another individual as agent to make health-care decisions for you if you become incapable of making your own decisions or if you want someone else to make those decisions for you now even though you are still capable. You may also name an alternate agent to act for you if your first choice is not willing, able or reasonably available to make decisions for you. Unless related to you, your agent may not be an owner, operator or employee of a residential long-term health-care institution at which you are receiving care. [1995, c. 378, Pt. A, §1 (NEW).]

Unless the form you sign limits the authority of your agent, your agent may make all health-care decisions for you. This form has a place for you to limit the authority of your agent. You need not limit the authority of your agent if you wish to rely on your agent for all health-care decisions that may have to be made. If you choose not to limit the authority of your agent, your agent will have the right to: [1995, c. 378, Pt. A, §1 (NEW).]

**(a).** Consent or refuse consent to any care, treatment, service or procedure to maintain, diagnose or otherwise affect a physical or mental condition;

[ 1995, c. 378, Pt. A, §1 (NEW) .]

**(b).** Select or discharge health-care providers and institutions;

[ 1995, c. 378, Pt. A, §1 (NEW) .]

**(c).** Approve or disapprove diagnostic tests, surgical procedures, programs of medication and orders not to resuscitate; and

[ 1995, c. 378, Pt. A, §1 (NEW) .]

**(d).** Direct the provision, withholding or withdrawal of artificial nutrition and hydration and all other forms of health care, including life-sustaining treatment.

[ 1995, c. 378, Pt. A, §1 (NEW) .]

Part 2 of this form lets you give specific instructions about any aspect of your health care. Choices are provided for you to express your wishes regarding the provision, withholding or withdrawal of treatment to keep you alive, including the provision of artificial nutrition and hydration, as well as the provision of pain relief. Space is also provided for you to add to the choices you have made or for you to write out any additional wishes. [1995, c. 378, Pt. A, §1 (NEW).]

Part 3 of this form lets you express an intention to donate your bodily organs and tissues following your death. [1995, c. 378, Pt. A, §1 (NEW).]

Part 4 of this form lets you designate a physician to have primary responsibility for your health care. [1995, c. 378, Pt. A, §1 (NEW).]

After completing this form, sign and date the form at the end. You must have 2 other individuals sign as witnesses. Give a copy of the signed and completed form to your physician, to any other health-care providers you may have, to any health-care institution at which you are receiving care and to any health-care agents you have named. You should talk to the person you have named as agent to make sure that he or she understands your wishes and is willing to take the responsibility. [1995, c. 378, Pt. A, §1 (NEW).]

You have the right to revoke this advance health-care directive or replace this form at any time. [1995, c. 378, Pt. A, §1 (NEW).]

\*\*\*\*\*

PART 1

POWER OF ATTORNEY FOR HEALTH CARE

(1) DESIGNATION OF AGENT: I designate the following individual as my agent to make health-care decisions for me:

.....
(name of individual you choose as agent)
.....
(address) (city) (state) (zip code)
.....
(home phone) (work phone)

OPTIONAL: If I revoke my agent's authority or if my agent is not willing, able or reasonably available to make a health-care decision for me, I designate as my first alternate agent:

.....
(name of individual you choose as first alternate agent)
.....
(address) (city) (state) (zip code)
.....
(home phone) (work phone)

OPTIONAL: If I revoke the authority of my agent and first alternate agent or if neither is willing, able or reasonably available to make a health-care decision for me, I designate as my second alternate agent:

.....
(name of individual you choose as second alternate agent)
.....
(address) (city) (state) (zip code)
.....
(home phone) (work phone)

(2) AGENT'S AUTHORITY: My agent is authorized to make all health-care decisions for me, including decisions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care to keep me alive, except as I state here:

.....
.....
.....
(Add additional sheets if needed.)

(3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE: My agent's authority becomes effective when my primary physician determines that I am unable to make my own health-care decisions unless I mark the following box. If I mark this box [ ], my agent's authority to make health-care decisions for me takes effect immediately.

(4) AGENT'S OBLIGATION: My agent shall make health-care decisions for me in accordance with this power of attorney for health care, any instructions I give in Part 2 of this form and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make health-care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

(5) NOMINATION OF GUARDIAN: If a guardian of my person needs to be appointed for me by a court, I nominate the agent designated in this form. If that agent is not willing, able or reasonably available to act as guardian, I nominate the alternate agents whom I have named, in the order designated.

[ 2003, c. 688, Pt. M, §1 (AMD); 2003, c. 688, Pt. M, §2 (AFF). ]

PART 2

INSTRUCTIONS FOR HEALTH CARE

If you are satisfied to allow your agent to determine what is best for you in making end-of-life decisions, you need not fill out this part of the form. If you do fill out this part of the form, you may strike any wording you do not want.

(6) END-OF-LIFE DECISIONS: I direct that my health-care providers and others involved in my care provide, withhold or withdraw treatment in accordance with the choice I have marked below:

[ ] (a) Choice Not To Prolong Life

I do not want my life to be prolonged if (i) I have an incurable and irreversible condition that will result in my death within a relatively short time, (ii) I become unconscious and, to a reasonable degree of medical certainty, I will not regain consciousness, or (iii) the likely risks and burdens of treatment would outweigh the expected benefits, OR

[ ] (b) Choice To Prolong Life

I want my life to be prolonged as long as possible within the limits of generally accepted health-care standards.

(7) ARTIFICIAL NUTRITION AND HYDRATION: Artificial nutrition and hydration must be provided, withheld or withdrawn in accordance with the choice I have made in paragraph (6) unless I mark the following box. If I mark this box [ ], artificial nutrition and hydration must be provided regardless of my condition and regardless of the choice I have made in paragraph (6).

(8) RELIEF FROM PAIN: Except as I state in the following space, I direct that treatment for alleviation of pain or discomfort be provided at all times, even if it hastens my death:

.....  
.....

(9) OTHER WISHES: (If you do not agree with any of the optional choices above and wish to write your own, or if you wish to add to the instructions you have given above, you may do so here.) I direct that:

.....  
.....

(Add additional sheets if needed)

[ 1995, c. 378, Pt. A, §1 (NEW). ]

PART 3

DONATION OF ORGANS AT DEATH

(OPTIONAL)

(10) Upon my death (mark applicable box)

[ ] (a) I give any needed organs, tissues or parts, OR

[ ] (b) I give the following organs, tissues or parts only

.....

(c) My gift is for the following purposes (strike any of the following you do not want)

(i) Transplant

- (ii) Therapy
- (iii) Research
- (iv) Education

[1995, c. 378, Pt. A, §1 (NEW).]

PART 4  
PRIMARY PHYSICIAN  
(OPTIONAL)

(11) I designate the following physician as my primary physician:

.....  
 (name of physician)  
 .....  
 (address) (city) (state) (zip code)  
 .....  
 (phone)

OPTIONAL: If the physician I have designated above is not willing, able or reasonably available to act as my primary physician, I designate the following physician as my primary physician:

.....  
 (name of physician)  
 .....  
 (address) (city) (state) (zip code)  
 .....  
 (phone)

\*\*\*\*\*

(12) EFFECT OF COPY: A copy of this form has the same effect as the original.

(13) SIGNATURES: Sign and date the form here:

.....  
 (date) (sign your name)  
 .....  
 (address) (print your name)  
 .....  
 (city) (state)

**SIGNATURES OF WITNESSES:**

First witness Second witness

.....  
 (print name) (print name)  
 .....  
 (address) (address)  
 .....  
 (city) (state) (city) (state)  
 .....  
 (signature of witness) (signature of witness)  
 .....  
 (date) (date)

[1995, c. 625, Pt. B, §4 (AMD).]

SECTION HISTORY



1995, c. 378, §A1 (NEW). 1995, c. 625, §B4 (AMD). 2003, c. 618, §C3 (AMD). 2003, c. 688, §M1 (AMD). 2003, c. 688, §M2 (AFF). 2003, c. 688, Pt. M, §1 (AMD). 2003, c. 688, Pt. M, §2 (AFF).

## §5-805. DECISIONS BY SURROGATE

(a). A surrogate may make a decision to withhold or withdraw life-sustaining treatment for a patient who is an adult or emancipated minor if the patient has been determined by the primary physician to lack capacity, no agent or guardian has been appointed or the agent or guardian is not reasonably available and the patient is in a terminal condition or a persistent vegetative state as determined by the primary physician.

A surrogate also is authorized to make any other health care decision for a patient who is an adult or emancipated minor if the patient has been determined by the primary physician to lack capacity and no agent or guardian exists, except that a surrogate may not deny surgery, procedures or other interventions that are lifesaving and medically necessary.

A medically necessary procedure is one providing the most patient-appropriate intervention or procedure that can be safely and effectively given.

[ 1999, c. 411, §2 (AMD) . ]

(b). Any member of the following classes of the patient's family who is reasonably available, in descending order of priority, may act as surrogate:

- (1). The spouse, unless legally separated; [1995, c. 378, Pt. A, §1 (NEW).]
- (1-A). An adult who shares an emotional, physical and financial relationship with the patient similar to that of a spouse; [1999, c. 411, §3 (NEW).]
- (2). An adult child; [1995, c. 378, Pt. A, §1 (NEW).]
- (3). A parent; [1995, c. 378, Pt. A, §1 (NEW).]
- (4). An adult brother or sister; [1995, c. 378, Pt. A, §1 (NEW).]
- (5). An adult grandchild; [1995, c. 378, Pt. A, §1 (NEW).]
- (6). An adult niece or nephew, related by blood or adoption; [1995, c. 378, Pt. A, §1 (NEW).]
- (7). An adult aunt or uncle, related by blood or adoption; or [1995, c. 378, Pt. A, §1 (NEW).]
- (8). Another adult relative of the patient, related by blood or adoption, who is familiar with the patient's personal values and is reasonably available for consultation. [1995, c. 378, Pt. A, §1 (NEW).]

[ 1999, c. 411, §3 (AMD) . ]

(c). If none of the individuals eligible to act as surrogate under subsection (b) is reasonably available, an adult who has exhibited special concern for the patient, who is familiar with the patient's personal values and who is reasonably available may act as surrogate.

[ 1995, c. 378, Pt. A, §1 (NEW) . ]

(d). A surrogate shall communicate the surrogate's assumption of authority as promptly as practicable to the members of the patient's family specified in subsection (b) who can be readily contacted.

[ 1995, c. 378, Pt. A, §1 (NEW) . ]

(e). If more than one member of a class assumes authority to act as surrogate and they, or members of different classes who are reasonably available, do not agree on a health-care decision and the supervising health-care provider is so informed, the supervising health-care provider may comply with the decision of the class having priority or a majority of the members of that class who have communicated their views to the provider. The health-care provider may refer the members of the class or classes to a neutral 3rd party for assistance in resolving the dispute or to a court of competent jurisdiction. If the class is evenly divided concerning the health-care decision and the supervising health-care provider is so informed, that class and all individuals having lower priority are disqualified from making the decision.

[ 1995, c. 378, Pt. A, §1 (NEW) . ]

(f). A surrogate shall make a health-care decision in accordance with the patient's individual instructions, if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the decision in accordance with the surrogate's determination of the patient's best interest and in good faith. In determining the patient's best interest, the surrogate shall consider the patient's personal values to the extent known to the surrogate. A consent is not valid if it conflicts with the intention of the patient previously expressed to the surrogate.

[ 1995, c. 378, Pt. A, §1 (NEW) . ]

(g). A health-care decision made by a surrogate for a patient lacking capacity is effective without judicial approval.

[ 1995, c. 378, Pt. A, §1 (NEW) . ]

(h). An individual with capacity at any time may disqualify another, including a member of the individual's family, from acting as the individual's surrogate by a signed writing or by personally informing the supervising health-care provider of the disqualification.

[ 1995, c. 378, Pt. A, §1 (NEW) . ]

(i). A surrogate may not be an owner, operator or employee of a residential long-term health-care institution at which the patient is receiving care unless the surrogate is one of the following:

- (1). The spouse of the patient; [1995, c. 378, Pt. A, §1 (NEW). ]
- (2). An adult child of the patient; [1995, c. 378, Pt. A, §1 (NEW). ]
- (3). A parent of the patient; or [1995, c. 378, Pt. A, §1 (NEW). ]
- (4). A relative of the patient with whom the patient has resided for more than 6 months prior to the decision. [1995, c. 378, Pt. A, §1 (NEW). ]

[ 1995, c. 378, Pt. A, §1 (NEW) . ]

(j). A supervising health-care provider may require an individual claiming the right to act as surrogate for a patient to provide a written declaration under penalty of perjury stating facts and circumstances reasonably sufficient to establish the claimed authority.

[ 1995, c. 378, Pt. A, §1 (NEW) . ]

#### SECTION HISTORY

1995, c. 378, §A1 (NEW). 1999, c. 411, §§2,3 (AMD).

## §5-806. DECISIONS BY GUARDIAN

(a). Except as authorized by a court of competent jurisdiction, a guardian shall comply with the ward's individual instructions and other wishes, if any, expressed while the ward had capacity and to the extent known to the guardian, and may not revoke the ward's advance health-care directive unless the appointing court expressly so authorizes.

[ 1995, c. 378, Pt. A, §1 (NEW) .]

(b). Absent a court order to the contrary, a health-care decision of an agent takes precedence over that of a guardian.

[ 1995, c. 378, Pt. A, §1 (NEW) .]

(c). A health-care decision made by a guardian for the ward is effective without judicial approval, except under the following circumstances:

(1). The guardian's decision is contrary to the ward's individual instructions and other wishes, expressed while the ward had capacity; or [1995, c. 378, Pt. A, §1 (NEW) .]

(2). The guardian seeks to withhold or withdraw life-sustaining treatment from the ward, against the advice of the ward's primary physician and in the absence of instructions from the ward, made while the ward had capacity. [1995, c. 378, Pt. A, §1 (NEW) .]

[ 1995, c. 378, Pt. A, §1 (NEW) .]

### SECTION HISTORY

1995, c. 378, §A1 (NEW).

## §5-807. OBLIGATIONS OF HEALTH-CARE PROVIDER

(a). Before implementing a health-care decision made for a patient, a supervising health-care provider, if possible, shall promptly communicate to the patient the decision made and the identity of the person making the decision.

[ 1995, c. 378, Pt. A, §1 (NEW) .]

(b). A supervising health-care provider who knows of the existence of an advance health-care directive, a revocation of an advance health-care directive or a designation or disqualification of a surrogate shall promptly record its existence in the patient's health-care record and, if it is in writing, shall request a copy and if one is furnished shall arrange for its maintenance in the health-care record.

[ 1995, c. 378, Pt. A, §1 (NEW) .]

(c). A primary physician who makes or is informed of a determination that a patient lacks or has recovered capacity or that another condition exists that affects an individual instruction or the authority of an agent, guardian, or surrogate or the validity of an advance health-care directive shall promptly record the determination in the patient's health-care record and communicate the determination to the patient, if possible, and to any person then authorized to make health-care decisions for the patient.

[ 1995, c. 378, Pt. A, §1 (NEW) .]

(d). Except as provided in subsections (e) and (f), a health-care provider or institution providing care to a patient shall:

(1). Comply with an individual instruction of the patient and with a reasonable interpretation of that instruction made by a person then authorized to make health-care decisions for the patient; and [1995, c. 378, Pt. A, §1 (NEW).]

(2). Comply with a health-care decision for the patient made by a person then authorized to make health-care decisions for the patient to the same extent as if the decision had been made by the patient while having capacity. [1995, c. 378, Pt. A, §1 (NEW).]

[ 1995, c. 378, Pt. A, §1 (NEW) .]

(e). A health-care provider may decline to comply with an individual instruction or health-care decision if the instruction or decision appears not to be in compliance with this Act or for reasons of conscience. A health-care institution may decline to comply with an individual instruction or health-care decision if the instruction or decision appears not to be in compliance with this Act or if the instruction or decision is contrary to a policy of the institution that is expressly based on reasons of conscience and if the policy was timely communicated to the patient or to a person then authorized to make health-care decisions for the patient.

[ 1995, c. 378, Pt. A, §1 (NEW) .]

(f). A health-care provider or institution may decline to comply with an individual instruction or health-care decision that requires medically ineffective health care or health care contrary to generally accepted health-care standards applicable to the health-care provider or institution.

[ 1995, c. 378, Pt. A, §1 (NEW) .]

(g). A health-care provider or institution that declines to comply with an individual instruction or health-care decision shall:

(1). Promptly so inform the patient, if possible, and any person then authorized to make health-care decisions for the patient; [1995, c. 378, Pt. A, §1 (NEW).]

(2). Provide continuing care to the patient until a transfer can be effected or a court of competent jurisdiction issues a final order regarding the decision; and [1995, c. 378, Pt. A, §1 (NEW).]

(3). Unless the patient or person then authorized to make health-care decisions for the patient refuses assistance, immediately make all reasonable efforts to assist in the transfer of the patient to another health-care provider or institution that is willing to comply with the instruction or decision. [1995, c. 378, Pt. A, §1 (NEW).]

[ 1995, c. 378, Pt. A, §1 (NEW) .]

(h). A health-care provider or institution may not require or prohibit the execution or revocation of an advance health-care directive as a condition for providing health care.

[ 1995, c. 378, Pt. A, §1 (NEW) .]

#### SECTION HISTORY

1995, c. 378, §A1 (NEW).

## §5-808. HEALTH-CARE INFORMATION

Unless otherwise specified in an advance health-care directive, a person then authorized to make health-care decisions for a patient has the same rights as the patient to request, receive, examine, copy and consent to the disclosure of medical or any other health-care information. [1995, c. 378, Pt. A, §1 (NEW).]

### SECTION HISTORY

1995, c. 378, §A1 (NEW).

## §5-809. IMMUNITIES

(a). A health-care provider or institution acting in good faith and in accordance with generally accepted health-care standards applicable to the health-care provider or institution is not subject to civil or criminal liability or to discipline for unprofessional conduct for:

- (1). Complying with a health-care decision of a person apparently having authority and capacity to make a health-care decision for a patient, including a decision to withhold or withdraw health care; [1995, c. 378, Pt. A, §1 (NEW).]
- (2). Declining to comply with a health-care decision of a person based on a belief that the person then lacked authority or capacity, or that the decision otherwise does not comply with this Act; [1995, c. 378, Pt. A, §1 (NEW).]
- (3). Complying with an advance health-care directive and assuming that the directive was valid when made and has not been revoked or terminated; or [1995, c. 378, Pt. A, §1 (NEW).]
- (4). Seeking judicial relief from a court of competent jurisdiction. [1995, c. 378, Pt. A, §1 (NEW).]

[ 1995, c. 378, Pt. A, §1 (NEW) .]

(b). An individual acting as agent, guardian or surrogate under this Part is not subject to civil or criminal liability or to discipline for unprofessional conduct for health-care decisions made in good faith.

[ 1995, c. 378, Pt. A, §1 (NEW) .]

### SECTION HISTORY

1995, c. 378, §A1 (NEW).

## §5-810. STATUTORY DAMAGES

(a). A health-care provider or institution that intentionally violates this Part is subject to liability to the aggrieved individual for damages of \$500 or actual damages resulting from the violation, whichever is greater, plus reasonable attorney's fees.

[ 1995, c. 378, Pt. A, §1 (NEW) .]

(b). A person who intentionally falsifies, forges, conceals, defaces or obliterates an individual's advance health-care directive or a revocation of an advance health-care directive without the individual's consent, or who coerces or fraudulently induces an individual to give, revoke or not to give an advance health-care directive, is subject to liability to that individual for damages of \$2,500 or actual damages resulting from the action, whichever is greater, plus reasonable attorney's fees.

[ 1995, c. 378, Pt. A, §1 (NEW) .]

### SECTION HISTORY

1995, c. 378, §A1 (NEW).

### §5-811. CAPACITY

(a). This Part does not affect the right of an individual to make health-care decisions while having capacity to do so.

[ 1995, c. 378, Pt. A, §1 (NEW) .]

(b). An individual is presumed to have capacity to make a health-care decision, to give or revoke an advance health-care directive and to designate or disqualify a surrogate. This presumption may be rebutted by a determination by the individual's primary physician or by a court of competent jurisdiction.

[ 1995, c. 378, Pt. A, §1 (NEW) .]

#### SECTION HISTORY

1995, c. 378, §A1 (NEW).

### §5-812. EFFECT OF COPY

A copy of a written advance health-care directive, revocation of an advance health-care directive or designation or disqualification of a surrogate has the same effect as the original. [1995, c. 378, Pt. A, §1 (NEW).]

#### SECTION HISTORY

1995, c. 378, §A1 (NEW).

### §5-813. EFFECT OF PART

(a). This Part does not create a presumption concerning the intention of an individual who has not made or who has revoked an advance health-care directive.

[ 1995, c. 378, Pt. A, §1 (NEW) .]

(b). Death resulting from the withholding or withdrawal of health care in accordance with this Part does not for any purpose constitute a suicide or homicide or legally impair or invalidate a policy of insurance or an annuity providing a death benefit, notwithstanding any term of the policy or annuity to the contrary.

[ 1995, c. 378, Pt. A, §1 (NEW) .]

(c). This Part does not authorize mercy killing, assisted suicide, euthanasia or the provision, withholding, or withdrawal of health care to the extent prohibited by other statutes of this State.

[ 1995, c. 378, Pt. A, §1 (NEW) .]

(d). This Part does not authorize or require a health-care provider or institution to provide health care contrary to generally accepted health-care standards applicable to the health-care provider or institution.

[ 1995, c. 378, Pt. A, §1 (NEW) .]

(e). This Part does not authorize an agent or surrogate to consent to the admission of an individual to a mental health-care institution unless the individual's written advance health-care directive expressly so provides.

[ 1995, c. 378, Pt. A, §1 (NEW) .]

(f). This Part does not affect other statutes of this State governing treatment for mental illness of an individual involuntarily committed to a mental health-care institution.

[ 1995, c. 378, Pt. A, §1 (NEW) . ]

#### SECTION HISTORY

1995, c. 378, §A1 (NEW).

### **§5-814. JUDICIAL RELIEF**

On petition of a patient, the patient's agent, guardian or surrogate, a health-care or social services provider or institution involved with the patient's care, a state agency mandated to provide adult protective services pursuant to Title 22, sections 3472 to 3487, or an adult relative or adult friend of the patient, the court may enjoin or direct a health-care decision or other equitable relief. [1995, c. 378, Pt. A, §1 (NEW) . ]

#### SECTION HISTORY

1995, c. 378, §A1 (NEW).

### **§5-815. UNIFORMITY OF APPLICATION AND CONSTRUCTION**

This Part must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject matter of this Part among states enacting it. [1995, c. 378, Pt. A, §1 (NEW) . ]

#### SECTION HISTORY

1995, c. 378, §A1 (NEW).

### **§5-816. SHORT TITLE**

This Part may be cited as the Uniform Health-care Decisions Act. [1995, c. 378, Pt. A, §1 (NEW) . ]

#### SECTION HISTORY

1995, c. 378, §A1 (NEW).

### **§5-817. EFFECTIVE DATE**

This Part takes effect on October 1, 1995. [1995, c. 378, Pt. A, §1 (NEW) . ]

#### SECTION HISTORY

1995, c. 378, §A1 (NEW).

### **§5-818. MILITARY ADVANCED MEDICAL DIRECTIVES**

A military advanced medical directive executed in accordance with 10 United States Code, Section 1044c is valid in this State. [2005, c. 353, §3 (NEW) . ]

#### SECTION HISTORY

2005, c. 353, §3 (NEW).

## **Part 9: MAINE UNIFORM POWER OF ATTORNEY ACT**

### **Subpart 1: GENERAL PROVISIONS AND DEFINITIONS**

**§5-901. SHORT TITLE**

This Part may be known and cited as "the Maine Uniform Power of Attorney Act." [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

## SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

**§5-902. DEFINITIONS**

As used in this Part, unless the context otherwise indicates, the following terms have the following meanings. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(a). "Agent" means a person granted authority to act for a principal under a power of attorney, whether denominated an agent, attorney-in-fact or otherwise. The term includes an original agent, coagent, successor agent and a person to which an agent's authority is delegated.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). "Durable," with respect to a power of attorney, means not terminated by the principal's incapacity.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(c). "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(d). "Good faith" means honesty in fact.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(e). "Incapacity" means inability of an individual to effectively manage property or business affairs because the individual:

(1). Is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication or other cause to the extent that the individual lacks sufficient understanding, capacity or ability to receive and evaluate information or make or communicate decisions regarding the individual's property or business affairs; or [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(2). Is:

(i) Missing;

(ii) Detained, including incarcerated in a penal system; or

(iii) Outside the United States and unable to return. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(f). "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality or any other legal or commercial entity.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]



(g). "Power of attorney" means a writing or other record that grants authority to an agent to act in the place of the principal, whether or not the term "power of attorney" is used.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(h). "Presently exercisable general power of appointment," with respect to property or a property interest subject to a power of appointment, means power exercisable at the time in question to vest absolute ownership in the principal individually, the principal's estate, the principal's creditors or the creditors of the principal's estate. The term includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard or the passage of a specified period only after the occurrence of the specified event, the satisfaction of the ascertainable standard or the passage of the specified period. The term does not include a power exercisable in a fiduciary capacity or only by will.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(i). "Principal" means an individual who grants authority to an agent in a power of attorney.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(j). "Property" means anything that may be the subject of ownership, whether real or personal, or legal or equitable, or any interest or right therein.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(k). "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(l). "Registered domestic partner" means an individual registered as a domestic partner under Title 22, section 2710, subsection 3.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(m). "Sign" means, with present intent to authenticate or adopt a record:

(1). To execute or adopt a tangible symbol; or [ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(2). To attach to or logically associate with the record an electronic sound, symbol or process. [ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(n). "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(o). "Stocks and bonds" means stocks, bonds, mutual funds and all other types of securities and financial instruments, whether held directly, indirectly or in any other manner. The term does not include commodity futures contracts and call or put options on stocks or stock indexes.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

#### SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

### §5-903. APPLICABILITY

This Part applies to all powers of attorney except: [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(a). A power to the extent it is coupled with an interest in the subject of the power, including a power given to or for the benefit of a creditor in connection with a credit transaction;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). A power to make health care decisions;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(c). A proxy or other delegation to exercise voting rights or management rights with respect to an entity; and

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(d). A power created on a form prescribed by a government or governmental subdivision, agency or instrumentality for a governmental purpose.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

#### SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

### §5-904. POWER OF ATTORNEY IS DURABLE

A power of attorney created under this Part is durable unless it expressly provides that it is terminated by the incapacity of the principal. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

#### SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

### §5-905. EXECUTION OF POWER OF ATTORNEY; NOTICES

(a). A power of attorney must be signed by the principal or in the principal's conscious presence by another individual directed by the principal to sign the principal's name on the power of attorney. A signature on a power of attorney is presumed to be genuine if the principal acknowledges the signature before a notary public or other individual authorized by law to take acknowledgments. A power of attorney under this Part is not valid unless it is acknowledged before a notary public or other individual authorized by law to take acknowledgments.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). A durable power of attorney under this Part is not valid unless it contains the following notices substantially in the following form:

"Notice to the Principal: As the "Principal" you are using this power of attorney to grant power to another person (called the Agent) to make decisions about your property and to use your property on your behalf. Under this power of attorney you give your Agent broad and sweeping powers to sell or otherwise dispose of your property without notice to you. Under this document your Agent will continue to have these powers

after you become incapacitated. The powers that you give your Agent are explained more fully in the Maine Uniform Power of Attorney Act, Maine Revised Statutes, Title 18-A, Article 5, Part 9. You have the right to revoke this power of attorney at any time as long as you are not incapacitated. If there is anything about this power of attorney that you do not understand you should ask a lawyer to explain it to you.

