

1 IN THE SENATE

BY THE RULES COMMITTEE BY REQUEST  
OF THE LEGISLATIVE COUNCIL

2 SENATE BILL NO. 4

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SECOND LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act to codify and revise the state law  
7 relating to probate; to provide a comprehen-  
8 sive probate code; and to provide for an  
9 effective date."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 ARTICLE-I

12 WILLS

13 Part 1. Execution

14 Section 1.01. WHO MAY EXECUTE A WILL. Any person of sound  
15 mind may make a will if he

16 (1) has attained the age of 19 years, or

17 (2) is or has been lawfully married, or

18 (3) is a member of the armed forces of the United

19 States or of the auxiliaries thereof or of the maritime service.

20 Sec. 1.02. EXECUTION OF A WILL. A will, other than a holo-  
21 graphic or nuncupative will, is valid only if signed by the  
22 testator and at least two witnesses as follows:

23 (1) Testator. The testator signifies to the attesting  
24 witnesses that the instrument is his will and either

25 (a) himself sign, or

26 (b) acknowledge his signature already made, or

27 (c) at his direction and in his presence have

28 someone else sign his name for him, and

29 (d) in any of the above cases the act must be

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1 done in the presence of two or more attesting witnesses.

2 (2) ~~Witnesses.~~ The attesting witnesses sign

3 (a) in the presence of the testator, and

4 (b) in the presence of each other.

5 Sec. 1.03. WHO MAY WITNESS. a. Any person competent to be  
6 a witness generally in this state may act as attesting witness to  
7 a will.

8 b. No will is invalid because it was attested by an  
9 interested witness but an interested witness, unless the will is  
10 also attested by two disinterested witnesses, forfeits so much of  
11 the provisions made for him in the will as in the aggregate ex-  
12 ceeds in value, as of the date of the testator's death, what he  
13 would have received had the testator died intestate.

14 c. The witness is allowed and may be compelled to appear  
15 and give testimony as if no bequest had been made to him.

16 Sec. 1.04. HOLOGRAPHIC WILL. No attesting witness to a  
17 holographic will is necessary, but the will is valid only if the  
18 signature and all its material provisions are in the handwriting  
19 of the testator.

20 Sec. 1.05. EXTENT OF TESTAMENTARY POWER. a. Present  
21 Interests. Any person competent to make a will may devise and be-  
22 queath all interests, estates and property, real or personal,  
23 tangible or intangible, which he has, subject to the limitations  
24 prescribed by law.

25 b. After-acquired Interests. All interests, estates and  
26 property, real or personal, tangible or intangible, acquired by  
27 the testator after the making of his will, may pass by will in  
28 like manner as if title thereto was vested in him at the time of  
29 making the will, unless the contrary appears by the will to have

1 been the intention of the testator.

2       Sec. 1.06. LIMITATION ON TESTAMENTARY POWER. If the will  
3 of a testator gives, devises, or bequeaths the testator's estate,  
4 or any part thereof, to a religious purpose, or to persons, muni-  
5 cipal corporations, corporations, or associations in trust for a  
6 religious purpose, whether such trust appears on the face of the  
7 instrument making such gift, devise, or bequest or not, the will  
8 as to such gift, devise, or bequest is valid unless it was exe-  
9 cuted within six months of the death of the testator, and in fear  
10 of imminent death.

11       Sec. 1.07. NUNCUPATIVE WILL. a. A nuncupative will may be  
12 made only by a person in imminent peril of death, whether from  
13 illness or otherwise. It is valid only if the testator died as a  
14 result of the impending peril and the will is

15               (1) declared to be his will by the testator before two  
16 disinterested witnesses;

17               (2) reduced to writing by or under the direction of one  
18 of the witnesses within 30 days after the declaration; and

19               (3) proved within six months after the speaking of the  
20 testamentary words.

21       b. The nuncupative will may dispose of property of an aggre-  
22 gate value not exceeding \$10,000.

23                               Part 2. Revocation

24       Sec. 1.21. REVOCATION OF WRITTEN WILL. Any written will or  
25 any part of a written will may be revoked

26               (1) by a valid written will; or

27               (2) by being burnt, torn, cancelled, obliterated, or  
28 destroyed with the intent and for the purpose of revoking the will  
29 by the testator himself or by another person in the testator's

1 presence and by his direction. If the act is done by any person  
2 other than the testator, the act is effective to revoke only if <sup>a</sup>  
3 the direction of the testator and the facts of the revocation are  
4 proved by two witnesses.

5 Sec. 1.22. REVOCATION OF NUNCUPATIVE WILL. A nuncupative  
6 will or any part of the will may be revoked by any other will.

7 Sec. 1.23. CONDITIONAL REVOCATION. If a testator revokes a  
8 will with a present intention of making a new will immediately and  
9 as a substitute, and the new will is not made, or if made, fails  
10 of effect for any reason, the revocation of the first will is not  
11 effective in the absence of evidence showing the testator would  
12 have preferred intestacy to the provisions of the old will.

13 Sec. 1.24. CHANGE IN CIRCUMSTANCES BY DIVORCE. If, after  
14 making a will, the testator is divorced, all provisions in the  
15 will in favor of the testator's divorced spouse or appointing the  
16 spouse to any fiduciary capacity under the will with respect to  
17 the estate or with respect to the estate or person of the  
18 testator's children, are revoked. With this exception, no written  
19 will, or any part of a written will, is revoked by any change in  
20 the circumstances or condition of the testator.

21 Sec. 1.25. REVIVAL OF REVOKED OR INVALID WILL. No will, or  
22 any part of a will, which is revoked, or which is invalid, may be  
23 revived other than by a re-execution of the will, or by the exe-  
24 cution of another will in which the revoked or invalid will or a  
25 part of it is incorporated by reference.

26 Part 3. Taking Against the Will

27 Sec. 1.31. WHEN SURVIVING SPOUSE MAY ELECT TO TAKE AGAINST  
28 THE WILL. When a married person dies testate as to any part of  
29 his estate, a right of election is given to the surviving spouse

1 solely under the following limitations and conditions.'

2 (1) Extent of Election. The surviving spouse may elect  
3 to receive (a) the share in the estate that would have passed to  
4 him had the testator died intestate, up to the amount of \$5,000,  
5 and (b) one-half of the amount by which the full intestate share  
6 exceeds \$5,000.

7 (2) Effect of Election. When a surviving spouse elects  
8 to take against the will, he is deemed to take by descent, as a  
9 modified share, the part of the net estate as comes to him under  
10 the provisions of this section.

11 Sec. 1.32. GIFT IN FRAUD OF MARITAL RIGHTS. a. Election  
12 to Treat-as-Devise. Any gift made by a person, whether dying  
13 testate or intestate, in fraud of the marital rights of his sur-  
14 viving spouse to share in his estate, may be treated by the sur-  
15 viving spouse as a testamentary disposition and may be recovered  
16 from the donee and persons taking from him without adequate con-  
17 sideration by the personal representative, and applied to the  
18 payment of the spouse's share, as in case of his election to take  
19 against the will.

20 b. When Gift Deemed Fraudulent. Any gifts made by a  
21 married person made two years or more before the time of his  
22 death are valid. Any gifts made by a married person within two  
23 years of the time of his death are valid unless the gifts are  
24 made with the intention of depriving the spouse of property which  
25 she would otherwise receive under this Code.

26 Sec. 1.33. NOTICE OF RIGHT TO ELECT. Immediately after  
27 the will of a married person is admitted to probate, the clerk of  
28 the court shall give notice to the testator's surviving spouse,  
29 informing him of the date before which a written election must be

1 filed by or on behalf of the surviving spouse in order to take  
2 against the will.

3 Sec. <sup>180</sup>1.34. TIME LIMITATION FOR FILING ELECTION. The elec-  
4 tion by a surviving spouse to take the share provided may be made  
5 at any time within 14 days after the expiration of the time limited  
6 for the filing of claims. If, at the expiration of the period  
7 for making the election, litigation is pending to determine any  
8 matter of law or fact which would affect the amount of the share  
9 to be received by the surviving spouse, the right of the surviving  
10 spouse to make an election is not barred until the expiration of  
11 one month after the final determination of the litigation.

12 Sec. <sup>193</sup>1.35. RIGHT OF ELECTION PERSONAL TO SURVIVING SPOUSE.  
13 The right of election of the surviving spouse is personal to him.  
14 It is not transferable and cannot be exercised subsequent to his  
15 death; but if the surviving spouse is incompetent, the court may  
16 order the guardian of his estate to elect for him.

17 Sec. <sup>200</sup>1.36. ELECTION NOT SUBJECT TO CHANGE. An election by  
18 or on behalf of a surviving spouse once made is binding and is not  
19 subject to change except for the causes <sup>which</sup> as would justify an  
20 equitable decree for the rescission of a deed.

21 Sec. <sup>216</sup>1.37. WAIVER OF RIGHT TO ELECT. The right of election  
22 of a surviving spouse may be waived before or after marriage by  
23 a written contract, agreement, or waiver signed by the party  
24 waiving the right of election, after full disclosure of the nature  
25 and extent of the right if the thing or the promise given to the  
26 waiving party is a fair consideration under all the circumstances.  
27 This written contract, agreement, or waiver may be filed in the  
28 same manner as provided for the filing of an election.

29 Sec. <sup>220</sup>1.38. PRETERMITTED CHILDREN. a. ~~Children Born or~~

1 Adopted After Will Made. When a testator fails to provide in his  
2 will for any of his children born or adopted after the making of  
3 his last will, the child, whether born before or after the testa-  
4 tor's death, receives a share in the net estate of the testator  
5 equal in value to that which he would have received if the testa-  
6 tor had died intestate, unless it appears from the will that the  
7 omission was intentional.

8 b. ~~Children Believed to be Dead When Will Made.~~ If at the  
9 time of making his will the testator believes any of his children  
10 are dead, and fails to provide for the child in his will, the  
11 child receives a share in the net estate of the testator equal in  
12 value to that which he would have received if the testator had  
13 died intestate, unless it appears from the will or from other  
14 evidence that the testator would not have devised anything to the  
15 child had he known that the child was alive.

16 c. Definition of "Net Estate." For the purpose of this  
17 section, "net estate" means that estate remaining after the amount  
18 devised to the surviving spouse has been deducted.

19 Part 4. Miscellaneous Provisions,

20 Sec. 1.41. FAILURE OF TESTAMENTARY PROVISIONS BY LAPSE OR  
21 OTHERWISE. a. General Rule. If a devise of property not in-  
22 cluded in a residuary clause of the will is void, revoked, or  
23 lapses, it becomes part of the residue, and passes to the residu-  
24 ary devisee, unless a contrary intent is indicated by the terms  
25 of the will.

26 b. Death of Related Devisee Leaving Lineal Descendants.  
27 When any estate is devised to any relative of the testator, and  
28 the devisee dies before the testator leaving leaving lineal  
29 descendants, the devise does not lapse by reason of the death,

1 but the estate devised or bequeathed vests in the lineal descen-  
2 dants of the devisee in the same manner as if he had survived the  
3 testator and died intestate.

4 c. Devise to a Class. When a devise is to a class and <sup>a</sup>any  
5 member of the class dies before the testator and there is no pro-  
6 vision in the will for that contingency, the members of the class  
7 who survive the testator take the share which the deceased member  
8 would have taken had he survived the testator. But, if the de-  
9 ceased member of the class is a relative within the third degree  
10 of kindred, computed by the civil law, or an adopted child, the  
11 descendants of the deceased member take per stirpes the share  
12 which the deceased member would have taken had he survived the  
13 testator.

14 Sec. 1.42. RENUNCIATION BY HEIR OR DEVISEE. An heir or  
15 devisee may renounce the succession to the property of the de-  
16 cedent, but the renunciation is subject to the rights of all  
17 creditors of the heir or devisee. In case of an effective renun-  
18 ciation by the heir, the property descends as if he had died be-  
19 fore the decedent.

20 Sec. <sup>60</sup>1.43. FOREIGN EXECUTION OR REVOCATION. A will executed  
21 or revoked outside this state in a manner prescribed by this Code  
22 or a written will executed or revoked outside this state in a  
23 manner prescribed by the law of the place of its execution or  
24 revocation or by the law of the testator's domicile at the time of  
25 his death, has the same force and effect in this state as if  
26 executed or revoked in this state in compliance with the pro-  
27 visions of this Code.

28 Sec. 1.44. DEVISE TO TRUSTEE OF INTER-VIVOS TRUST. a. A  
29 devise may be made to the trustee of a written trust established

1 by the testator or any other person before or concurrently with  
2 the execution of the will or to a trust to be established in  
3 writing at a future date. <sup>A</sup> Any future trust instrument or amend-  
4 ment <sup>to it</sup> thereto shall be signed by the settlor.

5 b. Unless the will provides otherwise, the property devised  
6 or bequeathed is not deemed <sup>considered</sup> held under a testamentary trust of the  
7 testator but becomes a part of the principal of the trust to which  
8 it is given to be administered and disposed of in accordance with  
9 the provisions of the instrument establishing the trust and any  
10 amendment to it.

11 c. An entire revocation of the trust <sup>before</sup> ~~prior~~ to the testator's  
12 death invalidates the devise or bequest unless the will directs  
13 otherwise.

14 <sup>-1280</sup> Sec. 1.45. DEPOSIT OF WILL WITH COURT DURING TESTATOR'S  
15 LIFETIME. a. Deposit of Will. A will may be deposited by the  
16 person making it, or by some person for him, with a clerk of the  
17 superior court. Before accepting any will for deposit, the clerk  
18 may require such proof as ~~is~~ <sup>is</sup> satisfactory to him concerning the  
19 testator's identity and residence. The administrative director of  
20 courts shall establish regulations governing the deposit of the  
21 will, including prescription of a reasonable fee for <sup>9</sup> deposit.

22 b. To Whom Will Shall be Delivered. During the lifetime of  
23 the testator a will so deposited shall be delivered only to the  
24 testator or to another person authorized by him by his written  
25 order.

26 c. Proceedings Upon Death of Testator. Upon presentation of  
27 convincing proof of the death of <sup>the</sup> such testator, the clerk shall  
28 notify the person or persons named on the endorsement of the  
29 wrapper of the will that the will is on deposit at his office.

1 Upon request, he shall deliver the will to the named person or  
2 persons. If no qualified person requests the delivery of the will  
3 within 14 days after the giving of notice, or if the will does not  
4 specify on the wrapper the person to whom it shall be delivered,  
5 the clerk shall open the wrapper and inspect the will. If an  
6 executor is named in the will, the clerk shall notify the executor  
7 that the will is on deposit, and upon receipt of request, the  
8 clerk shall deliver the will to the person so named as executor.  
9 If no executor is named in the will, or if the person so named is  
10 deceased, or fails to take the will within 14 days after notice  
11 is given, the clerk shall give notice to the devisees named in  
12 the will that the will is on deposit, and upon request, the clerk  
13 shall deliver the will to any or all the devisees.

14 d. Depositing has no Legal Significance. These provisions  
15 for the depositing of a will during the lifetime of a testator are  
16 solely for the purpose of providing a safe and convenient reposi-  
17 tory for a will, and no will which has been deposited shall be  
18 treated for purposes of probate any differently from any will that  
19 has not been deposited.

20 ~~CHAPTER II~~  
ARTICLE II

21 DESCENT AND DISTRIBUTION

22 <sup>13.11.01</sup> Sec. 2.01 GENERAL RULES OF DESCENT. The net estate of a  
23 person who has died intestate descends and is distributed as  
24 follows:

25 (1) Share of Surviving Spouse. The surviving spouse  
26 receives the following share:

27 (a) One-half of the net estate if the intestate  
28 is survived by issue; or

29 (b) The first \$5,000 and one-half of the

1 remainder of the net estate, if there is no surviving issue,  
2 but the intestate is survived by one or more of his parents,  
3 or of his brothers, sisters or their issue; or

4 (c) All of the net estate, if there is no surviv-  
5 ing issue or parent or issue of a parent.

6 (2) ~~Shares of Others Than Surviving Spouse.~~ The share  
7 of the net estate not distributable to the surviving spouse, or  
8 the entire net estate if there is no surviving spouse, descends  
9 and is distributed as follows:

10 (a) To the issue of the intestate; if they are all  
11 in the same degree of kinship to the intestate, they take  
12 equally, or if of unequal degree, then those of more remote  
13 degrees take by representation.

14 (b) If there is no surviving issue of the intes-  
15 tate, then to the surviving parents, brothers and sisters  
16 and the issue of deceased brothers and sisters of the in-  
17 testate. Each living parent of the intestate is treated as  
18 of the same degree as a brother or sister and is entitled to  
19 the same share as a brother or sister. Issue of deceased  
20 brothers and sisters take by representation.

21 (c) If there is no surviving issue, or parent or  
22 brother or sister of the intestate, then to the issue of  
23 brothers and sisters. If these distributees are all in the  
24 same degree of kinship to the intestate, they take equally,  
25 or if of unequal degree, then those of more remote degrees  
26 take by representation.

27 (d) If there is no surviving issue, or parent of  
28 the intestate, or issue of a parent, then to the surviving  
29 grandparents of the intestate equally.

1 (e) If there is no surviving issue, or parent, or  
2 issue of a parent, or grandparent of the intestate, then to  
3 the issue of deceased grandparents. If these distributees  
4 are all in the same degree of kinship to the intestate, they  
5 take equally, or if of unequal degree, then those of more  
6 remote degree take by representation.

