

Uniform Probate Code

The Uniform Probate Code (UPC) is a comprehensive statute that unifies, clarifies, and modernizes the laws governing the affairs of decedents and their estates, certain transfers accomplished other than by a will, and trusts and their administration. The UPC was originally approved by the National Conference of Commissioners on Uniform State Laws and the House of Delegates of the American Bar Association in 1969. The purpose of the UPC is to modernize probate law and probate administration and to encourage uniformity through the adoption of the code by all fifty states. The UPC, which has been amended numerous times, has been adopted in its entirety by sixteen states: Alaska, Arizona, Colorado, Florida, Hawaii, Idaho, Maine, Michigan, Minnesota, Montana, Nebraska, New Mexico, North Dakota, South Carolina, South Dakota, and Utah. The other thirty-four states have adopted parts of the UPC, but in general the UPC has not succeeded in providing a uniform body of substantive and procedural probate law.

The UPC contains seven substantive articles. Article I contains general provisions, definitions, and jurisdictional topics. Article II governs wills and intestate succession, which occurs when a person dies without leaving a will. Article III deals with the probate of wills and the administration of estates, article IV concerns the probating of estates in states other than the domicile of the decedent, article V extends protection to persons under disability and their property, and article VI governs nonprobate transfers of property. Article VII contains comprehensive provisions on trust administration.

The prime objective of the UPC is to simplify the probate process. For example, article III provides for supervised and unsupervised administration of probate. For estates with few assets and no disputes among the beneficiaries, the UPC allows unsupervised administration. In this case the executor of the will, who is called a Personal Representative in the UPC, handles the probating of the estate without direct supervision by the probate court. The personal representative handles every step of the probate process by filing a series of simple forms with the probate court. Unsupervised administration reduces the cost of probate and speeds up the process. Probate courts are freed from dealing with routine matters and may concentrate their efforts on estates with substantial assets or contested matters, where supervised administration is necessary.

The adoption of the UPC by state legislatures has been fought both by attorneys, who are opposed to unsupervised administration and to the overturning of current state laws governing probate, and by bonding companies, which stand to lose business because unsupervised probate does not require the posting of a bond. In light of this opposition, the Commissioners on Uniform State Laws have developed freestanding acts from similar provisions integrated into the UPC. This technique permits provisions, such as those involving powers of attorney and guardianship, to become law without disturbing other parts of a state's probate code.

Further readings

Averill, Lawrence H., Jr. 2001. *Uniform Probate Code in a Nutshell*. 5th ed. St. Paul, Minn.: West Group.

———. 1992. "An Eclectic History and Analysis of the 1990 Uniform Probate Code." *Albany Law Review* 55 (summer).

Stimmel, Andrew. 2002. "Mediating Will Disputes: A Proposal to Add a Discretionary Mediation Clause to the Uniform Probate Code." *Ohio State Journal on Dispute Resolution* 18 (fall).