Notice to the Agent: As the "Agent" you are given power under this power of attorney to make decisions about the property belonging to the Principal and to dispose of the Principal's property on the Principal's behalf in accordance with the terms of this power of attorney. This power of attorney is valid only if the Principal is of sound mind when the Principal signs it. When you accept the authority granted under this power of attorney a special legal relationship is created between you and the Principal. This relationship imposes upon you legal duties that continue until you resign or the power of attorney is terminated or revoked. The duties are more fully explained in the Maine Uniform Power of Attorney Act, Maine Revised Statutes, Title 18-A, Article 5, Part 9 and Title 18-B, sections 802 to 807 and Title 18-B, chapter 9. As the Agent, you are generally not entitled to use the Principal's property for your own benefit or to make gifts to yourself or others unless the power of attorney gives you such authority. If you violate your duty under this power of attorney you may be liable for damages and may be subject to criminal prosecution. You must stop acting on behalf of the Principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. Events of termination are more fully explained in the Maine Uniform Power of Attorney Act and include, but are not limited to, revocation of your authority or of the power of attorney by the Principal, the death of the Principal or the commencement of divorce proceedings between you and the Principal. If there is anything about this power of attorney or your duties under it that you do not understand you should ask a lawyer to explain it to you."

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

#### SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

## §5-906. VALIDITY OF POWER OF ATTORNEY

(a). A power of attorney executed in this State on or after July 1, 2010 is valid if its execution complies with section 5-905.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). A power of attorney executed in this State before July 1, 2010 is valid if its execution complied with the law of this State as it existed at the time of execution.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(c). A power of attorney executed other than in this State is valid in this State if, when the power of attorney was executed, the execution complied with:

(1). The law of the jurisdiction that determines the meaning and effect of the power of attorney pursuant to section 5-907; or [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(2). The requirements for a military power of attorney pursuant to 10 United States Code, Section 1044b, as amended. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(d). Except as otherwise provided by statute other than this Part, a photocopy or electronically transmitted copy of an original power of attorney has the same effect as the original.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

#### SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

### **§5-907. MEANING AND EFFECT OF POWER OF ATTORNEY**

The meaning and effect of a power of attorney is determined by the law of the jurisdiction indicated in the power of attorney and, in the absence of an indication of jurisdiction, by the law of the jurisdiction in which the power of attorney was executed. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

#### SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

### **§5-908. NOMINATION OF CONSERVATOR OR GUARDIAN; RELATION OF AGENT TO COURT-APPOINTED FIDUCIARY**

(a). In a power of attorney, a principal may nominate a conservator of the principal's estate or guardian of the principal's person for consideration by the court if protective proceedings for the principal's estate or person are begun after the principal executes the power of attorney. Except for good cause shown or disqualification, the court shall make its appointment in accordance with the principal's most recent nomination.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

(b). If, after a principal executes a power of attorney, a court appoints a conservator of the principal's estate or other fiduciary charged with the management of some or all of the principal's property, the agent is accountable to the fiduciary as well as to the principal. The power of attorney is not terminated and the agent's authority continues unless limited, suspended or terminated by the court.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

#### SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

### **§5-909. WHEN POWER OF ATTORNEY EFFECTIVE**

(a). A power of attorney is effective when executed unless the principal provides in the power of attorney that it becomes effective at a future date or upon the occurrence of a future event or contingency.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

(b). If a power of attorney becomes effective upon the occurrence of a future event or contingency, the principal, in the power of attorney, may authorize one or more persons to determine in a writing or other record that the event or contingency has occurred.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

(c). If a power of attorney becomes effective upon the principal's incapacity and the principal has not authorized a person to determine whether the principal is incapacitated, or the person authorized is unable or unwilling to make the determination, the power of attorney becomes effective upon a determination in a writing or other record by:

(1). A physician that the principal is incapacitated within the meaning of section 5-902, subsection (e), paragraph (1); or [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(2). An attorney at law, a judge or an appropriate governmental official that the principal is incapacitated within the meaning of section 5-902, subsection (e), paragraph (2). [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(d). A person authorized by the principal in the power of attorney to determine that the principal is incapacitated may act as the principal's personal representative pursuant to the federal Health Insurance Portability and Accountability Act of 1996, 42 United States Code, Section 1320d, et seq., as amended, and applicable regulations, to obtain access to the principal's health care information and communicate with the principal's health care provider.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

#### SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

## **§5-910. TERMINATION OF POWER OF ATTORNEY OR AGENT'S AUTHORITY**

(a). A power of attorney terminates when:

(1). The principal dies; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(2). The principal becomes incapacitated, if the power of attorney is not durable; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(3). The principal revokes the power of attorney; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(4). The power of attorney provides that it terminates; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(5). The purpose of the power of attorney is accomplished; or [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(6). The principal revokes the agent's authority or the agent dies, becomes incapacitated or resigns and the power of attorney does not provide for another agent to act under the power of attorney. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). An agent's authority terminates:

(1). When the principal revokes the authority; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(2). When the agent dies, becomes incapacitated or resigns; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(3). When an action is filed for the termination or annulment of the agent's marriage to the principal or their legal separation, unless the power of attorney otherwise provides; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(4). Upon the sooner to occur of either the marriage of the principal to a person other than the agent if upon or after execution of the power of attorney the principal and the agent are or became registered domestic partners, the filing with the domestic partner registry, in accordance with Title 22, section 2710, subsection 4, of a notice consenting to the termination of a registered domestic partnership of the principal and the agent or upon service, in accordance with Title 22, section 2710, subsection 4, of a notice of intent to terminate the registered domestic partnership of the principal and the agent; or [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(5). The power of attorney terminates. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(c). Unless the power of attorney otherwise provides, an agent's authority is exercisable until the authority terminates under subsection (b), notwithstanding a lapse of time since the execution of the power of attorney.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(d). Termination of an agent's authority or of a power of attorney is not effective as to the agent or another person that, without actual knowledge of the termination, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(e). Incapacity of the principal of a power of attorney that is not durable does not revoke or terminate the power of attorney as to an agent or other person that, without actual knowledge of the incapacity, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(f). The execution of a power of attorney does not revoke a power of attorney previously executed by the principal unless the subsequent power of attorney provides that the previous power of attorney is revoked or that all other powers of attorney are revoked.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

#### SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

### §5-911. COAGENTS AND SUCCESSOR AGENTS

(a). A principal may designate 2 or more persons to act as coagents. Unless the power of attorney otherwise provides, each coagent may exercise its authority independently.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). A principal may designate one or more successor agents to act if an agent resigns, dies, becomes incapacitated, is not qualified to serve or declines to serve. A principal may grant authority to designate one or more successor agents to an agent or other person designated by name, office or function. Unless the power of attorney otherwise provides, a successor agent:

(1). Has the same authority as that granted to the original agent; and [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(2). May not act until all predecessor agents have resigned, died, become incapacitated, are no longer qualified to serve or have declined to serve. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(c). Except as otherwise provided in the power of attorney and subsection (d), an agent that does not participate in or conceal a breach of fiduciary duty committed by another agent, including a predecessor agent, is not liable for the actions of the other agent.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(d). An agent that has actual knowledge of a breach or imminent breach of fiduciary duty by another agent shall notify the principal and, if the principal is incapacitated, take any action reasonably appropriate in the circumstances to safeguard the principal's interests. An agent that fails to notify the principal or take action as required by this subsection is liable for the reasonably foreseeable damages that could have been avoided if the agent had notified the principal or taken such action.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

#### SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

### **§5-912. REIMBURSEMENT AND COMPENSATION OF AGENT**

Unless the power of attorney otherwise provides, an agent is entitled to reimbursement of expenses reasonably incurred on behalf of the principal and to compensation that is reasonable under the circumstances. The factors set forth in section 3-721, subsection (b) should be considered as guides in determining the reasonableness of compensation under this section. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

#### SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

### **§5-913. AGENT'S ACCEPTANCE**

Except as otherwise provided in the power of attorney, a person accepts appointment as an agent under a power of attorney by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

#### SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

### **§5-914. AGENT'S DUTIES**

(a). Notwithstanding provisions in the power of attorney, an agent that has accepted appointment shall:

(1). Act in accordance with the principal's reasonable expectations to the extent actually known by the agent and otherwise act as a fiduciary under the standards of care applicable to trustees as described under Title 18-B, sections 802 to 807 and Title 18-B, chapter 9; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(2). Act in good faith; and [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(3). Act only within the scope of authority granted in the power of attorney. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

**(b).** Except as otherwise provided in the power of attorney, an agent that has accepted appointment shall:

(1). Act loyally for the principal's benefit; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(2). Act so as not to create a conflict of interest that impairs the agent's ability to act impartially; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(3). Act with the care, competence and diligence ordinarily exercised by agents in similar circumstances; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(4). Keep a record of all receipts, disbursements and transactions made on behalf of the principal; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(5). Cooperate with a person that has authority to make health care decisions for the principal to carry out such decisions; and [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(6). Attempt to preserve the principal's estate plan, to the extent actually known by the agent, based on all relevant factors, including:

(i) The value and nature of the principal's property;

(ii) The principal's foreseeable obligations and need for maintenance;

(iii) Minimization of taxes, including income, estate, inheritance, generation-skipping transfer and gift taxes; and

(iv) Eligibility for a benefit, a program or assistance under a statute, rule or regulation. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

**(c).** An agent that acts in good faith is not liable to any beneficiary of the principal's estate plan for failure to preserve the plan.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

**(d).** An agent that acts with care, competence and diligence for the sole interest of the principal is not liable solely because the agent also benefits from the act or has an individual or conflicting interest in relation to the property or affairs of the principal.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

**(e).** If an agent is selected by the principal because of special skills or expertise possessed by the agent or in reliance on the agent's representation that the agent has special skills or expertise, the special skills or expertise must be considered in determining whether the agent has acted with care, competence and diligence under the circumstances.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

**(f).** Absent a breach of duty to the principal, an agent is not liable if the value of the principal's property declines.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]



(g). An agent that exercises authority to delegate to another person the authority granted by the principal or that engages another person on behalf of the principal is not liable for an act, error of judgment or default of that person if the agent exercises care, competence and diligence in selecting and monitoring the person.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(h). Except as otherwise provided in the power of attorney, an agent is not required to disclose receipts, disbursements or transactions conducted on behalf of the principal unless ordered by a court or requested by the principal, a guardian, a conservator, another fiduciary acting for the principal, a governmental agency having authority to protect the welfare of the principal or, upon the death of the principal, by the personal representative or successor in interest of the principal's estate. If so requested, within 30 days the agent shall comply with the request or provide a writing or other record substantiating why additional time is needed and shall comply with the request within an additional 30 days.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

#### SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

### §5-915. EXONERATION OF AGENT

A provision in a power of attorney relieving an agent of liability for breach of duty is binding on the principal and the principal's successors in interest except to the extent the provision: [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(a). Relieves the agent of liability for breach of duty committed dishonestly, with an improper motive or with reckless indifference to the purposes of the power of attorney; or

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). Was inserted as a result of an abuse of a confidential or fiduciary relationship with the principal.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

#### SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

### §5-916. JUDICIAL RELIEF

(a). The following persons may petition the Probate Court or the Superior Court for the county in which either the principal or the agent resides to construe a power of attorney or review the agent's conduct and grant appropriate relief:

(1). The principal or the agent; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(2). A guardian, conservator or other fiduciary acting for the principal; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(3). A person authorized to make health care decisions for the principal; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(4). The principal's spouse, registered domestic partner, parent or descendant; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(5). An individual who would qualify as a presumptive heir of the principal; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(6). A person named as a beneficiary to receive any property, benefit or contractual right on the principal's death or as a beneficiary of a trust created by or for the principal that has a financial interest in the principal's estate; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(7). A governmental agency having regulatory authority to protect the welfare of the principal; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(8). The principal's caregiver or another person that demonstrates sufficient interest in the principal's welfare; and [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(9). A person asked to accept the power of attorney. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). Upon motion by the principal, the court shall dismiss a petition filed under this section, unless the court finds that the principal lacks capacity to revoke the agent's authority or the power of attorney.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

#### SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

### §5-917. AGENT'S LIABILITY

An agent that violates this chapter is liable to the principal or the principal's successors in interest for the amount required to: [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(a). Restore the value of the principal's property to what it would have been had the violation not occurred; and

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). Reimburse the principal or the principal's successors in interest for the attorney's fees and costs paid on the agent's behalf.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

#### SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

### §5-918. AGENT'S RESIGNATION; NOTICE

Unless the power of attorney provides a different method for an agent's resignation, an agent may resign by giving notice to the principal and, if the principal is incapacitated: [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(a). To the conservator or guardian, if one has been appointed for the principal, and a coagent or successor agent; or

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). If there is no person described in subsection (a), to:

(1). The principal's caregiver; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(2). Another person reasonably believed by the agent to have sufficient interest in the principal's welfare; or [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(3). A governmental agency having authority to protect the welfare of the principal. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

#### SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

### **§5-919. ACCEPTANCE OF AND RELIANCE UPON ACKNOWLEDGED POWER OF ATTORNEY**

(a). For purposes of this section and section 5-920, "acknowledged" means purportedly verified before a notary public or other individual authorized to take acknowledgements.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(b). A person that in good faith accepts an acknowledged power of attorney without actual knowledge that the signature is not genuine may rely upon the presumption under section 5-905 that the signature is genuine.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(c). A person that in good faith accepts an acknowledged power of attorney without actual knowledge that the power of attorney is void, invalid or terminated, that the purported agent's authority is void, invalid or terminated or that the agent is exceeding or improperly exercising the agent's authority may rely upon the power of attorney as if the power of attorney were genuine, valid and still in effect, the agent's authority were genuine, valid and still in effect and the agent had not exceeded and had properly exercised the authority.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(d). A person that is asked to accept an acknowledged power of attorney may request, and rely upon, without further investigation:

(1). An agent's certification under penalty of perjury of any factual matter concerning the principal, agent or power of attorney; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(2). An English translation of the power of attorney if the power of attorney contains, in whole or in part, language other than English; and [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(3). An opinion of counsel as to any matter of law concerning the power of attorney if the person making the request provides in a writing or other record the reason for the request. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(e). An English translation or an opinion of counsel requested under this section must be provided at the principal's expense unless the request is made more than 7 business days after the power of attorney is presented for acceptance.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(f). For purposes of this section and section 5-920, a person that conducts activities through employees is without actual knowledge of a fact relating to a power of attorney, a principal or an agent if the employee conducting the transaction involving the power of attorney is without actual knowledge of the fact.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

#### SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

### **§5-920. LIABILITY FOR REFUSAL TO ACCEPT ACKNOWLEDGED POWER OF ATTORNEY**

(a). Except as otherwise provided in subsection (b):

(1). A person shall either accept an acknowledged power of attorney or request a certification, a translation or an opinion of counsel under section 5-919, subsection (d) no later than 7 business days after presentation of the power of attorney for acceptance; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(2). If a person requests a certification, a translation or an opinion of counsel under section 5-919, subsection (d), the person shall accept the power of attorney no later than 5 business days after receipt of the certification, translation or opinion of counsel; and [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(3). A person may not require an additional or different form of power of attorney for authority granted in the power of attorney presented. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). A person is not required to accept an acknowledged power of attorney if:

(1). The person is not otherwise required to engage in a transaction with the principal in the same circumstances; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(2). Engaging in a transaction with the agent or the principal in the same circumstances would be inconsistent with federal law; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(3). The person has actual knowledge of the termination of the agent's authority or of the power of attorney before exercise of the power; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(4). A request for a certification, a translation or an opinion of counsel under section 5-919, subsection (d) is refused; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(5). The person in good faith believes that the power is not valid or that the agent does not have the authority to perform the act requested, whether or not a certification, a translation or an opinion of counsel under section 5-919, subsection (d) has been requested or provided; or [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(6). The person has a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation or abandonment by the agent or a person acting for or with the agent and the person makes, or has actual knowledge that another person has made, a report to the Department of Health and Human Services regarding such beliefs. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(c). A person that refuses in violation of this section to accept an acknowledged power of attorney is subject to:

(1). A court order mandating acceptance of the power of attorney; and [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(2). Liability for reasonable attorney's fees and costs incurred in any action or proceeding that confirms the validity of the power of attorney or mandates acceptance of the power of attorney. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

#### SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

### **§5-921. PRINCIPLES OF LAW AND EQUITY**

Unless displaced by a provision of this Part, the principles of law and equity supplement this Part. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

#### SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

### **§5-922. LAWS APPLICABLE TO FINANCIAL INSTITUTIONS AND ENTITIES**

This Part does not supersede any other law applicable to financial institutions or other entities, and the other law controls if inconsistent with this Part. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

#### SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

### **§5-923. REMEDIES UNDER OTHER LAW**

The remedies under this Part are not exclusive and do not abrogate any right or remedy under the law of this State other than this Part. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

#### SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

## Subpart 2: AUTHORITY

### **§5-931. AUTHORITY THAT REQUIRES SPECIFIC GRANT; GRANT OF GENERAL AUTHORITY**

(a). An agent under a power of attorney may do the following on behalf of the principal or with the principal's property only if the power of attorney expressly grants the agent the authority and exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject:

(1). Create, amend, revoke or terminate an inter vivos trust; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(2). Make a gift; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(3). Create or change rights of survivorship; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(4). Create or change a beneficiary designation; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(5). Delegate authority granted under the power of attorney; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(6). Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(7). Exercise fiduciary powers that the principal has authority to delegate; or [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(8). Disclaim property, including a power of appointment. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

**(b).** Notwithstanding a grant of authority to do an act described in subsection (a), unless the power of attorney otherwise provides, an agent that is not an ancestor, spouse, registered domestic partner or descendant of the principal may not exercise authority under a power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer or otherwise.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

**(c).** Subject to subsections (a), (b), (d) and (e), if a power of attorney grants to an agent authority to do all acts that a principal could do, the agent has the general authority described in sections 5-934 through 5-946.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

**(d).** Unless the power of attorney otherwise provides, a grant of authority to make a gift is subject to section 5-947.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

**(e).** Subject to subsections (a), (b) and (d), if the subjects over which authority is granted in a power of attorney are similar or overlap, the broadest authority controls.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

**(f).** Authority granted in a power of attorney is exercisable with respect to property that the principal has when the power of attorney is executed or acquires later, whether or not the property is located in this State and whether or not the authority is exercised or the power of attorney is executed in this State.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

**(g).** An act performed by an agent pursuant to a power of attorney has the same effect and inures to the benefit of and binds the principal and the principal's successors in interest as if the principal had performed the act.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

#### SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

## §5-932. INCORPORATION OF AUTHORITY

(a). An agent has authority described in this subpart if the power of attorney refers to general authority with respect to the descriptive term for the subjects stated in sections 5-934 through 5-947 or cites the section in which the authority is described.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

(b). A reference in a power of attorney to general authority with respect to the descriptive term for a subject in sections 5-934 through 5-947 or a citation to a section of sections 5-934 through 5-947 incorporates the entire section as if it were set out in full in the power of attorney.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

(c). A principal may modify authority incorporated by reference.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

### SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

## §5-933. CONSTRUCTION OF AUTHORITY GENERALLY

Except as otherwise provided in the power of attorney, by executing a power of attorney that incorporates by reference a subject described in sections 5-934 through 5-947 or that grants to an agent authority to do all acts that a principal could do pursuant to section 5-931, subsection (c), a principal authorizes the agent, with respect to that subject, to: [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

(a). Demand, receive and obtain by litigation or otherwise, money or another thing of value to which the principal is, may become or claims to be entitled and conserve, invest, disburse or use anything so received or obtained for the purposes intended;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

(b). Contract in any manner with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction and perform, rescind, cancel, terminate, reform, restate, release or modify the contract or another contract made by or on behalf of the principal;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

(c). Execute, acknowledge, seal, deliver, file or record any instrument or communication the agent considers desirable to accomplish a purpose of a transaction, including creating at any time a schedule listing some or all of the principal's property and attaching it to the power of attorney;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

(d). Initiate, participate in, submit to alternative dispute resolution, settle, oppose or propose or accept a compromise with respect to a claim existing in favor of or against the principal or intervene in litigation relating to the claim;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

(e). Seek on the principal's behalf the assistance of a court or other governmental agency to carry out an act authorized in the power of attorney;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

(f). Engage, compensate and discharge an attorney, accountant, discretionary investment manager, expert witness or other advisor;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

(g). Prepare, execute and file a record, report or other document to safeguard or promote the principal's interest under a statute, rule or regulation;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

(h). Communicate with any representative or employee of a government or governmental subdivision, agency or instrumentality on behalf of the principal;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

(i). Access communications intended for and communicate on behalf of the principal, whether by mail, electronic transmission, telephone or other means; and

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

(j). Do any lawful act with respect to the subject and all property related to the subject.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

#### SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

### §5-934. REAL PROPERTY

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to real property authorizes the agent to: [ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

(a). Demand, buy, lease, receive, accept as a gift or as security for an extension of credit or otherwise acquire or reject an interest in real property or a right incident to real property;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

(b). Sell; exchange; convey with or without covenants, representations or warranties; quitclaim; release; surrender; retain title for security; encumber; partition; consent to partitioning; subject to an easement or covenant; subdivide; apply for zoning or other governmental permits; plat or consent to platting; develop; grant an option concerning; lease; sublease; contribute to an entity in exchange for an interest in that entity; or otherwise grant or dispose of an interest in real property or a right incident to real property;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]



(c). Pledge or mortgage an interest in real property or right incident to real property as security to borrow money or pay, renew or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(d). Release, assign, satisfy or enforce by litigation or otherwise a mortgage, deed of trust, conditional sale contract, encumbrance, lien or other claim to real property that exists or is asserted;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(e). Manage or conserve an interest in real property or a right incident to real property owned or claimed to be owned by the principal, including:

(1). Insuring against liability or casualty or other loss; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(2). Obtaining or regaining possession of or protecting the interest or right by litigation or otherwise; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(3). Paying, assessing, compromising or contesting taxes or assessments or applying for and receiving refunds in connection with them; and [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(4). Purchasing supplies, hiring assistance or labor and making repairs or alterations to the real property; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(f). Use, develop, alter, replace, remove, erect or install structures or other improvements upon real property in or incident to which the principal has, or claims to have, an interest or right;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(g). Participate in a reorganization with respect to real property or an entity that owns an interest in or right incident to real property and receive, hold and act with respect to stocks and bonds or other property received in a plan of reorganization, including:

(1). Selling or otherwise disposing of them; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(2). Exercising or selling an option, right of conversion or similar right with respect to them; and [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(3). Exercising any voting rights in person or by proxy; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(h). Change the form of title of an interest in or right incident to real property; and

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(i). Dedicate to public use, with or without consideration, easements or other real property in which the principal has, or claims to have, an interest.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

#### SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

## §5-935. TANGIBLE PERSONAL PROPERTY

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to tangible personal property authorizes the agent to: [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(a). Demand, buy, receive, accept as a gift or as security for an extension of credit or otherwise acquire or reject ownership or possession of tangible personal property or an interest in tangible personal property;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). Sell; exchange; convey with or without covenants, representations or warranties; quitclaim; release; surrender; create a security interest in; grant options concerning; lease; sublease; or otherwise dispose of tangible personal property or an interest in tangible personal property;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(c). Grant a security interest in tangible personal property or an interest in tangible personal property as security to borrow money or pay, renew or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(d). Release, assign, satisfy or enforce by litigation or otherwise a security interest, lien or other claim on behalf of the principal with respect to tangible personal property or an interest in tangible personal property;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(e). Manage or conserve tangible personal property or an interest in tangible personal property on behalf of the principal, including:

(1). Insuring against liability or casualty or other loss; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(2). Obtaining or regaining possession of or protecting the property or interest by litigation or otherwise; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(3). Paying, assessing, compromising or contesting taxes or assessments or applying for and receiving refunds in connection with them; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(4). Moving the property from place to place; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(5). Storing the property for hire or on a gratuitous bailment; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(6). Using and making repairs, alterations or improvements to the property; and [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(7). Changing the form of title of an interest in tangible personal property. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

### SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

## §5-936. STOCKS AND BONDS

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to stocks and bonds authorizes the agent to: [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(a). Buy, sell and exchange stocks and bonds;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). Establish, continue, modify or terminate an account with respect to stocks and bonds;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(c). Pledge stocks and bonds as security to borrow, pay, renew or extend the time of payment of a debt of the principal;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(d). Receive certificates and other evidences of ownership with respect to stocks and bonds; and

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(e). Exercise voting rights with respect to stocks and bonds in person or by proxy, enter into voting trusts and consent to limitations on the right to vote.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

### SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

## §5-937. COMMODITIES AND OPTIONS

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to commodities and options authorizes the agent to: [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(a). Buy, sell, exchange, assign, settle and exercise commodity futures contracts and call or put options on stocks or stock indexes traded on a regulated option exchange; and

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). Establish, continue, modify and terminate option accounts.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

### SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

## §5-938. BANKS AND OTHER FINANCIAL INSTITUTIONS

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to banks and other financial institutions authorizes the agent to: [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

**(a).** Continue, modify and terminate an account or other banking arrangement made by or on behalf of the principal;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

**(b).** Establish, modify and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm or other financial institution selected by the agent;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

**(c).** Contract for services available from a financial institution, including renting a safe deposit box or space in a vault;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

**(d).** Withdraw, by check, order, electronic funds transfer or otherwise, money or property of the principal deposited with or left in the custody of a financial institution;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

**(e).** Receive statements of account, vouchers, notices and similar documents from a financial institution and act with respect to them;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

**(f).** Enter a safe deposit box or vault and withdraw or add to the contents;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

**(g).** Borrow money and pledge as security personal property of the principal necessary to borrow money or pay, renew or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

**(h).** Make, assign, draw, endorse, discount, guarantee and negotiate promissory notes, checks, drafts and other negotiable or nonnegotiable paper of the principal or payable to the principal or the principal's order, transfer money, receive the cash or other proceeds of those transactions and accept a draft drawn by a person upon the principal and pay it when due;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

**(i).** Receive for the principal and act upon a sight draft, warehouse receipt or other document of title, whether tangible or electronic, or other negotiable or nonnegotiable instrument;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

**(j).** Apply for, receive and use letters of credit, credit and debit cards, electronic transaction authorizations and traveler's checks from a financial institution and give an indemnity or other agreement in connection with letters of credit; and

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

(k). Consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

#### SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

### §5-939. OPERATION OF ENTITY OR BUSINESS

Subject to the terms of a document or an agreement governing an entity or an entity ownership interest, and unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to operation of an entity or business authorizes the agent to: [ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(a). Operate, buy, sell, enlarge, reduce or terminate an ownership interest;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). Perform a duty or discharge a liability and exercise in person or by proxy a right, power, privilege or option that the principal has, may have or claims to have;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(c). Enforce the terms of an ownership agreement;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(d). Initiate, participate in, submit to alternative dispute resolution, settle, oppose or propose or accept a compromise with respect to litigation to which the principal is a party because of an ownership interest;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(e). Exercise in person or by proxy, or enforce by litigation or otherwise, a right, power, privilege or option the principal has or claims to have as the holder of stocks and bonds;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(f). Initiate, participate in, submit to alternative dispute resolution, settle, oppose or propose or accept a compromise with respect to litigation to which the principal is a party concerning stocks and bonds;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(g). With respect to an entity or business owned solely by the principal:

(1). Continue, modify, renegotiate, extend and terminate a contract made by or on behalf of the principal with respect to the entity or business before execution of the power of attorney; [ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(2). Determine:

(i) The location of its operation;

(ii) The nature and extent of its business;

(iii) The methods of manufacturing, selling, merchandising, financing, accounting and advertising employed in its operation;

(iv) The amount and types of insurance carried; and

(v) The mode of engaging, compensating and dealing with its employees and accountants, attorneys or other advisors; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(3). Change the name or form of organization under which the entity or business is operated and enter into an ownership agreement with other persons to take over all or part of the operation of the entity or business; and [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(4). Demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the entity or business and control and disburse the money in the operation of the entity or business; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(h). Put additional capital into an entity or business in which the principal has an interest;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(i). Join in a plan of reorganization, consolidation, conversion, domestication or merger of the entity or business;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(j). Sell or liquidate all or part of an entity or business;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(k). Establish the value of an entity or business under a buy-out agreement to which the principal is a party;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(l). Prepare, sign, file and deliver reports, compilations of information, returns or other papers with respect to an entity or business and make related payments; and

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(m). Pay, compromise or contest taxes, assessments, fines or penalties and perform any other act to protect the principal from illegal or unnecessary taxation, assessments, fines or penalties, with respect to an entity or business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

#### SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

## §5-940. INSURANCE AND ANNUITIES

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to insurance and annuities authorizes the agent to: [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(a). Continue, pay the premium or make a contribution on, modify, exchange, rescind, release or terminate a contract procured by or on behalf of the principal that insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

(b). Procure new, different and additional contracts of insurance and annuities for the principal and the principal's spouse, registered domestic partner, children and other dependents and select the amount, type of insurance or annuity and mode of payment;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

(c). Pay the premium or make a contribution on, modify, exchange, rescind, release or terminate a contract of insurance or annuity procured by the agent;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

(d). Apply for and receive a loan secured by a contract of insurance or annuity;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

(e). Surrender and receive the cash surrender value on a contract of insurance or annuity;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

(f). Exercise an election;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

(g). Exercise investment powers available under a contract of insurance or annuity;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

(h). Change the manner of paying premiums on a contract of insurance or annuity;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

(i). Change or convert the type of insurance or annuity with respect to which the principal has or claims to have authority described in this section;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

(j). Apply for and procure a benefit or assistance under a statute or regulation to guarantee or pay premiums of a contract of insurance on the life of the principal;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

(k). Collect, sell, assign, hypothecate, borrow against or pledge the interest of the principal in a contract of insurance or annuity;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

(l). Select the form and timing of the payment of proceeds from a contract of insurance or annuity; and

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

(m). Pay, from proceeds or otherwise, compromise or contest, and apply for refunds in connection with, a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

#### SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

### §5-941. ESTATES, TRUSTS AND OTHER BENEFICIAL INTERESTS

(a). As used in this section, "estate, trust and other beneficial interest" means a trust, probate estate, guardianship, conservatorship, escrow or custodianship or a fund from which the principal is, may become or claims to be entitled to a share or payment.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to estates, trusts and other beneficial interests authorizes the agent to:

(1). Accept, receive, receipt for, sell, assign, pledge or exchange a share in or payment from the fund;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(2). Demand or obtain money or another thing of value to which the principal is, may become or claims to be entitled by reason of the fund, by litigation or otherwise; [2009, c. 292, §2 (NEW);

2009, c. 292, §6 (AFF).]