7 (f) If there is no surviving issue, or parent, or  
8 issue of a parent, or grandparent, or issue of a grandparent,  
9 then to the next of kin in the nearest degree of kinship to  
10 the intestate per capita without representation.

11 (g) If there is no person mentioned in the pre-  
12 ceding six parts of this subsection, then to the State of  
13 Alaska.

14 (3) Meaning of Representation. "Representation" means  
15 the method of determining distribution when the takers are not in  
16 equal degrees of kinship with respect to the intestate. Takers  
17 by representation are determined as follows:

18 (a) The estate is divided into equal shares, one  
19 for each living person in the nearest degree of kinship and  
20 one for each person in the nearest degree who died before  
21 the intestate, but who left issue surviving.

22 (b) Each share of a deceased person in the nearest  
23 degree is in turn divided in the same manner among his sur-  
24 viving children and the issue of his children who have died  
25 leaving issue who survive the intestate.

26 (c) This division shall continue until each por-  
27 tion falls to a living person. All distributees except those  
28 in the nearest degree are said to take by representation.

29 (4) Computation of Degrees of Kindred. The degrees of

1 kindred are computed according to rules of the civil law; that is  
2 by counting upward from the intestate to <sup>12</sup> the nearest common ances-  
3 tor and then downward to the relative, the degree of kinship being  
4 the sum of these two counts.

5 Sec. 2.02. <sup>020</sup> MATTERS AFFECTING AND NOT AFFECTING THE RIGHT TO  
6 INHERIT. a. ~~Afterborn Heirs.~~ Descendants and other relatives  
7 of the intestate, conceived before his death but born thereafter,  
8 inherit as if they had been born in the lifetime of the intestate  
9 and survived him. With this exception, the descent and distri-  
10 bution of intestate estates is determined by the relationships  
11 existing at the time of the death of the intestate.

12 b. ~~Kindred of the Half Blood.~~ Kindred of the half blood  
13 inherit the same share which they would have inherited if they  
14 had been of the whole blood.

15 c. ~~Adopted Children.~~ For the purpose of inheritance to,  
16 through, and from an adopted child, the child shall be treated as  
17 if he were the natural child of his adopting parents, and ceases  
18 to be treated as the child of his natural parents for purposes of  
19 intestate succession.

20 d. ~~Illegitimate Children.~~ For the purpose of inheritance  
21 to, through, and from an illegitimate child, the child is treated  
22 the same as if he were the legitimate child of his natural par-  
23 ents, and inherits from his natural parents and from their kin-  
24 dred, lineal and collateral, in the same manner as if he had been  
25 born in lawful wedlock.

26 e. ~~Murder of Intestate by Heir.~~ Any person who wilfully  
27 and unlawfully takes or procures to be taken the life of a person  
28 is deemed to have predeceased the decedent as to property which  
29 would have passed from the estate of the decedent to the slayer

1 under the statutes of descent and distribution.

2 f. ~~Alienage~~. The fact that <sup>an</sup> any person is an alien does not  
3 affect the passage of property to or through him by the statutes  
4 of descent and distribution.

5 g. ~~Persons Related to Intestate Through Two Lines.~~ A person  
6 who is related to the intestate through two lines of relationship,  
7 though under either one alone he might claim as next <sup>2-1</sup> of kin, is  
8 nevertheless entitled to only one share which shall be the share  
9 based on the relationship which would entitle him to the larger  
10 share.

11 Sec. ~~2:03~~<sup>2:030</sup>. PARTIAL INTESTACY. If part but not all of the  
12 estate of a decedent is validly disposed of by will, the part not  
13 disposed of by will is distributed as provided for intestate  
14 estates.

15 Sec. ~~2:04~~<sup>2:040</sup>. ADVANCEMENTS. a. Generally. If a person dies  
16 intestate as to all or part of his estate, property which he gave  
17 in his lifetime as an advancement to any person who, if the in-  
18 testate had died at the time of making the advancement, would be  
19 entitled to inherit a part of his estate, is counted toward the  
20 advancee's intestate share. To the extent that it does not exceed  
21 the intestate share the advancement is considered as part of the  
22 intestate estate in the division and distribution of <sup>the</sup> such estate.  
23 The person to whom the advancement was made is not required to  
24 refund any part of it, although it exceeds his share in the en-  
25 tire estate. Every gratuitous inter vivos transfer is <sup>considered</sup> deemed to  
26 be an absolute gift and not an advancement unless shown to be an  
27 advancement.

28 b. Valuation. The advancement is considered as of its  
29 value at the time when the advancee came into possession or

1 enjoyment or at the time of the death of the intestate, whichever  
2 first occurs.

3 c. ~~Death of Advancee Before Intestate.~~ If the advancee dies  
4 before the intestate, leaving a lineal heir who takes from the  
5 intestate, the advancement is taken into account in the same man-  
6 ner as if it had been made directly to <sup>the</sup> such heir. If the heir is  
7 entitled to a lesser share in the estate than the advancee would  
8 have been entitled had he survived the intestate, then the only  
9 proportion of the advancement attributed to the heir shall be the  
10 same as the amount he would have inherited, had there been no  
11 advancement, bears to the amount which the advancee would have  
12 inherited, had there been no advancement.

13 Sec. <sup>1,050</sup> 2-05. DOWER ABOLISHED. The estate of dower is  
14 abolished. Nothing contained herein shall be interpreted to  
15 divest any person of any present accrued rights in land.

16 Sec. <sup>1,060</sup> 2-06. DEVOLUTION OF PROPERTY UPON SIMULTANEOUS DEATH.

17 a. ~~No Sufficient Evidence of Survivorship.~~ When the title of  
18 property or the devolution thereof depends upon priority of death  
19 and there is no sufficient evidence that persons have died other-  
20 wise than simultaneously, the property of each person is disposed  
21 of as if he or she had survived, except as otherwise provided in  
22 this section.

23 b. Beneficiaries of Another Person's Disposition of ~~Pro-~~  
24 perty. Where two or more beneficiaries are designated to take  
25 successively by reason of survivorship under another person's  
26 disposition of property and there is no sufficient evidence that  
27 these beneficiaries have died otherwise than simultaneously, the  
28 property thus disposed of is divided into as many equal portions  
29 as there are successive beneficiaries and these portions shall be

1 distributed respectively to those who would have taken in the  
2 event that each designated beneficiary had survived.

3 c. ~~Joint Tenants or Tenants by the Entirety.~~ Where there  
4 is no sufficient evidence that two joint tenants or tenants by  
5 the entirety have died otherwise than simultaneously, the pro-  
6 perty so held is distributed one-half as if one had survived and  
7 one-half as if the other had survived. If there are more than  
8 two joint tenants and all of them have so died, the property  
9 distributed shall be in the proportion that one bears to the  
10 whole number of joint tenants.

11 d. Insurance Policies. Where the insured and the bene-  
12 ficiary in a policy of life or accident insurance have died and  
13 there is no sufficient evidence that they have died otherwise than  
14 simultaneously, the proceeds of the policy are distributed as if  
15 the insured had survived the beneficiary.

16 e. Application to Prior Decedents. This section applies to  
17 the distribution of the property of a deceased person who has died  
18 prior to the effective date thereof, unless the order of distri-  
19 bution has been assigned by the probate judge having jurisdiction  
20 of the probate of said estate.

21 ~~§~~ Section Does Not Apply if Decedent Provided Otherwise.  
22 This section does not apply in any case of wills, living trusts,  
23 deeds, or contracts of insurance wherein provision has been made  
24 for distribution of property different from the provisions of  
25 this section.

26 ~~§~~ Uniformity of Interpretation. This section shall be so  
27 construed and interpreted as to effectuate its general purpose  
28 to make uniform the law in those states which have enacted it.

29 h. Short Title. This section may be cited as the "Uniform

1 Simultaneous Death Law."

2 ~~CHAPTER 16.~~  
3 ~~ARTICLE III~~

4 GENERAL ADMINISTRATION

5 ~~ARTICLE I~~  
6 ~~Part 1.~~

7 Probate and Grant of Administration

8 ~~13.16.005-~~  
9 Sec. ~~3.01.~~ CHARACTER OF PROCEEDING. The administration of  
10 the estate of a decedent, from the filing of the petition for pro-  
11 bate or for administration until the decree of final distribution  
12 and the discharge of the last personal representative, is a single  
13 proceeding for purposes of jurisdiction. The entire proceeding  
14 is in rem. No requirement of notice is jurisdictional unless  
15 expressly so provided.

16 ~~3.010~~  
17 Sec. ~~3.02.~~ DUTY OF THE CUSTODIAN OF A WILL. Within a  
18 reasonable time after the death of a testator the person having  
19 custody of his will shall deliver it to the clerk of the court  
20 having jurisdiction of the estate. The court may order the cus-  
21 todian to produce the will.

22 ~~3.015~~  
23 Sec. ~~3.03.~~ WHO MAY PETITION. <sup>Any</sup> interested person may  
24 petition the court

25 (1) to admit the will to probate, whether it is writ-  
26 ten or oral, in his possession or not, lost, destroyed, or not in  
27 the state;

28 (2) to appoint an executor if one is designated in the  
29 will;

30 (3) to appoint an administrator, if no executor is  
31 specified, or if the person specified is not qualified or refuses  
32 to serve, or if there is no will.

33 ~~3.020~~  
34 Sec. ~~3.04.~~ QUALIFICATIONS OF PERSONS WHO MAY SERVE AS PER-  
35 SONAL REPRESENTATIVES. <sup>A</sup> Any person may serve as personal repre-  
36 sentative except

37 SB ;/4

1 (1) one who is under 19 years of age,

2 (2) a judicial officer,

3 (3) a nonresident, except that:

4 (a) a person named or specified as executor, who  
5 is not a resident, may qualify by becoming a resident, re-  
6 placing an administrator with the will annexed if one has  
7 been appointed, or becoming a joint executor if another  
8 executor has qualified;

9 (b) a personal representative who is a resident  
10 and becomes a nonresident, or one who is not a resident and  
11 does not become a resident may qualify by filing a bond to  
12 be approved by the court, and an irrevocable power of attor-  
13 ney constituting the clerk of the court agent to accept ser-  
14 vice of process or notice in any proceeding relating to  
15 administration of the estate,

16 (4) a person whom the court finds unsuitable.

17 <sup>.025</sup>  
Sec. ~~3.05~~. ORDER OF PERSONS ENTITLED. If there is no will

18 or if no executor is specified in the will, or if the person  
19 specified refuses to serve, the court shall grant domiciliary  
20 letters of general administration to one or more of the following  
21 persons, if qualified, in the following order:

22 (1) to the surviving spouse or next of kin or both, or  
23 to a person or persons nominated by them or any of them;

24 (2) if there is neither surviving spouse nor next of  
25 kin, or if none of the designated persons files a petition for  
26 letters within 30 days after the death of the decedent, then to  
27 any other qualified person or corporation or national banking  
28 association (if one or more of the principal creditors of the  
29 decedent petition to serve as administrators and the court finds

1 them suitable, they may be selected in preference to others made  
2 eligible by this paragraph);

3 (3) a sole legatee may be appointed by the court at  
4 his request to replace a disinterested person formerly appointed  
5 by the court;

6 (4) the court may on its own motion or at the instance  
7 of <sup>an</sup> ~~any~~ interested person remove a person who becomes disqualified.

8 <sup>.030</sup> Sec. 3.06. DEMAND FOR NOTICE OF PROBATE OR APPOINTMENT. <sup>Am</sup> Any  
9 interested person may at any time file a demand for notice before  
10 hearing on a petition to admit a will to probate or to appoint a  
11 personal representative other than a special administrator. After  
12 the filing of this demand, the court may not hear the petition  
13 without giving notice.

14 <sup>.035</sup> Sec. 3.07. HEARING ON PETITION. The court may at any time  
15 hear a petition for the admission of a will to probate or the  
16 appointment of a personal representative with or without notice.

17 <sup>.040</sup> Sec. 3.08. HEARING WITHOUT NOTICE. a. The petition may be  
18 heard without prior notice unless a demand for notice is or has  
19 been filed, or the petition is opposed. After hearing, the court  
20 may in its discretion issue letters testamentary or letters of  
21 administration, or may order a hearing with notice.

22 b. Immediately upon the issuance of letters, the clerk shall  
23 publish a notice of the appointment of the personal representa-  
24 tive, (1) identifying him, (2) advising creditors of the decedent  
25 that failure to file their claims within the specified statutory  
26 time will result in the claims being forever barred, and (3)  
27 stating the time within which the appointment of the personal rep-  
28 resentative or the probate of the will may be contested. A copy  
29 of the notice of appointment shall be served personally or by

1 registered mail on each heir and devisee whose name and address  
2 are known.

3 Sec. ~~3.09~~<sup>045</sup>. CONTEST OF PROBATE OR APPOINTMENT AFTER HEARING  
4 WITHOUT NOTICE. a. <sup>Any</sup> interested person may oppose the appoint-  
5 ment or probate after hearing without notice by filing a statement  
6 of the grounds of his objection in the court.

7 b. If a statement of objection is filed with the court with-  
8 in the appropriate time, the court shall provide for a hearing,  
9 notice of which is to be sent to each heir or devisee whose  
10 address is known. If the contest is based upon another will,  
11 notice will be given in addition to each devisee in the other will  
12 whose address is known and to other persons as the court may direct.

13 c. If the contest is on any ground other than a subsequent  
14 will, the statement may be filed only within four months after the  
15 notice of appointment of a personal representative or before the  
16 order of final distribution, whichever is shorter.

17 Sec. ~~3.10~~<sup>050</sup>. HEARING WITH NOTICE. a. Petition shall be heard  
18 only after notice if a demand for notice is filed, or the probate  
19 or appointment is opposed, or the court refused to grant letters  
20 in the summary hearing.

21 b. If a hearing with notice is required, the court shall (1)  
22 fix a time and place for hearing, and (2) provide for the giving  
23 of notice before the hearing.

24 Sec. ~~3.11~~<sup>055</sup>. NOTICE REQUIREMENTS. a. Notice before the hear-  
25 ing shall be directed to all interested persons and the alleged  
26 decedent.

27 b. Notice includes (1) the pertinent facts, (2) the time and  
28 place of hearing, (3) advice to creditors to present their claims  
29 within the statutory time or be forever barred, (4) a statement

1 that such is the case, if the will is being contested, (5) in-  
2 formation as to the provisions for contest.

3 c. Notice shall be made (1) by publication, (2) by service  
4 upon each heir and devisee whose name and address are known,  
5 either personally or by registered mail, (3) by registered mail to  
6 the last known residence of the decedent if there is any doubt  
7 that the alleged decedent is dead or if an interested person so  
8 requests, (4) to each devisee in the other will, and to other per-  
9 sons as the court directs if another will is sought to be pre-  
10 sented.

11 <sup>- 060</sup> Sec. 3.12. SUBSEQUENT WILLS. a. If another will of the  
12 decedent is discovered, it may be presented for probate at any  
13 time before final distribution of the estate so long as it is with-  
14 in the time specified in Sec. 3.16. <sup>§ 0 of this chapter.</sup>

15 b. At any time <sup>after</sup> ~~prior~~ to the decree for final distribution,  
16 and as a part of the proceeding already initiated for probate or  
17 for administration, the court may hear a petition for the probate  
18 of a will of the decedent not theretofore presented for probate.  
19 It may hear it at the same time as any other will, and determine  
20 which if any will is to be admitted, or it may revoke a prior  
21 grant of letters and admit the subsequent will to probate.

22 <sup>- 065</sup> Sec. 3.13. REQUEST FOR NOTICE OF HEARINGS. At any time  
23 after the issuance of letters, any person interested in the  
24 estate may serve the personal representative and file with the  
25 clerk of the court in which the proceedings are pending, together  
26 with an admission or proof of service, a request, stating that he  
27 desires notice by ordinary mail of the time and place of all hear-  
28 ings on the settlement of account, on final distribution and on  
29 any other matters for which ~~any~~ notice is required by law, by

1 rule of court, or by an order in the particular case. Unless the  
2 court otherwise directs, the clerk shall, from the time of filing,  
3 give the notice specified in the request.

4 Sec. <sup>070</sup>~~3.14~~. SEARCH FOR DECEDENT. If the court determines  
5 that there is a doubt of the fact of death of the alleged decedent,  
6 it may order the personal representative to search for the alleged  
7 decedent, by any method the court directs, including one or more  
8 of the following:

9 (1) inserting in any appropriate publications of a re-  
10 quest for information concerning the alleged decedent;

11 (2) notifying officers of justice and public welfare  
12 agencies in appropriate places of the disappearance of the alleged  
13 decedent;

14 (3) using any investigative agency.

15 Sec. <sup>075</sup>~~3.15~~. PROOF REQUIRED FOR PROBATE AND FOR APPOINTMENT.

16 a. On a petition for the probate of a will, if the court finds  
17 that the testator is dead and that the will was executed in all  
18 respects according to law when the testator was of sound mind, and  
19 unless the court finds that

20 (1) the testator was acting under undue influence,  
21 fraud, or restraint; or

22 (2) the will was revoked; or

23 (3) for any other reason, the will should not be ad-  
24 mitted, then the court shall order the will admitted to probate as  
25 the last will of the testator.

