

**TITLE 18-C
PROBATE CODE**

**ARTICLE 1
GENERAL PROVISIONS, DEFINITIONS AND JURISDICTION**

**PART 2
DEFINITIONS**

§1-201. Definitions

As used in this Code, unless the context otherwise indicates, the following terms have the following meanings.

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11. Devisee. "Devisee" means any person designated in a will to receive a devise. For the purposes of Article 3, in the case of a devise to an existing trust or trustee, or to a trustee or trust described by will, "devisee" includes the trust or trustee but not the beneficiaries.

...

14. Domestic partner. "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.

...

23. Heirs. "Heirs," except as provided in section 2-711, means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

...

54. Spouse. "Spouse" means an individual who is lawfully married and includes registered domestic partners and individuals who are in a legal union that was validly formed in any state or jurisdiction and that provides substantially the same rights, benefits and responsibilities as a marriage.

**ARTICLE 3
PROBATE OF WILLS AND ADMINISTRATION**

**PART 2
VENUE FOR PROBATE AND ADMINISTRATION, PRIORITY TO ADMINISTER AND
DEMAND FOR NOTICE**

§3-203. Priority among persons seeking appointment as personal representative

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

- A. The person with priority as determined by a probated will including a person nominated by a power conferred in a will;
- B. The surviving spouse of the decedent who is a devisee of the decedent;
- C. Other devisees of the decedent;
- D. The surviving spouse of the decedent;

Sec. 1 repeals ¶E and Sec. 2 reenacts its content as ¶F-1

E. The surviving domestic partner of the decedent;

F. Other heirs of the decedent;

G. Forty-five days after the death of the decedent, any creditor; and

H. Six months after the death of the decedent if no testacy proceeding have been held or no personal representative has been appointed, the State Tax Assessor upon application by the State Tax Assessor.

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

A. If the estate appears to be more than adequate to meet exemptions and costs of administration but inadequate to discharge anticipated unsecured claims, the court, on petition of creditors, may appoint any qualified person; or

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

Sec. 3 amends sub-§3 to capture the changes in Sec. 1 and Sec. 2

3. **Nomination and renunciation.** A person entitled to letters under subsection 1, paragraphs B to F may nominate a qualified person to act as personal representative. Any person may renounce the person's 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.

4. **Authority of conservators and guardians.** 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, or an agent under a power of attorney that expressly grants the agent the authority to do so, may exercise the same right to nominate, to object to another's appointment or to participate in determining the preference of a majority in interest of the heirs and devisees that the protected person or ward would have if qualified for appointment.

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

6. **Qualifications.** A person is qualified to serve as a personal representative who:

A. Is 18 years of age or older; and

B. Has not been found unsuitable by the court in formal proceedings.

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

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