(3). Exercise for the benefit of the principal a presently exercisable general power of appointment held by the principal; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(4). Initiate, participate in, submit to alternative dispute resolution, settle, oppose or propose or accept a compromise with respect to litigation to ascertain the meaning, validity or effect of a deed, will, declaration of trust or other instrument or transaction affecting the interest of the principal; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(5). Initiate, participate in, submit to alternative dispute resolution, settle, oppose or propose or accept a compromise with respect to litigation to remove, substitute or surcharge a fiduciary; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(6). Conserve, invest, disburse or use anything received for an authorized purpose; and [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(7). Transfer an interest of the principal in real property, stocks and bonds, accounts with financial institutions or securities intermediaries, insurance, annuities and other property to the trustee of a revocable trust created by the principal as settler. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

#### SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

### §5-942. CLAIMS AND LITIGATION

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to claims and litigation authorizes the agent to: [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]



**(a).** Assert and maintain before a court or administrative agency a claim, claim for relief, cause of action, counterclaim, offset, recoupment or defense, including an action to recover property or other thing of value, recover damages sustained by the principal, eliminate or modify tax liability or seek an injunction, specific performance or other relief;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

**(b).** Bring an action to determine adverse claims or intervene or otherwise participate in litigation;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

**(c).** Seek an attachment, garnishment, order of arrest or other preliminary, provisional or intermediate relief and use an available procedure to effect or satisfy a judgment, order or decree;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

**(d).** Make or accept a tender, offer of judgment or admission of facts, submit a controversy on an agreed statement of facts, consent to examination and bind the principal in litigation;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

**(e).** Submit to alternative dispute resolution, settle and propose or accept a compromise;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

**(f).** Waive the issuance and service of process upon the principal, accept service of process, appear for the principal, designate persons upon which process directed to the principal may be served, execute and file or deliver stipulations on the principal's behalf, verify pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and pay for the preparation and printing of records and briefs, receive, execute and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement or other instrument in connection with the prosecution, settlement or defense of a claim or litigation;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

**(g).** Act for the principal with respect to bankruptcy or insolvency, whether voluntary or involuntary, concerning the principal or some other person, or with respect to a reorganization, receivership or application for the appointment of a receiver or trustee that affects an interest of the principal in property or other thing of value;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

**(h).** Pay a judgment, award or order against the principal or a settlement made in connection with a claim or litigation; and

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

**(i).** Receive money or other thing of value paid in settlement of or as proceeds of a claim or litigation.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) . ]

#### SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

**§5-943. PERSONAL AND FAMILY MAINTENANCE**

(a). Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to personal and family maintenance authorizes the agent to:

- (1). Perform the acts necessary to maintain the customary standard of living of the principal, the principal's spouse or the principal's registered domestic partner and the following individuals, whether living when the power of attorney is executed or later born:
  - (i) Individuals legally entitled to be supported by the principal; and
  - (ii) Individuals whom the principal has customarily supported or indicated the intent to support; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]
- (2). Make periodic payments of child support and other family maintenance required by a court or governmental agency or an agreement to which the principal is a party; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]
- (3). Provide living quarters for the individuals described in paragraph (1) by:
  - (i) Purchase, lease or other contract; or
  - (ii) Paying the operating costs, including interest, amortization payments, repairs, improvements and taxes, for premises owned by the principal or occupied by those individuals; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]
- (4). Provide normal domestic help, usual vacations and travel expenses and funds for shelter, clothing, food, appropriate education, including postsecondary and vocational education, and other current living costs for the individuals described in paragraph (1); [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]
- (5). Pay expenses for necessary health care and custodial care on behalf of the individuals described in paragraph (1); [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]
- (6). Act as the principal's personal representative pursuant to the federal Health Insurance Portability and Accountability Act of 1996, 42 United States Code, Section 1320d et seq., as amended, and applicable regulations, in making decisions related to the past, present or future payment for the provision of health care consented to by the principal or anyone authorized under the law of this State to consent to health care on behalf of the principal; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]
- (7). Continue any provision made by the principal for automobiles or other means of transportation, including registering, licensing, insuring and replacing them, for the individuals described in paragraph (1); [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]
- (8). Maintain credit and debit accounts for the convenience of the individuals described in paragraph (1) and open new accounts; and [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]
- (9). Continue payments incidental to the membership or affiliation of the principal in a religious institution, club, society, order or other organization or to continue contributions to those organizations. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). Authority with respect to personal and family maintenance is neither dependent upon, nor limited by, authority that an agent may or may not have with respect to gifts under this Part.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

## SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

## §5-944. BENEFITS FROM GOVERNMENTAL PROGRAMS OR CIVIL OR MILITARY SERVICE

(a). As used in this section, "benefit from governmental programs or civil or military service" means any benefit, program or assistance provided under a statute, rule or regulation including Social Security, Medicare and Medicaid.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to benefits from governmental programs or civil or military service authorizes the agent to:

(1). Execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or subdivision of a state to the principal, including allowances and reimbursements for transportation of the individuals described in section 5-943, subsection (a), paragraph (1) and for shipment of their household effects; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(2). Take possession and order the removal and shipment of property of the principal from a post, warehouse, depot, dock or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate or other instrument for that purpose; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(3). Enroll in, apply for, select, reject, change, amend or discontinue, on the principal's behalf, a benefit or program; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(4). Prepare, file and maintain a claim of the principal for a benefit or assistance, financial or otherwise, to which the principal may be entitled under a statute, rule or regulation; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(5). Initiate, participate in, submit to alternative dispute resolution, settle, oppose or propose or accept a compromise with respect to litigation concerning any benefit or assistance the principal may be entitled to receive under a statute, rule or regulation; and [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(6). Receive the financial proceeds of a claim described in paragraph (4) and conserve, invest, disburse or use for a lawful purpose anything so received. [2009, c. 652, Pt. A, §18 (AMD).]

[ 2009, c. 652, Pt. A, §18 (AMD) .]

### SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF). 2009, c. 652, Pt. A, §18 (AMD).

## §5-945. RETIREMENT PLANS

(a). As used in this section, "retirement plan" means a plan or account created by an employer, the principal or another individual to provide retirement benefits or deferred compensation of which the principal is a participant, beneficiary or owner, including a plan or account under the following sections of the federal Internal Revenue Code:

(1). An individual retirement account under 26 United States Code, Section 408, as amended; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(2). A Roth individual retirement account under 26 United States Code, Section 408A, as amended; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(3). A deemed individual retirement account under 26 United States Code, Section 408(q), as amended; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(4). An annuity or mutual fund custodial account under 26 United States Code, Section 403(b), as amended; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(5). A pension, profit-sharing, stock bonus or other retirement plan qualified under 26 United States Code, Section 401(a), as amended; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(6). A plan under 26 United States Code, Section 457(b), as amended; and [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(7). A nonqualified deferred compensation plan under 26 United States Code, Section 409A, as amended. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

**(b).** Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to retirement plans authorizes the agent to:

(1). Select the form and timing of payments under a retirement plan and withdraw benefits from a plan; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(2). Make a rollover, including a direct trustee-to-trustee rollover, of benefits from one retirement plan to another; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(3). Establish a retirement plan in the principal's name; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(4). Make contributions to a retirement plan; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(5). Exercise investment powers available under a retirement plan; and [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(6). Borrow from, sell assets to or purchase assets from a retirement plan. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

#### SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

## §5-946. TAXES

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to taxes authorizes the agent to: [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

**(a).** Prepare, sign and file federal, state, local and foreign income, gift, payroll, property, Federal Insurance Contributions Act and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters and any other tax-related documents, including receipts, offers, waivers, consents, including consents and agreements under 26 United States Code, Section 2032A, as amended, closing agreements and any power of attorney required by the federal Internal Revenue Service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and the following 25 tax years;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). Pay taxes due, collect refunds, post bonds, receive confidential information and contest deficiencies determined by the federal Internal Revenue Service or other taxing authority;

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(c). Exercise any election available to the principal under federal, state, local or foreign tax law; and

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(d). Act for the principal in all tax matters for all periods before the federal Internal Revenue Service or other taxing authority.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

**§5-947. GIFTS**

(a). As used in this section, a gift "for the benefit of" a person includes a gift to a trust, an account under the Maine Uniform Transfers to Minors Act and a tuition savings account or prepaid tuition plan as defined under 26 United States Code, Section 529, as amended.

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

(b). An agent may make a gift of the principal's property only as the agent determines is consistent with the principal's objectives if known by the agent and, if unknown, as the agent determines is consistent with the principal's objectives based on all relevant factors, including:

- (1). The value and nature of the principal's property; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]
- (2). The principal's foreseeable obligations and need for maintenance; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]
- (3). Minimization of taxes, including income, estate, inheritance, generation-skipping transfer and gift taxes; [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]
- (4). Eligibility for a benefit, a program or assistance under a statute, rule or regulation; and [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]
- (5). The principal's personal history of making or joining in making gifts. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF) .]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

**Subpart 3: STATUTORY FORMS**

**§5-951. AGENT'S CERTIFICATION**

The following optional form may be used by an agent to certify facts concerning a power of attorney.

*AGENT'S CERTIFICATION AS TO THE VALIDITY OF  
POWER OF ATTORNEY AND AGENT'S AUTHORITY*

State of .....

County of .....

I, .....(Name of Agent), certify under penalty of perjury that .....(Name of Principal) granted me authority as an agent or successor agent in a power of attorney dated ..... I further certify that to my knowledge:

(1) The Principal is alive and has not revoked the Power of Attorney or my authority to act under the Power of Attorney and the Power of Attorney and my authority to act under the Power of Attorney have not terminated;

(2) If the Power of Attorney was drafted to become effective upon the happening of an event or contingency, the event or contingency has occurred;

(3) If I was named as a successor agent, the prior agent is no longer able or willing to serve; and

(4)

.....  
.....  
.....  
.....

(Insert other relevant statements)

*SIGNATURE AND ACKNOWLEDGMENT*

.....  
Agent's Signature

Date

.....  
Agent's Name Printed

.....  
Agent's Address

.....  
Agent's Telephone Number

This document was acknowledged before me on .....

(Date)

by .....  
(name of Agent)

..... (Seal, if any)

Signature of Notary/Attorney

My commission expires: .....

This document prepared by:  
.....

[ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF). ]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

**Subpart 4: MISCELLANEOUS PROVISIONS**

**§5-961. UNIFORMITY OF APPLICATION AND CONSTRUCTION**

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it. [ 2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF). ]

SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

## **§5-962. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT**

This Part modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 United States Code, Section 7001 et seq., but does not modify, limit or supersede 15 United States Code, Section 7001(c), or authorize electronic delivery of any of the notices described in 15 United States Code, Section 7003(b). [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

### SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

## **§5-963. EFFECT ON EXISTING POWERS OF ATTORNEY**

Except as otherwise provided in this Part, on July 1, 2010: [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(a). This Part applies to a power of attorney created before, on or after July 1, 2010;

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(b). This Part applies to a judicial proceeding concerning a power of attorney commenced on or after July 1, 2010; and

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

(c). This Part applies to a judicial proceeding concerning a power of attorney commenced before July 1, 2010, unless the court finds that application of a provision of this Part would substantially interfere with the effective conduct of the judicial proceeding or prejudice the rights of a party, in which case that provision does not apply and the superseded law applies.

[2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

An act done before July 1, 2010 is not affected by this Part. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

### SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

## **§5-964. EFFECTIVE DATE**

This Part takes effect July 1, 2010. [2009, c. 292, §2 (NEW); 2009, c. 292, §6 (AFF).]

### SECTION HISTORY

2009, c. 292, §2 (NEW). 2009, c. 292, §6 (AFF).

## Article 6: NONPROBATE TRANSFERS

### Part 1: MULTIPLE-PARTY ACCOUNTS

#### §6-101. DEFINITIONS

In this Part, unless the context otherwise requires: [1979, c. 540, §1 (NEW).]

(1). "Account" means a contract between a customer and a financial institution in the nature of a deposit of funds primarily to be used in its banking business, whether or not insured, and includes a checking account, savings account, certificate of deposit, share account, repurchase agreement and other like arrangement;

[ 1981, c. 560, (RPR) .]

(2). "Beneficiary" means a person named in a trust account as one for whom a party to the account is named as trustee;

[ 1979, c. 540, §1 (NEW) .]

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

[ 1979, c. 540, §1 (NEW) .]

(4). "Joint account" means an account payable on request to one or more of 2 or more parties whether or not mention is made of any right of survivorship;

[ 1979, c. 540, §1 (NEW) .]

(5). A "multiple-party account" is any of the following types of account: (i) a joint account, (ii) a P.O.D. account, or (iii) a trust account. It does not include accounts established for deposit of funds of a partnership, joint venture, or other association for business purposes, or accounts controlled by one or more persons as the duly authorized agent or trustee for a corporation, unincorporated association, charitable or civic organization or a regular fiduciary or trust account where the relationship is established other than by deposit agreement;

[ 1979, c. 540, §1 (NEW) .]

(6). "Net contribution" of a party to a joint account as of any given time is the sum of all deposits thereto made by or for him, less all withdrawals made by or for him which have not been paid to or applied to the use of any other party, plus a pro rata share of any interest or dividends included in the current balance. The term includes, in addition, any proceeds of deposit life insurance added to the account by reason of the death of the party whose net contribution is in question;

[ 1979, c. 540, §1 (NEW) .]

(7). "Party" means a person who, by the terms of the account, has a present right, subject to request, to payment from a multiple-party account. A P.O.D. payee or beneficiary of a trust account is a party only after the account becomes payable to him by reason of his surviving the original payee or trustee. Unless the context otherwise requires, it includes a guardian, conservator, personal representative, or assignee, including



an attaching creditor, of a party. It also includes a person identified as a trustee of an account for another whether or not a beneficiary is named, but it does not include any named beneficiary unless he has a present right of withdrawal;

[ 1979, c. 540, §1 (NEW) . ]

**(8).** "Payment" of sums on deposit includes withdrawal, payment on check or other directive of a party, and any pledge of sums on deposit by a party and any set-off, or reduction or other disposition of all or part of an account pursuant to a pledge;

[ 1979, c. 540, §1 (NEW) . ]

**(9).** "Proof of death" includes a death certificate or record or report which is prima facie proof of death under section 1-107;

[ 1979, c. 540, §1 (NEW) . ]

**(10).** "P.O.D. account" ["payable on death account"] means an account payable on request to one person during lifetime and on his death to one or more P.O.D. payees, or to one or more persons during their lifetimes and on the death of all of them to one or more P.O.D. payees;

[ 1979, c. 540, §1 (NEW) . ]

**(11).** "P.O.D. payee" ["payable on death payee"] means a person designated on a P.O.D. account as one to whom the account is payable on request after the death of one or more persons;

[ 1979, c. 540, §1 (NEW) . ]

**(12).** "Request" means a proper request for withdrawal, or a check or order for payment, which complies with all conditions of the account, including special requirements concerning necessary signatures and regulations of the financial institution; but if the financial institution conditions withdrawal or payment on advance notice, for purposes of this Part the request for withdrawal or payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for withdrawal;

[ 1979, c. 540, §1 (NEW) . ]

**(13).** "Sums on deposit" means the balance payable on a multiple-party account including interest, dividends, and in addition any deposit life insurance proceeds added to the account by reason of the death of a party;

[ 1979, c. 540, §1 (NEW) . ]

**(14).** "Trust account" means an account in the name of one or more parties as trustee for one or more beneficiaries where the relationship is established by the form of the account and the deposit agreement with the financial institution and there is no subject of the trust other than the sums on deposit in the account; it is not essential that payment to the beneficiary be mentioned in the deposit agreement. A trust account does not include a regular trust account under a testamentary trust or a trust agreement which has significance apart from the account, or a fiduciary account arising from a fiduciary relation such as attorney-client;

[ 1979, c. 540, §1 (NEW) . ]

(15). "Withdrawal" includes payment to a 3rd person pursuant to check or other directive of a party.

[ 1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1981, c. 560, (AMD).

### **§6-102. OWNERSHIP AS BETWEEN PARTIES, AND OTHERS; PROTECTION OF FINANCIAL INSTITUTIONS**

The provisions of sections 6-103 to 6-105 concerning beneficial ownership as between parties, or as between parties and P.O.D. payees or beneficiaries of multiple-party accounts, are relevant only to controversies between these persons and their creditors and other successors, and have no bearing on the power of withdrawal of these persons as determined by the terms of account contracts. The provisions of sections 6-108 to 6-113 govern the liability of financial institutions who make payments pursuant thereto, and their set-off rights. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§6-103. OWNERSHIP DURING LIFETIME**

(a). A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contribution by each to the sums on deposit, unless there is clear and convincing evidence of a different intent.

[ 1979, c. 540, (NEW) .]

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

[ 1979, c. 540, §1 (NEW) .]

(c). Unless a contrary intent is manifested by the terms of the account or the deposit agreement or there is other clear and convincing evidence of an irrevocable trust, a trust account belongs beneficially to the trustee during his lifetime, and if 2 or more parties are named as trustee on the account, during their lifetimes beneficial rights as between them are governed by subsection (a) of this section. If there is an irrevocable trust, the account belongs beneficially to the beneficiary.

[ 1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§6-104. RIGHT OF SURVIVORSHIP**

(a). Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties as against the estate of the decedent unless there is clear and convincing evidence of a different intention at the time the account is created. If there are 2 or more surviving parties, their respective

ownerships during lifetime shall be in proportion to their previous ownership interests under section 6-103 augmented by an equal share for each survivor of any interest the decedent may have owned in the account immediately before his death; and the right of survivorship continues between the surviving parties.

[ 1979, c. 540, §1 (NEW) . ]

(b). If the account is a P.O.D. account;

(1). On death of one of 2 or more original payees the rights to any sums remaining on deposit are governed by subsection (a); [1979, c. 540, §1 (NEW) . ]

(2). On death of the sole original payee or of the survivor of 2 or more original payees, any sums remaining on deposit belong to the P.O.D. payee or payees in equal and undivided shares if surviving, or to the survivor of them if one or more die before the original payee; if 2 or more P.O.D. payees survive, there is no right of survivorship in the event of death of a P.O.D. payee thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them. [1979, c. 540, §1 (NEW) . ]

[ 1979, c. 540, §1 (NEW) . ]

(c). If the account is a trust account:

(1). On death of one of 2 or more trustees, the rights to any sums remaining on deposit are governed by subsection (a); [1979, c. 540, §1 (NEW) . ]

(2). On the death of the sole trustee or the survivor of 2 or more trustees, any sums remaining on deposit belong to the person or persons named as beneficiaries in equal and undivided shares, if surviving, or to the survivor of them if one or more die before the trustee, unless there is clear and convincing evidence of a contrary intent; if 2 or more beneficiaries survive, there is no right of survivorship in event of death of any beneficiary thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them. [1979, c. 540, §1 (NEW) . ]

[ 1979, c. 540, §1 (NEW) . ]

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

[ 1979, c. 540, §1 (NEW) . ]

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

[ 1979, c. 540, §1 (NEW) . ]

#### SECTION HISTORY

1979, c. 540, §1 (NEW) .

### **§6-105. EFFECT OF WRITTEN NOTICE TO FINANCIAL INSTITUTION**

The provisions of section 6-104 as to rights of survivorship are determined by the form of the account at the death of a party. This form may be altered by written order given by a party to the financial institution to change the form of the account or to stop or vary payment under the terms of the account. The order or request must be signed by a party, received by the financial institution during the party's lifetime, and not countermanded by other written order of the same party during his lifetime. [1979, c. 540, §1 (NEW) . ]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

## **§6-106. ACCOUNTS AND TRANSFERS NONTESTAMENTARY**

Any transfers resulting from the application of section 6-104 are effective by reason of the account contracts involved and this statute and are not to be considered as testamentary or subject to Articles I through IV, except as provided in sections 2-201 through 2-207, and except as a consequence of, and to the extent directed by, section 6-107. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## **§6-107. RIGHTS OF CREDITORS**

No multiple-party account will be effective against an estate of a deceased party to transfer to a survivor sums needed to pay debts, taxes, and expenses of administration, including statutory allowances to the surviving spouse, minor children and dependent children, if other assets of the estate are insufficient. A surviving party, P.O.D. payee, or beneficiary who receives payment from a multiple-party account after the death of a deceased party shall be liable to account to his personal representative for amounts the decedent owned beneficially immediately before his death to the extent necessary to discharge the claims and charges mentioned above remaining unpaid after application of the decedent's estate. No proceeding to assert this liability shall be commenced later than 2 years following the death of the decedent. Sums recovered by the personal representative shall be administered as part of the decedent's estate. This section shall not affect the right of a financial institution to make payment on multiple-party accounts according to the terms thereof, or make it liable to the estate of a deceased party unless before payment the institution has been served with process in a proceeding by the personal representative. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## **§6-108. FINANCIAL INSTITUTION PROTECTION; PAYMENT ON SIGNATURE OF ONE PARTY**

Financial institutions may enter into multiple-party accounts to the same extent that they may enter into single-party accounts. Any multiple-party account may be paid, on request, to any one or more of the parties. A financial institution shall not be required to inquire as to the source of funds received for deposit to a multiple-party account, or to inquire as to the proposed application of any sum withdrawn from an account, for purposes of establishing net contributions. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## **§6-109. FINANCIAL INSTITUTION PROTECTION; PAYMENT AFTER DEATH OR DISABILITY; JOINT ACCOUNT**

Any sums in a joint account may be paid, on request, to any party without regard to whether any other party is incapacitated or deceased at the time the payment is demanded; but payment may not be made to the personal representative or heirs of a deceased party unless proofs of death are presented to the financial institution showing that the decedent was the last surviving party or unless there is no right of survivorship under section 6-104. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§6-110. FINANCIAL INSTITUTION PROTECTION; PAYMENT OF P.O.D. ACCOUNT**

Any P.O.D. account may be paid, on request, to any original party to the account. Payment may be made, on request, to the P.O.D. payee or to the personal representative or heirs of a deceased P.O.D. payee upon presentation to the financial institution of proof of death showing that the P.O.D. payee survived all persons named as original payees. Payment may be made to the personal representative or heirs of a deceased original payee if proof of death is presented to the financial institution showing that his decedent was the survivor of all other persons named on the account either as an original payee or as P.O.D. payee. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§6-111. FINANCIAL INSTITUTION PROTECTION; PAYMENT OF TRUST ACCOUNT**

Any trust account may be paid, on request, to any trustee. Unless the financial institution has received written notice that the beneficiary has a vested interest not dependent upon his surviving the trustee, payment may be made to the personal representative or heirs of a deceased trustee if proof of death is presented to the financial institution showing that his decedent was the survivor of all other persons named on the account either as trustee or beneficiary. Payment may be made, on request, to the beneficiary upon presentation to the financial institution of proof of death showing that the beneficiary or beneficiaries survived all persons named as trustees. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§6-112. FINANCIAL INSTITUTION PROTECTION; DISCHARGE**

Payment made pursuant to Sections 6-108, 6-109, 6-110 or 6-111 discharges the financial institution from all claims for amounts so paid whether or not the payment is consistent with the beneficial ownership of the account as between parties, P.O.D. payees, or beneficiaries, or their successors. The protection here given does not extend to payments made after a financial institution has received written notice from any party able to request present payment to the effect that withdrawals in accordance with the terms of the account should not be permitted. Unless the notice is withdrawn by the person giving it, the successor of any deceased party must concur in any demand for withdrawal if the financial institution is to be protected under this section. No other notice or any other information shown to have been available to a financial institution shall affect its right to the protection provided here. The protection here provided shall have no bearing on the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of funds in, or withdrawn from, multiple-party accounts. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§6-113. FINANCIAL INSTITUTION PROTECTION; SET-OFF**

Without qualifying any other statutory right to set-off or lien and subject to any contractual provision, if a party to a multiple-party account is indebted to a financial institution, the financial institution has a right to set-off against the account in which the party has or had immediately before his death a present right of withdrawal. The amount of the account subject to set-off is that proportion to which the debtor is, or was immediately before his death, beneficially entitled, and in the absence of proof of net contributions, to an equal share with all parties having present rights of withdrawal. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

## Part 2: PROVISIONS RELATING TO EFFECT OF DEATH

### §6-201. PROVISIONS FOR PAYMENT OR TRANSFER AT DEATH

(a). Any of the following provisions in an insurance policy, contract of employment, bond, mortgage, promissory note, deposit agreement, pension plan, trust agreement, conveyance or any other written instrument effective as a contract, gift, conveyance, or trust is deemed to be nontestamentary, and this Code does not invalidate the instrument or any provision:

- (1). That money or other benefits theretofore due to, controlled or owned by a decedent shall be paid after his death to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently; [1979, c. 540, §1 (NEW).]
- (2). That any money due or to become due under the instrument shall cease to be payable in event of the death of the promisee or the promisor before payment or demand; or [1979, c. 540, §1 (NEW).]
- (3). That any property which is the subject of the instrument shall pass to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently. [1979, c. 540, §1 (NEW).]