26 b. On a petition for the appointment of an executor or  
27 administrator, the court shall determine whether the deceased  
28 died testate or intestate and shall grant letters accordingly, or,  
29 on proper grounds, deny the petition.

1                   . 080  
2           Sec. ~~3.16~~. TIME LIMIT FOR PROBATE AND ADMINISTRATION. No  
3 written will may be admitted to probate and no administration may  
4 be granted unless application is made to the court within five  
5 years from the death of the decedent.

6                   - .085  
7           Sec. ~~3.17~~. FINALITY OF ORDER. The court order admitting the  
8 will to probate, or appointing a personal representative is final  
9 if not contested or appealed from, <sup>subject to the following</sup> ~~except that~~ <sup>exceptions;</sup>

10                   (1) It may be changed or revoked before the decree of  
11 final distribution to admit to probate a subsequent will not pre-  
12 viously presented to the court;

13                   (2) It may be vacated or modified for cause;

14                   (3). The finding of the fact of death is conclusive as  
15 to the alleged decedent only if notice of the hearing on the  
16 petition for probate or for the appointment of a personal repre-  
17 sentative is sent by registered mail to the decedent at his last  
18 known residence, and the court finds that a search, when ordered  
19 by the court, was made. Even when the notice has been sent and the  
20 search, if ordered, made, the alleged decedent, if alive, may  
21 nevertheless at any time recover the estate from the personal  
22 representative if it is in his hands, or the estate and its pro-  
23 ceeds from the distributees, if either is in their hands.

24                   - .090  
25           Sec. ~~3.18~~. PASSAGE OF TITLE TO DECEDENT'S PROPERTY. When a  
26 person dies, title to his property, except exempt property and  
27 homestead interests, passes to the persons to whom it is devised,  
28 or if there is no will, or if the will does not dispose of all of  
29 the decedent's property, to the persons who succeed to his estate  
as his heirs. However, the property is subject to the possession  
of the personal representative and to the election of the sur-  
viving spouse. The property also is chargeable with the expenses

1 of administering the estate and the payment of other claims and  
2 allowances to the family, except as otherwise provided in this  
3 Code.

4           <sup>105</sup>Sec. ~~3.19~~. EFFECT OF WILL NOT ADMITTED TO PROBATE. Except as  
5 provided in the administration of small estates, a will not admit-  
6 ted to probate is not proof of title to, or of the right to pos-  
7 session of, any property disposed of by the will.

8           <sup>ARTICLE</sup>  
          <sup>Part 2.</sup> Administrators and Executors

9           <sup>105</sup>Sec. 3.31. ISSUANCE AND REVOCATION OF LETTERS. The court  
10 shall issue letters to the appointed personal representative when  
11 he has given the required bond. When letters are revoked, the per-  
12 sonal representative who was issued the letters shall return them  
13 to the court for cancellation, and the court shall reissue approp-  
14 riate letters.

15           <sup>110</sup>Sec. ~~3.32~~. REMOVAL OF THE PERSONAL REPRESENTATIVE. The  
16 court may remove the personal representative if he (1) becomes for  
17 any reason unsuitable or incapable of discharging his trust, (2)  
18 mismanages the estate, (3) fails to perform any duty imposed by  
19 law or order of the court, (4) fails to maintain the required bond,  
20 or (5) ceases to be a resident of the state without appointing an  
21 agent to accept service. The court, on its own motion, may, or on  
22 petition of any interested person shall, order the representative  
23 to appear and show cause why he should not be removed. Official  
24 acts of a personal representative to whom letters were lawfully  
25 issued performed prior to his removal are not rendered invalid by  
26 his removal.

27           <sup>115</sup>Sec. ~~3.33~~. SUCCESSOR PERSONAL REPRESENTATIVES. Upon the  
28 death, removal, or the acceptance by the court of the resignation  
29 of a personal representative, the court may appoint a successor.

1 It shall appoint one if there is no other personal representative  
2 and the administration is not complete. A successor personal  
3 representative, including an administrator with the will annexed,  
4 has all the rights and powers of his predecessor (subject to the  
5 requirements of joint administration) except that an administrator  
6 with the will annexed shall not exercise powers given in the will  
7 which by its terms were personal to the executor.

8 Sec. <sup>120</sup>3.34. POWERS OF SURVIVING PERSONAL REPRESENTATIVES. If  
9 the number of joint personal representatives is reduced by the  
10 death or termination by court order of the appointment of one or  
11 more of them, the survivor or survivors may exercise the powers  
12 formerly exercisable by all, except in the case of a power given  
13 by will, the terms of which provide otherwise.

14 Sec. <sup>175</sup>3.35. JOINT AND SEVERAL POWERS OF PERSONAL REPRESENTA-  
15 TIVES. a. When there are two or more personal representatives,  
16 all of them must join in the exercise of the power to

- 17 (1) sue on behalf of the estate;  
18 (2) employ any person other than those necessary to  
19 maintain the property or business of the deceased pending adminis-  
20 tration;  
21 (3) sell or terminate the business of the decedent;  
22 (4) vote shares of a corporation;  
23 (5) do any other thing which by the terms of the will  
24 must be done jointly.

25 b. All other powers may be exercised by any one of them,  
26 unless the will otherwise provides.

27 Sec. <sup>130</sup>3.36. COMPENSATION OF PERSONAL REPRESENTATIVES. a. If  
28 a testator by will makes provision for the compensation of his  
29 executor or administrator, that shall be his full compensation,

1 unless, before qualifying as personal representative, he files in  
2 the court a renunciation of the compensation provided for by will.  
3 However, if the estate is insufficient to satisfy the claims  
4 against it, the court may reduce the compensation. If the will  
5 contains no provision for compensation, or if a claim or right  
6 under such a provision is renounced, the court shall allow the  
7 following amounts: (1) for the first \$1,000, or less, at the  
8 rate of 7%; (2) for all above that sum and not exceeding \$2,000,  
9 at the rate of 5%; (3) for all above \$2,000 and not exceeding  
10 \$4,000, at the rate of 4%; (4) for all above the last-mentioned  
11 sum, at the rate of 2%.

12 b. When there are more than one personal representatives,  
13 concurrent or successive or both, the court may apportion among  
14 them the compensation to which a single representative would be  
15 entitled, basing the apportionment upon the actual service  
16 rendered. The court shall allow reasonable attorney fees to  
17 attorneys retained for the estate and to the personal representa-  
18 tive if he renders legal service. Fees allowed to the personal  
19 representative are in addition to his other compensation. Compensa-  
20 tion is allowed at the final settlement, but at any time during  
21 administration, a personal representative, or attorney, or both,  
22 may apply to the court for an allowance upon the compensation to  
23 become due them. The court may reduce or eliminate the compensa-  
24 tion of any personal representative or attorney if it finds that  
25 in view of the services actually rendered it is excessive, or if  
26 he has not discharged his duties properly. It may provide for  
27 additional compensation to a representative who has rendered neces-  
28 sary service not required of him as personal representative and  
29 may increase <sup>the</sup> any compensation where fairness requires it.

1           Sec. <sup>-135</sup>~~3.37~~. ALLOWANCE FOR CERTAIN LEGAL PROCEEDINGS. When an  
2 executor or administrator with the will annexed defends the will  
3 or prosecutes in good faith any proceeding, successful or not, to  
4 have it admitted to probate, he is allowed from the estate his  
5 expenses, including reasonable attorney fees, of the defense or  
6 prosecution.

7           Sec. <sup>-140</sup>~~3.38~~. SPECIAL ADMINISTRATORS. A special administrator  
8 may be appointed in the best interests of the estate before or  
9 after the appointment ~~of~~ and without removal of an executor or a  
10 general administrator, without notice or upon ~~such~~ notice <sup>which</sup> as the  
11 court directs. The appointment may be for a specified time, to  
12 perform duties respecting specific property, or to perform par-  
13 ticular acts, as stated in the order of appointment. The special  
14 administrator shall make reports as the court directs, and shall  
15 account to the court upon the termination <sup>3-1</sup> of his authority. Except  
16 insofar as certain provisions of this Code specifically exclude  
17 special administrators, and except as ordered by the court, the  
18 law relating to personal representatives applies to special  
19 administrators. The order appointing a special administrator is  
20 not appealable.

ARTICLE  
Part 3. Bonds

21  
22           Sec. <sup>-150</sup>~~3.41~~. BOND OF PERSONAL REPRESENTATIVE. a. Letters may  
23 be issued to a personal representative only after he files a bond  
24 of an amount determined by the court to be sufficient to protect  
25 interested parties. The bond, to be procured at the expense of  
26 the estate, is conditioned upon the faithful discharge by the per-  
27 sonal representative of his lawful duties. In the absence of  
28 special circumstances, the court shall fix the amount of the bond  
29 at the sum of

1 (1) the value of any part of the estate which appears  
2 to the court to be easily convertible by the personal representa-  
3 tive during the period of administration, plus

4 (2) the value of the easily convertible annual income  
5 of the estate.

6 b. The court may at any time increase or decrease the amount  
7 of the bond in the best interests of the estate. In the absence  
8 of special circumstances, the court shall change the required  
9 amount to correspond to not less than the sum of a(1) and (2)  
10 above.

11 <sup>of this section</sup>  
- 155  
Sec. 3.42. PROVISION IN WILL REMOVING BOND REQUIREMENT.

12 When the will provides there is no bond requirement, none is re-  
13 quired, unless the court determines it to be for the best inter-  
14 ests of the estate to reimpose it.

15 <sup>160</sup>  
Sec. 3.43. REMOVAL OF BOND REQUIREMENT UPON DEPOSIT OF  
16 PERSONAL ASSETS OF THE ESTATE. Personal assets of the estate may  
17 be deposited with a domestic banking or trust company upon terms  
18 approved by the court. The court may reduce the amount of the  
19 bond required in proportion to the value of the assets deposited,  
20 or may accept the deposit in lieu of the bond.

21 <sup>165</sup>  
Sec. 3.44. AGREEMENT BETWEEN PERSONAL REPRESENTATIVE AND  
22 SURETY AS TO THE DEPOSIT OF ASSETS. The personal representative  
23 may, if the surety wishes, and the deposit is otherwise proper,  
24 deposit any asset of the estate in a lawfully constituted bank,  
25 safe deposit company, trust company, or other depository approved  
26 by the court, if an agreement is made with the depository that  
27 assets may be withdrawn only with the written consent of the  
28 surety or by order of the court. Notice to the surety, when with-  
29 drawal is by court order, is as the court directs.

1           Sec. <sup>170</sup>~~3.45~~. REDUCTION OF BOND IN THE CASE OF CORPORATE  
2 FIDUCIARIES. If the personal representative is a trust company  
3 existing or doing business under the laws of Alaska, the deposit  
4 of cash or other collateral with the Department of Administration  
5 required by law may be accepted by the court in lieu of a bond.  
6 If the personal representative is a bank holding a valid certifi-  
7 cate of authority, the requirement of the bond may be waived by  
8 the court.

9           Sec. <sup>175</sup>~~3.46~~. OBLIGEEs OF BOND, JOINT AND SEVERAL LIABILITY.  
10 The bond of the personal representative shall be drawn to the  
11 State of Alaska to the use of all persons interested in the es-  
12 tate. The sureties are jointly and severally liable with the per-  
13 sonal representative and with each other, except that when the  
14 penal sum of the bond exceeds \$5,000, three or more sureties may  
15 become severally liable for portions of the sum, so long as the  
16 total is equal to the required sum.

17           Sec. <sup>180</sup>~~3.47~~. BONDS OF JOINT PERSONAL REPRESENTATIVES. When  
18 two or more persons are appointed personal representatives of the  
19 same decedent and are required by the provisions of this <sup>Act</sup> Code to  
20 give a bond, the court may require either a separate bond from  
21 each or one bond from all of them. No personal representative is  
22 a surety for another personal representative unless the terms of  
23 the bond so provide.

24           Sec. <sup>185</sup>~~3.48~~. RELEASE OF SURETIES BEFORE THE ESTATE IS FULLY  
25 ADMINISTERED. a. For good cause the court may, before the  
26 estate is fully administered, release the sureties of the per-  
27 sonal representative, and require him to furnish a new bond.

28           b. The original sureties remain liable after their release  
29 for all breaches of the obligation of the bond occurring up to

1 the time of filing and approval by the court of the new bond. The  
2 new bond binds the sureties thereon for all acts and omissions of  
3 the personal representative from the time when the original sure-  
4 ties cease to be liable for further breach on the original bond,  
5 or from a prior time if the court so directs.

6 Sec. <sup>190</sup>3.49. BOND NOT VOID UPON FIRST RECOVERY. The bond of  
7 the personal representative is not void upon the first recovery,  
8 but may be proceeded against until the penalty is exhausted.

9 Sec. <sup>195</sup>3.50. DENIAL OF LIABILITY BY SURETY. If the court has  
10 already determined the liability of the personal representative,  
11 the surety may not thereafter deny this liability in <sup>an</sup> any action or  
12 hearing to determine its liability; but the surety may intervene  
13 in any <sup>or</sup> hearing to determine the liability of the personal repre-  
14 sentative.

15 Sec. <sup>200</sup>3.51. LIMITATION OF ACTION ON BOND. No action upon the  
16 bond of a personal representative may be brought more than two  
17 years after his discharge.

18 <sup>Article</sup> Part 4. Inventory

19 Sec. <sup>710</sup>3.61. REQUIREMENT OF INVENTORY. Within one month after  
20 his appointment, unless a longer time is granted by the court, a  
21 personal representative shall make and return an inventory and  
22 appraisalment, in one instrument, of all the property of the dece-  
23 dent which <sup>shall</sup> ~~shall~~ come into his possession or to his knowledge,  
24 including a statement of all encumbrances, liens, and other  
25 charges on any item. Unless ordered otherwise by the court, this  
26 property shall be classified as follows:

27 (1) real property, with plat or survey description, and  
28 designation of homestead property, if any;

29 (2) furniture, household goods, and wearing apparel;

1 (3) corporation stocks, the description to include  
2 certificate numbers;

3 (4) mortgages, bonds, notes, and other written evi-  
4 dences of debt, the description to include the name of the debtor,  
5 recording data, and other necessary identification;

6 (5) bank accounts, insurance policies, and money;

7 (6) all other personal property, accurately identified,  
8 including the decedent's proportionate share in any partnership.

9 No inventory of the partnership property is required.

10 <sup>- 215</sup>  
Sec. ~~3.62~~. REQUIREMENT OF APPRAISEMENT. At the time adminis-  
11 tration is granted, the court shall appoint two disinterested and  
12 competent persons to be appraisers, to whom the personal repre-  
13 sentative shall give a copy of the inventory. The appraisers  
14 shall determine and state in figures opposite each item in the  
15 inventory its fair value, as of the date of the decedent's death  
16 (after deducting any encumbrances, liens, and charges thereon),  
17 and return the inventory and appraisal, certified by them  
18 under oath, to the personal representative, who shall file it  
19 with the court. The expenses and compensation of the appraisers  
20 are determined by the court and paid by the personal representa-  
21 tive as expenses of administration.

22 <sup>- 220</sup>  
Sec. ~~3.63~~. DISPENSING WITH APPRAISEMENT. If the inventory  
23 shows that the estate consists solely of personal assets of  
24 definitely liquidated values, or of property of negligible value,  
25 the court may accept an appraisal by the personal representative  
26 in lieu of appraisal by appraisers. In such a case the court  
27 need not appoint appraisers, or may revoke their appointment if  
28 already made.

29 <sup>- 225</sup>  
Sec. ~~3.64~~. SUPPLEMENTARY FILING. If property not in the

1 original inventory comes to the knowledge or into the possession  
2 of the personal representative after the filing of the original  
3 inventory, he shall make an inventory of it, and cause it to be  
4 appraised (unless it is of liquidated value, or of negligible  
5 value, in which case the court may, <sup>under sec. 220 of this chapter,</sup> ~~as in Sec. 3.62,~~ accept the  
6 personal representative's appraisal). The return of the supple-  
7 mentary inventory and appraisal shall be made within one month of  
8 the discovery of the property, either separately or as part of an  
9 accounting.

10 Sec. <sup>220</sup>~~3.65~~. DEBT OF EXECUTOR. The naming of <sup>a</sup>any person in a  
11 will is not of itself a discharge or bequest of <sup>a</sup>any right of action  
12 which the testator had against him, but the right, if it survives,  
13 is an asset of the estate. If the personal representative is or  
14 becomes insolvent, debts owed by him to the decedent are not  
15 assets in his hands in determining the liability on the bond.

16 Sec. <sup>221</sup>~~3.66~~. INVENTORY AND APPRAISAL AS EVIDENCE. Inven-  
17 tories and appraisals, when used in evidence, are not conclusive,  
18 and their effect may be varied by other proper evidence.

19 <sup>ARTICLE 5</sup>  
~~Part 5~~. Allowances and Homestead

20 <sup>245</sup>~~3.71~~. HOMESTEAD. At any time after the return of the  
21 inventory the court, of its own motion or upon application, shall  
22 set apart the homestead to the decedent's spouse, or in case of  
23 his death, to the minor children. The court may set apart the  
24 homestead to any adult children who have been declared incompe-  
25 tent by order of court. The homestead may be set aside without  
26 filing of inventory if no inventory is required by the court or  
27 if no administration is had under <sup>acc. of</sup> this Code. Any homestead set  
28 apart under this section is not subject to administration and is  
29 exempt from all claims against the estate excepting any lien

1 thereon at the time of the decedent's death.