[ 1979, c. 540, §1 (NEW) .]

(b). Nothing in this section limits the rights of creditors under other laws of this State.

[ 1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

## Part 3: UNIFORM TRANSFER ON DEATH SECURITY REGISTRATION ACT

### §6-301. SHORT TITLE

This Part may be known and cited as the "Uniform Transfer on Death Security Registration Act."  
[1997, c. 627, §1 (NEW).]

#### SECTION HISTORY

1997, c. 627, §1 (NEW).

### §6-302. DEFINITIONS

As used in this Part, unless the context otherwise indicates, the following terms have the following meanings. [1997, c. 627, §1 (NEW).]

(a). "Beneficiary form" means a registration of a security that indicates the present owner of the security and the intention of the owner regarding the person who becomes the owner of the security upon the death of the owner.

[ 1997, c. 627, §1 (NEW) .]

(b). "Register," including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

[ 1997, c. 627, §1 (NEW) . ]

(c). "Registering entity" means a person who originates or transfers a security title by registration and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

[ 1997, c. 627, §1 (NEW) . ]

(d). "Security" means a share, participation or other interest in property, in a business or in an obligation of an enterprise or other issuer and includes a certificated security, an uncertificated security and a security account.

[ 1997, c. 627, §1 (NEW) . ]

(e). "Security account" means:

(1). A reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings or dividends earned or declared on a security in an account, a reinvestment account or a brokerage account, whether or not credited to the account before the owner's death; or [1997, c. 627, §1 (NEW).]

(2). A cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death. [1997, c. 627, §1 (NEW).]

[ 1997, c. 627, §1 (NEW) . ]

#### SECTION HISTORY

1997, c. 627, §1 (NEW).

### **§6-303. REGISTRATION IN BENEFICIARY FORM; SOLE OR JOINT TENANCY OWNERSHIP**

Only individuals whose registration of a security shows sole ownership by one individual or multiple ownership by 2 or more individuals with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form hold as joint tenants with right of survivorship and not as tenants in common. [1997, c. 627, §1 (NEW).]

#### SECTION HISTORY

1997, c. 627, §1 (NEW).

### **§6-304. REGISTRATION IN BENEFICIARY FORM; APPLICABLE LAW**

A security may be registered in beneficiary form if the form is authorized by this or a similar statute of the state of organization of the issuer or registering entity, the location of the registering entity's principal office, the office of its transfer agent or its office making the registration, or by this or a similar statute of the law of the state listed as the owner's address at the time of registration. A registration governed by the law of a jurisdiction in which this or similar legislation is not in force or was not in force when a registration in beneficiary form was made is nevertheless presumed to be valid and authorized as a matter of contract law. [1997, c. 627, §1 (NEW).]

#### SECTION HISTORY

1997, c. 627, §1 (NEW).

### **§6-305. ORIGATION OF REGISTRATION IN BENEFICIARY FORM**

A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners. [1997, c. 627, §1 (NEW).]

#### SECTION HISTORY

1997, c. 627, §1 (NEW).

### **§6-306. FORM OF REGISTRATION IN BENEFICIARY FORM**

Registration in beneficiary form may be shown by the words "transfer on death" or the abbreviation "TOD" after the name of the registered owner and before the name of a beneficiary. [1997, c. 627, §1 (NEW).]

#### SECTION HISTORY

1997, c. 627, §1 (NEW).

### **§6-307. EFFECT OF REGISTRATION IN BENEFICIARY FORM**

The designation of a TOD beneficiary on a registration in beneficiary form has no effect on ownership until the owner's death. A registration of a security in beneficiary form may be canceled or changed at any time by the sole owner or all then surviving owners without the consent of the beneficiary. [1997, c. 627, §1 (NEW).]

#### SECTION HISTORY

1997, c. 627, §1 (NEW).

### **§6-308. OWNERSHIP ON DEATH OF OWNER**

On death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survived the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners. [1997, c. 627, §1 (NEW).]

#### SECTION HISTORY

1997, c. 627, §1 (NEW).

### **§6-309. PROTECTION OF REGISTERING ENTITY**

(a). A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by this Part.

[ 1997, c. 627, §1 (NEW) .]



(b). By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on death of the deceased owner as provided in this Part.

[ 1997, c. 627, §1 (NEW) . ]

(c). A registering entity is discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner if it registers a transfer of the security in accordance with section 6-308 and does so in good faith reliance on the registration, on this Part and on information provided to it by affidavit of the personal representative of the deceased owner or by the surviving beneficiary or by the surviving beneficiary's representatives or other information available to the registering entity. The protections of this Part do not extend to a reregistration or payment made after a registering entity has received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under this Part.

[ 1997, c. 627, §1 (NEW) . ]

(d). The protection provided by this Part to the registering entity of a security does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds.

[ 1997, c. 627, §1 (NEW) . ]

#### SECTION HISTORY

1997, c. 627, §1 (NEW) .

## §6-310. NONTTESTAMENTARY TRANSFER ON DEATH

(a). A transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and this Part and is not testamentary or subject to Articles I through IV, except as provided in sections 2-201 through 2-207, and except as a consequence of, and to the extent directed by, subsection (b).

[ 1997, c. 627, §1 (NEW) . ]

(b). A registration in beneficiary form is not effective against an estate of a deceased owner to transfer to a survivor sums needed to pay debts, taxes and expenses of administration, including statutory allowances to the surviving spouse, minor children and dependent children, if other assets of the estate are insufficient. A surviving sole owner or beneficiary who receives a security after the death of a deceased owner is liable to account to the personal representative of the decedent's estate for amounts the decedent owned beneficially immediately before the decedent's death to the extent necessary to discharge the claims and charges mentioned above remaining unpaid after application of the decedent's estate. A proceeding to assert this liability may not be commenced later than 2 years following the death of the decedent. Sums recovered by the personal representative must be administered as part of the decedent's estate.

[ 1997, c. 627, §1 (NEW) . ]

#### SECTION HISTORY

1997, c. 627, §1 (NEW) .

## §6-311. TERMS, CONDITIONS AND FORMS FOR REGISTRATION

(a). A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it receives requests for registrations in beneficiary form and for implementation of registrations in beneficiary form, including requests for cancellation of previously registered TOD beneficiary designations and requests for reregistration to effect a change of beneficiary. The terms and conditions so established may provide for proving death, avoiding or resolving any problems concerning fractional shares, designating primary and contingent beneficiaries and substituting a named beneficiary's descendants to take in the place of the named beneficiary in the event of the beneficiary's death. Substitution may be indicated by appending to the name of the primary beneficiary the letters PCEG, standing for "per capita at each generation." This designation substitutes a deceased beneficiary's descendants who survive the owner for a beneficiary who fails to so survive, the descendants to be identified and to share in accordance with the law of the beneficiary's domicile at the owner's death governing inheritance by descendants of an intestate. Other forms of identifying beneficiaries who are to take on one or more contingencies, and rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form, may be contained in a registering entity's terms and conditions.

[ 1997, c. 627, §1 (NEW) .]

(b). The following are illustrations of registrations in beneficiary form that a registering entity may authorize:

- (1). Sole owner - sole beneficiary: John S. Brown TOD (or POD) John S. Brown Jr.; [1997, c. 627, §1 (NEW) .]
- (2). Multiple owners - sole beneficiary: John S. Brown, Mary B. Brown JT TEN TOD John S. Brown Jr.; or [1997, c. 627, §1 (NEW) .]
- (3). Multiple owners - primary and secondary (substituted) beneficiaries by either:
  - (i) John S. Brown, Mary B. Brown, JT TEN TOD John S. Brown Jr. SUB BENE Peter Q. Brown; or
  - (ii) John S. Brown, Mary B. Brown JT TEN TOD John S. Brown Jr. PCEG. [1997, c. 627, §1 (NEW) .]

[ 1997, c. 627, §1 (NEW) .]

### SECTION HISTORY

1997, c. 627, §1 (NEW) .

## §6-312. CANCELLATION OF BENEFICIARY REGISTRATION BY WILL

Registrations in beneficiary form may be canceled by inclusion in the will of the sole owner or the last to die of multiple owners of a general reference that all such beneficiary forms be canceled or by specific reference to one or more securities or security accounts, but the terms of the revocation are not binding on a registering entity unless the registering entity has received written notice from any claimant to an interest in any security objecting to implementation of a registration in beneficiary form prior to the registering entity reregistering the security. If a beneficiary registration is canceled, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners. [1997, c. 627, §1 (NEW) .]

### SECTION HISTORY

1997, c. 627, §1 (NEW) .

## Article 7: TRUST ADMINISTRATION

### Part 1: TRUST REGISTRATION

#### §7-101. REGISTRATION OF TRUSTS

*(REPEALED)*

SECTION HISTORY

1979, c. 540, §1 (NEW). 2003, c. 618, §B20 (AFF). 2003, c. 618, §B9 (RP).

#### §7-102. REGISTRATION PROCEDURES

*(REPEALED)*

SECTION HISTORY

1979, c. 540, §1 (NEW). 2003, c. 618, §B20 (AFF). 2003, c. 618, §B9 (RP).

#### §7-103. EFFECT OF REGISTRATION

*(REPEALED)*

SECTION HISTORY

1979, c. 540, §1 (NEW). 2003, c. 618, §B20 (AFF). 2003, c. 618, §B9 (RP).

#### §7-104. PRINCIPAL PLACE OF ADMINISTRATION; JURISDICTION

*(REPEALED)*

SECTION HISTORY

1979, c. 540, §1 (NEW). 2003, c. 618, §B20 (AFF). 2003, c. 618, §B9 (RP).

#### §7-105. REGISTRATION, QUALIFICATION OF FOREIGN TRUSTEE

A foreign corporate trustee is required to qualify as a foreign corporation doing business in this State if it maintains the principal place of administration of any trust within the State. A foreign cotrustee is not required to qualify in this State solely because its cotrustee maintains the principal place of administration in this State. Unless otherwise doing business in this State, local qualification by a foreign trustee, corporate or individual, is not required in order for the trustee to receive distribution from a local estate or to hold, invest in, manage or acquire property located in this State, or maintain litigation. Nothing in this section affects a determination of what other acts require qualification as doing business in this State. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

### Part 2: JURISDICTION OF COURT CONCERNING TRUSTS

#### §7-201. COURT; JURISDICTION OVER TRUSTS

*(REPEALED)*

## SECTION HISTORY

1979, c. 540, §1 (NEW). 2003, c. 618, §B20 (AFF). 2003, c. 618, §B10 (RP).

**§7-202. TRUST PROCEEDINGS; VENUE**

*(REPEALED)*

## SECTION HISTORY

1979, c. 540, §1 (NEW). 2003, c. 618, §B20 (AFF). 2003, c. 618, §B10 (RP).

**§7-203. TRUST PROCEEDINGS; DISMISSAL OF MATTERS RELATING TO FOREIGN TRUSTS**

*(REPEALED)*

## SECTION HISTORY

1979, c. 540, §1 (NEW). 2003, c. 618, §B20 (AFF). 2003, c. 618, §B10 (RP).

**§7-204. COURT; CONCURRENT JURISDICTION OF LITIGATION INVOLVING TRUSTS AND 3RD PARTIES**

*(REPEALED)*

## SECTION HISTORY

1979, c. 540, §1 (NEW). 2003, c. 618, §B20 (AFF). 2003, c. 618, §B10 (RP).

**§7-205. PROCEEDINGS FOR REVIEW OF EMPLOYMENT OF AGENTS AND REVIEW OF COMPENSATION OF TRUSTEE AND EMPLOYEES OF TRUST**

*(REPEALED)*

## SECTION HISTORY

1979, c. 540, §1 (NEW). 1999, c. 571, §1 (AMD). 2003, c. 618, §B20 (AFF). 2003, c. 618, §B10 (RP).

**§7-206. TRUST PROCEEDINGS; INITIATION BY NOTICE; NECESSARY PARTIES**

*(REPEALED)*

## SECTION HISTORY

1979, c. 540, §1 (NEW). 2003, c. 618, §B20 (AFF). 2003, c. 618, §B10 (RP).

**Part 3: DUTIES AND LIABILITIES OF TRUSTEES****§7-301. GENERAL DUTIES NOT LIMITED**

*(REPEALED)*

## SECTION HISTORY

1979, c. 540, §1 (NEW). 2003, c. 618, §B20 (AFF). 2003, c. 618, §B11 (RP).

### **§7-302. TRUSTEE'S STANDARD OF CARE AND PERFORMANCE; FIDUCIARY INVESTMENTS AUTHORIZED**

*(REPEALED)*

#### SECTION HISTORY

1979, c. 540, §1 (NEW). RR 1993, c. 1, §41 (COR). 1995, c. 525, §4 (AFF). 1995, c. 525, §2 (RPR). 2003, c. 618, §B20 (AFF). 2003, c. 618, §B11 (RP).

### **§7-303. DUTY TO INFORM AND ACCOUNT TO BENEFICIARIES**

*(REPEALED)*

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 2003, c. 618, §B20 (AFF). 2003, c. 618, §B11 (RP).

### **§7-304. DUTY TO PROVIDE BOND**

*(REPEALED)*

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 2003, c. 618, §B20 (AFF). 2003, c. 618, §B11 (RP).

### **§7-305. TRUSTEE'S DUTIES; APPROPRIATE PLACE OF ADMINISTRATION; DEVIATION**

*(REPEALED)*

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 2003, c. 618, §B20 (AFF). 2003, c. 618, §B11 (RP).

### **§7-306. PERSONAL LIABILITY OF TRUSTEE TO 3RD PARTIES**

*(REPEALED)*

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 2003, c. 618, §B20 (AFF). 2003, c. 618, §B11 (RP).

### **§7-307. LIMITATIONS ON PROCEEDINGS AGAINST TRUSTEES AFTER FINAL ACCOUNT**

*(REPEALED)*

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 2003, c. 618, §B20 (AFF). 2003, c. 618, §B11 (RP).

## **Part 4: POWERS OF TRUSTEES**

**§7-401. POWERS OF TRUSTEE CONFERRED BY TRUST OR BY LAW***(REPEALED)*

## SECTION HISTORY

1979, c. 540, §1 (NEW). 2003, c. 618, §B20 (AFF). 2003, c. 618, §B12 (RP).

**§7-402. POWERS OF TRUSTEES CONFERRED BY THIS PART***(REPEALED)*

## SECTION HISTORY

1979, c. 540, §1 (NEW). 1997, c. 191, §§1,2 (AMD). 2001, c. 544, §1 (AMD). 2003, c. 618, §B20 (AFF). 2003, c. 618, §B13 (RP).

**§7-403. TRUSTEE'S OFFICE NOT TRANSFERABLE***(REPEALED)*

## SECTION HISTORY

1979, c. 540, §1 (NEW). 2003, c. 618, §B20 (AFF). 2003, c. 618, §B14 (RP).

**§7-404. POWER OF COURT TO PERMIT DEVIATION OR TO APPROVE TRANSACTIONS INVOLVING CONFLICT OF INTEREST***(REPEALED)*

## SECTION HISTORY

1979, c. 540, §1 (NEW). 2003, c. 618, §B20 (AFF). 2003, c. 618, §B14 (RP).

**§7-405. POWERS EXERCISABLE BY JOINT TRUSTEES; LIABILITY***(REPEALED)*

## SECTION HISTORY

1979, c. 540, §1 (NEW). 2003, c. 618, §B20 (AFF). 2003, c. 618, §B14 (RP).

**§7-406. THIRD PERSONS PROTECTED IN DEALING WITH TRUSTEE***(REPEALED)*

## SECTION HISTORY

1979, c. 540, §1 (NEW). 2003, c. 618, §B20 (AFF). 2003, c. 618, §B14 (RP).

**§7-407. PROHIBITIONS AND REQUIREMENTS APPLICABLE TO TRUSTS WHICH ARE PRIVATE FOUNDATIONS**

(a). In the administration of any trust which is a "private foundation" as defined in section 509 of the Internal Revenue Code of 1954, a "charitable trust" as defined in section 4947 (a)(1) of the Internal Revenue Code of 1954, or a "split-interest trust" as defined in section 4947 (a)(2) of the Internal Revenue Code of 1954, the following acts shall be prohibited:

(1). Engaging in any act of "self-dealing" as defined in section 4941 (d) of the Internal Revenue Code of 1954, which would give rise to any liability for the tax imposed by section 4941 (a) of the Internal Revenue Code of 1954; [1979, c. 540, §1 (NEW).]

(2). Retaining any "excess business holdings" as defined in section 4943 (c) of the Internal Revenue Code of 1954, which would give rise to any liability for the tax imposed by section 4943 (a) of the Internal Revenue Code of 1954; [1979, c. 540, §1 (NEW).]

(3). Making any investments which would jeopardize the carrying out of any of the exempt purposes of the trust, within the meaning of section 4944 of the Internal Revenue Code of 1954, so as to give rise to any liability for the tax imposed by section 4944 (a) of the Internal Revenue Code of 1954; and [1979, c. 540, §1 (NEW).]

(4). Making any "taxable expenditures" as defined in section 4945 (d) of the Internal Revenue Code of 1954, which would give rise to any liability for the tax imposed by section 4945 (a) of the Internal Revenue Code of 1954; [1979, c. 540, §1 (NEW).]

provided that this section shall not apply either to those split-interest trusts or to amounts thereof which are not subject to the prohibitions applicable to private foundations by reason of the provisions of section 4947 of the Internal Revenue Code of 1954.

[ 1979, c. 540, §1 (NEW) .]

(b). In the administration of any trust which is a "private foundation" or "charitable trust" as defined in subsection (a), there shall be distributed, for the purposes specified in the trust instrument, for each taxable year, amounts at least sufficient to avoid liability for the tax imposed by section 4942 (a) of the Internal Revenue Code of 1954.

[ 1979, c. 540, §1 (NEW) .]

(c). Subsections (a) and (b) shall not apply to any trust to the extent that a court of competent jurisdiction shall determine that such application would be contrary to the terms of the instrument governing such trust and that the trust instrument may not properly be changed to conform to such subsections.

[ 1979, c. 540, §1 (NEW) .]

(d). Nothing in this section shall impair the rights and powers of the courts or the Attorney General of this State with respect to any trust.

[ 1979, c. 540, §1 (NEW) .]

(e). All references to sections of the Internal Revenue Code of 1954 shall include future amendments to such sections and corresponding provisions of future internal revenue laws.

[ 1979, c. 540, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

## **§7-408. TRUSTEES AUTHORIZED TO INVEST TRUST FUNDS IN AFFILIATED INVESTMENTS; LIMITATIONS**

**1. Authorization.** Any association, corporation or financial institution authorized to exercise trust powers in this State while acting as a fiduciary is authorized to purchase for the fiduciary estate, directly from underwriters or distributors or in the secondary market, bonds or other securities underwritten or distributed by that association, corporation or financial institution or an affiliate or by any syndicate that includes

that association, corporation or financial institution and securities of any investment company registered under the federal Investment Company Act of 1940 for which that association, corporation or financial institution or any affiliate acts as advisor, distributor, transfer agent, registrar, sponsor, manager, shareholder servicing agent or custodian. Any person acting as a cofiduciary with any association, corporation or financial institution or an affiliate is authorized to consent to the investment in such interests.

[ 1993, c. 213, §1 (NEW) .]

**2. Limitations.** The authority granted pursuant to subsection 1 may not be exercised:

A. If the investment is prohibited by the instrument, judgment, decree or order creating the fiduciary relationship; or [1997, c. 203, §1 (AMD).]

B. Unless, in the case of cofiduciaries, the association, corporation or financial institution or an affiliate procures the consent of its cofiduciaries to the investment. [1997, c. 203, §1 (AMD).]

C. [1997, c. 203, §2 (RP).]

[ 1997, c. 203, §§1, 2 (AMD) .]

**3. Limitations on fees.**

[ 1997, c. 203, §3 (RP) .]

**4. Disclosures.** The disclosures required by this section must be provided by mailing a statement or letter to the last known address of each person to whom statements for the fiduciary estate are provided. The disclosures may be provided separately or as part of other documents of the fiduciary estate. If made part of other documents of the fiduciary estate, the disclosures must be printed clearly and conspicuously on these documents.

A. A trustee purchasing bonds or securities pursuant to this section shall disclose in writing any capacities in which the trustee or an affiliate acts for the issuer of those bonds or securities and that the trustee or an affiliate may have an interest in the underwriting or distribution of those bonds or securities. [1997, c. 203, §4 (NEW).]

B. If the securities purchased are shares of an investment company subject to this section, the trustee shall disclose the services provided and the receipt of compensation for those services before the initial purchase and annually. [1997, c. 203, §4 (NEW).]

[ 1997, c. 203, §4 (NEW) .]

#### SECTION HISTORY

1993, c. 213, §1 (NEW). 1997, c. 203, §§1-4 (AMD).

## Part 5: COMMON TRUST FUNDS

### §7-501. ESTABLISHMENT OF COMMON TRUST FUNDS

Any bank or trust company qualified to act as fiduciary in this State may establish and operate common trust funds for the purpose of furnishing investments to itself as fiduciary or to itself and others, as cofiduciaries; and for the purposes of furnishing investments to affiliated banks, within the meaning of section 1504 of the Internal Revenue Code, acting for themselves and others as cofiduciaries; and may, as such fiduciary or cofiduciary or acting for affiliated banks alone or with their cofiduciaries; invest funds which are lawfully held for investment in interests in such common trust funds, if such investment is not prohibited by the instrument, judgment, decree or order creating such fiduciary relationship, and if, in the case of cofiduciaries, the bank or trust company or affiliate procures the consent of its cofiduciaries to such investment. Any person acting as a cofiduciary with any such bank or trust company or affiliate is authorized to consent to the investment in such interests. [1979, c. 540, §1 (NEW).]



As used in this Part, "common trust fund" means any trust or fund maintained by a bank or trust company exclusively for the collective investment or reinvestment of money contributed thereto by the bank or trust company, or an affiliated bank or trust company, as a fiduciary, including a trustee of any trust or fund for the primary purpose of paying employee benefits of any kind. [1989, c. 661, §9 (NEW).]

As used in this Part, "fiduciary" includes trustee, executor, administrator, guardian and custodian under a uniform transfers to minors act. [1989, c. 661, §9 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 1989, c. 661, §9 (AMD).

### **§7-502. COURT ACCOUNTINGS**

Unless ordered by decree of the Superior Court, the bank or trust company operating such common trust funds is not required to render a court accounting with regard to such funds; but it, as accountant, may by petition to the Superior Court or the probate court, in the county where the accountant has its principal place of business, secure approval of such accounting on such conditions as the court may establish. Whenever a petition for the allowance of such an account is presented, the court having jurisdiction thereof shall assign a time and place for hearing and shall cause public notice thereof to be given, meaning thereby notice published 3 weeks successively in a newspaper published in the county whose court has jurisdiction. In addition thereto said court shall, except to such extent as the several instruments creating the trusts participating in such common trust fund provide otherwise, order personal notice upon all known beneficiaries of the participating trust estates who have a place of residence known to the accountant. Personal notice to known beneficiaries having a place of residence known to the accountant shall denote service by a written notice deposited in the mails addressed to each such known beneficiary at such known place of residence at least 14 days before the time of hearing, or by a written notice either in hand or left at such known place of residence 14 days at least before the time of hearing. The method of service and the form of such notice shall be as the court shall order. "Place of residence known to the accountant" as used in this section shall include only places of residence actually known to the accountant, and shall not include residences which could be discovered upon investigation but which do not in the due course of business come to the actual knowledge of the accountant. The allowance of such an account shall be conclusive as to all matters shown therein upon all persons then or thereafter interested in the funds invested in said common trust funds. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§7-503. APPLICATION OF PART**

This Part shall apply to fiduciary relationships in existence on September 1, 1951 or thereafter established. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

## **Part 6: BANK AND TRUST COMPANY NOMINEES**

### **§7-601. REGISTRATION IN NAME OF NOMINEES**

Any state or national bank or trust company, when acting in this State as a fiduciary or co-fiduciary with others, may with the consent of its co-fiduciary or co-fiduciaries, if any, who are authorized to give such consent, cause any investment held in any such capacity to be registered and held in the name of a nominee or nominees of such bank or trust company. Such bank or trust company shall be liable for the acts of any

such nominee with respect to any investment so registered. The term "fiduciary" as used in this section shall include, but not be limited to, personal representatives, guardians, conservators, trustees, agents, custodians and each of them. [1979, c. 540, §1 (NEW).]

## SECTION HISTORY

1979, c. 540, §1 (NEW).

**§7-602. SEPARATE RECORDS**

The records of such bank or trust company shall at all times show the ownership of any such investment, which investment shall be in the possession and control of such bank or trust company and be kept separate and apart from the assets of such bank or trust company. [1979, c. 540, §1 (NEW).]

## SECTION HISTORY

1979, c. 540, §1 (NEW).

**§7-603. APPLICABILITY OF PROVISIONS**

This Part shall govern fiduciaries and cofiduciaries acting under wills, agreements, court orders and other instruments now existing or hereafter made. Nothing contained in this Part shall be construed as authorizing any departure from or variation of the express words or limitations set forth in any will, agreement, court order or other instrument creating or defining the fiduciary's duties and powers. [1979, c. 540, §1 (NEW).]

## SECTION HISTORY

1979, c. 540, §1 (NEW).

**Part 7: UNIFORM PRINCIPAL AND INCOME ACT OF 1997****Subpart 1: DEFINITIONS AND FIDUCIARY DUTIES****§7-701. SHORT TITLE**

This Part may be cited as the "Uniform Principal and Income Act of 1997." [2001, c. 544, §2 (NEW).]

## SECTION HISTORY

2001, c. 544, §2 (NEW).

**§7-702. DEFINITIONS**

As used in this Part, unless the context otherwise indicates, the following terms have the following meanings. [2001, c. 544, §2 (NEW).]

(a). "Accounting period" means a calendar year unless another 12-month period is selected by a fiduciary. The term includes a portion of a calendar year or other 12-month period that begins when an income interest begins or ends when an income interest ends.

[ 2001, c. 544, §2 (NEW) .]

(b). "Beneficiary" includes, in the case of a decedent's estate, an heir and devisee and, in the case of a trust, an income beneficiary and a remainder beneficiary.

[ 2001, c. 544, §2 (NEW) .]

(c). "Fiduciary" means a personal representative or a trustee. The term includes an executor, administrator, successor personal representative, special administrator and a person performing substantially the same function.

[ 2001, c. 544, §2 (NEW) . ]

(d). "Income" means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange or liquidation of a principal asset, to the extent provided in subpart 4.

[ 2001, c. 544, §2 (NEW) . ]

(e). "Income beneficiary" means a person to whom net income of a trust is or may be payable.

[ 2001, c. 544, §2 (NEW) . ]

(f). "Income interest" means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee's discretion.

[ 2001, c. 544, §2 (NEW) . ]

(g). "Mandatory income interest" means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.

[ 2001, c. 544, §2 (NEW) . ]

(h). "Net income" means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under this Part to or from income during the period.

[ 2001, c. 544, §2 (NEW) . ]

(i). "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency or instrumentality; public corporation; or any other legal or commercial entity.

[ 2001, c. 544, §2 (NEW) . ]

(j). "Principal" means property held in trust for distribution to a remainder beneficiary when the trust terminates.

[ 2001, c. 544, §2 (NEW) . ]

(k). "Remainder beneficiary" means a person entitled to receive principal when an income interest ends.

[ 2001, c. 544, §2 (NEW) . ]

(l). "Terms of a trust" means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.

[ 2001, c. 544, §2 (NEW) . ]

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

[ 2001, c. 544, §2 (NEW) . ]

#### SECTION HISTORY

2001, c. 544, §2 (NEW) .

### §7-703. FIDUCIARY DUTIES; GENERAL PRINCIPLES

(a). In allocating receipts and disbursements to or between principal and income and with respect to any matter within the scope of subparts 2 and 3, a fiduciary:

- (1). Shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this Part; [2001, c. 544, §2 (NEW) . ]
- (2). May administer a trust or estate by the exercise of a discretionary power of administration given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by this Part; [2001, c. 544, §2 (NEW) . ]
- (3). Shall administer a trust or estate in accordance with this Part if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration; and [2001, c. 544, §2 (NEW) . ]
- (4). Shall add a receipt or charge a disbursement to principal to the extent that the terms of the trust and this Part do not provide a rule for allocating the receipt or disbursement to or between principal and income. [2001, c. 544, §2 (NEW) . ]

[ 2001, c. 544, §2 (NEW) . ]

(b). In exercising the power to adjust under section 7-704, subsection (a) or a discretionary power of administration regarding a matter within the scope of this Part, whether granted by the terms of a trust, a will or this Part, a fiduciary shall administer a trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an intention that the fiduciary shall or may favor one or more of the beneficiaries. A determination in accordance with this Part is presumed to be fair and reasonable to all of the beneficiaries.

[ 2001, c. 544, §2 (NEW) . ]

#### SECTION HISTORY

2001, c. 544, §2 (NEW) .

### §7-704. TRUSTEE'S POWER TO ADJUST

(a). A trustee may adjust between principal and income by allocating an amount of income to principal or an amount of principal to income to the extent the trustee considers appropriate if the terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust's income and the trustee determines, after applying the rules in section 7-703, subsection (a), that the trustee is unable to comply with section 7-703, subsection (b).

[ 2001, c. 544, §2 (NEW) . ]

(b). In deciding whether and to what extent to exercise the power conferred by subsection (a), a trustee shall consider all factors relevant to the trust and its beneficiaries, including the following factors to the extent they are relevant:

- (1). The nature, purpose and expected duration of the trust; [2001, c. 544, §2 (NEW) . ]

- (2). The intent of the settlor; [2001, c. 544, §2 (NEW).]
  - (3). The identity and circumstances of the beneficiaries and, to the extent reasonably known to the trustee, the needs of the beneficiaries for present and future distributions authorized or required by the terms of the trust; [2001, c. 544, §2 (NEW).]
  - (4). The needs for liquidity, regularity of income and preservation and appreciation of capital; [2001, c. 544, §2 (NEW).]
  - (5). The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor; [2001, c. 544, §2 (NEW).]
  - (6). The net amount allocated to income under the other sections of this Part and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available; [2001, c. 544, §2 (NEW).]
  - (7). Whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income; [2001, c. 544, §2 (NEW).]
  - (8). The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and [2001, c. 544, §2 (NEW).]
  - (9). The anticipated tax consequences of an adjustment. [2001, c. 544, §2 (NEW).]
- [ 2001, c. 544, §2 (NEW) .]

(c). A trustee may not make an adjustment under this section if any of the following applies:

- (1). The adjustment would diminish the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment; [2001, c. 544, §2 (NEW).]
- (2). The adjustment would reduce the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion; [2001, c. 544, §2 (NEW).]
- (3). The adjustment would change the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets; [2001, c. 544, §2 (NEW).]
- (4). The adjustment is from any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside; [2001, c. 544, §2 (NEW).]
- (5). The trustee's possession or exercise of the power to make an adjustment would cause an individual to be treated as the owner of all or part of the trust for income tax purposes and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment; [2001, c. 544, §2 (NEW).]
- (6). The trustee's possession or exercise of the power to make an adjustment would cause all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment; [2001, c. 544, §2 (NEW).]
- (7). The trustee is a beneficiary of the trust; or [2001, c. 544, §2 (NEW).]

(8). The trust has been converted to a unitrust under section 7-705. [ 2001, c. 544, §2 (NEW) . ]

[ 2001, c. 544, §2 (NEW) . ]

(d). If subsection (c), paragraph (5), (6) or (7) applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is prohibited by the terms of the trust. Terms of the trust requiring that if there are 2 or more trustees serving they must act by agreement or by any majority or percentage consensus may not be construed to prohibit the remaining trustee or trustees from possessing or exercising the power to make the adjustment.

[ 2001, c. 544, §2 (NEW) . ]

(e). A trustee may release the entire power conferred by subsection (a) or may release only the power to adjust from income to principal or the power to adjust from principal to income, if the trustee is uncertain about whether possessing or exercising the power will cause a result described in subsection (c), paragraphs (1) to (6) or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (c). The release of the power to adjust may be permanent or for a specified period, including a period measured by the life of an individual.

[ 2001, c. 544, §2 (NEW) . ]

(f). Terms of a trust that limit the power of a trustee to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power of adjustment conferred by subsection (a).

[ 2001, c. 544, §2 (NEW) . ]

#### SECTION HISTORY

2001, c. 544, §2 (NEW) .

### §7-705. POWER TO CONVERT TO UNITRUST

(a). Unless expressly prohibited by the terms of the trust, a trustee may release the power to adjust under section 7-704 and convert a trust into a unitrust as described in this section if all of the following apply.

- (1). The trustee determines that the conversion will improve the ability of the trustee to carry out the intent of the settlor and the purposes of the trust. [ 2001, c. 544, §2 (NEW) . ]
- (2). The trustee gives written notice of the trustee's intention to release the power to adjust and to convert the trust into a unitrust and of how the unitrust will operate, including what initial decisions the trustee will make under this section, to the following beneficiaries:
  - (i) All beneficiaries who are currently eligible to receive income from the trust; and
  - (ii) All beneficiaries who would receive, if no power of appointment were exercised, a distribution of principal if the trust were to terminate immediately prior to the giving of notice. [ 2001, c. 544, §2 (NEW) . ]
- (3). There is at least one beneficiary eligible to receive income and at least one beneficiary who would receive principal as described in paragraph (2). [ 2001, c. 544, §2 (NEW) . ]
- (4). No beneficiary objects to the conversion to a unitrust in a writing delivered to the trustee within 60 days of the mailing of the notice required under paragraph (2). [ 2001, c. 544, §2 (NEW) . ]

[ 2001, c. 544, §2 (NEW) . ]

**(b).** If a beneficiary timely objects to the conversion to a unitrust or if the requirements of subsection (a), paragraph (3) are not met, the trustee may petition the court to approve the conversion to a unitrust. A beneficiary may request a trustee to convert to a unitrust and, if the trustee does not convert, the beneficiary may petition the court to order the conversion. Upon receipt of a petition by the trustee or a beneficiary, the court shall approve the conversion or direct the requested conversion if the court concludes that the conversion will better enable the trustee to carry out the intent of the settlor and the purposes of the trust.

[ 2001, c. 544, §2 (NEW) . ]

**(c).** In deciding whether to exercise the power conferred by subsection (a), a trustee shall consider the following factors to the extent they are relevant:

- (1). The nature, purpose and expected duration of the trust; [ 2001, c. 544, §2 (NEW) . ]
- (2). The identity and circumstances of the beneficiaries and, to the extent reasonably known to the trustee, the needs of the beneficiaries for present and future distributions authorized or required by the terms of the trust; [ 2001, c. 544, §2 (NEW) . ]
- (3). The needs for liquidity, regularity of income and preservation and appreciation of capital; [ 2001, c. 544, §2 (NEW) . ]
- (4). The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property or real property; and the extent to which an asset is used by a beneficiary; [ 2001, c. 544, §2 (NEW) . ]
- (5). Whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income; [ 2001, c. 544, §2 (NEW) . ]
- (6). The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and [ 2001, c. 544, §2 (NEW) . ]
- (7). The anticipated tax consequences of the conversion. [ 2001, c. 544, §2 (NEW) . ]

[ 2001, c. 544, §2 (NEW) . ]

**(d).** After a trust is converted to a unitrust, all of the following apply.

- (1). The trustee shall follow an investment policy seeking a total return for the investments held by the trust, whether the return is to be derived from appreciation of capital, from earnings and distributions from capital or from both. [ 2001, c. 544, §2 (NEW) . ]
- (2). The trustee shall make regular distributions in accordance with the terms of the trust construed in accordance with the provisions of this section. [ 2001, c. 544, §2 (NEW) . ]
- (3). The term "income" in the terms of the trust means an annual distribution, known as the "unitrust distribution," equal to 4%, known as the "payout percentage," of the net fair market value of the trust's assets, whether such assets would be considered income or principal under other provisions of this Part, averaged over the lesser of the 3 preceding years or the period during which the trust has been in existence. [ 2001, c. 544, §2 (NEW) . ]

[ 2001, c. 544, §2 (NEW) . ]

**(e).** The trustee may in the trustee's discretion from time to time determine all of the following:

- (1). The effective date of a conversion to a unitrust; [ 2001, c. 544, §2 (NEW) . ]
- (2). The provisions for prorating a unitrust distribution for a short year in which a beneficiary's right to payment commences or ceases; [ 2001, c. 544, §2 (NEW) . ]
- (3). The frequency of unitrust distributions during the year; [ 2001, c. 544, §2 (NEW) . ]

- (4). The effect of other payments from or contributions to the trust on the trust's valuation; [ 2001, c. 544, §2 (NEW) . ]
- (5). Whether to value the trust's assets annually or more frequently; [ 2001, c. 544, §2 (NEW) . ]
- (6). What valuation dates to use; [ 2001, c. 544, §2 (NEW) . ]
- (7). How frequently to value nonliquid assets and whether to estimate their value; [ 2001, c. 544, §2 (NEW) . ]
- (8). Whether to omit from the calculation of the unitrust distribution trust property occupied or possessed by a beneficiary; and [ 2001, c. 544, §2 (NEW) . ]
- (9). Any other matters necessary for the proper functioning of the unitrust. [ 2001, c. 544, §2 (NEW) . ]

[ 2001, c. 544, §2 (NEW) . ]

**(f).** After a trust is converted to a unitrust, the following allocation rules apply to the trust.

- (1). Expenses that would be deducted from income if the trust were not a unitrust may not be deducted from the unitrust distribution. [ 2001, c. 544, §2 (NEW) . ]
- (2). Unless otherwise provided by the terms of the trust, the unitrust distribution must be paid from net income, as net income would be determined if the trust were not a unitrust. To the extent net income is insufficient, the unitrust distribution must be paid from net realized short-term capital gains. To the extent net income and net realized short-term capital gains are insufficient, the unitrust distribution must be paid from net realized long-term capital gains. To the extent net income and net realized short-term and long-term capital gains are insufficient, the unitrust distribution must be paid from the principal of the trust. [ 2001, c. 544, §2 (NEW) . ]

[ 2001, c. 544, §2 (NEW) . ]

**(g).** The trustee or, if the trustee declines to do so, a beneficiary may petition the court to do any of the following:

- (1). Select a payout percentage other than 4%; [ 2001, c. 544, §2 (NEW) . ]
- (2). Provide for a distribution of net income, as would be determined if the trust were not a unitrust, in excess of the unitrust distribution if such distribution is necessary to preserve a tax benefit; [ 2001, c. 544, §2 (NEW) . ]
- (3). Average the valuation of the trust's net assets over a period other than 3 years; or [ 2001, c. 544, §2 (NEW) . ]
- (4). Reconvert from a unitrust. Upon a reconversion, the power to adjust under section 7-704 is revived. [ 2001, c. 544, §2 (NEW) . ]

[ 2001, c. 544, §2 (NEW) . ]

**(h).** A conversion to a unitrust does not affect a provision in the terms of the trust directing or authorizing the trustee to distribute principal or authorizing a beneficiary to withdraw a portion or all of the principal.

[ 2001, c. 544, §2 (NEW) . ]

**(i).** A trustee may not convert a trust into a unitrust if any of the following applies:

- (1). Payment of the unitrust distribution would change the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets; [ 2001, c. 544, §2 (NEW) . ]



(2). The unitrust distribution would be made from any amount that is permanently set aside for charitable purposes under a will or the terms of the trust unless both income and principal are so set aside; [2001, c. 544, §2 (NEW).]

(3). The trustee's possession or exercise of the power to convert would cause an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to convert; [2001, c. 544, §2 (NEW).]

(4). The trustee's possession or exercise of the power to convert would cause all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to convert; [2001, c. 544, §2 (NEW).]

(5). The conversion would result in the disallowance of an estate tax or gift tax marital deduction that would be allowed if the trustee did not have the power to convert; or [2001, c. 544, §2 (NEW).]

(6). The trustee is a beneficiary of the trust. [2001, c. 544, §2 (NEW).]

[2001, c. 544, §2 (NEW).]

(j). If subsection (i), paragraph (3), (4) or (6) applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may convert the trust unless the exercise of the power by the remaining trustee or trustees is prohibited by the terms of the trust. Terms of the trust requiring that if there are 2 or more trustees serving they must act by agreement or by any majority or percentage consensus may not be construed to prohibit the remaining trustee or trustees from exercising the power to convert. If subsection (i), paragraph (3), (4) or (6) applies to all the trustees, the trustees may petition the court to direct a conversion.

[2001, c. 544, §2 (NEW).]

(k). A trustee may release the power conferred by subsection (a) to convert to a unitrust if the trustee is uncertain about whether possessing or exercising the power will cause a result described in subsection (i), paragraph (3), (4) or (5) or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (i). The release of the power to convert to a unitrust may be permanent or for a specified period, including a period measured by the life of an individual.

[2001, c. 544, §2 (NEW).]

#### SECTION HISTORY

2001, c. 544, §2 (NEW).

### **§7-706. JUDICIAL REVIEW OF DISCRETIONARY POWERS**

(a). A court may not change a fiduciary's decision to exercise or not to exercise a discretionary power conferred by this Part unless it determines that the decision was an abuse of the fiduciary's discretion. A court may not determine that a fiduciary abused the fiduciary's discretion merely because the court would have exercised the discretion in a different manner or would not have exercised the discretion.

[2001, c. 544, §2 (NEW).]

(b). If a court determines that a fiduciary has abused the fiduciary's discretion in exercising a discretionary power conferred by this Part, the remedy is to restore the income and remainder beneficiaries to the positions they would have occupied if the fiduciary had not abused the fiduciary's discretion, according to the following rules.

(1). To the extent that the abuse of discretion has resulted in no distribution to a beneficiary or a distribution that is too small, the court shall require the fiduciary to distribute from the trust to the beneficiary an amount that the court determines will restore the beneficiary, in whole or in part, to the beneficiary's appropriate position. [2001, c. 544, §2 (NEW).]

(2). To the extent that the abuse of discretion has resulted in a distribution to a beneficiary that is too large, the court shall restore the beneficiaries or the trust, or both, in whole or in part, to their appropriate positions by requiring the fiduciary to withhold an amount from one or more future distributions to the beneficiary who received the distribution that was too large or requiring that beneficiary or that beneficiary's estate to return some or all of the distribution to the trust, notwithstanding a spendthrift or similar provision. [2001, c. 544, §2 (NEW).]

(3). If the abuse of discretion concerns the power to convert a trust into a unitrust, the court shall require the trustee either to convert the trust to a unitrust or to reconvert from a unitrust. [2001, c. 544, §2 (NEW).]

(4). To the extent that the court is unable, after applying paragraphs (1), (2) and (3), to restore the beneficiaries or the trust, or both, to the positions they would have occupied if the fiduciary had not abused the fiduciary's discretion, the court may require the fiduciary to pay an appropriate amount from the fiduciary's own funds to one or more of the beneficiaries or the trust, or both. [2001, c. 544, §2 (NEW).]

[ 2001, c. 544, §2 (NEW) .]

(c). Upon a petition by the fiduciary, a court having jurisdiction over the trust or estate shall determine whether a proposed exercise or nonexercise by the fiduciary of a discretionary power conferred by this Part will result in an abuse of the fiduciary's discretion. If the petition describes the proposed exercise or nonexercise of the power and contains sufficient information to inform the beneficiaries of the reasons for the proposal, the facts upon which the fiduciary relies and an explanation of how the income and remainder beneficiaries will be affected by the proposed exercise or nonexercise of the power, a beneficiary who challenges the proposed exercise or nonexercise has the burden of establishing that it will result in an abuse of discretion.

[ 2001, c. 544, §2 (NEW) .]

#### SECTION HISTORY

2001, c. 544, §2 (NEW).

## Subpart 2: DECEDENT'S ESTATE OR TERMINATING INCOME INTEREST

### §7-721. DETERMINATION AND DISTRIBUTION OF NET INCOME

After a decedent dies, in the case of an estate, or after an income interest in a trust ends, the following rules apply. [2001, c. 544, §2 (NEW).]

(a). A fiduciary of an estate or of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under the rules in subparts 3 to 5 that apply to trustees and the rules in subsection (e). The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.

[ 2001, c. 544, §2 (NEW) .]

(b). A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the rules in subparts 3 to 5 that apply to trustees and by:

(1). Including in net income all income from property used to discharge liabilities; [ 2001, c. 544, §2 (NEW) . ]

(2). Paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants and fiduciaries; court costs and other expenses of administration; and interest on death taxes; but the fiduciary may pay those expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction only to the extent that the payment of those expenses from income will not cause the reduction or loss of the deduction; and [ 2001, c. 544, §2 (NEW) . ]

(3). Paying from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, including debts, funeral expenses, disposition of remains, exempt property and allowances distributable pursuant to Article II, Part 4 and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the terms of the trust or applicable law. [ 2001, c. 544, §2 (NEW) . ]

[ 2001, c. 544, §2 (NEW) . ]

(c). A fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright the interest or any other amount provided by the will, the terms of the trust or applicable law from net income determined under subsection (b) or from principal to the extent that net income is insufficient. If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends and no interest or other amount is provided for by the terms of the trust or applicable law, the fiduciary shall distribute the interest or other amount to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will under section 3-904.

[ 2001, c. 544, §2 (NEW) . ]

(d). A fiduciary shall distribute the net income remaining after distributions required by subsection (c) in the manner described in section 7-722 to all other beneficiaries, including a beneficiary who receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

[ 2001, c. 544, §2 (NEW) . ]

(e). A fiduciary may not reduce principal or income receipts from property described in subsection (a) because of a payment described in section 7-761 or 7-762 to the extent that the will, the terms of the trust or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a 3rd party. The net income and principal receipts from the property are determined by including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts accrued or became due before, on or after the date of a decedent's death or an income interest's terminating event, and by making a reasonable provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed.

[ 2001, c. 544, §2 (NEW) . ]

#### SECTION HISTORY

2001, c. 544, §2 (NEW) .

### **§7-722. DISTRIBUTION TO RESIDUARY AND REMAINDER BENEFICIARIES**

(a). Each beneficiary described in section 7-721, subsection (d) is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to whom this

section applies, each beneficiary, including one who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

[ 2001, c. 544, §2 (NEW) . ]

**(b).** In determining a beneficiary's share of net income, the following rules apply.

(1). The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date, including assets that later may be sold to meet principal obligations. [2001, c. 544, §2 (NEW) . ]

(2). The beneficiary's fractional interest in the undistributed principal assets must be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust. [2001, c. 544, §2 (NEW) . ]

(3). The beneficiary's fractional interest in the undistributed principal assets must be calculated on the basis of the aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation. [2001, c. 544, §2 (NEW) . ]

(4). The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed. [2001, c. 544, §2 (NEW) . ]

[ 2001, c. 544, §2 (NEW) . ]

**(c).** If a fiduciary does not distribute all of the collected but undistributed net income to each person as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income.

[ 2001, c. 544, §2 (NEW) . ]

**(d).** A fiduciary may apply the rules in this section, to the extent that the fiduciary considers it appropriate, to net gain or loss realized after the date of death or terminating event or earlier distribution date from the disposition of a principal asset if this section applies to the income from the asset.

[ 2001, c. 544, §2 (NEW) . ]

#### SECTION HISTORY

2001, c. 544, §2 (NEW) .

## Subpart 3: APPORTIONMENT AT BEGINNING AND END OF INCOME INTEREST

### §7-731. WHEN RIGHT TO INCOME BEGINS AND ENDS

**(a).** An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

[ 2001, c. 544, §2 (NEW) . ]

**(b).** An asset becomes subject to a trust:

(1). On the date it is transferred to the trust in the case of an asset that is transferred to a trust during the transferor's life; [2001, c. 544, §2 (NEW) . ]

(2). On the date of a testator's death in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate; or [ 2001, c. 544, §2 (NEW) . ]

(3). On the date of an individual's death in the case of an asset that is transferred to a fiduciary by a 3rd party because of the individual's death. [ 2001, c. 544, §2 (NEW) . ]

[ 2001, c. 544, §2 (NEW) . ]

(c). An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under subsection (d), even if there is an intervening period of administration to wind up the preceding income interest.

[ 2001, c. 544, §2 (NEW) . ]

(d). An income interest ends on the day before an income beneficiary dies or another terminating event occurs or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

[ 2001, c. 544, §2 (NEW) . ]

#### SECTION HISTORY

2001, c. 544, §2 (NEW) .

### **§7-732. APPORTIONMENT OF RECEIPTS AND DISBURSEMENTS WHEN DECEDENT DIES OR INCOME INTEREST BEGINS**

(a). A trustee shall allocate an income receipt or disbursement other than one to which section 7-721, subsection (a) applies to principal if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

[ 2001, c. 544, §2 (NEW) . ]

(b). A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement must be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins must be allocated to principal and the balance must be allocated to income.

[ 2001, c. 544, §2 (NEW) . ]

(c). An item of income or an obligation is due on the date the payor is required to make a payment. If a payment date is not stated, there is no due date for the purposes of this Part. Distributions to shareholders or other owners from an entity to which section 7-741 applies are deemed to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

[ 2001, c. 544, §2 (NEW) . ]

#### SECTION HISTORY

2001, c. 544, §2 (NEW) .

## §7-733. APPORTIONMENT WHEN INCOME INTEREST ENDS

(a). In this section, "undistributed income" means net income received before the date on which an income interest ends. The term does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.

[ 2001, c. 544, §2 (NEW) . ]

(b). When a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust unless the beneficiary has an unqualified power to revoke more than 5% of the trust immediately before the income interest ends. In the latter case, the undistributed income from the portion of the trust that may be revoked must be added to principal.

[ 2001, c. 544, §2 (NEW) . ]

(c). When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, the trustee shall prorate the final payment to the extent required by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate or other tax requirements.

[ 2001, c. 544, §2 (NEW) . ]

### SECTION HISTORY

2001, c. 544, §2 (NEW) .

## Subpart 4: ALLOCATION OF RECEIPTS DURING ADMINISTRATION OF TRUST

### §7-741. CHARACTER OF RECEIPTS

(a). In this section, "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund or any other organization in which a trustee has an interest other than a trust or estate to which section 7-742 applies, a business or activity to which section 7-743 applies or an asset-backed security to which section 7-755 applies.

[ 2001, c. 544, §2 (NEW) . ]

(b). Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.

[ 2001, c. 544, §2 (NEW) . ]

(c). A trustee shall allocate the following receipts from an entity to principal:

(1). Property other than money; [2001, c. 544, §2 (NEW) . ]

(2). Money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity; [2001, c. 544, §2 (NEW) . ]

(3). Money received in total or partial liquidation of the entity; and [2001, c. 544, §2 (NEW) . ]

(4). Money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes. [ 2001, c. 544, §2 (NEW) . ]

[ 2001, c. 544, §2 (NEW) . ]

(d). Money is received in partial liquidation:

(1). To the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or [ 2001, c. 544, §2 (NEW) . ]

(2). If the total amount of money and property received in a distribution or series of related distributions is greater than 20% of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt. [ 2001, c. 544, §2 (NEW) . ]

[ 2001, c. 544, §2 (NEW) . ]

(e). Money is not received in partial liquidation, nor may it be taken into account under subsection (d), paragraph (2), to the extent that it does not exceed the amount of income tax that a trustee or beneficiary must pay on taxable income of the entity that distributes the money.

[ 2001, c. 544, §2 (NEW) . ]

(f). A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

[ 2001, c. 544, §2 (NEW) . ]

#### SECTION HISTORY

2001, c. 544, §2 (NEW) .

### **§7-742. DISTRIBUTION FROM TRUST OR ESTATE**

A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest, and shall allocate to principal an amount received as a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, section 7-741 or 7-755 applies to a receipt from the trust. [ 2001, c. 544, §2 (NEW) . ]

#### SECTION HISTORY

2001, c. 544, §2 (NEW) .

### **§7-743. BUSINESS AND OTHER ACTIVITIES CONDUCTED BY TRUSTEE**

(a). If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

[ 2001, c. 544, §2 (NEW) . ]

(b). A trustee who accounts separately for a business or other activity may determine the extent to which its net cash receipts must be retained for working capital, the acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net

cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business.

[ 2001, c. 544, §2 (NEW) . ]

(c). Activities for which a trustee may maintain separate accounting records include:

(1). Retail, manufacturing, service and other traditional business activities; [ 2001, c. 544, §2 (NEW) . ]

(2). Farming; [ 2001, c. 544, §2 (NEW) . ]

(3). Raising and selling livestock and other animals; [ 2001, c. 544, §2 (NEW) . ]

(4). Management of rental properties; [ 2001, c. 544, §2 (NEW) . ]

(5). Extraction of minerals and other natural resources; [ 2001, c. 544, §2 (NEW) . ]

(6). Timber operations; and [ 2001, c. 544, §2 (NEW) . ]

(7). Activities to which section 7-754 applies. [ 2001, c. 544, §2 (NEW) . ]

[ 2001, c. 544, §2 (NEW) . ]

#### SECTION HISTORY

2001, c. 544, §2 (NEW) .

### §7-744. PRINCIPAL RECEIPTS

A trustee shall allocate to principal: [ 2001, c. 544, §2 (NEW) . ]

(a). To the extent not allocated to income under this Part, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest or a payor under a contract naming the trust or its trustee as beneficiary;

[ 2001, c. 544, §2 (NEW) . ]

(b). Money or other property received from the sale, exchange, liquidation or change in form of a principal asset, including realized profit, subject to this subpart;

[ 2001, c. 544, §2 (NEW) . ]

(c). Amounts recovered from 3rd parties to reimburse the trust because of disbursements described in section 7-762, subsection (a), paragraph (7) or for other reasons to the extent not based on the loss of income;

[ 2001, c. 544, §2 (NEW) . ]

(d). Proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income;

[ 2001, c. 544, §2 (NEW) . ]

(e). Net income received in an accounting period during which there is no beneficiary to whom a trustee may or must distribute income; and

[ 2001, c. 544, §2 (NEW) . ]



(f). Other receipts as provided in sections 7-748 to 7-755.

[ 2001, c. 544, §2 (NEW) . ]

SECTION HISTORY

2001, c. 544, §2 (NEW).

### §7-745. RENTAL PROPERTY

To the extent that a trustee accounts for receipts from rental property pursuant to this section, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, must be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount. [ 2001, c. 544, §2 (NEW) . ]

SECTION HISTORY

2001, c. 544, §2 (NEW).

### §7-746. OBLIGATION TO PAY MONEY

(a). An amount received as interest, whether determined at a fixed, variable or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, must be allocated to income without any provision for amortization of premium.

[ 2001, c. 544, §2 (NEW) . ]

(b). A trustee shall allocate to principal an amount received from the sale, redemption or other disposition of an obligation to pay money to the trustee more than one year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity. If the obligation matures within one year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust must be allocated to income.