2 Sec. <sup>250</sup>~~3.72~~. NATURE AND DURATION OF HOMESTEAD. The estate  
3 of homestead set apart by the court is a fee simple estate for  
4 the benefit of the spouse and minor children and adult children  
5 declared incompetent by order of court, and may be held and en-  
6 joyed by them if one of them or a purchaser occupies the premises,  
7 until the last living minor child is 21, or until the marriage or  
8 death of the widow, or until the last living adult incompetent  
9 child has been judicially declared competent, whichever is longer.  
10 But all the right, title, and interest of the deceased in the  
11 premises in which the estate exists except the estate of home-  
12 stead set apart under Sec. <sup>248 of this chapter</sup>~~3.71~~ shall be subject to the laws re-  
13 lating to devise, descent, and sale for the payment of debts and  
14 legacies.

15 Sec. <sup>253</sup>~~3.73~~. EXEMPT PROPERTY. The surviving spouse or minor  
16 children of a decedent, or adult children who have been judicially  
17 declared incompetent, are entitled absolutely to the personal  
18 property of the estate as may be exempt from execution or forced  
19 sale under the laws of this state not to exceed a total appraised  
20 value of \$2,000, any portion or all of which may be taken in  
21 money. The property shall belong to the surviving spouse, if any,  
22 otherwise to the minor children and incompetent adult children in  
23 equal shares. The selection shall be made by the surviving spouse  
24 if any; otherwise by the guardian of the estate of each child for  
25 the child. At any time after the return of the inventory the  
26 court shall set apart the exempt property to the persons entitled  
27 to it. Exempt property may be set aside without filing of inven-  
28 tory if no inventory is ordered by the court, or if no adminis-  
29 tration is had under this Code. The property set aside is not

1 subject to administration and is exempt from all claims against  
2 the estate except any liens upon the property at the time of the  
3 decedent's death.

4 <sup>-.560</sup> Sec. 3.74. FAMILY ALLOWANCE. In addition to the right to  
5 homestead and exempt property, the widow, widower, minor children,  
6 and adult children who have been declared incompetent by order of  
7 court are entitled to a reasonable allowance out of the estate as  
8 in the court's discretion is necessary for their maintenance dur-  
9 ing the progress of the settlement of the estate, or a period of  
10 six months, whichever is greater. However, the allowances shall  
11 not continue for more than one year in the case of an insolvent  
12 estate. The allowance is paid in preference to all other charges  
13 except funeral charges, expenses of last illness, and administra-  
14 tion, and may, in the court's discretion, take effect from the  
15 death of the decedent.

16 <sup>-.265</sup> Sec. 3.75. AMOUNT OF ALLOWANCE. The fact that a party en-  
17 titled to an allowance has previously had a homestead or exempt  
18 property set aside to him shall be considered by the court in  
19 fixing the amount of the allowance. The allowance may be made  
20 payable in one payment or in periodic installments. It is payable  
21 to the surviving spouse, if any, for his use and the use of the  
22 minor children or incompetent adult children. Otherwise it is  
23 payable to the guardians or other persons having the care and  
24 custody of any minor children or adult incompetent children.

25 <sup>Article</sup> Part 6. Management

26 <sup>-.275</sup> Sec. 3.81. GENERAL POWERS AND DUTIES. A personal repre-  
27 sentative shall take possession of all the real and personal pro-  
28 perty of the decedent except the homestead and exempt property of  
29 the surviving spouse and minor children. He shall pay the taxes

1 on and collect the rents and earnings of this property until the  
2 estate is settled or until it is delivered by court order to the  
3 distributees. He shall keep in repair, and protect from loss or  
4 deterioration, and may protect by insurance the property under his  
5 control. He may maintain an action for the possession of real  
6 property or to determine title to it.

7 <sup>- 280</sup> Sec. ~~3.82~~. ASSETS SUBJECT TO CREDITORS' CLAIMS. The pro-  
8 perty liable for the payment of debts of a decedent includes pro-  
9 perty transferred by him with intent to defraud one or more  
10 creditors, and the personal representative shall recover this pro-  
11 perty insofar as necessary to pay the debts of the decedent. Re-  
12 covered property becomes part of the general assets for the payment  
13 of all creditors. No property so transferred may be taken from a  
14 bona fide purchaser.

15 <sup>- 281</sup> Sec. ~~3.83~~. COMPROMISE. When it appears to be in the best  
16 interests of the estate, the personal representative may on court  
17 order effect a reasonable compromise with <sup>a</sup> any debtor or other  
18 obligor, or extend, renew, or in any manner modify the terms of  
19 <sup>an</sup> any obligation owing to the estate. A personal representative  
20 holding a mortgage, pledge, or other lien upon property of  
21 another person may, instead of foreclosing, accept a conveyance or  
22 transfer of the encumbered property from its owner in satisfaction  
23 of the indebtedness secured if it appears to be in the best in-  
24 terests of the estate and if the court ~~shall~~ so order. Without  
25 the prior authorization or subsequent approval of the court, no  
26 compromise binds the estate.

27 <sup>- 290</sup> Sec. ~~3.84~~. ABANDONMENT OF PROPERTY. When <sup>the</sup> any property is  
28 valueless, or is so encumbered or in such condition that it is of  
29 no benefit to the estate, the court may, on its own motion or at

1 the request of an interested person, order the personal repre-  
2 sentative to abandon it.

3 Sec. ~~3.85~~<sup>395</sup>. PROPERTY EMBEZZLED OR CONVERTED. <sup>A</sup> ~~Any~~ person  
4 embezzling or converting to his own use any of the personal pro-  
5 perty of a decedent before the appointment of a personal repre-  
6 sentative is liable to the estate for the value of the property so  
7 embezzled or converted. No person shall be charged as executor  
8 de son tort.

9 Sec. ~~3.86~~<sup>300</sup>. DISCLOSURE OF THE DETERMINATION OF TITLE TO  
10 PROPERTY. Upon the filing of a petition by <sup>an</sup> ~~any~~ interested person  
11 alleging that <sup>a</sup> ~~any~~ person has or is suspected to have concealed,  
12 embezzled, converted to his own use, or disposed of property be-  
13 longing to the estate of a decedent, or has possession or know-  
14 ledge of <sup>the</sup> ~~such~~ property or documents relating to <sup>the</sup> ~~such~~ property, the  
15 court upon <sup>what</sup> ~~such~~ notice as it may direct, may order the persons  
16 named in the petition to appear before it to answer the allega-  
17 tions of the petition, and may finally adjudicate the rights of  
18 the parties before the court with respect to <sup>the</sup> ~~the~~ property. In-  
19 sofar as parties claiming an interest adverse to the estate are  
20 concerned, this procedure for disclosure or to determine title is  
21 an independent proceeding and not within Sec. ~~3.01~~<sup>5 of 1915 chapter</sup>.

22 Sec. ~~3.87~~<sup>305</sup>. CONTINUATION OF BUSINESS. The personal repre-  
23 sentative may apply to the court to carry on the decedent's  
24 business. If the court is satisfied that this will benefit the  
25 estate, it may grant him permission to do so. If the estate is  
26 solvent, however, pertinent provisions of a valid will govern. The  
27 order may be with or without notice, but if all interested persons  
28 are not given notice before the order, notice must be given them  
29 within five days after the order, and <sup>an</sup> ~~any~~ interested person not

1 previously notified may then challenge all or part of the order.  
2 The order may provide for appropriate conditions, restrictions,  
3 regulations and requirements, such as, but not limited to, the  
4 following:

5 (1) ~~That~~ the business be conducted solely by the per-  
6 sonal representative, or as a corporation to be formed by the  
7 personal representative;

8 (2) ~~That~~ the liability of the estate or any part of it,  
9 or of <sup>Z</sup>the personal representative, be limited as to obligations  
10 incurred in the continuation of the business;

11 (3) ~~That~~ liabilities incurred in the continuance of the  
12 business be chargeable only to a part of the estate set aside for  
13 use in the business rather than to the estate as a whole;

14 (4) ~~As~~ to the period of time for which the business may  
15 be conducted, and such other conditions, restrictions, regulations  
16 and requirements as the court may order.

17 <sup>310</sup>  
18 Sec. 3.88. CONTRACT TO CONVEY OR LEASE LAND. a. When <sup>a</sup>any  
19 person legally bound to make a conveyance or lease dies before  
20 making it, the court, with or without notice, may direct the per-  
21 sonal representative to make it according to the agreement. A  
22 petition for specific performance may be made by a person claiming  
23 to be entitled to the conveyance or lease, by the personal repre-  
24 sentative, or by any other interested person. The personal repre-  
25 sentative may, by order of the court only, deliver a deed or lease  
26 to the person entitled, upon the performance of the contract.

27 b. When warranties are required by the contract for a con-  
28 veyance, the deed given by the personal representative shall con-  
29 tain the promised warranties, which shall be as binding upon the  
estate as if made by the decedent but shall not bind the personal

1 representative personally. A certified copy of the order to con-  
2 vey shall be recorded with the deed in the office of the recorder.  
3 A conveyance made <sup>under</sup> pursuant to this section is as effective to pass  
4 title as if made by the testator.

5 c. If a personal representative has been given power by will  
6 to make a conveyance or lease, he may do so without following the  
7 procedure described in ~~Subsecs.~~ <sup>of this section</sup> a and b and without order of the  
8 court.

9 Sec. ~~3.89~~ <sup>315</sup>. INVESTMENT OF ESTATE FUNDS. Subject to the terms  
10 of the will and to the primary duty of the personal representative  
11 to preserve the estate for prompt distribution, the personal  
12 representative shall invest the funds of the estate. Investments  
13 must be of the kind proper for trustees to make under Alaska law.

14 Sec. ~~3.90~~ <sup>320</sup>. BANK DEPOSITS. Whenever appropriate the personal  
15 representative may deposit, as a fiduciary, the funds of the  
16 estate in a bank in this state as a general deposit, either in a  
17 checking account or in a savings account.

18 <sup>ARTICLE</sup>  
~~Part~~ 7. Claims

19 Sec. ~~3.95~~ <sup>330</sup>. PRESENTATION AND PAYMENT OF CLAIMS. a. Claims  
20 against the estate of the decedent, supported by affidavit, may  
21 be presented to the personal representative as soon as he has  
22 received letters. No claim may be allowed unless it describes

- 23 (1) the nature of the claim,  
24 (2) the amount of the claim,  
25 (3) when the claim became or is to become due,  
26 (4) any setoffs known to the claimant,  
27 (5) a contingency, if any,  
28 (6) when the claim is founded upon a writing, and the  
29 writing is not offered, the reasons for failure to produce the

1 writing,

2 (7) security held for the claim, if any.

3 b. Unless the personal representative has reason to believe  
4 that the estate is or may be insolvent, he may allow and pay all  
5 or any part of the claim as soon as he is satisfied that it is  
6 proper. He may reject a claim that he believes to be improper  
7 by writing on the claim the word "rejected," the date, and his  
8 signature.

9 c. If the personal representative has reason to believe that  
10 the estate is or may become insolvent, or that there are insuf-  
11 ficient funds on hand, or for any other reason, he may refrain  
12 from paying any class of claims until the period for filing claims  
13 has elapsed, and if the estate is insolvent, as much longer as  
14 necessary. The court may direct him to pay any claim or claims  
15 before that time, and require bond or security from the creditor  
16 to refund any part of the payment that may be necessary to make  
17 payment in accordance with the provisions of this Code.

18 Sec. <sup>335</sup>3.96. CLAIMS REJECTED BY THE PERSONAL REPRESENTATIVE.

19 a. In the case of <sup>a</sup>any claim which the personal representative  
20 rejects in whole or in part, the claimant may present the claim  
21 with the rejection noted on it to the court and petition the  
22 court for a hearing on it. A hearing will be set and notice  
23 given as the court directs.

24 b. The rejection of <sup>a</sup>any claim in whole or in part by the  
25 personal representative is final unless the claimant presents the  
26 claim to the court and petitions for a hearing within one month of  
27 the rejection of the claim. The allowance or rejection of the  
28 claim by the court is a judgment.

29 Sec. <sup>340</sup>3.97. CLAIMS FOR AMOUNTS NOT YET DUE. The personal

1 representative shall allow a claim for an amount which will be-  
2 come due at some future time at its present value. Payment may  
3 be made as in the case of an absolute claim which has been allowed.  
4 Alternatively, the distributee may give a bond to be approved by  
5 the court for the payment of the creditor's claim in accordance  
6 with its terms. The giving of this bond satisfies the claim and  
7 enables the estate to be closed.

8 Sec. ~~3.98~~<sup>3.45</sup>. SECURED CLAIMS. a. A mortgage, pledge, or other  
9 lien which has been recorded may be described by date and refer-  
10 ence to the volume, page, and place of recording. A secured claim  
11 shall be allowed in the amount remaining unpaid at the time of its  
12 allowance. The full amount of the claim shall be paid if the  
13 creditor surrenders his security; otherwise payment shall be made  
14 as follows: 2 4-2

15 (1) If the creditor exhausts his security before re-  
16 ceiving payment, he is entitled to the full amount of the claim  
17 allowed less the amount realized upon exhausting the security, or

18 (2) If the creditor has not exhausted his security,  
19 then upon the full amount of the claim allowed less the value of  
20 the security, which is determined either by conversion of the  
21 security into money according to the terms of the agreement pur-  
22 suant to which the security was delivered to the creditor, or by  
23 agreement, arbitration, compromise, or litigation between the  
24 creditor and the personal representative, as the court may direct.

25 b. Where encumbered assets are sought to be retained in  
26 kind, the personal representative may pay the encumbrance or any  
27 part of it, or may renew or extend the obligation. No payment so  
28 made increases the share of the distributees entitled to the  
29 encumbered assets.

1           <sup>350</sup>  
2           Sec. ~~3.99~~. CONTINGENT CLAIMS. Contingent claims, although  
3 not allowable as absolute debts, may be filed with the personal  
4 representative and proved. The order of allowance of a contin-  
5 gent claim must state the nature of the contingency. If the claim  
6 becomes absolute before distribution it shall be paid as are  
7 absolute claims of the same class, or if not

8           (1) the creditor and the personal representative may  
9 determine by agreement, arbitration, or compromise, the probable  
10 present value of the claim; it may be allowed and paid as is an  
11 absolute claim, or

12           (2) the court may order the personal representative to  
13 distribute the estate but to retain in his hands enough money to  
14 pay the claim if and when it does become absolute. The estate  
15 shall not be kept open for this purpose more than two years after  
16 distribution of the remainder of the estate. If the claim has not  
17 become absolute within that time, distribution of the funds so re-  
18 tained shall be made to the distributees after the payment of any  
19 costs and expenses accruing during this period. These distribu-  
20 tees will be liable to the creditor to the extent of the portion  
21 of the estate received by them if the contingent claim thereafter  
22 becomes absolute, and the court may require bond of them for the  
23 satisfaction of the contingent claim.

24           Sec. <sup>355</sup> 3.100. PAYMENT OF CONTINGENT CLAIMS BY DISTRIBUTEES.  
25 If a claim becomes absolute after distribution, which has been  
26 made as provided in <sup>3.50(2) of this chapter</sup> Sec. 3.99(2), the creditor may recover against  
27 those distributees whose shares were increased by reason of non-  
28 payment of the claim before final distribution. No action to  
29 recover may be brought more than six months after the claim be-  
comes absolute. The distributees are jointly and severally

1 liable, but no distributee is liable in excess of the amount of  
2 the estate or fund so distributed to him. If more than one dis-  
3 tributee is liable to the creditor, the creditor shall make all  
4 distributees who can be reached by process parties to the action.  
5 The court shall determine the relative liability of each of the  
6 defendants as between themselves, but if any is unable to pay his  
7 proportion, or is beyond the reach of process, the others to the  
8 extent of their respective liabilities shall nevertheless be  
9 liable to the creditor for the whole amount of his debt. <sup>A</sup> Any  
10 distributee paying more than his fair proportion to the creditor  
11 has a right to be indemnified by the distributees or distributees  
12 who failed to pay their share.

13 <sup>360</sup> Sec. 3-101. CLASSIFICATION OF CLAIMS AND ALLOWANCES. a. All  
14 claims and allowances, when allowed, shall be classified as fol-  
15 lows, and if the applicable assets of the estate are insufficient  
16 to pay all claims and allowances in full, shall be paid by the  
17 personal representative in the following order: 7

18 (1) ~~F~~uneral charges and expenses of the last illness;

19 (2) ~~T~~axes of whatever nature due the United States for  
20 which lien claim has been filed for record in accordance with  
21 <sup>AS 43.10.0405</sup> ~~Sec. 48-9-1, ACLIA 1949;~~

22 (3) ~~T~~axes of whatever nature due the State of Alaska  
23 for which it holds a prior, paramount lien;

24 (4) All other taxes of whatever nature to whomsoever  
25 due and all debts which at decedent's death were a lien upon his  
26 property or <sup>SL</sup> any right or interest thereon according to the re-  
27 spective priority of the several liens of <sup>the</sup> such taxes and debts;

28 (5) ~~D~~ebts preferred by the bankruptcy laws of the  
29 United States and debts due employees of decedent for wages earned

1 within the <sup>90</sup> ~~ninety~~ days immediately preceding the death of the  
2 decedent;

3 (6) All other claims against the estate.