[ 2001, c. 544, §2 (NEW) . ]

(c). This section does not apply to an obligation to which section 7-749, 7-750, 7-751, 7-752, 7-754 or 7-755 applies.

[ 2001, c. 544, §2 (NEW) . ]

SECTION HISTORY

2001, c. 544, §2 (NEW).

### §7-747. INSURANCE POLICIES AND SIMILAR CONTRACTS

(a). Except as otherwise provided in subsection (b), a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income, and to principal if the premiums are paid from principal.

[ 2001, c. 544, §2 (NEW) . ]

(b). A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income or, subject to section 7-743, loss of profits from a business.

[ 2001, c. 544, §2 (NEW) .]

(c). This section does not apply to a contract to which section 7-749 applies.

[ 2001, c. 544, §2 (NEW) .]

#### SECTION HISTORY

2001, c. 544, §2 (NEW) .

### §7-748. INSUBSTANTIAL ALLOCATIONS NOT REQUIRED

If a trustee determines that an allocation between principal and income required by section 7-749, 7-750, 7-751, 7-752 or 7-755 is insubstantial, the trustee may allocate the entire amount to principal unless one of the circumstances described in section 7-704, subsection (c) applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in section 7-704, subsection (d) and may be released for the reasons and in the manner described in section 7-704, subsection (e). An allocation is presumed to be insubstantial if: [2001, c. 544, §2 (NEW) .]

(a). The amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than 10%; or

[ 2001, c. 544, §2 (NEW) .]

(b). The value of the asset producing the receipt for which the allocation would be made is less than 10% of the total value of the trust's assets at the beginning of the accounting period.

[ 2001, c. 544, §2 (NEW) .]

#### SECTION HISTORY

2001, c. 544, §2 (NEW) .

### §7-749. DEFERRED COMPENSATION, ANNUITIES AND SIMILAR PAYMENTS

(a). In this section:

(1). "Payment" means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payor in exchange for future payments. The term includes a payment made in money or property from the payor's general assets or from a separate fund created by the payor. For the purposes of subsections (d), (d-1), (d-2) and (d-3), "payment" also includes any payment from any separate fund, regardless of the reason for the payment; and [2011, c. 256, §1 (NEW); 2011, c. 256, §4 (AFF) .]

(2). "Separate fund" includes a private or commercial annuity, an individual retirement account and a pension, profit-sharing, stock-bonus or stock-ownership plan. [2011, c. 256, §1 (NEW); 2011, c. 256, §4 (AFF) .]

[ 2011, c. 256, §1 (AMD); 2011, c. 256, §4 (AFF) .]

**(b).** To the extent that a payment is characterized as interest, a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate the payment to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend or an equivalent payment.

[ 2011, c. 256, §1 (AMD); 2011, c. 256, §4 (AFF) .]

**(c).** If no part of a payment is characterized as interest, a dividend or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income 10% of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

[ 2001, c. 544, §2 (NEW) .]

**(d).** Except as otherwise provided in subsection (d-1), subsections (d-2) and (d-3) apply and subsections (b) and (c) do not apply in determining the allocation of a payment made from a separate fund to a trust:

(1). That qualifies for the marital deduction under the federal Internal Revenue Code, 26 United States Code, Section 2056(b)(7) (2010), as amended, and for which either such an election has been made for federal purposes or for which an election under the pertinent provisions of the laws of the State to qualify as Maine qualified terminable interest property has been made; or [2011, c. 256, §1 (NEW); 2011, c. 256, §4 (AFF) .]

(2). That qualifies for the marital deduction under the federal Internal Revenue Code, 26 United States Code, Section 2056(b)(5) (2010), as amended. [2011, c. 256, §1 (NEW); 2011, c. 256, §4 (AFF) .]

[ 2011, c. 256, §1 (AMD); 2011, c. 256, §4 (AFF) .]

**(d-1).** Subsections (d), (d-2) and (d-3) do not apply if and to the extent that the series of payments would, without the application of subsection (d), qualify for the marital deduction under the federal Internal Revenue Code, 26 United States Code, Section 2056(b)(7)(C) (2010), as amended.

[ 2011, c. 256, §1 (NEW); 2011, c. 256, §4 (AFF) .]

**(d-2).** A trustee shall determine the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to this Part. Upon request of the surviving spouse, the trustee shall demand that the person administering the separate fund distribute the internal income to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and distribute that amount to the surviving spouse. The trustee shall allocate the balance of the payment to principal. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent the internal income of the separate fund exceeds payments made from the separate fund to the trust during the accounting period.

[ 2011, c. 256, §1 (NEW); 2011, c. 256, §4 (AFF) .]

**(d-3).** If a trustee cannot determine the internal income of a separate fund but can determine the value of the separate fund, the internal income of the separate fund is deemed to equal 4% of the fund's value, according to the most recent statement of value preceding the beginning of the accounting period. If the trustee can determine neither the internal income of the separate fund nor the fund's value, the internal income

of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments, as determined under the federal Internal Revenue Code, 26 United States Code, Section 7520 (2010), as amended, for the month preceding the accounting period for which the computation is made.

[ 2011, c. 256, §1 (NEW); 2011, c. 256, §4 (AFF) .]

(e). This section does not apply to a payment to which section 7-750 applies.

[ 2011, c. 256, §1 (AMD); 2011, c. 256, §4 (AFF) .]

#### SECTION HISTORY

2001, c. 544, §2 (NEW). 2011, c. 256, §1 (AMD). 2011, c. 256, §4 (AFF).

### §7-750. LIQUIDATING ASSET

(a). In this section, "liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right and right to receive payments during a period of more than one year under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include a payment subject to section 7-749, resources subject to section 7-751, timber subject to section 7-752, an activity subject to section 7-754, an asset subject to section 7-755, or any asset for which the trustee establishes a reserve for depreciation under section 7-763.

[ 2001, c. 544, §2 (NEW) .]

(b). A trustee shall allocate to income 10% of the receipts from a liquidating asset and the balance to principal.

[ 2001, c. 544, §2 (NEW) .]

#### SECTION HISTORY

2001, c. 544, §2 (NEW).

### §7-751. MINERALS, WATER AND OTHER NATURAL RESOURCES

(a). To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them as follows.

(1). If received as nominal delay rental or nominal annual rent on a lease, a receipt must be allocated to income. [2001, c. 544, §2 (NEW).]

(2). If received from a production payment, a receipt must be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance must be allocated to principal. [2001, c. 544, §2 (NEW).]

(3). If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus or delay rental is more than nominal, 90% must be allocated to principal and the balance to income. [2001, c. 544, §2 (NEW).]

(4). If an amount is received from a working interest or any other interest not provided for in paragraph (1), (2) or (3), 90% of the net amount received must be allocated to principal and the balance to income. [2001, c. 544, §2 (NEW).]

[ 2001, c. 544, §2 (NEW) .]

(b). An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, 90% of the amount must be allocated to principal and the balance to income.

[ 2001, c. 544, §2 (NEW) . ]

(c). This Part applies whether or not a decedent or donor was extracting minerals, water or other natural resources before the interest became subject to the trust.

[ 2001, c. 544, §2 (NEW) . ]

(d). If a trust owns an interest in minerals, water or other natural resources on January 1, 2002, the trustee may allocate receipts from the interest as provided in this Part or in the manner used by the trustee before January 1, 2002. If the trust acquires an interest in minerals, water or other natural resources after January 1, 2002, the trustee shall allocate receipts from the interest as provided in this Part.

[ 2001, c. 544, §2 (NEW) . ]

#### SECTION HISTORY

2001, c. 544, §2 (NEW) .

### §7-752. TIMBER

(a). To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts:

(1). To income to the extent the net receipts do not exceed the product of (i) mean annual growth multiplied by the number of years since the last timber sale, or, if more recent, the date the timber became a part of the trust, multiplied by (ii) the stumpage rates obtained, after netting against the stumpage rates obtained the expenses associated with the conduct of the sale; [ 2001, c. 544, §2 (NEW) . ]

(2). To principal to the extent that the proceeds received exceed the amount determined in paragraph (1); [ 2001, c. 544, §2 (NEW) . ]

(3). To or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying the rules in paragraphs (1) and (2); or [ 2001, c. 544, §2 (NEW) . ]

(4). To principal to the extent that advance payments, bonuses and other payments are not allocated pursuant to paragraph (1), (2) or (3). [ 2001, c. 544, §2 (NEW) . ]

[ 2001, c. 544, §2 (NEW) . ]

(b). In determining net receipts to be allocated pursuant to subsection (a), a trustee may deduct and transfer to principal a reasonable amount for depletion.

[ 2001, c. 544, §2 (NEW) . ]

(c). This section applies whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.

[ 2001, c. 544, §2 (NEW) . ]

(d). If a trust owns an interest in timberland on January 1, 2003, the trustee may allocate net receipts from the sale of timber and related products as provided in this section or in the manner used by the trustee before January 1, 2003. If the trust acquires an interest in timberland after January 1, 2003, the trustee shall allocate net receipts from the sale of timber and related products as provided in this section.

[ 2001, c. 544, §2 (NEW) . ]

(e). For purposes of this section, the term "mean annual growth" means, at the trustee's option, either:

(1). The mean annual increment of growth of the timber involved as determined by a licensed professional forester; or [2001, c. 544, §2 (NEW) . ]

(2). Forty-five hundredths of a cord per acre of woodland. [2001, c. 544, §2 (NEW) . ]

[ 2001, c. 544, §2 (NEW) . ]

#### SECTION HISTORY

2001, c. 544, §2 (NEW) .

### §7-753. PROPERTY NOT PRODUCTIVE OF INCOME

(a). If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the spouse with sufficient income from or use of the trust assets, and if the amounts that the trustee transfers from principal to income under section 7-704 and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee to make property productive of income, convert property within a reasonable time or exercise the power conferred by section 7-704, subsection (a). The trustee may decide which action or combination of actions to take.

[ 2001, c. 544, §2 (NEW) . ]

(b). In cases not governed by subsection (a), proceeds from the sale or other disposition of an asset are principal without regard to the amount of income the asset produces during any accounting period.

[ 2001, c. 544, §2 (NEW) . ]

#### SECTION HISTORY

2001, c. 544, §2 (NEW) .

### §7-754. DERIVATIVES AND OPTIONS

(a). In this section, "derivative" means a contract or financial instrument or a combination of contracts and financial instruments that gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates or other market indicator for an asset or a group of assets.

[ 2001, c. 544, §2 (NEW) . ]

(b). To the extent that a trustee does not account under section 7-743 for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

[ 2001, c. 544, §2 (NEW) . ]

(c). If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option must be allocated to principal. An amount paid to acquire the option must be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, must be allocated to principal.

[ 2001, c. 544, §2 (NEW) . ]

#### SECTION HISTORY

2001, c. 544, §2 (NEW).

### **§7-755. ASSET-BACKED SECURITIES**

(a). In this section, "asset-backed security" means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not include an asset to which section 7-741 or 7-749 applies.

[ 2001, c. 544, §2 (NEW) . ]

(b). If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the trustee shall allocate to income the portion of the payment which the payor identifies as being from interest or other current return and shall allocate the balance of the payment to principal.

[ 2001, c. 544, §2 (NEW) . ]

(c). If a trust receives one or more payments in exchange for the trust's entire interest in an asset-backed security in one accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust's interest in the security over more than one accounting period, the trustee shall allocate 10% of the payment to income and the balance to principal.

[ 2001, c. 544, §2 (NEW) . ]

#### SECTION HISTORY

2001, c. 544, §2 (NEW).

## **Subpart 5: ALLOCATION OF DISBURSEMENTS DURING ADMINISTRATION OF TRUST**

### **§7-761. DISBURSEMENTS FROM INCOME**

A trustee shall make the following disbursements from income to the extent that they are not disbursements to which section 7-721, subsection (b), paragraph (2) or (3) applies: [ 2001, c. 544, §2 (NEW) . ]

(a). One-half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee;

[ 2001, c. 544, §2 (NEW) . ]

(b). One-half of all expenses for accountings, judicial proceedings or other matters that involve both the income and remainder interests;

[ 2001, c. 544, §2 (NEW) . ]

(c). All of the other ordinary expenses incurred in connection with the administration, management or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal and expenses of a proceeding or other matter that concerns primarily the income interest; and

[ 2001, c. 544, §2 (NEW) . ]

(d). Recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

[ 2001, c. 544, §2 (NEW) . ]

#### SECTION HISTORY

2001, c. 544, §2 (NEW) .

### §7-762. DISBURSEMENTS FROM PRINCIPAL

(a). A trustee shall make the following disbursements from principal:

(1). The remaining 1/2 of the disbursements described in section 7-761, subsections (a) and (b);

[ 2001, c. 544, §2 (NEW) . ]

(2). All of the trustee's compensation calculated on principal as a fee for acceptance, distribution or termination and disbursements made to prepare property for sale; [ 2001, c. 544, §2 (NEW) . ]

(3). Payments on the principal of a trust debt; [ 2001, c. 544, §2 (NEW) . ]

(4). Expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property; [ 2001, c. 544, §2 (NEW) . ]

(5). Premiums paid on a policy of insurance not described in section 7-761, subsection (d) of which the trust is the owner and beneficiary; [ 2001, c. 544, §2 (NEW) . ]

(6). Estate, inheritance and other transfer taxes, including penalties, apportioned to the trust; and [ 2001, c. 544, §2 (NEW) . ]

(7). Disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by 3rd parties and defending claims based on environmental matters. [ 2001, c. 544, §2 (NEW) . ]

[ 2001, c. 544, §2 (NEW) . ]

(b). If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

[ 2001, c. 544, §2 (NEW) . ]

#### SECTION HISTORY



2001, c. 544, §2 (NEW).

### **§7-763. TRANSFERS FROM INCOME TO PRINCIPAL FOR DEPRECIATION**

(a). In this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion or gradual obsolescence of a fixed asset having a useful life of more than one year.

[ 2001, c. 544, §2 (NEW) . ]

(b). A trustee may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but may not transfer any amount for depreciation:

(1). Of that portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary;

[ 2001, c. 544, §2 (NEW) . ]

(2). During the administration of a decedent's estate; or [ 2001, c. 544, §2 (NEW) . ]

(3). Under this section if the trustee is accounting under section 7-743 for the business or activity in which the asset is used. [ 2001, c. 544, §2 (NEW) . ]

[ 2001, c. 544, §2 (NEW) . ]

(c). An amount transferred to principal need not be held as a separate fund.

[ 2001, c. 544, §2 (NEW) . ]

#### SECTION HISTORY

2001, c. 544, §2 (NEW).

### **§7-764. TRANSFERS FROM INCOME TO REIMBURSE PRINCIPAL**

(a). If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

[ 2001, c. 544, §2 (NEW) . ]

(b). Principal disbursements to which subsection (a) applies include the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a 3rd party:

(1). An amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs; [ 2001, c. 544, §2 (NEW) . ]

(2). A capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments; [ 2001, c. 544, §2 (NEW) . ]

(3). Disbursements made to prepare property for rental, including tenant allowances, leasehold improvements and broker's commissions; [ 2001, c. 544, §2 (NEW) . ]

(4). Periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments; and [ 2001, c. 544, §2 (NEW) . ]

(5). Disbursements described in section 7-762, subsection (a), paragraph (7). [ 2001, c. 544, §2 (NEW) . ]

[ 2001, c. 544, §2 (NEW) . ]

(c). If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in subsection (a).

[ 2001, c. 544, §2 (NEW) .]

#### SECTION HISTORY

2001, c. 544, §2 (NEW).

### §7-765. INCOME TAXES

(a). A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.

[ 2001, c. 544, §2 (NEW) .]

(b). A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

[ 2001, c. 544, §2 (NEW) .]

(c). A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid:

(1). From income to the extent that receipts from the entity are allocated only to income; [2011, c. 256, §2 (AMD); 2011, c. 256, §4 (AFF).]

(2). From principal to the extent that receipts from the entity are allocated only to principal; [2011, c. 256, §2 (AMD); 2011, c. 256, §4 (AFF).]

(3). Proportionately from principal and income to the extent that receipts from the entity are allocated to both income and principal; and [2011, c. 256, §2 (NEW); 2011, c. 256, §4 (AFF).]

(4). From principal to the extent that the tax exceeds the total receipts from the entity. [2011, c. 256, §2 (NEW); 2011, c. 256, §4 (AFF).]

[ 2011, c. 256, §2 (AMD); 2011, c. 256, §4 (AFF) .]

(d).

[ 2011, c. 256, §4 (AFF); 2011, c. 256, §2 (RP) .]

(e). After applying subsections (a) to (c), the trustee shall adjust income or principal receipts to the extent that the trust's taxes are reduced because the trust receives a deduction for payments made to a beneficiary.

[ 2011, c. 256, §2 (NEW); 2011, c. 256, §4 (AFF) .]

#### SECTION HISTORY

2001, c. 544, §2 (NEW). 2011, c. 256, §2 (AMD). 2011, c. 256, §4 (AFF).

### §7-766. ADJUSTMENTS BETWEEN PRINCIPAL AND INCOME BECAUSE OF TAXES

(a). A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries that arise from:

- (1). Elections and decisions, other than those described in subsection (b), that the fiduciary makes from time to time regarding tax matters; [ 2001, c. 544, §2 (NEW) . ]
- (2). An income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust; or [ 2001, c. 544, §2 (NEW) . ]
- (3). The ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust or a beneficiary. [ 2001, c. 544, §2 (NEW) . ]

[ 2001, c. 544, §2 (NEW) . ]

**(b).** If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal are increased and income taxes paid by an estate, trust or beneficiary are decreased, each estate, trust or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement must equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust or beneficiary whose income taxes are reduced must be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.

[ 2001, c. 544, §2 (NEW) . ]

#### SECTION HISTORY

2001, c. 544, §2 (NEW) .

## Subpart 6: MISCELLANEOUS PROVISIONS

### §7-771. UNIFORMITY OF APPLICATION AND CONSTRUCTION

In applying and construing the Uniform Principal and Income Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [ 2001, c. 544, §2 (NEW) . ]

#### SECTION HISTORY

2001, c. 544, §2 (NEW) .

### §7-772. EFFECTIVE DATE

This Part takes effect January 1, 2003. [ 2001, c. 544, §2 (NEW) . ]

#### SECTION HISTORY

2001, c. 544, §2 (NEW) .

### §7-773. APPLICATION OF PART TO ALL TRUSTS AND ESTATES

This Part applies to every trust or decedent's estate, including those in existence on January 1, 2003, beginning with the first fiscal year of the trust or decedent's estate that begins on or after January 1, 2003, except as otherwise expressly provided in the will or terms of the trust or in this Part. [ 2001, c. 544, §2 (NEW) . ]

#### SECTION HISTORY

2001, c. 544, §2 (NEW) .

**§7-774. TRANSITIONAL MATTERS**

Section 7-749 applies to a trust described in section 7-749, subsection (d) on and after the following dates: [2011, c. 256, §3 (NEW); 2011, c. 256, §4 (AFF).]

(1). If the trust is not funded as of January 1, 2012, the date of the decedent's death;

[ 2011, c. 256, §3 (NEW); 2011, c. 256, §4 (AFF) .]

(2). If the trust is initially funded in the calendar year beginning January 1, 2012, the date of the decedent's death; or

[ 2011, c. 256, §3 (NEW); 2011, c. 256, §4 (AFF) .]

(3). If the trust is not described in subsection (1) or (2), January 1, 2012.

[ 2011, c. 256, §3 (NEW); 2011, c. 256, §4 (AFF) .]

## SECTION HISTORY

2011, c. 256, §3 (NEW). 2011, c. 256, §4 (AFF).

## Article 8: MISCELLANEOUS PROVISIONS

### Part 1: RECEIVERSHIPS FOR MISSING AND ABSENT PERSONS

#### §8-101. ESTATES OF ABSENTEES

If a person entitled to or having an interest in property within the jurisdiction of the State has disappeared or absconded from the place within or without the State where he was last known to be, and has no agent in the State, and it is not known where he is, or if such person, having a spouse or minor child dependent to any extent upon him for support, has thus disappeared or absconded without making sufficient provision for such support, and it is not known where he is, or, if it is known that he is without the State, anyone who would under the law of the State be entitled to administer upon the estate of such absentee if he were deceased, may file a petition under oath in the probate court for the county where such property is situated or found, stating the name, age, occupation and last known residence or address of such absentee, the date and circumstances of the disappearing or absconding, and the names and residences of other persons, whether members of such absentee's family or otherwise, of whom inquiry may be made, and containing a schedule of the property, real and personal so far as known, and its location within the State, and praying that such property may be taken possession of, and a receiver thereof appointed under this Part. [1979, c. 540, §1 (NEW).]

##### SECTION HISTORY

1979, c. 540, §1 (NEW).

#### §8-102. WARRANT

The court may thereupon issue a warrant, directed to the public administrator in the county where the property or some of it is situated, which may run throughout the State, commanding him to take possession of the property named in said schedule and make return of said warrant as soon as may be with his doings thereon with a schedule of the property so taken. The public administrator shall cause so much of the warrant as relates to land to be recorded in the registry of deeds for the county where the land is located. He shall receive such fees for serving the warrant as the court allows, but not more than those established by law for similar service upon a writ of attachment. Fees and the costs of publishing and serving the notice shall be paid by the petitioner. If a receiver is appointed, said fees shall be repaid by the receiver to the petitioner and allowed the receiver in his account. [1979, c. 540, §1 (NEW).]

##### SECTION HISTORY

1979, c. 540, §1 (NEW).

#### §8-103. NOTICE

Upon the return of such warrant, the court may issue a notice reciting the substance of the petition, warrant and return, which shall be addressed to such absentee and to all persons who claim an interest in said property, and to all to whom it may concern, citing them to appear at a time and place named and show cause why a receiver of the property named in the schedule should not be appointed and said property held and disposed of under this Part. [1979, c. 540, §1 (NEW).]

##### SECTION HISTORY

1979, c. 540, §1 (NEW).

## §8-104. PUBLICATION

The return day of said notice shall be not less than 30 days nor more than 60 days after its date. The court shall order said notice to be published once in each of 3 successive weeks in one or more newspapers within the said county and a copy to be mailed to the last known address of such absentee. The court may order other and further notice to be given within or without the State. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## §8-105. HEARING

The absentee or any person who claims an interest in any of the property may appear and show cause why the prayer of the petitioner should not be granted. The court may, after hearing, dismiss the petition and order the property in possession of the public administrator to be returned to the person entitled thereto, or it may appoint the person who, under the law of the State, would be entitled to administer upon the estate of such absentee if he were deceased, or if no such person is known or such person declines to serve, then he may appoint the public administrator for said county as receiver of the property which is in the possession of the public administrator and named in his schedule. If a receiver is appointed, the court shall find and record the date of the disappearance or absconding of the absentee and such receiver shall give bond to the judge of probate and his successors in office in such sum and with such condition as the court orders. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## §8-106. POSSESSION BY RECEIVER

After the approval of such bond, the court may order the public administrator to transfer and deliver to such receiver the possession of the property under the warrant, and the receiver shall file in the registry of probate a schedule of the property received by him. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## §8-107. COLLECTION OF DEBTS

Such receiver shall take possession of any additional property within the State which belongs to such absentee and demand and collect all debts due such absentee from any person within the State and hold the same as if it had been transferred and delivered to him by the public administrator. If he takes any additional real estate, said receiver shall file a certificate describing said real estate with the register of deeds for the county where the real estate is located. [1979, c. 540, §1 (NEW).]

### SECTION HISTORY

1979, c. 540, §1 (NEW).

## §8-108. APPOINTMENT

If such absentee has left no corporeal property within the State, but there are debts or obligations due or owing to him from persons within the State, a petition may be filed as provided in section 8-101, stating the nature and amount of such debts and obligations so far as known, and praying that a receiver thereof may be appointed. The court may thereupon issue a notice as provided, without issuing a warrant, and may, upon the return of said notice and after a hearing, dismiss the petition or appoint a receiver and authorize and

direct him to demand and collect the debts and obligations of said absentee. Said receiver shall give bond as provided in section 8-105, and shall hold the proceeds of such debts and obligations and all property received by him and distribute the same as provided. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§8-109. PERISHABLE GOODS**

The court may make orders for the care, custody, leasing and investing of all property and its proceeds in the possession of the receiver. If any of the said property consists of live animals or is perishable or cannot be kept without great or disproportionate expense, the court may, after the return of the warrant, order such property to be sold at public or private sale. After the appointment of a receiver, upon his petition, the court may order all or part of said property, including the rights of the absentee in land, to be sold at public or private sale to supply money for payments authorized by this subchapter or for reinvestment approved by the court. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§8-110. SUPPORT OF DEPENDENTS**

The court may order said property or its proceeds acquired by mortgage, lease or sale to be applied in payment of charges incurred or that may be incurred in the support and maintenance of the absentee's spouse and dependent children, and to the discharge of such debts and claims for alimony as may be proved against said absentee. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§8-111. ARBITRATION OF CLAIMS**

The court may authorize the receiver to adjust by arbitration or compromise any demand in favor of or against the estate of such absentee. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§8-112. COMPENSATION; CESSATION OF DUTIES**

The receiver shall be allowed such compensation and disbursements as the court orders, to be paid out of said property or proceeds. If within 8 years after the date of the disappearance and absconding as found and recorded by the court, such absentee appears, or a personal representative, assignee in insolvency or trustee in bankruptcy of said absentee is appointed, such receiver shall account for, deliver and pay over to him the remainder of said property. If said absentee does not appear and claim said property within said 8 years, all his right, title and interest in said property, real or personal, or the proceeds thereof, shall cease, and no action shall be brought by him on account thereof. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

### §8-113. TERMINATION OF RECEIVERSHIP

If at the expiration of said 8 years said property has not been accounted for, delivered or paid over under section 8-112 the court shall order the distribution of the remainder to the persons to whom, and in the shares and proportions in which, it would have been distributed if said absentee had died intestate within the State on the day 8 years after the date of the disappearance or absconding as found and recorded by the court, except that said receiver shall deduct from the share of each distributee and pay to the State Tax Assessor for the use of the State such amount as said distributee would have paid in an inheritance tax to the State if said distributee had received the property by inheritance from a deceased resident of this State. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### §8-114. LIMITATIONS

If such receiver is not appointed within 7 years after the date found by the court under section 8-105, the time limited to accounting for, or fixed for distributing, said property or its proceeds, or for barring actions relative thereto, shall be one year after the date of the appointment of the receiver instead of the 8 years provided in sections 8-112 and 8-113. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

## Part 2: ALLOCATION OF PRINCIPAL AND INCOME

### §8-201. BONDS AND OBLIGATIONS IN TRUST; VALUATION; AMORTIZATION (REPEALED)

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 2001, c. 544, §3 (RP).

### §8-202. INCOME EARNED DURING ADMINISTRATION (REPEALED)

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 2001, c. 544, §3 (RP).

### §8-203. INCOME ON GENERAL DEVISE OF PERSONAL PROPERTY IN TRUST, IN TRUST OR FOR A TERM (REPEALED)

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 2001, c. 544, §3 (RP).

### §8-204. DIVIDENDS REPRESENTING CAPITAL GAINS (REPEALED)

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 2001, c. 544, §3 (RP).

## Part 3: PROCEDURES GOVERNING BONDS



### **§8-301. APPLICABILITY TO PROCEEDINGS ON OTHER BONDS**

Except as otherwise provided by law, and insofar as the provisions of this Part are applicable, like proceedings, judgment and execution shall be had on the bonds given to any judge by personal representatives, guardians, conservators, trustees, surviving partners, assignees of insolvent debtors and others, in the manner provided in this Part. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§8-302. SURETY ON BOND MAY CITE TRUST OFFICERS FOR ACCOUNTING**

Whenever any surety on any bond has reason to believe that the trust officer has depleted or is wasting or mismanaging the estate, the surety may cite the trust officer before the judge of probate as provided in section 3-110. If upon hearing the judge is satisfied that the estate held in trust by such officer has been depleted, wasted or mismanaged, he may remove the trust officer and appoint another in his stead. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§8-303. AGREEMENT WITH SURETIES FOR JOINT CONTROL**

It shall be lawful for any party of whom a bond, undertaking or other obligation is required to agree with his surety or sureties for the deposit of any or all moneys and assets for which he and his surety or sureties are or may be held responsible with a national bank, savings banks, safe-deposit or trust company, authorized by law to do business as such in this State, or with other depository approved by the court having jurisdiction over the trust or undertaking for which the bond is required, or a judge thereof, if such deposit is otherwise proper, for the safekeeping thereof, and in such manner as to prevent the withdrawal of such money or assets or any part thereof, without the written consent of such surety or sureties, or an order of such court or judge thereof, made on such notice to such surety or sureties as such court or judge may direct. Such agreement shall not in any manner release from or change the liability of the principal or sureties as established by the terms of the said bond. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§8-304. APPROVAL OF BOND BY JUDGE**

Except as otherwise provided by sections 3-603 to 3-606, 4-204, 4-207, 5-411, 5-412 and 5-432 and Title 18-B, section 702, no bond required to be given to the judge of probate or to be filed in the probate office is sufficient until it has been examined by the judge and the judge's approval has been written thereon. [2003, c. 618, Pt. B, §15 (AMD); 2003, c. 618, Pt. B, §20 (AFF).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW). 2003, c. 618, §B15 (AMD). 2003, c. 618, §B20 (AFF).

### **§8-305. INSUFFICIENT SURETIES**

When the sureties in any such bond are insufficient the judge, on petition of any person interested and with notice to the principal, may require a new bond with sureties approved by him. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§8-306. DISCHARGE OF SURETY**

On application of any surety or principal in such bond, the judge on the due notice to all parties interested may, in his discretion, discharge the surety or sureties from all liability for any subsequent but not for any prior breaches thereof, and may require a new bond of the principal with sureties approved by him. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§8-307. NEW BONDS OR REMOVAL OF PRINCIPAL**

In either case, if the principal does not give the new bond within the time ordered by the judge, he shall be removed and another appointed. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§8-308. REDUCTION OF PENAL SUM WHERE SIGNED BY SURETY COMPANY**

If a surety company becomes surety on a bond given to a judge of probate, the court may, upon petition of any party in interest and after due notice to all parties interested, reduce the penal sum in which the principal and surety shall be liable for a violation thereafter of the conditions of said bond. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§8-309. ACTIONS ON BONDS**

Actions or proceedings on probate bonds of any kind payable to the judge may be commenced by any person interested in the estate or other matter for which the bond was given, either in the probate court in which the bond was filed or in the Superior Court of that county. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§8-310. PRINCIPAL MADE PARTY IN ACTION AGAINST SURETY**

If the principal in any such bond resides in the State when an action is brought thereon, and is not made a party thereto, or if at the trial thereof, or on proceedings on a judgment against the sureties only, he is in the State, the court, at the request of any such surety, may postpone or continue the action long enough to summon or bring him into court. [1979, c. 540, §1 (NEW).]

#### SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§8-311. PROCEEDINGS AND JUDGMENT**

Such surety may thereupon take out a writ, in the form prescribed by the court, to arrest the principal, if liable to arrest, or to attach his estate and summon him to appear and answer as a defendant in the action. If, after 14 days' previous service of such process, he fails thus to appear at the time appointed and judgment

is rendered for the plaintiff, it shall be against him and the other defendants as if he had been originally a party, and any attachment made or bail taken on such process is liable to respond to the judgment as if made or taken in the original action. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§8-312. LIMITATION OF ACTIONS ON BONDS**

Except in the case of personal representatives provided for under sections 3-1005 and 3-1007, and insofar as applicable under the provisions of section 8-301, an action on a bond must be commenced within 6 years after the principal has been cited by the court to appear to settle his account or, if not so cited, within 6 years from the time of the breach of his bond, unless the breach is fraudulently concealed by the principal or surety from the persons pecuniarily interested and who are parties to the action, and in such case within 3 years from the time such breach is discovered. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§8-313. JUDICIAL AUTHORIZATION OF ACTIONS**

The judge of probate may expressly authorize or instruct a personal representative or other fiduciary, at the judge's discretion or on the complaint of any interested person, to commence an action on the bond for the benefit of the estate. Nothing herein may be deemed to limit the power or duty of a successor fiduciary to bring such proceedings as they are authorized to bring without express court authorization under section 3-606, subsection (a), paragraph (4); section 5-412, subsection (a), paragraph (3); Title 18-B, section 702; or as otherwise provided by law. [2003, c. 618, Pt. B, §16 (AMD); 2003, c. 618, Pt. B, §20 (AFF).]

SECTION HISTORY

1979, c. 540, §1 (NEW). 2003, c. 618, §B16 (AMD). 2003, c. 618, §B20 (AFF).

### **§8-314. FORFEITURE FOR FAILURE TO ACCOUNT WHEN ORDERED**

When it appears in any action of a bond against a principal that he has been cited to account for such personal property of the estate as he has received, and has not done so, execution shall be awarded against him for the full value thereof, without any allowance for charges of administration or debts paid. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

### **§8-315. JUDGMENT IN TRUST FOR ALL INTERESTED**

Every judgment and execution in an action on the bond shall be recovered by the judge in trust for all parties interested in the penalty of the bond. The judge shall require the delinquent fiduciary to account for the amount, if still in office, or assign it to his successor to be collected and distributed or otherwise disposed of as assets. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

## **Part 4: EFFECTIVE DATE**

**§8-401. TIME OF TAKING EFFECT; PROVISIONS FOR TRANSITION**

(a). This Code takes effect on January 1, 1981.

[ 1979, c. 540, §1 (NEW) .]

(b). Except as provided elsewhere in this Code, on the effective date of this Code:

(1). The Code applies to any wills of decedents dying thereafter; [1979, c. 540, §1 (NEW) .]

(2). The Code applies to any proceedings in Court then pending or thereafter commenced regardless of the time of the death of decedent except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this Code; [1979, c. 540, §1 (NEW) .]

(3). Every personal representative including a person administering an estate of a minor or incompetent holding an appointment on that date, continues to hold the appointment but has only the powers conferred by this Code and is subject to the duties imposed with respect to any act occurring or done thereafter and a guardian appointed prior to January 1, 1981 shall have the powers conferred by this Code on guardians and conservators, unless otherwise limited by the original order of appointment or subsequent court order under this Code; [1981, c. 127, §1 (AMD) .]

(4). An act done before the effective date in any proceeding and any accrued right is not impaired by this Code. If a right is acquired, extinguished or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before the effective date, the provisions shall remain in force with respect to that right; [1979, c. 540, §1 (NEW) .]

(5). Any rule of construction or presumption provided in this Code applies to instruments executed and multiple party accounts opened before the effective date unless there is a clear indication of a contrary intent; and [1979, c. 540, §1 (NEW) .]

(6). For an adoption decree entered before the effective date and not amended after the effective date, the child shall be the child of both the natural and adopting parents for purposes of intestate succession, notwithstanding section 2-109, subsection (1), unless the decree provides otherwise. [1979, c. 540, §1 (NEW) .]

[ 1981, c. 127, §1 (AMD) .]

**SECTION HISTORY**

1979, c. 540, §1 (NEW). 1981, c. 127, §1 (AMD).

## Article 9: ADOPTION

### Part 1: GENERAL PROVISIONS

#### §9-101. SHORT TITLE

This article may be known and cited as "The Adoption Act." [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

#### SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF).

#### §9-102. DEFINITIONS

As used in this article, unless the context otherwise indicates, the following terms have the following meanings. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(a). "Adoptee" means a person who will be or who has been adopted, regardless of whether the person is a child or an adult.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(b). "Adoption services" means services related to adoptions, including but not limited to adoptive home studies, search services and adoption counseling services.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(c). "Adult" means a person who is 18 years of age or older.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(d). "Child" means a person who is under 18 years of age.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(e). "Consent," used as a noun, means a voluntary agreement to an adoption by a specific petitioner that is executed by a parent or custodian of the adoptee.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(f). "Department" means the Department of Health and Human Services.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF); 2003, c. 689, Pt. B, §6 (REV) .]

(g). "Licensed child-placing agency" means an agency, person, group of persons, organization, association or society licensed to operate in this State pursuant to Title 22, chapter 1671.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(h). "Parent" means a person who:

(1). Has established a parent-child relationship with the child under Title 19-A, chapter 61; or [ 2015, c. 296, Pt. C, §5 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

(2). When no person described in paragraph (1) exists, is the legal guardian of the child. [2015, c. 296, Pt. C, §5 (NEW); 2015, c. 296, Pt. D, §1 (AFF).]

[ 2015, c. 296, Pt. C, §5 (AMD); 2015, c. 296, Pt. D, §1 (AFF) .]

(i). "Petitioner" means a person filing a petition to adopt an adult or child, and includes both petitioners under a joint petition, except as otherwise provided.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(j). "Putative father" means a man who is the alleged biological father of a child but whose paternity has not been legally established.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(k). "Surrender and release," used as a noun, means a voluntary relinquishment of all parental rights to a child to the department or a licensed child-placing agency for the purpose of placement for adoption.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

#### SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF). 2003, c. 689, §B6 (REV). 2015, c. 296, Pt. C, §5 (AMD). 2015, c. 296, Pt. D, §1 (AFF).

### §9-103. JURISDICTION

(a). Subject to Title 4, section 152, subsection 5-A, the Probate Court has exclusive jurisdiction over the following:

(1). Petitions for adoption; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(2). Consents and reviews of withholdings of consent by persons other than a parent; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(3). Surrenders and releases; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(4). Termination of parental rights proceedings brought pursuant to section 9-204; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(5). Proceedings to determine the rights of putative fathers of children whose adoptions or surrenders and releases are pending before the Probate Court; and [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(6). Reviews conducted pursuant to section 9-205. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[ 2015, c. 460, §7 (AMD) .]

(b). The District Court has jurisdiction to conduct hearings pursuant to section 9-205. The District Court has jurisdiction over any matter described in subsection (a) if the proceeding concerns a child over whom the District Court has exclusive jurisdiction pursuant to Title 4, section 152, subsection 5-A.

[ 2015, c. 460, §7 (AMD) .]

#### SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF). 2015, c. 460, §7 (AMD).

## §9-104. VENUE; TRANSFER

(a). If the adoptee is placed by a licensed child-placing agency or the department, the petition for adoption must be filed in the court in the county where:

- (1). The petitioner resides; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- (2). The adoptee resides or was born; or [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- (3). An office of the agency that placed the adoptee for adoption is located. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(b). If the adoptee is not placed by a licensed child-placing agency or the department, the petition for adoption must be filed in the county where the adoptee resides or where the petitioners reside.

[ 1997, c. 239, §1 (AMD); 1997, c. 239, §6 (AFF) .]

(c). If, in the interests of justice or for the convenience of the parties, the court finds that the matter should be heard in another probate court, the court may transfer, stay or dismiss the proceeding, subject to any further conditions imposed by the court.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

### SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 239, §1 (AMD). 1997, c. 239, §6 (AFF).

## §9-105. RIGHTS OF ADOPTED PERSONS

Except as otherwise provided by law, an adopted person has all the same rights, including inheritance rights, that a child born to the adoptive parents would have. An adoptee also retains the right to inherit from the adoptee's biological parents if the adoption decree so provides, as specified in section 2-109, subsection (1). [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

### SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF).

## §9-106. LEGAL REPRESENTATION

(a). The biological parents are entitled to an attorney for any hearing held pursuant to this article. If the biological mother or the biological or putative father wants an attorney but is unable to afford one, the biological mother or the biological or putative father may request the court to appoint an attorney. If the court finds either or both of them indigent, the court shall appoint and pay the reasonable costs and expenses of the attorney of the indigent party. The attorney may not be the attorney for the adoptive parents.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(b). When the adoptee is unrelated to the petitioner, the court shall appoint an attorney who is not the attorney for the adoptive parents to represent a minor indigent biological parent at every stage of the proceedings unless the minor biological parent refuses representation or the court determines that representation is unnecessary.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) . ]

## SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF).

**§9-107. INDIAN CHILD WELFARE ACT**

The Indian Child Welfare Act, United States Code, Title 25, Section 1901 et seq. governs all proceedings under this article that pertain to an Indian child as defined in that Act. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

## SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF).

**§9-108. APPLICATION OF PRIOR LAWS**

The laws in effect on July 31, 1994 apply to proceedings for which any of the following occurred before August 1, 1994: [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) . ]

(a). The filing of a consent;

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) . ]

(b). The filing of a surrender and release;

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) . ]

(c). The filing of a waiver of notice by a father or putative father under former Title 19, section 532-C;

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) . ]

(d). The issuance of an order terminating parental rights; or

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) . ]

(e). The filing of an adoption petition.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) . ]

## SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF).

## **Part 2: ESTABLISHMENT OF PATERNAL RIGHTS AND TERMINATION OF PARENTAL RIGHTS**



## §9-201. ESTABLISHMENT OF PATERNITY

(a). When the biological mother of a child born out of wedlock wishes to consent to the adoption of the child or to execute a surrender and release for the purpose of adoption of the child and the putative father has not consented to the adoption of the child or joined in a surrender and release for the purpose of adoption of the child or waived his right to notice, the biological mother must file an affidavit of paternity with the judge of probate so that the judge may determine how to give notice of the proceedings to the putative father of the child.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(b). If the judge finds from the affidavit of the biological mother that the putative father's whereabouts are known, the judge shall order that notice of the mother's intent to consent to adoption or to execute a surrender and release, or the mother's actual consent or surrender and release, for the purpose of adoption of the child, be served upon the putative father of the child. If the judge finds that the putative father's whereabouts are unknown, then the court shall order notice by publication in accordance with the Maine Rules of Probate Procedure. If the biological mother does not know or refuses to tell the court who the biological father is, the court may order publication in accordance with the Maine Rules of Probate Procedure in a newspaper of general circulation in the area where the petition is filed, where the biological mother became pregnant or where the putative father is most likely to be located. The notice must specify the names of the biological mother and the child.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(c). A putative father or a legal father who is not the biological father may waive his right to notice in a document acknowledged before a notary public or a judge of probate. The notary public may not be an attorney who represents either the mother or any person who is likely to become the legal guardian, custodian or parent of the child.

(1). The waiver of notice must indicate that the putative father or legal father understands that the waiver of notice operates as a consent to adoption or a surrender and release for the purposes of adoption for any adoption of the child, and that by signing the waiver of notice the putative father or legal father voluntarily gives up any rights to the named child. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(2). The waiver of notice may state that the putative father or legal father neither admits nor denies paternity. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(3). The legal father shall attach to the waiver of notice an affidavit stating that, although he is the legal father, he is not the biological father. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(d). If, after notice, the putative father of the child wishes to establish parental rights to the child, he must, within 20 days after notice has been given or within a longer period of time as ordered by the judge, petition the judge of probate to grant to him parental rights. The petition must include an allegation that the putative father is in fact the biological father of the child.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(e). Upon receipt of a petition under subsection (d), the judge shall fix a date for a hearing to determine the putative father's parental rights to the child.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(f). The court shall appoint an attorney who is not the attorney for the putative father, the biological mother or the potential transferee agency or a potential adoptive parent to represent the child and to protect the child's interests.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(g). Notice of the hearing must be given to the putative father, the biological mother, the attorney for the child and any other parties the judge determines appropriate. Notice need not be given to a putative father or a legal father who is not the biological father and who has waived his right to notice as provided in subsection (c).

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(h). Upon order of the court, the department or licensed child-placing agency shall furnish studies and reports relevant to the proceedings.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(i). If, after a hearing, the judge finds that the putative father is the biological father, that he is willing and able to protect the child from jeopardy and has not abandoned the child, that he is willing and able to take responsibility for the child and that it is in the best interests of the child, then the judge shall declare the putative father the child's parent with all the attendant rights and responsibilities.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(j). If the judge of probate finds that the putative father of the child has not petitioned or appeared within the period required by this section or has not met the requirements of subsection (i), the judge shall rule that the putative father has no parental rights and that only the biological mother of the child need consent to adoption or a surrender and release.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

#### SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF).

### **§9-202. SURRENDER AND RELEASE; CONSENT**

(a). With the approval of the judge of probate of any county within the State and after a determination by the judge that a surrender and release or a consent is in the best interest of the child, the parents or surviving parent of a child may at any time after the child's birth:

(1). Surrender and release all parental rights to the child and the custody and control of the child to a licensed child-placing agency or the department to enable the licensed child-placing agency or the department to have the child adopted by a suitable person; or [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(2). Consent to have the child adopted by a specified petitioner. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

The parents or the surviving parent must execute the surrender and release or the consent in the presence of the judge. The adoptee, if 14 years of age or older, must execute the consent in the presence of the judge. The waiver of notice by the legal father who is not the biological father or putative father is governed by section 9-201, subsection (c).

[ 1997, c. 239, §2 (AMD); 1997, c. 239, §6 (AFF) .]

(b). The court may approve a consent or a surrender and release only if the following conditions are met.

(1). A licensed child-placing agency or the department certifies to the court that counseling was provided or was offered and refused. This requirement does not apply if:

- (i) One of the petitioners is a blood relative; or
- (ii) The adoptee is an adult. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(2). The court has explained the individual's parental rights and responsibilities, the effects of the consent or the surrender and release, that in all but specific situations the individual has the right to revoke the consent or surrender and release within 3 days and the existence of the adoption registry and the services available under Title 22, section 2706-A. The individual does not have the right to revoke the consent when the individual is a consenting party and also a petitioner. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(3). The court determines that the consent or the surrender and release has been duly executed and was given freely after the parent was informed of the parent's rights. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(4). Except when a consenting party is also a petitioner, at least 3 days have elapsed since the parents or parent executed the surrender and release or the consent and the parents or parent did not withdraw or revoke the consent or surrender and release before the judge or, if the judge was not available, before the register. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(c). The original consent or surrender and release must be filed in the Probate Court where the consent or the surrender and release is executed. An attested copy of the consent or surrender and release must be filed in the Probate Court in which the petition is filed. The court in which the consent or the surrender and release is executed shall provide an attested copy to each consenting or surrendering party and an attested copy to the transferring agency. The copy given to the consenting or surrendering party must contain a statement explaining the importance of keeping the court informed of a current name and address.

[ 1997, c. 239, §3 (AMD); 1997, c. 239, §6 (AFF) .]

(d). A consent or a surrender and release is not valid until 3 days after it has been executed, except that consent by a parent petitioning to adopt that parent's own child with that parent's spouse is valid upon signature.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(e). Consent may be acknowledged before a notary public who is not an attorney for the adopting parents or a partner, associate or employee of an attorney for the adopting parents when consent is given by:

(1). The department or a licensed child-placing agency; or [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(2). A public agency or a duly licensed private agency to which parental rights have been transferred under the law of another state or country. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(f). Except as provided in subsection (g) and section 9-205, subsection (b), a consent or a surrender and release is final and irrevocable when duly executed.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(g). A consent is final only for the adoption consented to, and, if that adoption petition is withdrawn or dismissed or if the adoption is not finalized within 18 months of the execution of the consent, a review must be held pursuant to section 9-205.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(h). The court shall accept a consent or a surrender and release by a court of comparable jurisdiction in another state if the court receives an affidavit from a member of that state's bar or a certificate from that court of comparable jurisdiction stating that:

(1). The party executing the consent or the surrender and release followed the procedure required to make a consent or a surrender and release valid in the state in which it was executed; and [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(2). The court of comparable jurisdiction advised the person executing the consent or the surrender and release of the consequences of the consent or the surrender and release under the laws of the state in which the consent or the surrender and release was executed. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

The court shall accept a waiver of notice by a putative father or a legal father who is not the biological father that meets the requirements of section 9-201, subsection (c).

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

#### SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 239, §§2,3 (AMD). 1997, c. 239, §6 (AFF).

### **§9-203. DUTIES AND RESPONSIBILITIES SUBSEQUENT TO SURRENDER AND RELEASE**

Without notice to the parent or parents, the surrender and release authorized pursuant to section 9-202 may be transferred together with all rights under section 9-202 from the transferee agency to the department or from the department as original transferee to any licensed child-placing agency. If the licensed child-placing agency or the department is unable to find a suitable adoptive home for a child surrendered and released by a parent or parents, then the licensed child-placing agency or the department to whom custody and control of that child have been surrendered and released or transferred shall request a review pursuant to section 9-205. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

#### SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF).

### **§9-204. TERMINATION OF PARENTAL RIGHTS**

(a). A petition for termination of parental rights may be brought in Probate Court in which an adoption petition is properly filed as part of that adoption petition except when the District Court has exclusive jurisdiction over the child pursuant to Title 4, section 152, subsection 5-A.

[ 2015, c. 460, §8 (AMD) .]

(b). Except as otherwise provided by this section, a termination of parental rights petition is subject to the provisions of Title 22, chapter 1071, subchapter VI.

[ 1997, c. 683, Pt. A, §8 (AMD) .]

(c). The court may appoint a guardian ad litem for the child. The appointment must be made as soon as possible after the petition for termination of parental rights is initiated.

(1). The court shall pay reasonable costs and expenses for the guardian ad litem. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(2). The guardian ad litem must be given access to all reports and records relevant to the case. In general, the guardian ad litem shall represent the child. The guardian ad litem may conduct an investigation to ascertain the facts that includes:

(i) Reviewing records of psychiatric, psychological or physical examinations of the child, parents or other persons having or seeking care or custody of the child;

(ii) Interviewing the child with or without other persons present;

(iii) Interviewing, subpoenaing, examining and cross-examining witnesses; and

(iv) Making recommendations to the court. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

#### SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 683, §A8 (AMD). 2015, c. 460, §8 (AMD).

### §9-205. REVIEW

(a). The court shall conduct a judicial review if:

(1). A child is not adopted within 18 months of execution of a surrender and release; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(2). The adoption is not finalized within 18 months of the consent to an adoption by a parent or parents; or [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(3). An adoption petition is not finalized within 18 months. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(b). If the court determines that adoption is still a viable plan for the child, the court shall schedule another judicial review within 2 years. If the court determines that adoption is no longer a viable plan, the court shall attempt to notify the biological parents, who must be given an opportunity to present an acceptable plan for the child. If either or both parents are able and willing to assume physical custody of the child, then the court shall declare the consent or the surrender and release void.

If the biological parents are not notified or are unable or unwilling to assume physical custody of the child or if the court determines that placement of the child with the biological parents would constitute jeopardy as defined by Title 22, section 4002, subsection 6, then the case must be transferred to the District Court for a hearing pursuant to Title 22, section 4038-A.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

#### SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF).

### Part 3: ADOPTION PROCEDURES

#### §9-301. PETITION FOR ADOPTION AND CHANGE OF NAME; FILING FEE

A husband and wife jointly or an unmarried person, resident or nonresident of the State, may petition the Probate Court to adopt a person, regardless of age, and to change that person's name. The fee for filing the petition is \$65 plus: [2005, c. 654, §4 (AMD).]

(a). The fee for a national criminal history record check for noncriminal justice purposes set by the Federal Bureau of Investigation for each prospective adoptive parent who is not the biological parent of the child; and

[ 2001, c. 52, §1 (NEW) .]

(b). The fee for a state criminal history record check for noncriminal justice purposes established pursuant to Title 25, section 1541, subsection 6 for each prospective adoptive parent who is not the biological parent of the child.

[ 2001, c. 52, §1 (NEW) .]

#### SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 18, §3 (AMD). 1997, c. 18, §6 (AFF). 2001, c. 52, §1 (AMD). 2005, c. 654, §4 (AMD).

#### §9-302. CONSENT FOR ADOPTION

(a). Before an adoption is granted, written consent to the adoption must be given by:

(1). The adoptee, if the adoptee is 14 years of age or older; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(2). Each of the adoptee's living parents, except as provided in subsection (b); [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(3). The person or agency having legal custody or guardianship of the child or to whom the child has been surrendered and released, except that the person's or agency's lack of consent, if adjudged unreasonable by a judge of probate, may be overruled by the judge. In order for the judge to find that the person or agency acted unreasonably in withholding consent, the petitioner must prove, by a preponderance of the evidence, that the person or agency acted unreasonably. The court may hold a pretrial conference to determine who will proceed. The court may determine that even though the burden of proof is on the petitioner, the person or agency should proceed if the person or agency has important facts necessary to the petitioner in presenting the petitioner's case. The judge shall consider the following:

(i) Whether the person or agency determined the needs and interests of the child;

(ii) Whether the person or agency determined the ability of the petitioner and other prospective families to meet the child's needs;

(iii) Whether the person or agency made the decision consistent with the facts;

(iv) Whether the harm of removing the child from the child's current placement outweighs any inadequacies of that placement; and

(v) All other factors that have a bearing on a determination of the reasonableness of the person's or agency's decision in withholding consent; and [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(4). A guardian appointed by the court, if the adoptee is a child, when the child has no living parent, guardian or legal custodian who may consent. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

A petition for adoption must be pending before a consent is executed.

[ 1997, c. 239, §4 (AMD); 1997, c. 239, §6 (AFF) .]

**(b).** Consent to adoption is not required of:

(1). A putative father or a legal father who is not the biological father if he:

(i) Received notice and failed to respond to the notice within the prescribed time period;

(ii) Waived his right to notice under section 9-201, subsection (c);

(iii) Failed to meet the standards of section 9-201, subsection (i); or

(iv) Holds no parental rights regarding the adoptee under the laws of the foreign jurisdiction in which the adoptee was born; [1999, c. 790, Pt. G, §1 (AMD).]

(2). A parent whose parental rights have been terminated under Title 22, chapter 1071, subchapter VI; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(3). A parent who has executed a surrender and release pursuant to section 9-202; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(4). A parent whose parental rights have been voluntarily or judicially terminated and transferred to a public agency or a duly licensed private agency pursuant to the laws of another state or country; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(5). The parent of an adoptee who is 18 years of age or older. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[ 1999, c. 790, Pt. G, §1 (AMD) .]

**(c).** When the department consents to the adoption of a child in its custody, the department shall immediately notify:

(1). The District Court in which the action under Title 22, chapter 1071 is pending; and [1997, c. 715, Pt. C, §1 (NEW).]

(2). The guardian ad litem for the child. [1997, c. 715, Pt. C, §1 (NEW).]

[ 1997, c. 715, Pt. C, §1 (NEW) .]

#### SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 239, §4 (AMD). 1997, c. 239, §6 (AFF). 1997, c. 715, §C1 (NEW). 1999, c. 790, §G1 (AMD).

### §9-303. PETITION

**(a).** A petition for adoption must be sworn to by the petitioner and must include:

(1). The full name, age and place of residence of the petitioner and, if married, the place and date of marriage; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(2). The date and place of birth of the adoptee, if known; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(3). The birth name of the adoptee, any other names by which the adoptee has been known and the adoptee's proposed new name, if any; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(4). The residence of the adoptee at the time of the filing of the petition; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(5). The petitioner's intention to establish a parent and child relationship between the petitioner and the adoptee and a statement that the petitioner is a fit and proper person able to care and provide for the adoptee's welfare; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(6). The names and addresses of all persons or agencies known to the petitioner that affect the custody, visitation or access to the adoptee; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(7). The relationship, if any, of the petitioner to the adoptee; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(8). The names and addresses of the department and the licensed child-placing agency, if any; [2015, c. 274, §3 (AMD).]

(9). The names and addresses of all persons known to the petitioner at the time of filing from whom consent to the adoption is required; and [2015, c. 274, §3 (AMD).]