4 b. The preference given by <sup>(a)(4)</sup> ~~Paragraph (4)~~ of this section to  
5 debts extends only to the proceeds of the property upon which the  
6 lien exists and as to these proceeds the debt is to be preferred  
7 to any of the classes mentioned in this section other than the  
8 taxes upon the property.

9 <sup>- 365</sup> Sec. ~~3.102~~. CLAIMS OF PERSONAL REPRESENTATIVES. If the per-  
10 sonal representative is a creditor of the decedent, he shall file  
11 his claim in the court for approval before payment. The court  
12 may in its discretion appoint a suitable person, whether interes-  
13 ted in the estate or not, to represent the estate on the hearing  
14 of the claim.

15 <sup>- 370</sup> Sec. ~~3.103~~. COMPROMISE OF CLAIMS. When a claim against the  
16 estate has been filed or suit on a claim is pending, the personal  
17 representative may, if it appears to be in the best interests of  
18 the estate, compromise the claim, whether it is due or not due,  
19 absolute or contingent, liquidated or unliquidated. Without prior  
20 authorization or subsequent approval of the court, no compromise  
21 shall bind the estate.

22 <sup>- 375</sup> Sec. ~~3.104~~. LIMITATIONS ON FILING OF CLAIMS. a. Claims,  
23 with the exception of those provided for in <sup>380 of this chapter,</sup> ~~Sec. 3.105~~, expenses  
24 of administration, claims of the United States and all claims  
25 against a decedent's estate shall be forever barred against the  
26 estate, the personal representative, and the heirs and devisees  
27 of the decedent, unless filed with the personal representative  
28 within four months after the date of the first published notice  
29 to creditors.

1           b. No claim shall be allowed which was barred by any statute  
2 of limitations at the time of the decedent's death.

3           c. No claim is barred by the statute of limitations which  
4 was not barred ~~thereby~~ at the time of the decedent's death, if the  
5 claim is filed within four months after the first published notice  
6 to creditors.

7           d. All claims which would be barred by ~~Subsec. (a)~~<sup>of this section</sup> are, in any  
8 event, barred if administration is not begun within five years  
9 after the death of the decedent.

10          e. Nothing in this section affects ~~any~~<sup>an</sup> action or proceeding  
11 to enforce ~~any~~<sup>a</sup> mortgage, pledge or other lien upon property of the  
12 estate.

13           - 380  
14          Sec. ~~3.105~~. COMMENCEMENT OF SEPARATE ACTION OR REVIVOR  
15 EQUIVALENT TO FILING OF CLAIM. The provisions of ~~Sec. 3.104~~<sup>375 of Chapter</sup> do  
16 not preclude the commencement or continuance of separate actions  
17 against the personal representative as such for the debts and  
18 other liabilities of the decedent, if commenced or revived within  
19 the periods stated in ~~Sec. 3.104~~<sup>375 of this chapter</sup>. An action pending against a  
20 person at the time of his death, which survives against the per-  
21 sonal representative, is considered to be a claim filed against  
22 the estate from the time such action is revived. ~~Any~~<sup>the</sup> action com-  
23 menced against a personal representative as such after the death  
24 of the decedent is considered to be a claim duly filed against the  
25 estate from the time the action is ~~commenced~~<sup>com-</sup>menced. Nothing in this  
26 section impairs the individual liability of the personal repre-  
27 sentative for his own acts and contracts in the administration of  
28 the estate.

28           - 390  
29          - 390           Article  
                          Part 8. Sales  
                          Sec. ~~3.111~~. NO PRIORITY BETWEEN REAL AND PERSONAL PROPERTY.

1 In determining what property of the estate shall be sold, mort-  
2 gaged, leased or exchanged there is no priority as between real  
3 and personal property, except as provided by will, by court order  
4 or by the provisions of <sup>565 of this chapter</sup> ~~Sec. 3.154~~.

5 <sup>395</sup> ~~Sec. 3.112~~. WHEN POWER GIVEN IN WILL. When power to sell,  
6 mortgage, lease or exchange property of the estate has been given  
7 to <sup>a</sup> ~~any~~ personal representative by will, the personal representa-  
8 tive may proceed under <sup>that</sup> such power, or under the provisions of this  
9 <sup>title,</sup> Code, as he elects.

10 <sup>400</sup> ~~Sec. 3.113~~. PURPOSES OF TRANSFER BY COURT ORDER. Real or  
11 personal property belonging to an estate may be sold, mortgaged,  
12 leased, or exchanged under court order when necessary to

- 13 (1) pay claims allowed against the estate;
- 14 (2) pay <sup>an</sup> ~~any~~ allowance made to the surviving spouse and  
15 minor children of the decedent;
- 16 (3) pay any legacy;
- 17 (4) pay expenses of administration;
- 18 (5) pay ~~any~~ taxes assessed upon the transfer of the  
19 estate or due from the decedent or his estate;
- 20 (6) distribute the estate or any part of it;
- 21 (7) do any other thing in the best interests of the  
22 estate.

23 <sup>405</sup> ~~Sec. 3.114~~. ORDER TO SELL, MORTGAGE, OR LEASE TO BE REFUSED  
24 IF BOND GIVEN. No court order described in <sup>400 of this chapter</sup> ~~Sec. 3.113~~ shall be  
25 made if <sup>an</sup> ~~any~~ interested person files in the court a bond suitable  
26 to the court conditioned to pay all obligations of the estate to  
27 the extent that the other property of the estate is insufficient,  
28 within a time to be set by the court. The personal representative  
29 may sue on the bond on behalf of <sup>an</sup> ~~any~~ interested person who is

1 prejudiced by the breach of <sup>an</sup> any obligation of the bond.

2 Sec. <sup>410</sup> ~~3.115~~. TERMS OF SALE. In all sales of real or per-  
3 sonal property, the court may authorize the personal representa-  
4 tive to give credit for a period not extending beyond one year  
5 from his qualification and for an amount not exceeding 50 per  
6 cent of the sale price, the payment of the debt to be secured by  
7 notes or bonds with approved sureties or by a purchase money  
8 mortgage. An order authorizing credit shall specify the time of  
9 payment, the rate of interest on payments and the way in which  
10 <sup>the</sup> such payments shall be secured. If the estate is solvent, credit  
11 may be extended by the personal representative for longer than  
12 one year with the written consent of the distributees.

13 Sec. <sup>415</sup> ~~3.116~~. WHEN PERSONAL REPRESENTATIVE MAY PURCHASE. <sup>a</sup> Any  
14 personal representative may purchase, take a mortgage on, lease or  
15 take by exchange, real or personal property belonging to the  
16 estate, but such a transaction shall always be reported to the  
17 court and be subject to confirmation.

18 Sec. <sup>420</sup> ~~3.117~~. PURCHASE BY LIEN HOLDER. If estate property  
19 subject to a mortgage pledge, or other lien is sold, the holder of  
20 the lien may buy, applying the amount of his lien against the  
21 purchase price, if the claim has been allowed by giving the per-  
22 sonal representative a receipt for the amount due him. If the  
23 claim has not been allowed, the court may examine, at the hearing  
24 for confirmation of the sale, the validity and enforceability of  
25 and the amount due on the claim. If the proceeds of the sale do  
26 not defray expenses and discharge the lien, the purchaser must  
27 pay an additional amount sufficient to do so, unless the creditor  
28 can show that the property was never intended to be equal in  
29 value to the amount of the debt. Nothing permitted by this

1 section shall be <sup>considered</sup> ~~deemed~~ an allowance of a claim based upon any  
2 such lien.

3 Sec. <sup>425</sup> ~~3.118~~. SALE, MORTGAGE OR LEASE OF PERSONAL PROPERTY. A  
4 personal representative may file a petition to sell, mortgage or  
5 lease any personal property belonging to the estate, setting <sup>out</sup> ~~forth~~  
6 the reasons for the application and describing the property in-  
7 volved. The petition may be heard with or without notice as the  
8 court may direct. At the hearing of the petition the court may  
9 order the sale, mortgage or lease of the property described or  
10 any part <sup>of it</sup> ~~thereof~~, at the price and upon the terms and conditions  
11 required by the court. No report or confirmation of <sup>the</sup> ~~such a~~ trans-  
12 action is necessary except as required when the personal repre-  
13 sentative is personally interested in the transaction or by the  
14 court; but no sale, mortgage or lease, except as provided in Sec.  
15 <sup>430 of this chapter,</sup> ~~3.119~~, is valid unless prior authorization or subsequent approval  
16 of the court is secured.

17 Sec. <sup>430</sup> ~~3.119~~. SALES OF PERISHABLE OR DEPRECIABLE PROPERTY.  
18 Perishable property and other personal property which will de-  
19 preciate in value if not disposed of promptly, or which will incur  
20 loss or expense by being kept, and so much other personal property  
21 as may be necessary to provide allowance to the surviving spouse  
22 and children pending the receipt of other sufficient funds, may  
23 be sold without notice, and title will pass without confirmation;  
24 but the personal representative will be responsible for the actual  
25 value of the property unless, after he makes a report of the  
26 sale, the court approves the sale.

27 Sec. <sup>435</sup> ~~3.120~~. SALE, MORTGAGE OR LEASE OF REAL AND PERSONAL  
28 PROPERTY AS A UNIT. In the best interests of the estate, real and  
29 personal property of the estate may be sold, mortgaged or leased

1 as a unit, but the provisions of this <sup>Code</sup> Code for the sale, mortgage  
2 or lease of real property apply so far as practical.

3 Sec. <sup>440</sup>~~3.121~~. PETITION TO SELL, MORTGAGE OR LEASE REAL PRO-  
4 PERTY. A personal representative may petition to sell, mortgage  
5 or lease any real property belonging to the estate, setting <sup>out</sup> forth  
6 the reasons for the application and describing the property in-  
7 volved. He may apply for authority to take different actions with  
8 respect to different parts of the property, or for authority either  
9 to sell, to mortgage, or to lease. The court shall hear the peti-  
10 tion after notice, except that as to any real property which was  
11 last appraised at not more than \$1,000 the court may, in its  
12 discretion, hear the petition without notice. The court then may  
13 order the sale, mortgage or lease of the property described or any  
14 part of it. When a claim secured by a mortgage on real property  
15 is payable at or before the time of distribution, the court with  
16 the consent of the mortgagee may nevertheless order the sale of  
17 the real property subject to the mortgage. The consent of the  
18 mortgagee releases the estate even if a deficiency later appears.

19 Sec. <sup>445</sup>~~3.122~~. QUIETING ADVERSE CLAIMS. Upon petition to sell  
20 or mortgage real property the court may investigate and determine  
21 all questions of conflicting and controverted title, remove clouds  
22 from any title or interest involved, and invest purchasers or  
23 mortgagees with a good and indefeasible title to the property sold  
24 or mortgaged. When the petition to sell or mortgage seeks such  
25 relief, notice shall be given as in civil actions of like nature  
26 and the court is authorized to issue appropriate process and  
27 notices in order to obtain jurisdiction ~~so~~ to proceed against ad-  
28 verse parties.

29 Sec. <sup>450</sup>~~3.123~~. THE ORDER FOR SALE, MORTGAGE OR LEASE OF THE

1 PROPERTY. The order for sale, mortgage or lease of the property  
2 may

3 (1) describe the property;

4 (2) designate a <sup>s</sup>dequence of disposition of several  
5 parcels;

6 (3) direct whether the sale is private or public;

7 (4) where a sale is public, fix a time and place of  
8 sale;

9 (5) prohibit sale at less than the appraised rental  
10 value, unless after an unsuccessful attempt to sell or rent, at or  
11 above that value the court approves a lower price;

12 (6) set forth <sup>out</sup> the terms of a sale, or in the case of a  
13 mortgage, the maximum amount of principal, the maximum rate of  
14 interest, the earliest and latest dates of maturity;

15 (7) show the purpose for which the proceeds are to be  
16 used;

17 (8) remain in force until terminated by the court,  
18 except that after one year from the date of the order, no sale or  
19 lease may be made unless the sale or rental value of the property  
20 has been reappraised by court order within three months preceding  
21 the sale or lease.

22 Sec. <sup>455</sup> 3.124. APPRAISAL OF REAL PROPERTY. Before <sup>a</sup> any personal  
23 representative sells or leases any real property he shall have it  
24 appraised by two disinterested persons appointed by the court un-  
25 less the court directs that he be permitted to use the appraisal  
26 filed with the inventory. The appraisers shall appraise the real  
27 property or its rental value, as the case may be, and deliver the  
28 appraisal to the personal representative.

29 Sec. <sup>460</sup> 3.125. SALES AT PUBLIC AUCTION. The personal

1 representative shall give notice of all public auction sales of  
2 real property describing the property to be sold, and stating the  
3 time, terms and place of sale. He shall publish the notice once  
4 a week for three consecutive weeks in at least one newspaper, of  
5 the locality in which the real property is situated. If no news-  
6 paper is circulated in the locality, or if the appraised value of  
7 the real property is \$500 or less, the personal representative may  
8 in lieu of publication, post a copy of the notice in three public  
9 places in the locality in which the real property is situated at  
10 least two weeks before the sale is made. If the notice is pub-  
11 lished, the date set for the sale shall not be earlier than one  
12 day or later than seven days after the date of the third publica-  
13 tion of notice. The personal representative may adjourn the sale  
14 from time to time in the best interests of the estate for not  
15 longer than three months in all. Every adjournment shall be  
16 announced publicly at the time and place fixed for the sale.

17 Sec. <sup>1465</sup>~~3.126~~ REPORT AND CONFIRMATION. a. Within 10 days of  
18 a transaction in land described in Sec. <sup>440 of this chapter</sup>~~3.121~~, the personal repre-  
19 sentative shall submit a report of the transaction to the court,  
20 with

21 (1) the certificate of appraisalment in case special  
22 appraisalment is required;

23 (2) proof of publication or posting in case the sale is  
24 made at public auction;

25 (3) a statement that he did not directly or indirectly  
26 acquire any beneficial interest in the real property, or the lease  
27 thereof, except as stated in his report.

28 b. Any interested person may file objections to confirmation  
29 in writing, stating reasons. If, after examining the report, the

1 court is satisfied that the sale, mortgage or lease has been made  
2 upon terms advantageous to the estate and in conformity with law,  
3 the court shall confirm the transaction and order the personal  
4 representative to make and deliver proper instruments to the per-  
5 son entitled. No report shall be confirmed within five days after  
6 filing unless all interested persons consent in writing or unless  
7 the court determines delay would not be in the best interests of  
8 the estate. If the court is not satisfied by the transaction, it  
9 may reject the sale, mortgage, or lease and require that defi-  
10 ciencies be remedied, or take other appropriate action.

11 <sup>470</sup> Sec. 3.127. EXECUTION OF CONVEYANCE OR OTHER INSTRUMENT BY  
12 PERSONAL REPRESENTATIVE. Upon the confirmation of <sup>a</sup> any sale,  
13 mortgage or lease the personal representative shall execute the  
14 proper instrument according to the order of confirmation. Any  
15 instrument made by the personal representative must refer to the  
16 order of sale, mortgage, or lease by date and the court by which  
17 the order was made. It transfers to the grantee, mortgagee or  
18 lessee all the right, title, and interest of the decedent to the  
19 extent appropriate to the nature of the transaction, discharged  
20 from liability for all debts and obligations incident to the  
21 administration of the estate, except encumbrances assumed. A  
22 certified copy of the order may be recorded with the deed or other  
23 instrument.

24 <sup>475</sup> Sec. 3.128. BROKERS' FEES AND TITLE DOCUMENTS. The court  
25 may authorize the personal representative to pay, out of the pro-  
26 ceeds realized from the sale, mortgage, lease, or exchange of  
27 property or out of the estate, reasonable auctioneers' and  
28 brokers' fees, necessary expenses for abstracting, title insurance  
29 survey and revenue stamps, and other necessary costs and expenses

1 incurred in connection with the sale. Lead tape 4

2 Sec. <sup>480</sup>~~3.129~~. PLATTING. When rent property is to be disposed  
3 of, the court, on the application of <sup>an</sup> ~~any~~ interested person, may  
4 authorize the personal representative, either along or together  
5 with other owners, to plat land belonging to the estate according  
6 to law.

7 Sec. <sup>485</sup>~~3.130~~. EXCHANGE OF PROPERTY. The court may authorize  
8 the exchange of any estate property for any other property upon  
9 such terms <sup>the 5-2</sup> and conditions ~~as~~ it may prescribe, which may include  
10 the payment or receipt of part cash by the personal representative  
11 If personal property of the estate is to be exchanged, the pro-  
12 cedure for the sale of <sup>the</sup> ~~such~~ property shall be followed as far as  
13 practical; if real property of the estate is to be exchanged, the  
14 procedure for the sale of <sup>the</sup> ~~such~~ property shall be followed as far  
15 as practical.

16 <sup>Article</sup> Part 9. Accounting

17 Sec. <sup>495</sup>~~3.131~~. LIABILITY OF PERSONAL REPRESENTATIVE. a. ~~(Pro-~~  
18 ~~perty of Estate)?~~ A personal representative is liable and account-  
19 able for all of the estate of the decedent which comes into his  
20 possession at any time, or should by law have been collected by  
21 him, including income. He may not be held for debts due to the  
22 decedent or other assets of the estate which remain uncollected  
23 without his fault. He is not entitled to profit nor chargeable  
24 with loss resulting from increase or decrease in the value of  
25 estate property, except that he is liable for loss resulting from  
26 improper management.