(10). A statement that the petitioner acknowledges that after the adoption is finalized, the transfer of the long-term care and custody of the child without a court order is prohibited under Title 17-A, section 553, subsection 1, paragraphs C and D. [2015, c. 274, §3 (NEW).]

[ 2015, c. 274, §3 (AMD) .]

**(b).** A petitioner shall indicate to the court what information the petitioner is willing to share with the biological parents and under what circumstances and shall provide a mechanism for updating that information.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

**(c).** The caption of a petition for adoption may be styled "In the Matter of the Adoption Petition of (name of adoptee)." The petitioner must also be designated in the caption.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

#### SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF). 2015, c. 274, §3 (AMD).

### **§9-304. INVESTIGATION; GUARDIAN AD LITEM; REGISTRY**

**(a).**

[ 2001, c. 52, §2 (RP) .]

**(a-1).** Upon the filing of a petition for adoption of a minor child, the court shall request a background check and shall direct the department or a licensed child-placing agency to conduct a study and make a report to the court.



- (1). The study must include an investigation of the conditions and antecedents of the child to determine whether the child is a proper subject for adoption and whether the proposed home is suitable for the child. The department or licensed child-placing agency shall submit the report to the court within 60 days.
- (i) If the court has a report that provides sufficient, current information, the court may waive the requirement of a study and report.
  - (ii) If the petitioner is a blood relative of the child, the court may waive the requirement of a study and report. [ 2001, c. 52, §3 (NEW). ]
- (2). The court shall request a background check for each prospective adoptive parent who is not the biological parent of the child. The background check must include a screening for child abuse cases in the records of the department and criminal history record information obtained from the Maine Criminal Justice Information System and the Federal Bureau of Investigation.
- (i) The criminal history record information obtained from the Maine Criminal Justice Information System must include a record of public criminal history record information as defined in Title 16, section 703, subsection 8.
  - (ii) The criminal history record information obtained from the Federal Bureau of Investigation must include other state and national criminal history record information.
  - (iii) Each prospective parent who is not the biological parent of the child shall submit to having fingerprints taken. The State Police, upon receipt of the fingerprint card, may charge the court for the expenses incurred in processing state and national criminal history record checks. The State Police shall take or cause to be taken the applicant's fingerprints and shall forward the fingerprints to the State Bureau of Identification so that the bureau can conduct state and national criminal history record checks. Except for the portion of the payment, if any, that constitutes the processing fee charged by the Federal Bureau of Investigation, all money received by the State Police for purposes of this paragraph must be paid over to the Treasurer of State. The money must be applied to the expenses of administration incurred by the Department of Public Safety.
  - (iv) The subject of a Federal Bureau of Investigation criminal history record check may obtain a copy of the criminal history record check by following the procedures outlined in 28 Code of Federal Regulations, Sections 16.32 and 16.33. The subject of a state criminal history record check may inspect and review the criminal history record information pursuant to Title 16, section 709.
  - (v) State and federal criminal history record information may be used by the court for the purpose of screening prospective adoptive parents in determining whether the adoption is in the best interests of the child.
  - (vi) Information obtained pursuant to this paragraph is confidential. The results of background checks received by the court are for official use only and may not be disseminated outside the court except as required under Title 22, section 4011-A.
  - (vii) The expense of obtaining the information required by this paragraph is incorporated in the adoption filing fee established in section 9-301. The Probate Court shall collect the total fee and transfer the appropriate funds to the Department of Public Safety and the department. [ 2013, c. 267, Pt. B, §12 (AMD). ]

The court may waive the background check of a prospective adoptive parent if a previous background check was completed by a court or by the department under this subsection within a reasonable period of time and the court is satisfied that nothing new that would be included in the background check has transpired since the last background check.

This subsection does not authorize the court to request a background check for the biological parent who is also the current legal parent of the child.

[ 2013, c. 267, Pt. B, §12 (AMD) . ]

**(a-2).** The department may, pursuant to rules adopted by the department, at any time before the filing of the petition for adoption, conduct background checks for each prospective adoptive parent of a minor child in its custody.

(1). The department may request a background check for each prospective adoptive parent who is not the biological parent of the child. The background check must include criminal history record information obtained from the Maine Criminal Justice Information System and the Federal Bureau of Investigation.

(i) The criminal history record information obtained from the Maine Criminal Justice Information System must include a record of public criminal history record information as defined in Title 16, section 703, subsection 8.

(ii) The criminal history record information obtained from the Federal Bureau of Investigation must include other state and national criminal history record information.

(iii) Each prospective parent who is not the biological parent of the child shall submit to having fingerprints taken. The State Police, upon receipt of the fingerprint card, may charge the department for the expenses incurred in processing state and national criminal history record checks. The State Police shall take or cause to be taken the applicant's fingerprints and shall forward the fingerprints to the State Bureau of Identification so that the bureau can conduct state and national criminal history record checks. Except for the portion of the payment, if any, that constitutes the processing fee charged by the Federal Bureau of Investigation, all money received by the State Police for purposes of this paragraph must be paid over to the Treasurer of State. The money must be applied to the expenses of administration incurred by the Department of Public Safety.

(iv) The subject of a Federal Bureau of Investigation criminal history record check may obtain a copy of the criminal history record check by following the procedures outlined in 28 Code of Federal Regulations, Sections 16.32 and 16.33. The subject of a state criminal history record check may inspect and review the criminal history record information pursuant to Title 16, section 709.

(v) State and federal criminal history record information may be used by the department for the purpose of screening prospective adoptive parents in determining whether the adoption is in the best interests of the child.

(vi) Information obtained pursuant to this paragraph is confidential. The results of background checks received by the department are for official use only and may not be disseminated outside the department except to a court considering an adoption petition under subsection (a-1). [2013, c. 267, Pt. B, §13 (AMD).]

(2). Rules adopted by the department pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2003, c. 575, §2 (NEW).]

[ 2013, c. 267, Pt. B, §13 (AMD) .]

**(b).** This subsection governs the collection and disclosure of information about the child's background.

(1). The department, the licensed child-placing agency or any other person who acts to place or assist in placing the child for adoption shall obtain medical and genetic information on the biological parents and the child. Specifically, the department, the licensed child-placing agency or other person who acts to place or assist in placing the child for adoption shall attempt to obtain:

(i) A current medical, psychological and developmental history of the child, including an account of the child's prenatal care and medical condition at birth, results of newborn screening, any drug or medication taken by the child's biological mother during pregnancy, any subsequent medical, psychological or psychiatric examination and diagnosis, any physical, sexual or emotional abuse suffered by the child and a record of any immunizations and health care received since birth; and

(ii) Relevant information concerning the medical, psychological and social history of the biological parents, including any known disease or hereditary disposition to disease, the history of use of drugs and alcohol, the health of the biological mother during her pregnancy and the health of the biological parents at the time of the child's birth. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(2). Prior to the child being placed for adoption, the department, the licensed child-placing agency or other person who acts to place or assist in placing the child for adoption shall provide the information described in paragraph (1) to the prospective adoptive parents. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(3). If the department, the licensed child-placing agency or other person who acts to place or assists in placing the child for adoption has specific, articulable reasons to question the truth or accuracy of any of the information obtained, those reasons must be disclosed in writing to the prospective adoptive parents. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(4). The prospective adoptive parents must be informed in writing if any of the information described in this subsection can not be obtained, either because the records are unavailable or because the biological parents are unable or unwilling to consent to its disclosure or to be interviewed. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(5). If, after a child is placed for adoption and either before or after the adoption is final, the child suffers a serious medical or mental illness for which the specific medical, psychological or social history of the biological parents or the child may be useful in diagnosis or treatment, the prospective adoptive or adoptive parents may request that the department, the licensed child-placing agency or other person who placed or assisted to place the child attempt to obtain additional information. The department, licensed child-placing agency or other person shall attempt to obtain the information promptly and shall disclose any information collected to the prospective adoptive or adoptive parents as soon as reasonably possible. The department, the licensed child-placing agency or other person may charge a fee to the prospective adoptive or adoptive parents to cover the cost of obtaining and providing the additional information. Fees collected by the department must be dedicated to defray the costs of obtaining and providing the additional information. Fees may be reduced or waived for low-income prospective adoptive or adoptive parents. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(6). The department, the licensed child-placing agency or other person who acts to place or assist in placing the child for adoption shall file the information collected with the court and, if it appears that the adoption will be granted and this information has not previously been made available to the adoptive parents pursuant to Title 22, section 4008, subsection 3, paragraph G or Title 22, section 8205, the court shall make the information available to the adoptive parents, prior to issuing the decree pursuant to subsection (f), with protection for the identity of persons other than the child. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(7). If the child to be placed for adoption is from a foreign country that has jurisdiction over the child and the prospective adoptive parents are United States citizens, compliance with federal and international adoption laws is deemed to be compliance with this subsection. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

**(b-1).** There is a rebuttable presumption that the petitioner would create a situation of jeopardy for the child if the adoption were granted and that the adoption is not in the best interest of the child if the court finds that the petitioner for the adoption of a minor child:

(1). Has been convicted of an offense listed in Title 19-A, section 1653, subsection 6-A, paragraph A in which the victim was a minor at the time of the offense and the petitioner was at least 5 years older than the minor at the time of the offense except that, if the offense was gross sexual assault under Title 17-A, section 253, subsection 1, paragraph B or C, or an offense in another jurisdiction that involves conduct

that is substantially similar to that contained in Title 17-A, section 253, subsection 1, paragraph B or C, and the minor victim submitted as a result of compulsion, the presumption applies regardless of the ages of the petitioner and the minor victim at the time of the offense; or [2007, c. 513, §1 (AMD).]

(2). Has been adjudicated in an action under Title 22, chapter 1071 of sexually abusing a person who was a minor at the time of the abuse. [2005, c. 366, §1 (NEW).]

The petitioner may present evidence to rebut the presumption.

[ 2007, c. 513, §1 (AMD) .]

(c). The court may require that the child live for one year in the home of the petitioner before the petition is granted and that the child, during all or part of this probationary period, be under the supervision of the department or a licensed adoption agency.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(d). The court may appoint a guardian ad litem for the child at any time during the proceedings.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(e). Before the adoption is decreed, the court shall ensure that the petitioners are informed of the existence of the adoption registry and the services available under Title 22, section 2706-A.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(f). If the judge is satisfied with the identity and relations of the parties, of the ability of the petitioner to bring up and educate the child properly, considering the condition of the child's biological parents, and of the fitness and propriety of the adoption, the judge shall make a decree setting forth the facts and declaring that from that date the child is the child of the petitioner and that the child's name is changed, without requiring public notice of that change.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(g). A certified copy of the birth record of the child proposed for adoption must be presented with the petition for adoption if the certified copy can be obtained or made available by filing a delayed birth registration. After the adoption has been decreed, the register of probate shall file a certificate of adoption with the State Registrar of Vital Statistics on a form prescribed and furnished by the state registrar.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(h). Before the adoption is decreed, the court shall ensure that the petitioners are informed that the transfer of the long-term care and custody of the child without a court order is prohibited under Title 17-A, section 553, subsection 1, paragraphs C and D.

[ 2015, c. 274, §4 (NEW) .]

#### SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 239, §5 (AMD). 1997, c. 239, §6 (AFF). RR 2001, c. 1, §21 (COR). 2001, c. 52, §§2,3 (AMD). 2001, c. 546, §1 (AMD). 2003, c. 575, §§1,2 (AMD). 2005, c. 366, §1 (AMD). 2007, c. 513, §1 (AMD). 2013, c. 267, Pt. B, §§12, 13 (AMD). 2015, c. 274, §4 (AMD).

## §9-305. EVIDENCE; PROCEDURE

(a). The judge may interview any adoptee, and shall interview an adoptee who is 12 years of age or older, outside the presence of the prospective adoptive parents to determine the adoptee's attitudes and desires about the adoption and other relevant issues.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(b). The judge may conduct an inspection in camera of records of relevant child protective proceedings and may disclose only that information necessary for the determination of any issue before the court. Any disclosure of information must be done pursuant to Title 22, section 4008, subsection 3.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(c). The parties may request a recording of the proceedings. The requesting party shall pay the expense of the recording.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

### SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF).

## §9-306. ALLOWABLE PAYMENTS; EXPENSES

(a). Except when one of the petitioners is a blood relative of the adoptee or the adoptee is an adult, only the following expenses may be paid by or on behalf of a petitioner in any proceeding under this article:

(1). The actual cost of legal services related to the consent or the surrender and release and to the adoption process; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(2). Prenatal and postnatal counseling expenses for the biological mother; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(3). Prenatal, birthing and other related medical expenses for the biological mother; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(4). Necessary transportation expenses to obtain the services listed in paragraphs (1), (2) and (3); [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(5). Foster care expenses for the child; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(6). Necessary living expenses for the biological mother and the child; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(7). For the biological father, legal and counseling expenses related to the consent, the surrender and release and the adoption process; and [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(8). Fees to a licensed child-placing agency providing services in connection with the pending adoption. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(b). Prior to the dispositional hearing pursuant to section 9-308, the petitioner shall file a full accounting of all disbursements of anything of value made or agreed to be made by or on behalf of the petitioner in connection with the adoption. The accounting report must be signed under penalty of perjury and must be submitted to the court on or before the date the final decree is granted. The accounting report

must be itemized and show the services related to the adoption or to the placement of the adoptee for adoption that were received by the adoptee's biological parents, by the adoptee or on behalf of the petitioner. The accounting must include the dates of each payment and the names and addresses of each attorney, physician, hospital, licensed child-placing agency or other person or organization who received funds or anything of value from the petitioner in connection with the adoption or the placement of the adoptee with the petitioner or participated in any way in the handling of the funds, either directly or indirectly. This subsection does not apply when one of the petitioners is a blood relative or the adoptee is an adult.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(c). Payment for expenses allowable under subsection (a), if provided, may not be contingent upon any future decision a biological parent might make pertaining to the child. Other expenses or payments to biological parents are not authorized.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

#### SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF).

### §9-307. ADOPTION NOT GRANTED

If the court determines that it is unable to finalize an adoption to which biological parents have consented, the court shall notify the biological parents that the court has not granted the adoption and shall conduct a review pursuant to section 9-205. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

#### SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF).

### §9-308. FINAL DECREE; DISPOSITIONAL HEARING

(a). The court shall grant a final decree of adoption if the petitioner who filed the petition has been heard or has waived hearing and the court is satisfied from the hearing or record that:

- (1). All necessary consents, relinquishments or terminations of parental rights have been duly executed and filed with the court; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- (2). An adoption study, when required by section 9-304, has been filed with the court; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- (3). A list of all disbursements as required by section 9-306 has been filed with the court; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- (4). The petitioner is a suitable adopting parent and desires to establish a parent and child relationship with the adoptee; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- (5). The best interests of the adoptee are served by the adoption; [2015, c. 274, §5 (AMD).]
- (5-A). The petitioner has acknowledged that the petitioner understands that the transfer of the long-term care and custody of the child without a court order is prohibited under Title 17-A, section 553, subsection 1, paragraphs C and D; and [2015, c. 274, §5 (NEW).]
- (6). All other requirements of this article have been met. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[ 2015, c. 274, §5 (AMD) .]

(b). In determining the best interests of the adoptee, the court shall consider and evaluate the following factors to give the adoptee a permanent home at the earliest possible date:

(1). The love, affection and other emotional ties existing between the adoptee and the adopting person or persons, the biological parent or biological parents or the putative father; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(2). The capacity and disposition of the adopting person or persons, the biological parent or biological parents or the putative father to educate and give the adoptee love, affection and guidance and to meet the needs of the adoptee. An adoption may not be delayed or denied because the adoptive parent and the child do not share the same race, color or national origin; and [1999, c. 78, §1 (AMD).]

(3). The capacity and disposition of the adopting person or persons, the biological parent or biological parents or the putative father to provide the adoptee with food, clothing and other material needs, education, permanence and medical care or other remedial care recognized and permitted in place of medical care under the laws of this State. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[ 1999, c. 78, §1 (AMD) .]

(c). The court shall enter its findings in a written decree that includes the new name of the adoptee. The final decree must further order that from the date of the decree the adoptee is the child of the petitioner and must be accorded the status set forth in section 9-105. If the court determines that it is in the best interest of the child, the court may require that the names of the child and of the petitioner be kept confidential.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(d). Upon completion of an adoption proceeding, the biological parents who consented to an adoption or who executed a surrender and release must be notified of the completion by regular mail at their last known address. Notice under this subsection is not required to a biological parent who is also a petitioner. When the biological parents' rights have been terminated pursuant to Title 22, section 4055, the notice must be given to the department and the department shall notify the biological parents of the completion by regular mail at their last known address. Actual receipt of the notice is not a precondition of completion and does not affect the rights or responsibilities of adoptees or adoptive parents.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(e). The department shall notify the grandparents of a child when the child is placed for adoption if the department has received notice that the grandparents were granted reasonable rights of visitation or access under Title 19-A, chapter 59 or Title 22, section 4005-E.

[ 2001, c. 696, §9 (AMD) .]

#### SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF). 1999, c. 78, §1 (AMD). 2001, c. 696, §9 (AMD). 2013, c. 137, §1 (AMD). 2015, c. 274, §5 (AMD).

### §9-309. APPEALS

(a). Any party may appeal from any order entered under this article to the Supreme Judicial Court sitting as the Law Court, as in other civil actions, but a bond to prosecute an appeal is not required of a child or next friend and costs may not be awarded against either.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(b). An appeal from any order under this article must be expedited.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(c). An attorney or guardian ad litem appointed to represent a party in an adoption proceeding in Probate Court continues to represent the interests of that party in any appeal unless otherwise ordered by the court.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

#### SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF).

### §9-310. RECORDS CONFIDENTIAL

Notwithstanding any other provision of law and except as provided in Title 22, section 2768, all Probate Court records relating to any adoption decreed on or after August 8, 1953 are confidential. The Probate Court shall keep records of those adoptions segregated from all other court records. If a judge of probate court determines that examination of records pertaining to a particular adoption is proper, the judge may authorize that examination by specified persons, authorize the register of probate to disclose to specified persons any information contained in the records by letter, certificate or copy of the record or authorize a combination of both examination and disclosure. [2007, c. 409, §1 (AMD); 2007, c. 409, §6 (AFF).]

Any medical or genetic information in the court records relating to an adoption must be made available to the adopted child upon reaching the age of 18 and to the adopted child's descendants, adoptive parents or legal guardian on petition of the court. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

#### SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF). 2007, c. 409, §1 (AMD). 2007, c. 409, §6 (AFF).

### §9-311. INTERSTATE PLACEMENTS

(a). A person or agency who intends to bring a child to this State from another state for the purpose of adoption must provide to the Probate Court the certification of compliance as required by the department pursuant to Title 22, chapter 1153 or 1154, as applicable.

[ 2007, c. 255, §1 (AMD) .]

(b). A person or agency who intends to remove a child from this State for the purpose of adoption in another state must obtain from the department certification of compliance with Title 22, chapter 1153 or 1154, as applicable, prior to the removal of the child from this State.

[ 2007, c. 255, §1 (AMD) .]

(c). The Probate Court may not grant a petition to adopt a child who has been brought to or will be removed from this State for the purpose of adoption without department certification of compliance with Title 22, chapter 1153 or 1154, as applicable.

[ 2007, c. 255, §1 (AMD) .]



(d). An agency or person who fails to comply with this section commits a civil violation for which a penalty of not less than \$100 and not more than \$5,000 may be adjudged.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

#### SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF). 2007, c. 255, §1 (AMD).

## §9-312. FOREIGN ADOPTIONS

If an adoption in a foreign country has been finalized and the adopting parents are seeking an adoption under the laws of this State to give recognition to the foreign adoption, a judge of probate may enter a decree of adoption based solely upon a judgment of adoption in a foreign country and may order a change of name if requested by the adopting parents. The fee for filing the petition is \$55. [2005, c. 654, §5 (AMD).]

#### SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF). 2005, c. 654, §5 (AMD).

## §9-313. ADVERTISEMENT

**1. Definitions.** As used in this section, the following terms have the following meanings.

A. "Advertise" means to communicate by any public medium that originates within this State, including by newspaper, periodical, telephone book listing, outdoor advertising sign, radio or television or by any computerized communication system, including by e-mail, website, Internet account or any similar medium of communication provided via the Internet. [2015, c. 274, §6 (NEW).]

B. "Internet account" means an account created within a bounded system established by an Internet-based service that requires a user to input or store access information in an electronic device in order to view, create, use or edit the user's account information, profile, display, communications or stored data. [2015, c. 274, §6 (NEW).]

[ 2015, c. 274, §6 (NEW) .]

**2. Advertising prohibited.** A person may not:

A. Advertise for the purpose of finding a child to adopt or to otherwise take into permanent physical custody; [2015, c. 274, §6 (NEW).]

B. Advertise that the person will find an adoptive home or any other permanent physical placement for a child or arrange for or assist in the adoption, adoptive placement or any other permanent physical placement of a child; [2015, c. 274, §6 (NEW).]

C. Advertise that the person will place a child for adoption or in any other permanent physical placement; or [2015, c. 274, §6 (NEW).]

D. Advertise for the purpose of finding a person to adopt or otherwise take into permanent custody a particular child. [2015, c. 274, §6 (NEW).]

[ 2015, c. 274, §6 (NEW) .]

**3. Exceptions.** This section does not prohibit:

A. The department or a child placing agency from advertising in accordance with rules adopted by the department; or [2015, c. 274, §6 (NEW).]

B. An attorney licensed to practice in this State from advertising the attorney's availability to practice or provide services relating to the adoption of children. [2015, c. 274, §6 (NEW).]

[ 2015, c. 274, §6 (NEW) .]

**4. Violation.** A person who violates subsection 2 commits a civil violation for which a fine of not more than \$5,000 may be adjudged.

[ 2015, c. 274, §6 (NEW) .]

#### SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF). 2015, c. 274, §6 (RPR).

### **§9-314. IMMUNITY FROM LIABILITY FOR GOOD FAITH REPORTING; PROCEEDINGS**

A person, including an agent of the department, who participates in good faith in reporting violations of this article or participates in a related child protection investigation or proceeding is immune from any criminal or civil liability for reporting or participating in the investigation or proceeding. For purposes of this section, "good faith" does not include instances when a false report is made and the person knows the report is false. [1997, c. 683, Pt. A, §9 (AMD).]

#### SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 683, §A9 (AMD).

### **§9-315. ANNULMENT OF THE ADOPTION DECREE**

(a). A judge of probate may, on petition of 2 or more persons and after notice and hearing, reverse and annul a decree of the Probate Court for one of the following reasons.

(1). The court finds that the adoption was obtained as a result of fraud, duress or illegal procedures. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(2). The court finds other good cause shown consistent with the best interest of the child. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(b). Notice of a petition to annul must be given to the biological parents, except those whose parental rights were terminated through a proceeding pursuant to Title 22, section 4055, subsection 1, paragraph B, subparagraph (2), and to all parties to the adoption including the adoptive parents, an adoptee who is 14 years of age or older and the agency involved in the adoption.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(c). After the Probate Court annuls a decree of adoption, the register of probate shall transmit immediately a certified copy of the annulment to the State Registrar of Vital Statistics.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

#### SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF).

## Part 4: ADOPTION ASSISTANCE PROGRAM

### §9-401. AUTHORIZATION; SPECIAL NEEDS CHILDREN

(a). There is established in the Department of Health and Human Services the Adoption Assistance Program, referred to in this Part as "the program."

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF); 2003, c. 689, Pt. B, §6 (REV) .]

(b). Subject to rules and regulations adopted by the department and the federal Department of Health and Human Services, the department may provide through the program adoption assistance for special needs children in its care or custody or in the custody of a nonprofit private licensed child-placing agency in this State if those children are legally eligible for adoption and, when reasonable but unsuccessful efforts have been made to place them without adoption assistance, would not otherwise be adopted without the assistance of this program.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(c). The department shall, subject to rules and regulations adopted by the department and the federal Department of Health and Human Services, reimburse adoptive parents of a special needs child for one-time adoption expenses when reasonable but unsuccessful efforts have been made to place the child without such assistance.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(d). A "special needs child" means a child who:

(1). Has a physical, mental or emotional handicap that makes placement difficult; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(2). Has a medical condition that makes placement difficult; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(3). Is a member of a sibling group that includes at least one member who is difficult to place; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(4). Is difficult to place because of age or race; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(5). Has been a victim of physical, emotional or sexual abuse or neglect that places the child at risk for future emotional difficulties; or [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

(6). Has in the family background factors such as severe mental illness, substance abuse, prostitution, genetic or medical conditions or illnesses that place the child at risk for future problems. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(e). For the purposes of this section, the department is authorized to use funds that are appropriated for child welfare services and funds provided under the United States Social Security Act, Titles IV-B and IV-E.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(f). The amount of adoption assistance may vary depending upon the resources of the adoptive parents and the special needs of the child, as well as the availability of other resources, but may not exceed the total cost of caring for the child if the child were to remain in the care or custody of the department, without regard to the source of the funds.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) . ]

(g). The duration of assistance may continue until the cessation of legal parental responsibility or until the parents are no longer supporting the child, at which time the adoption assistance ceases. However, if the child has need of educational benefits or has a physical, mental or emotional handicap, adoption assistance may continue until the adoptee has attained 21 years of age if the adoptee, the parents and the department agree that the need for care and support exists.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) . ]

(h). Children who are in the custody of a person or agency in another state who are brought to this State for the purpose of adoption are not eligible for adoption assistance through the program except for reimbursement of nonrecurring expenses if the child meets the requirements of the United States Social Security Act, 42 United States Code, Section 673 (c).

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) . ]

#### SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF). 2003, c. 689, §B6 (REV).

## §9-402. ADOPTION ASSISTANCE

(a). Applications for the program may be submitted by the following persons:

- (1). Foster parents interested in adopting an eligible child in their care; [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- (2). Other persons interested in adopting an eligible child; or [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]
- (3). Adoptive parents who were not informed of the program or of facts relevant to the child's eligibility when they adopted a child who was at the time of adoption eligible for participation in the program. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) . ]

(b). All applicants for the program must meet department standards for adoption except for financial eligibility.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) . ]

(c). Assistance may be provided for special needs only and may be varied based on the special needs of the child. Assistance may be provided for a period of time based on the special needs of the child.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) . ]

#### SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF).

## §9-403. ADMINISTRATION

(a). A written agreement between the family entering into the program and the department must precede the final decree of adoption, except that an application may be filed subsequent to the finalization of the adoption if there were facts relevant to the child's eligibility that were not presented at the time of the request for assistance or if the child was eligible for participation in the program at the time of placement and the adoptive parents were not apprised of the program.

Except as provided by section 9-401, subsection (h), once an adoption assistance payment is agreed upon and the agreement signed by the prospective adoptive parents, the department may not reduce the adoption assistance payment amounts.

[ 2013, c. 411, §1 (AMD) .]

(b). If assistance continues for more than one year, the need for assistance must be annually redetermined. Adoption assistance continues regardless of the state in which the adoptive parents reside, or the state to which the adoptive parents move, as long as the family continues to be eligible based on the annual redetermination of need.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(c). Upon the death of both adoptive parents, adoption assistance may be transferred to the legal guardian as long as the child continues to be eligible for adoption assistance pursuant to the terms of the most recent adoption assistance agreement with the adoptive parents. The department shall enter into a new assistance agreement with the legal guardian.

[ 1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

### SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF). 2013, c. 411, §1 (AMD) .

## §9-404. RULES

The department shall adopt rules for the program consistent with this Part. [1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF).]

### SECTION HISTORY

1995, c. 694, §C7 (NEW). 1995, c. 694, §E2 (AFF).

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