27 b. (Property Not a Part of the Estate.) A personal repre-  
28 sentative is accountable for property not a part of the estate  
29 which comes into his hands at any time, and is liable to the

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1 persons entitled to it, if

2 (1) the property was received under a duty imposed on  
3 him by law in the capacity of personal representative, or

4 (2) he has commingled this property with the assets of  
5 the estate.

6 c. ~~Breach of Duty~~. Every personal representative is liable  
7 and accountable for losses

8 (1) from neglect or unreasonable delay in collecting  
9 assets of the estate or in selling, mortgaging or leasing the pro-  
10 perty of the estate;

11 (2) from neglect in paying over money or delivering  
12 property of the estate in his hands;

13 (3) from failure to account for or to close the estate  
14 within the time provided by this Code;

15 (4) to the estate resulting from his embezzlement or  
16 commingling of the assets of the estate with other property;

17 (5) to the estate through his self-dealing;

18 (6) to the estate resulting from wrongful acts or  
19 omissions of his co-representatives which he could have prevented  
20 by the exercise of ordinary care;

21 (7) from any other negligent or wilful act or non-  
22 feasance in his administration.

23 <sup>500</sup> Sec. 3.132. DUTY TO CLOSE ESTATE. A personal representative  
24 shall close the estate as promptly as possible. The estate must  
25 be closed within nine months from the filing of the petition for  
26 the appointment of a personal representative, unless for cause  
27 the time is extended by the court.

28 <sup>500</sup> Sec. 3.133. WHEN PERSONAL REPRESENTATIVE MUST ACCOUNT. A  
29 personal representative or (unless they maintain separate

1 accounts) joint representatives of the same estate jointly must  
2 file in the court a verified account of the administration  
3 (1) upon filing a petition for final settlement;  
4 (2) upon the revocation of his or their letters;  
5 (3) upon his or their application to resign and before  
6 the resignation is accepted by the court;  
7 (4) annually during the period of administration unless  
8 the court otherwise directs;  
9 (5) at any other time when directed by the court either  
10 of its own motion or on the application of <sup>an</sup> interested person.

11 <sup>510</sup> Sec. ~~3.134~~. WHAT ACCOUNTS TO CONTAIN. Accounts are given to  
12 the court by a personal representative for a definite period and  
13 consist of three schedules, of which the first shows the amount  
14 of the property according to the inventory, (or, if there has  
15 been a prior accounting, the amount of the balance of the next  
16 prior account) all income and other property received, and gains  
17 from the sale of any property or otherwise; the second shows  
18 payments, charges, losses, and distributions; the third shows the  
19 property on hand constituting the balance of the account, if any,  
20 by reference to the inventory or otherwise. When an account is  
21 filed, the personal representative shall also file receipts for  
22 disbursement of assets made during the period covered by the  
23 account. The court may provide for an inspection of the balance  
24 of assets on hand.

25 <sup>515</sup> Sec. ~~3.135~~. ACCOUNT TO INCLUDE PETITION FOR SETTLEMENT AND  
26 DISTRIBUTION. At the time of filing of an account the personal  
27 representative shall petition the court to settle and allow his  
28 account; and if the estate is in a proper condition to be closed,  
29 he shall also petition the court for an order authorizing him to

1 distribute the estate. He shall specify in the latter petition  
2 the persons to whom distribution is to be made and the proportions  
3 or parts of the estate to which each is entitled.

4 Sec. <sup>-.520</sup> 3.136. HEARING ON SETTLEMENT OF ACCOUNT. Petitions for  
5 settlement of account and for distribution shall be heard after  
6 notice to all interested persons.

7 Sec. <sup>-.525</sup> 3.137. OBJECTIONS TO ACCOUNT. At any time before the  
8 hearing on an account of a personal representative, <sup>an</sup> any interested  
9 person may file a statement of specific objections to any item or  
10 omission in the account. The statement must include a proposed  
11 modification.

12 Sec. <sup>-.530</sup> 3.138. CONCLUSIVENESS OF ORDER SETTLING ACCOUNT. The  
13 approval by the court of the account of a personal representative  
14 relieves him and his sureties from liability arising from the  
15 administration of his trust during the accounting period, includ-  
16 ing the investment of the assets of the estate. The court may  
17 disapprove the account in whole or in part and surcharge the per-  
18 sonal representative in the amount of any loss caused by any  
19 breach of duty.

20 Sec. <sup>-.535</sup> 3.139. STATEMENT OF RECEIPTS AND DISBURSEMENTS AFTER  
21 FINAL ACCOUNT AND BEFORE FINAL DISTRIBUTION. Receipts and dis-  
22 bursements of the personal representative after the filing of his  
23 final account, and an estimate of the expenses of closing the  
24 estate must be reported to and approved by the court before final  
25 distribution. The court may elect to treat a statement of these  
26 receipts and disbursements as a supplementary account and order  
27 notice to be given as in other cases of the settlement of accounts.

28 Sec. <sup>-.540</sup> 3.140. ACCOUNT OF DECEASED OR INCOMPETENT PERSONAL  
29 REPRESENTATIVE. If a personal representative dies or becomes

1 incompetent, his account may be presented by his personal repre-  
2 sentative or the guardian of his estate. It is presented to and  
3 settled by the court in which the estate entrusted to the de-  
4 ceased or incompetent personal representative is being adminis-  
5 tered. Upon petition of the successor of the deceased or incom-  
6 petent personal representative, the court shall compel the per-  
7 sonal representative to render an account of the administration of  
8 the estate of the decedent. The court shall settle the account  
9 as in other cases.

ARTICLE

Part 10. Distribution and Discharge

11 Sec. ~~3.151~~<sup>-550</sup>. DELIVERY OF SPECIFIC PROPERTY TO DISTRIBUTEE

12 BEFORE FINAL DECREE. Upon application of the personal representa-  
13 tive or of <sup>a</sup> any distributee, with or without notice as the court  
14 may direct, the court may order the personal representative to  
15 deliver to any distributee who consents to it, possession of ~~any~~  
16 specific property to which he is entitled by will or intestacy,  
17 provided that other distributees and claimants are not prejudiced  
18 thereby. At any time before the decree of final distribution the  
19 court may order him to return the property to the personal repre-  
20 sentative, if it is for the best interests of the estate. The  
21 court may require the distributee to give security for the return  
22 of the property.

23 Sec. ~~3.152~~<sup>-555</sup>. DISTRIBUTION OF PART OF ESTATE. After the

24 expiration of the time limited for the filing of claims and be-  
25 fore final settlement of the accounts of the personal representa-  
26 tive, a partial distribution may be decreed, with notice to  
27 interested persons, as the court may direct. This distribution is  
28 as conclusive as a decree of final distribution with respect to  
29 the estate distributed except to any extent that other

1 distributees and claimants are deprived of their fair share of the  
2 entire estate. Before decreeing a partial distribution, the court  
3 may require that security be given for the return of the property  
4 distributed or any part of it if necessary to complete the fair  
5 portions of distributees and claimants.

6 Sec. ~~3-153~~<sup>360</sup>. DECREE OF FINAL DISTRIBUTION. a. After (1) the  
7 expiration of the time limit for the filing of claims, (2) all  
8 claims against the estate, including state and federal inheritance  
9 and estate taxes, have been finally determined and paid (except  
10 contingent and unmatured claims which cannot then be paid), and  
11 (3) one month has elapsed since the rejection of any claim by the  
12 personal representative without petition by the claimant for a  
13 hearing, the personal representative shall, if the estate is  
14 otherwise in a condition to be closed, render his final account  
15 and at the same time petition the court to decree the final dis-  
16 tribution of the estate. Notice of the hearing of the petition  
17 shall be given to all interested persons.

18 b. The decree of final distribution is not to be made if all  
19 federal and state inheritance and estate taxes are not paid. It  
20 includes:

- 21 (1) a designation of the distributees;
- 22 (2) proportions, parts, or amounts to which each dis-  
23 tributee is entitled by the will and this Code;
- 24 (3) a description of every tract of real property  
25 distributed;
- 26 (4) a statement ~~that~~ <sup>that</sup> claims are paid except ~~such as~~ <sup>those</sup> it  
27 describes, and a description of any fund set aside for payment of  
28 unsatisfied claims;
- 29 (5) a description of any claims as yet contingent and

1 unpaid, and a statement of whether the distributees take subject  
2 to them;

3 (6) if there is a fund to pay contingent claims, a  
4 provision for the distribution of any part of it not needed to  
5 pay these claims;

6 (7) a confirmation or modification of a decree of  
7 partial distribution, if any.

8 c. The decree of final distribution is a conclusive deter-  
9 mination of the successors in interest to the decedent and of the  
10 extent and character of their interests, subject only to ~~such~~  
11 rights to appeal and to reopen the decree <sup>which</sup> ~~as~~ the rules of the  
12 court may provide. It is the final adjudication of the transfer  
13 of the right, title and interest of the decedent to the distribu-  
14 tees designated in it; but no transfer before or after the dece-  
15 dent's death by an heir or devisee shall affect the decree, nor  
16 shall the decree affect any rights acquired by grantees from the  
17 heirs or devisees.

18 d. Whenever the decree of final distribution includes real  
19 property, the personal representative shall record a certified  
20 copy of the decree in the recording district in which the land is  
21 situated. The cost of recording the decree shall be charged to  
22 the estate.

23 Sec. 3.154. <sup>565</sup> ORDER IN WHICH ASSETS APPROPRIATED. a. ~~General~~  
24 ~~Rules~~ Except as provided in Subsec. <sup>(c) of the section</sup> (b) shares of the distributees  
25 abate, for the payment of claims, legacies, the family allowance,  
26 the shares of pretermitted heirs or the share of the surviving  
27 spouse who elects to take against the will, without ~~any~~ prefer-  
28 ence or priority as between real and personal property, in the  
29 following order:

- 1 (1) property not disposed of by the will;  
2 (2) property devised to the residuary devisee;  
3 (3) property disposed of by the will but not speci-  
4 fically devised and not devised to the residuary devisee;  
5 (A) (4) property specifically devised.

6 A general devise charged on any specific property or fund shall,  
7 for purposes of abatement, be ~~deemed~~ <sup>considered</sup> property specifically de-  
8 vised to the extent of the value of the thing on which it is  
9 charged. Upon the failure or insufficiency of the thing on which  
10 it is charged, it shall be ~~deemed~~ <sup>considered</sup> property not specifically de-  
11 vised to the extent of <sup>the</sup> such failure or insufficiency.

12 ~~C. b. Contrary Provisions, Plan or Purpose~~ If the provisions  
13 of the will, the testamentary plan, or the express or implied  
14 purpose of the devise would be defeated by the order of abatement  
15 stated in ~~Subsec. a,~~ <sup>(a) & (c) of this section</sup> the shares of distributees shall abate in any  
16 other manner the court finds necessary to give effect to the in-  
17 tention of the testator.

18 <sup>- 576</sup> Sec. 3.155. CONTRIBUTION. When property specifically de-  
19 vised or charged with a legacy is sold or taken by the personal  
20 representative for the payment of claims, general legacies, the  
21 family allowance, the shares of pretermitted heirs or the share of  
22 a surviving spouse who elects to take against the will, then other  
23 legatees and devisees of that class shall contribute according to  
24 their respective interests to the legatee or devisee whose legacy  
25 or devise has been sold or taken, so as to accomplish an abatement  
26 in accordance with ~~the provisions of Sec. 3.154~~ <sup>565</sup> of this ~~Code~~ <sup>chapter</sup>. The  
27 court shall, at the time of the hearing on the petition for final  
28 distribution, determine what the amounts of the respective con-  
29 tributions are to be and whether the contributions are to be made

1 before distribution or are to constitute a lien on specific pro-  
2 perty which is distributed.

3 Sec. 3.<sup>575</sup>~~156~~. DETERMINATION OF ADVANCEMENTS. At the time of  
4 the hearing on the petition for final distribution the court may  
5 hear and determine questions of advancements made or alleged to  
6 have been made by an intestate to any heir. The court shall note  
7 in the decree of final distribution the amount of every advance-  
8 ment.

9 Sec. <sup>580</sup>~~3-157~~. INTEREST ON GENERAL LEGACIES. General legacies  
10 bear interest at the legal rate for a period beginning nine months  
11 from the filing of the petition for the appointment of a personal  
12 representative and running until the payment of such legacies,  
13 unless a contrary intent is indicated by the will.

14 Sec. <sup>585</sup>~~3-158~~. EXONERATION OF ENCUMBERED PROPERTY. When any  
15 property subject to a mortgage is specifically devised, the devi-  
16 see shall take it subject to such mortgage unless the will pro-  
17 vides expressly or by necessary implication that such mortgage be  
18 otherwise paid. The term "mortgage" as used in this section does  
19 not include a pledge of personal property.

20 Sec. <sup>590</sup>~~3-159~~. PAYMENT TO DISTRIBUTEES IN KIND. a. ~~When~~  
21 ~~Distributees to Take in Kind.~~ When the estate is otherwise ready  
22 to be distributed, it shall be distributed in kind, unless the  
23 terms of the will otherwise provide or unless a partition sale is  
24 ordered. Except as provided in Subsec. (b), any general legatee may  
25 elect to take the value of his legacy in kind, and any distributee  
26 who by the terms of the will is to receive land or any other  
27 thing to be purchased by the personal representative, may, if he  
28 notifies the personal representative before the thing is pur-  
29 chased, elect to take the purchase price or property of the estate

1 which the personal representative would otherwise sell to obtain  
2 such purchase price.

3 b. ~~Exception Where Will Directs Purchase of Annuity.~~ If  
4 the terms of the will direct the purchase of an annuity, the per-  
5 son to whom the income thereof is directed to be paid may not  
6 elect to take instead the capital sum directed to be used to buy  
7 the annuity except to the extent that the will expressly provides  
8 that an assignable annuity be purchased. Nothing in this section  
9 affects the rights of election by a surviving spouse against a  
10 testamentary provision as provided in this Code.

11 Sec. 3.160<sup>-1595</sup>. PARTITION FOR PURPOSE OF DISTRIBUTION. When  
12 two or more distributees are entitled to distribution of undivided  
13 interests in property of the estate, the court shall distribute  
14 undivided interests unless the personal representative or a  
15 distributee petitions, not later than the hearing on the petition  
16 for final distribution, for a partition. The court may then,  
17 after notice to all interested persons, partition as provided by  
18 law. The court may direct <sup>the</sup> sale of any property by the personal  
19 representative, and make ~~any~~ other orders necessary to effect an  
20 equitable distribution of the property. ~~Any~~ <sup>two</sup> or more dis-  
21 tributees may agree to accept undivided interests. Each party  
22 must pay his own attorney fees, but expenses of partition are to  
23 be fairly apportioned among the parties. The amount charged to  
24 each party is a lien on the property allotted to him.

25 Sec. 3.161<sup>-600</sup>. DISCHARGE OF PERSONAL REPRESENTATIVE. Upon the  
26 filing of receipts or other evidence satisfactory to the court  
27 that distribution has been made as ordered in the final decree,  
28 the court shall enter an order of discharge. The discharge so  
29 obtained operates as a release from the duties of personal

1 representative and as a bar to any suit against the personal rep-  
2 resentative and his sureties not commenced within two years from  
3 the date of the discharge.

4 Sec. <sup>166</sup>3:162. REOPENING ADMINISTRATION. If, after an estate  
5 has been settled and the personal representative discharged, other  
6 property of the estate is discovered, or if it appears that the  
7 personal representative has left any necessary thing undone or for  
8 any other proper cause, the court, upon the petition of <sup>an</sup> ~~any~~ in-  
9 terested person may, without notice or upon <sup>which</sup> ~~such~~ notice as it may  
10 direct, order that the estate be reopened. It may reappoint the  
11 discharged personal representative, or appoint another personal  
12 representative to administer property or perform such acts as may  
13 be necessary. Unless the court otherwise orders, the provisions  
14 of this <sup>title</sup> ~~Code~~ as to an original administration shall apply to the  
15 proceedings in the reopened administration so far as possible; but  
16 no claim which is already barred may be asserted in the reopened  
17 administration.

18 CHAPTER 21  
ARTICLE IV

19 ADMINISTRATION OF SMALL ESTATES

20 <sup>Article</sup> Part 1. Estates Less Than \$3,000

21 <sup>13.21.010.</sup> Sec. 4.01. COLLECTION OF PERSONAL PROPERTY BY DISTRIBUTEES.

22 The distributees of an estate are entitled to the personal pro-  
23 perty of the estate without awaiting the appointment of a personal  
24 representative or the probate of a will when:

25 (1) no petition for the appointment of a personal rep-  
26 resentative is pending or has been granted, and

27 (2) thirty days have elapsed since the death of the  
28 decedent, and

29 (3) the value of the entire assets of the estate does

1 not exceed \$3,000, and

2 (4) there is furnished to any person owing ~~any~~ money,  
3 or having custody of any property or evidence of interest in pro-  
4 perty, an affidavit showing the existence of the foregoing con-  
5 ditions and the right of the distributees to receive the money or  
6 property or to have the evidences transferred.

7 <sup>- .020</sup> Sec. 4.02. DETERMINATION OF TITLE TO REAL PROPERTY. a. The  
8 distributees of an estate are entitled to the real property of the  
9 estate and may make record evidence of title without the appoint-  
10 ment of a personal representative if

11 (1) no petition for the appointment of a personal rep-  
12 resentative is pending or has been granted, ~~and~~

13 (2) thirty days have elapsed since the death of the  
14 decedent, ~~and~~

15 (3) the value of the entire assets of the estate does  
16 not exceed \$3,000, ~~and~~

17 (4) there is furnished to any person having custody of  
18 any real property, or acting as registrar or transfer agent of any  
19 evidence of interest, property or right, an affidavit showing the  
20 existence of the foregoing conditions and the right of the dis-  
21 tributees to receive ~~such~~ <sup>the</sup> property or to have ~~such~~ <sup>the</sup> evidence trans-  
22 ferred, ~~and~~

23 (5) there is recorded in the office of the recorder of  
24 each recording district where the real property is situated, an  
25 affidavit, executed by any person having knowledge of the facts,  
26 showing the existence of the foregoing conditions, describing the  
27 real property, naming the persons entitled ~~thereto~~ <sup>to it</sup>, and showing  
28 their right to succeed to the property, and stating that there are  
29 no unsecured claims against the decedent or his estate including

1 the expenses of the funeral and last illness, ~~and~~

2 (6) a notice is published in a newspaper of general  
3 circulation in each judicial district in which the property is  
4 located not less than once a week for three successive weeks; ~~The~~  
5 notice shall describe the real property, state that an affidavit  
6 has been recorded on behalf of the persons who claim to be en-  
7 titled to succeed to the real property showing the names of the  
8 distributees and their right to succeed to the property, and  
9 notify all persons having claims against the decedent or his  
10 estate to file a petition for the appointment of a personal rep-  
11 resentative within three months after the first publication of  
12 the notice or be barred from asserting any right or claim against  
13 the real property described, ~~and~~

14 (7) there is recorded in the office of the recorder in  
15 each recording district in which the property is situated, proof  
16 of publication of the notice, and

17 (8) no petition for the appointment of a personal  
18 representative is filed within three months after the first pub-  
19 lication of the notice.

20 b. The occurrence of the ~~above~~ conditions <sup>in (a) of this section</sup> has the same  
21 effect in establishing the right of distributees to succeed to the  
22 real property as if complete administration had occurred; but  
23 nothing in this section affects the rights of secured creditors  
24 with respect to any real property.

25 Sec. ~~4.03~~<sup>10</sup>. EFFECT OF AFFIDAVIT. The person making payment,  
26 delivery, transfer or issuance <sup>under</sup> ~~pursuant to~~ the affidavit described  
27 in Secs. ~~4.01~~<sup>10</sup> and ~~4.02~~<sup>20 of this chapter</sup> is released to the same extent as if the  
28 person had made payment, delivery, transfer, or issuance to a  
29 personal representative of the decedent. The person is not

1 required to see to the application of the payment, delivery,  
2 transfer, or issuance, or to inquire into the truth of any state-  
3 ment in the affidavit. The distributees to whom payment, de-  
4 livery, transfer, or issuance is made are answerable to any person  
5 having a prior right and are accountable to any personal repre-  
6 sentative subsequently appointed.

7           - .040  
8           Sec. ~~4.04~~. SUIT BY DISTRIBUTEES. If the person to whom the  
9 affidavit described in Secs. <sup>10 and 20 of this chapter.</sup> ~~4.01 and 4.02~~ is delivered refuses to  
10 pay, deliver, transfer, or issue the property ~~as above provided,~~  
11 it may be recovered or compelled in an action brought for ~~such that~~  
12 purpose by or on behalf of the distributees entitled <sup>to it</sup> ~~thereto,~~  
13 upon proof of the facts required to be stated in the affidavit.

13           - .060  
14           Part 2. Estates Less Than \$10,000

14           - .060  
15           Sec. ~~4.11~~. PETITION FOR ORDER OF NO ADMINISTRATION. If the  
16 value of the entire assets of an estate does not exceed \$10,000  
17 and would be exhausted by setting aside the homestead estate,  
18 exempt property, and family allowance, and the funeral expenses  
19 and expenses of last illness have been paid, there may be filed  
20 by or on behalf of the surviving spouse or minor children a  
21 petition to have the court set aside the homestead estate, exempt  
22 property, and family allowance, and to make an order that no  
23 administration is necessary.

23           - .070  
24           Sec. ~~4.12~~. HEARING AND ORDER. Upon the filing of a petition  
25 for no administration the court may hear the petition without  
26 notice, or at ~~such~~ <sup>the</sup> time and upon such notice ~~as~~ <sup>which</sup> the court may re-  
27 quire. If the court finds that the facts contained in the  
28 petition are true, the court shall make a family allowance and,  
29 if the entire assets of the estate are thereby exhausted, shall  
order that no administration be had in the estate and shall assign

1 to the surviving spouse, or if there be no surviving spouse, then  
2 to the minor children, the whole of the estate, subject to the  
3 liens and encumbrances <sup>on it.</sup> thereon.

4 Sec. <sup>1080</sup> ~~4.13~~. EFFECT OF ORDER. The order that no administra-  
5 tion be had on the estate shall, until revoked, constitute suf-  
6 ficient legal authority to all persons owing ~~any~~ money, having  
7 custody of ~~any~~ property or any evidence of interest in property  
8 belonging to the estate, and to persons purchasing or otherwise  
9 dealing with the estate, for payment or transfer to the persons  
10 described in the order as entitled to receive the estate without  
11 administration. <sup>2</sup>

12 Sec. <sup>1090</sup> ~~4.14~~. PROCEEDING TO REVOKE ORDER. At any time within  
13 one year after the making of an order of no administration, <sup>a</sup> ~~any~~  
14 person interested in the estate may file a petition to revoke the  
15 order alleging that other property has been discovered, or that  
16 property belonging to the estate was not included in the petition  
17 for no administration, or that the property described in the  
18 petition was improperly valued, and that if the property were  
19 added, included, or properly valued, the total value of the pro-  
20 perty would exceed that necessary to justify the court in ordering  
21 no administration. Upon proof of any of these grounds, the court  
22 shall revoke the order of no administration. In case of <sup>a</sup> ~~any~~ con-  
23 test as to the value of <sup>the</sup> ~~any~~ property, the court may have the  
24 property appraised.

25 <sup>ARTICLE</sup>  
~~Part 3.~~ Estates Less Than \$15,000

26 Sec. <sup>110</sup> ~~4.21~~. SUMMARY ADMINISTRATION OF SMALL ESTATES. a. If  
27 it appears at the time of the appointment of a personal repre-  
28 sentative or at any time after the appointment, that the value of  
29 an estate not including homestead and exempt property does not

1 exceed \$15,000, the court may authorize a summary administration  
2 of the estate in ~~any~~ one or more of the following respects:

3 (1) ~~By~~ ordering that notice be given to creditors to  
4 present their claims within two months after the first publication  
5 of the notice or be barred as if full administration had occurred;

6 (2) ~~By~~ dispensing with notice by publication in any or  
7 all subsequent portions of the proceeding and ordering that  
8 notice be given by posting or mailing in lieu of publication;

9 (3) ~~By~~ conferring upon the personal representative full  
10 power to sell, lease for periods not exceeding one year, mortgage,  
11 assign, transfer or convey any property of the estate upon terms  
12 and conditions and for considerations ~~as~~ he may determine, with-  
13 out any other <sup>order</sup> or confirmation of the court; or

14 (4) ~~By~~ ordering final distribution of the estate at any  
15 time after the expiration of the two months' period after the  
16 first publication of notice to creditors.

17 b. In any such case, creditors not presenting their claims  
18 within the time stated in the notice to creditors are barred as if  
19 full administration had occurred. No error in the statement of  
20 the value of the estate or the subsequent discovery of additional  
21 assets affects the validity of <sup>an</sup> ~~any~~ order directing the summary  
22 administration of the estate or <sup>an</sup> ~~any~~ order or proceeding in con-  
23 nection with the administration of the estate. <sup>A</sup> ~~Any~~ person dealing  
24 with a personal representative upon whom powers have been con-  
25 ferred by this section may rely fully upon the powers conferred  
26 upon him, but the personal representative, in exercising ~~any~~ of  
27 the powers, is accountable to the estate and shall make a final  
28 report and account of his administration to be settled by the  
29 court as in other cases.

CHAPTER 26  
ARTICLE V

ANCILLARY ESTATES

ARTICLE

Part 1.

13,26,010

Powers of Foreign Representatives

Sec. 5.01. POWERS OF COLLECTION. When there is no adminis-

tration, or application for administration pending in this state,

a foreign representative may collect and receive any personal

estate of the decedent or ward in this state, and may remove it

to the jurisdiction in which his letters are issued upon delivery

to the person or corporation indebted or holding the personal

estate of the decedent or ward

(1) an affidavit by the foreign representative stating that to his knowledge no letters of administration are then outstanding on the estate in this state, and that no petition for letters of administration is pending on the estate in this state, and

(2) an authenticated copy of letters issued to him by the domiciliary jurisdiction.

Sec. 5.02. EFFECT OF COLLECTION. <sup>A</sup> Any person who makes payment or delivers personal property to a foreign representative upon receipt of the affidavit and copy of domiciliary letters and without actual notice of local administration or application for local administration, shall be released to the same extent as if the payment or delivery had been made to a legally qualified resident representative.

Sec. 5.03. POWER TO BRING ACTIONS. When there is no administration or application for administration pending in this state, a foreign representative may bring actions and proceedings in this state in any situations in which a resident representative may bring actions and proceedings, subject to the conditions imposed by <sup>10 of this chapter</sup> Sec. 5.04 and upon nonresident suitors generally.

1           <sup>-1,040</sup>  
2           Sec. ~~5.04~~. PROOF OF AUTHORITY IN COURT PROCEEDINGS. Upon  
3           commencing <sup>an</sup> any action or proceeding in <sup>a</sup> any court of this state, the  
4           foreign representative shall file with the court authenticated  
5           copies of his appointment and of his official bond, if he has  
6           given a bond. If the court believes that the security furnished  
7           by him in the domiciliary administration is insufficient to cover  
8           the proceeds of the action or proceeding, it may order the action  
9           or proceeding stayed until sufficient security is furnished in the  
10          domiciliary jurisdiction.

11          <sup>-1,050</sup>  
12          Sec. ~~5.05~~. PROCEEDINGS TO BAR CREDITORS' CLAIMS. Upon  
13          application by a foreign representative, the court shall cause  
14          notice of the appointment of the foreign representative to be  
15          published. The claims of all creditors of the decedent or ward,  
16          unless filed with the court within six months after notice is  
17          first published, are barred as a lien upon all property of the  
18          decedent or of the ward in this state, to the extent that all  
19          claims are barred by local administration. If <sup>before</sup> before the expira-  
20          tion of such period any claims have been filed and remain unpaid  
21          after notice of the claim has been given to the foreign representa-  
22          tive, ancillary administration may be had.

23          <sup>ARTICLE</sup>  
24          Part 2. Probate of Foreign Wills

25          <sup>-1,070</sup>  
26          Sec. ~~5.20~~. PROBATE ON PROOF OF DOMICILIARY PROBATE. The  
27          written will of a testator who died domiciled outside this state  
28          shall be admitted to probate upon proof that it stands probated  
29          or established in the jurisdiction where the testator died domi-  
30          ciled and is not being contested there. A will probated under this  
31          section is sufficient to operate on any property within the terms  
32          of the will, subject to ~~any~~ limitations upon its operation imposed  
33          by the law of the jurisdiction where the testator died domiciled.

1 Rights to take against the will are not affected by this section.

2       Sec. <sup>- .080</sup>~~5.21~~. LOCAL CONTEST LIMITED. The will may be contested  
3 only upon the ground that the conditions of Sec. 5.20 have not  
4 been met or that the will has been finally rejected from probate  
5 in this state.

6       Sec. <sup>- .090</sup>~~5.22~~. SETTING ASIDE LOCAL PROBATE. Probate shall be  
7 set aside upon sufficient proof that probate or establishment of  
8 the will has been set aside in the jurisdiction where the testator  
9 died domiciled.

10       Sec. <sup>- .100</sup>~~5.23~~. PROTECTION OF PROBATE UNDER SECTION 5.20. If  
11 after probate sufficient proof that probate or establishment of  
12 the will has been set aside in the domiciliary jurisdiction or that  
13 proceedings have been taken to contest the will in the domiciliary  
14 jurisdiction is filed in the court of this state where probate was  
15 granted, and, in the case of real property, also recorded in the  
16 office of the recorder in the district where the real property is  
17 located, the protection of local probate ceases until sufficient  
18 proof that the domiciliary proceedings have been terminated in  
19 favor of the will or were never actually taken is filed, and, in  
20 the case of real property, also recorded as above provided.

21       Sec. <sup>- .110</sup>~~5.24~~. EFFECT OF REJECTION OF WILL AT DOMICILE. Final  
22 rejection of the will from probate or establishment in the juris-  
23 diction where the testator died domiciled is conclusive in this  
24 state except when the will has been rejected solely for a cause  
25 which is not a ground for rejection of a will of a testator who  
26 died domiciled in this state, in which case the will may be ad-  
27 mitted to probate under Sec. 5.25.

28       Sec. <sup>- .120</sup>~~5.25~~. ORIGINAL PROBATE: WHEN ALLOWED. Original probate  
29 of the will of a testator who died domiciled outside this state,

1 which is valid under the laws of this state, may be granted if the  
2 will

3 (1) does not stand rejected from probate or establish-  
4 ment in the domiciliary jurisdiction, or

5 (2) stands rejected from probate or establishment in  
6 the domiciliary jurisdiction solely for a cause which is not  
7 ground for rejection of a will of a testator who died domiciled  
8 in this state. The court may delay passing on the application for  
9 probate under this section pending the result of probate or  
10 establishment or contest at the domicile or of the application for  
11 probate under <sup>70 of the Code</sup> Sec. 5.20.

12 Sec. <sup>130</sup> ~~5.26~~. PROOF OF WILL AFTER PROBATE IN NON-DOMICILIARY  
13 JURISDICTION. If a testator dies domiciled outside this state,  
14 an authenticated copy of his will and of the probate or establish-  
15 ment thereof in a jurisdiction other than the one in which he  
16 died domiciled shall be prima facie proof of the contents and  
17 legal sufficiency of the will in proceedings for admission of the  
18 will to probate in this state if no objection is made ~~therein~~.  
19 This section does not authorize the probate of <sup>a</sup> any will which  
20 would not be admissible to probate under <sup>110 of the Code</sup> Sec. 5.24, or in case  
21 objection is made to the will, relieve the proponent from offer-  
22 ing proof of the contents and legal sufficiency of the will.

23 <sup>Article</sup> Part 3. Ancillary Administration

24 <sup>150</sup> Sec. 5.40. APPLICATION FOR ANCILLARY LETTERS AND NOTICE  
25 THEREOF. a. ~~Qualifications~~. Qualifications of and preference  
26 for foreign representatives are as follows:

27 (1) <sup>A</sup> Any foreign representative, upon the filing of an  
28 authenticated copy of the domiciliary letters with the superior  
29 court, may be granted ancillary letters in this state notwith-

1 standing that the representative is a nonresident of this state or  
2 is a foreign corporation.

3 (2) If the foreign representative is a foreign cor-  
4 poration, it need not qualify under any other law of this state to  
5 authorize it to act as representative in this state for the par-  
6 ticular estate if it complies with the provisions of <sup>170</sup>secs. 5.42  
7 and <sup>180</sup>5.43 <sup>chapter</sup> of this Article.

8 (3) If application is made for the issuance of ancillary  
9 letters to the foreign representative, the court shall give pre-  
10 ference in appointment to the foreign representative unless the  
11 court finds that it will not be in the best interests of the  
12 estate, or the decedent otherwise directed.

13 b. ~~Intervention Upon Application.~~ When application is made  
14 for issuance of ancillary letters, <sup>an</sup> any interested person may  
15 intervene and pray for the appointment of any person who is eli-  
16 gible under the law of this state.

17 c. ~~Notice to Foreign Representative.~~ When application is  
18 made for issuance of ancillary letters to <sup>a</sup> any person other than  
19 the foreign representative, the applicant shall give notice of the  
20 application to the foreign representative.

21 <sup>160</sup>Sec. 5.41. DENIAL OF ANCILLARY LETTERS. The court may deny  
22 the application for ancillary letters if it appears that the  
23 estate may be settled conveniently without ancillary administra-  
24 tion. 2

25 <sup>170</sup>Sec. 5.42. BOND. No nonresident shall be granted ancillary  
26 letters unless he gives an administration bond.

27 <sup>180</sup>Sec. 5.43. AGENT TO ACCEPT SERVICE OF PROCESS. No non-  
28 resident shall be granted ancillary letters and no person shall be  
29 granted leave to remove assets until he files in the court an

1 irrevocable power of attorney constituting the clerk of the court  
2 as his agent to accept service of process or of notice in any  
3 action or proceeding relating to the administration of the estate.  
4 The clerk shall forward to the representative any process or  
5 notice received.

6 Sec. ~~5.44~~<sup>5.190</sup>. SUBSTITUTION OF FOREIGN FOR LOCAL REPRESENTATIVE.

7 a. ~~Application and Procedure.~~ If ~~any other~~<sup>another</sup> person has been  
8 appointed representative in this state, the foreign representative  
9 not later than 14 days after the receipt by him of notice, unless  
10 this period is extended by the court for cause which it ~~deems~~<sup>considers</sup>  
11 adequate, may apply for revocation of the appointment and for  
12 grant of ancillary letters to himself. Notice of the hearing  
13 shall be given to the local representative. If the court finds  
14 that it is for the best interests of the estate, it may grant the  
15 application and direct the local representative to deliver all the  
16 assets, documents, and papers pertaining to the estate in his  
17 possession to the new administrator, and make a full report of his  
18 administration to the combined representative as soon as the  
19 letters are issued and he is qualified. The local representative  
20 shall also account to the court. The hearing on the account may  
21 be forthwith or upon such notice as the court directs. Upon com-  
22 pliance with the court's directions, the local representative  
23 shall be discharged.

24 Sec. ~~5.45~~<sup>5.200</sup>. REMOVAL OF ASSETS TO DOMICILIARY JURISDICTION.

25 a. ~~Application.~~ <sup>Before</sup> ~~Prior to~~ the final disposition of the ancillary  
26 estate and upon giving notice, the foreign representative or the  
27 combined representative may apply for leave to remove all or any  
28 part of the assets from <sup>this</sup> state to the domiciliary jurisdiction  
29 for purposes of administration and distribution.

1           b. (~~Prerequisites to Granting Application.~~)? Before granting  
2 <sup>the</sup> ~~such~~ application, the court shall require the filing of a power  
3 of attorney and a bond by the foreign representative commensurate  
4 with the protection of the estate and all interested persons.

5           c. (~~Granting Application - Terms and Consequences.~~)? Upon  
6 compliance with this section, the court may grant the application  
7 upon ~~such~~ conditions ~~as~~ it sees fit. The granting of the appli-  
8 cation shall not terminate any proceedings for the administration  
9 of property in this state unless the court finds that <sup>the</sup> ~~such~~ pro-  
10 ceedings are unnecessary. If the court so finds, it may order the  
11 administration in this state closed, subject to reopening within  
12 one year for cause.

13           <sup>- 210</sup>  
14           Sec. ~~5.45~~. EFFECT OF ADJUDICATIONS FOR OR AGAINST REPRE-  
15 SENTATIVES. A prior adjudication rendered in any jurisdiction for  
16 or against <sup>a</sup> ~~any~~ representative of the estate is conclusive as to  
17 the local or combined representative as if he were a party to the  
18 adjudication unless it resulted from fraud or collusion of the  
19 party representative to the prejudice of the estate. This section  
20 does not apply to adjudications in another jurisdiction admitting  
21 or refusing to admit a will to probate.

22           <sup>220</sup>  
23           Sec. ~~5.47~~. PAYMENT OF CLAIMS. No claim against the estate  
24 may be paid in the ancillary administration in this state unless  
25 it has been proceeded upon in this state in the manner and within  
26 the time required for claims in domiciliary administrations.

27           <sup>230</sup>  
28           Sec. ~~5.43~~. LIABILITY OF LOCAL ASSETS. All local assets are  
29 subject to the payment of all claims, allowances, and charges,  
whether they are established or incurred in this state or else-  
where. For this purpose local assets may be sold and the proceeds  
forwarded to the representative in the jurisdiction where the

1 claim was established on the charge incurred.

2 Sec. <sup>5.40</sup> 5.49. PAYMENT OF CLAIMS IN CASE OF INSOLVENCY. a.

3 ~~Equality Subject to Preferences and Security.~~ If the estate  
4 either in this state or as a whole is insolvent, it shall be dis-  
5 posed of in this state so that, as far as possible, each creditor  
6 whose claim has been allowed, either in this state or elsewhere,  
7 shall receive an equal proportion of his claim subject to prefer-  
8 ences and priorities and to any security which a creditor has as  
9 to particular assets. If a preference, priority, or security is  
10 allowed in another jurisdiction but not in this state, the credi-  
11 tor so benefited shall receive dividends on local assets only  
12 upon the balance of his claim after deducting the amount of any  
13 allowed benefit.

14 b. ~~Security Claims Upon Local Nonexempt Property.~~ Creditors  
15 who have security claims upon local property not exempt from the  
16 claims of general creditors, and who have not released or sur-  
17 rendered it, shall have the value of the security determined by  
18 such means as the court may direct, and the value so determined  
19 shall be credited upon the claim, and the dividends from local  
20 assets shall be computed and paid only on the unpaid balance.

21 c. ~~Security Claims Upon Local Exempt Property.~~ When any <sup>a</sup>  
22 creditor has security upon local property which is exempt from  
23 process for the satisfaction of unsecured debts and is claimed as  
24 exempt by the insolvent estate, the value of <sup>the</sup> such security shall  
25 not be credited upon the claim in computing dividends from local  
26 assets. Amounts realized by the creditor from the security after  
27 distribution proceedings are begun shall be disregarded in com-  
28 puting dividends, unless the dividend as computed exceeds the sum  
29 actually owing upon the claim, in which event only the amount

1 owing shall be paid.

2 d. ~~Procedure.~~ In case of insolvency and if local assets  
3 permit, each claim allowed in this state shall be paid its pro-  
4 portion, and any balance of assets shall be disposed of in  
5 accordance with Sec. <sup>250 of this chapter.</sup> 5.50:

6 <sup>-2450</sup> Sec. ~~5.50.~~ TRANSFER OF RESIDUE TO DOMICILIARY REPRESENTA-  
7 TIVE. After payment of all claims allowed in this state and of  
8 all taxes and charges levied or incurred in this state, the court  
9 may order any movable assets remaining on hand to be transferred  
10 to the representative in the domiciliary jurisdiction. The court  
11 may decline to make the order until <sup>the</sup> such representative furnishes  
12 security or additional security in the domiciliary jurisdiction,  
13 for the proper administration and distribution of the assets to be  
14 transferred.

15 <sup>Article</sup> Part 4. Miscellaneous Provisions

16 <sup>-2.60 290</sup> Sec. ~~5.80.~~ ~~DEFINITIONS OF FOREIGN REPRESENTATIVE AND COM-~~  
17 ~~BINED REPRESENTATIVE.~~ <sup>end #6</sup> For the purposes of <sup>chapter 292</sup> this Article, "foreign  
18 representative" means any executor, administrator, guardian, or  
19 other fiduciary of the estate of a decedent or a ward who has been  
20 appointed by the court of another jurisdiction in which the dece-  
21 dent was domiciled at the time of his death, or in which the ward  
22 is domiciled, and who has not been appointed by a court of this  
23 state. <sup>(2)</sup> The term "combined representative" means a foreign repre-  
24 sentative who has also been appointed by a court of this state.

25 <sup>-270 250</sup> Sec. ~~5.81.~~ GENERAL LAW TO APPLY. Except where special pro-  
26 vision is made otherwise, the law in this state relating generally  
27 to administration and probate apply to ancillary administration  
28 and probate.

29

CHAPTER 31  
ARTICLE VI

SB #4

1 ADMINISTRATION OF PARTNERSHIP INTERESTS

2 <sup>13.31.810.</sup> Sec. ~~6.01~~. INVENTORY AND APPRAISEMENT. The executor or  
3 administrator of the estate of a deceased person who was a member  
4 of a partnership at his death shall include in the inventory of  
5 the deceased person's estate the whole of the partnership property,  
6 and the appraisers shall estimate the value of the whole of the  
7 property and also the value of the deceased person's individual  
8 interest in the partnership property taking into account all the  
9 debts and liabilities of the partnership.

10 <sup>- 1.020</sup> Sec. ~~6.02~~. CUSTODY AND CONTROL. After the inventory is  
11 taken, the partnership property shall be in the custody and con-  
12 trol of the surviving partner, who shall wind up the partnership  
13 and transfer the interest of the deceased in the partnership re-  
14 maining after the payment or satisfaction of the debts and lia-  
15 bilities of the partnership to the executor or general adminis-  
16 trator or pay its value to him.

17 <sup>- .030</sup> Sec. ~~6.03~~. LIMITED PARTNERSHIP UNDER CERTAIN CIRCUMSTANCES.  
18 Upon application concurred in by the surviving partner or part-  
19 ners, and the personal representative of the deceased partner, the  
20 court may authorize the continuance of the enterprise in the form  
21 of a limited partnership as defined in <sup>AS 22.10.280</sup> ~~Sec. 28-2-1, ACLA 1949~~  
22 without termination of the original partnership if

23 (1) it appears to the court that present circumstances  
24 would make immediate liquidation of partnership assets financially  
25 unfeasible, to the detriment of the decedent's interest in the  
26 partnership; and

27 (2) the surviving partners post bond equal to the  
28 present value of the decedent's interest in the partnership.

29 <sup>- .040</sup> Sec. ~~6.04~~. NATURE OF LIMITED PARTNERSHIP. Before the

1 limited partnership may be authorized, the surviving partner or  
2 partners shall agree that they shall be general partners as de-  
3 fined in the Alaska Uniform Limited Partnership Act <sup>(AS 22.10)</sup> and that the  
4 representative of the deceased shall be a limited partner as  
5 defined in ~~the Alaska Uniform Limited Partnership Act.~~ <sup>that Act.</sup> However,  
6 the limited partner may bring about dissolution proceedings upon  
7 being directed to do so by the court.

8 Sec. <sup>1050</sup> ~~6.05~~. TERMINATION OF LIMITED PARTNERSHIP. The adminis-  
9 trator of the estate who is also a limited partner of the partner-  
10 ship shall report to the court regarding the state of the partner-  
11 ship's <sup>7</sup> affairs as directed by the court. The court shall at any  
12 time during the administration, order the administrator to bring  
13 about dissolution proceedings and winding up, when it appears to  
14 the court that the situation which caused the court to authorize  
15 the limited partnership has been alleviated.

16 Sec. <sup>1060</sup> ~~6.06~~. PARTNERSHIP CONTINUATION AGREEMENTS. The pro-  
17 visions of this <sup>chapter</sup> Article do not apply if the decedent has provided  
18 for disposition of the partnership interest in his will, and the  
19 disposition is effective.

20 CHAPTER 36  
ARTICLE VII

21 GUARDIANSHIP

22 Part 1. General Provisions

23 Sec. <sup>1336.010</sup> ~~7.01~~. DEFINITIONS AND USE OF TERMS. When used in  
24 <sup>secs. 10 - of this chapter</sup> Parts 1, 2, 3, 4, and 5, unless otherwise apparent from the con-  
25 text:

26 (1) <sup>means a person</sup> "guardian" is one appointed by a court to have  
27 the care and custody of an incompetent person or of the estate of  
28 an incompetent person or of both,

29 (2) <sup>means a</sup> An "incompetent" is any person who is

1 (a) under the age of 19; or  
2 (b) incapable by reason of insanity, mental ill-  
3 ness, imbecility, idiocy, senility, habitual drunkenness,  
4 excessive use of drugs, or other incapacity, of either  
5 managing his property or caring for himself or both;

6 (3) <sup>means a person</sup> "missing person" is one who owns property within  
7 the state and cannot be located upon reasonable inquiry;

8 (4) <sup>means</sup> "ward" is an incompetent or missing person for  
9 whom a guardian has been appointed.

10 <sup>240</sup> Sec. 7.02. <sup>SECS. 10-410 TO SECS. 430-600 OF THIS CHAPTER</sup> RELATION OF PARTS 1, 2, 3, 4, AND 5 TO PART 6.

11 The provisions of Parts 1, 2, 3, 4, and 5 of this Article extend to  
12 the persons specifically provided for under the terms of Part 6,  
13 known as the Uniform Veterans' Guardianship Act. The provisions of  
14 Parts 1, 2, 3, 4, and 5 are cumulative to the provisions of Part  
15 6; but any conflict arising between Part 6 and the other sections  
16 of this Article shall be resolved by giving effect to the law as  
17 stated in Part 6.

18 Sec. 7.03. <sup>030</sup> APPLICATION OF OTHER PARTS OF CODE. The pro-  
19 visions of <sup>chapter 16</sup> Article III of this Code, unless therein restricted to  
20 decedents' estates, apply to guardianships. Where sections in  
21 <sup>chapter 16</sup> Article III are specifically incorporated by reference by any  
22 section of this Article, they shall be applied as if "decedent"  
23 read "ward," "personal representative" read "guardian," as the  
24 case may be, as far as applicable to guardianships and not in-  
25 consistent with the provisions of this Article.

26 <sup>330</sup> Sec. 7.04. <sup>040</sup> JURISDICTION AND NON-STATUTORY GUARDIANSHIPS  
27 ABOLISHED. The superior court has exclusive original jurisdiction  
28 over all matters of guardianship, other than guardianships ad  
29 litem. All forms of guardianship not expressly provided for in

<sup>title</sup>  
1 this Code are abolished.

2 <sup>390</sup> ~~Sec. 7.05~~ <sup>- .050</sup> WHO MAY BE UNDER GUARDIANSHIP. A guardian of  
3 the estate may be appointed for any incompetent or missing person.  
4 A guardian of the person may be appointed for any incompetent  
5 except a married minor who is incompetent solely by reason of his  
6 minority.

7 <sup>400</sup> ~~Sec. 7.06~~ <sup>060</sup> DETERMINATIONS NECESSARY TO APPOINTMENT OF  
8 GUARDIAN. a. ~~Determination of Incompetency~~. No guardian of <sup>an</sup> ~~any~~  
9 incompetent, other than a minor, may be appointed until the person  
10 has been adjudicated to be incompetent upon sufficient competent  
11 evidence in a proceeding instituted for that purpose as provided  
12 by law.

13 b. ~~Missing Persons~~. No guardian of the estate of a missing  
14 person may be appointed until the court has first determined that  
15 the person has disappeared, and cannot upon reasonable inquiry be  
16 found.

17 <sup>Article</sup>  
Part 2. Appointment of Guardian

18 <sup>1080</sup> ~~Sec. 7.10~~ <sup>an</sup> PETITION FOR APPOINTMENT OF GUARDIAN. ~~Any~~  
19 interested person may commence an action for the appointment of  
20 himself or some other qualified person as guardian of the estate  
21 or person of an incompetent, or of the estate of a missing person.  
22 The Department of Health and Welfare is considered an interested  
23 party for purposes of participation in any hearing involving a  
24 guardianship of the person.

25 <sup>20</sup> ~~Sec. 7.11~~ <sup>090</sup> NOTICE OF HEARING ~~ON PETITION FOR GUARDIANSHIP~~. (a  
26 Before appointing a guardian other than a temporary guardian,  
27 notice of hearing shall be given to the following unless they have  
28 signed the petition for appointment of the guardian or have waived  
29 notice of the hearing:

- 1 (1) The incompetent, if over 14 years of age;  
2 (2) The parents, if the incompetent is a minor;  
3 (3) The spouse of the incompetent or missing person,  
4 if any;  
5 (4) Any person who has been appointed guardian, or the  
6 person having the care and custody of the incompetent or missing  
7 person, if any;  
8 (5) At least one of the closest adult relatives of the  
9 incompetent or missing person, by blood or marriage;  
10 (6) If directed by the court,  
11 (a) any department, bureau or agency of the United  
12 States or of this state or any political subdivision thereof,  
13 which makes or awards compensation, pension, insurance or  
14 other allowance for the benefit of the ward's estate;  
15 (b) any department, bureau or agency of this state  
16 or any political subdivision thereof or any charitable  
17 organization of this state, which may be charged with the  
18 supervision, control, or custody of the incompetent;  
19 (c) any interested person.

20 b. It shall not be necessary that the person for whom  
21 guardianship is sought to be represented by a guardian ad litem in  
22 the proceedings.

23 <sup>30</sup> Sec. 7.12. QUALIFICATIONS OF GUARDIAN. a. ~~Generally~~. A  
24 person is qualified to serve as guardian of a person or of an  
25 estate if he has the qualifications of a personal representative,  
26 unless specifically exempted by this section. However, no person  
27 may be appointed guardian of the person unless he is qualified to  
28 have the care and custody, and in case of a minor ward to provide  
29 for the training and education of the ward, and, except as

1 provided in this section, unless he is a natural person.

2 b. ~~Minor Parent~~. A parent shall not be denied appointment  
3 as guardian of the person of his child by reason of the parent  
4 being under the age of 19.

5 c. ~~Public and Charitable Organizations~~. <sup>A</sup> Any department or  
6 agency of this state or <sup>a</sup> any political subdivision, or ~~any~~ charit-  
7 able organization of this state, which may be charged with the  
8 supervision, control or custody of the incompetent, may be ap-  
9 pointed guardian of the person or of the estate or of both.

10 <sup>40</sup> Sec. <sup>110</sup> ~~7.13~~. PREFERENCE IN GRANTING LETTERS. Blood relatives  
11 of an unmarried minor, up to and including the third degree of  
12 kindred, <sup>if</sup> otherwise qualified, are preferred over all others for  
13 appointment as guardian of the person. If more than one is quali-  
14 fied, relatives in closest degree of kindred are preferred. Sub-  
15 ject to this rule, the court shall appoint as guardian of the  
16 person or estate of an incompetent or of the estate of a missing  
17 person, the one most suitable who is willing to serve, having due  
18 regard to: <sup>7</sup> (1) any request for the appointment contained in a  
19 will or other written instrument executed by the parent for the  
20 appointment as guardian of his minor child; (2) any request made  
21 by a minor for the appointment as his guardian provided the minor  
22 is of sufficient age to form an intelligent preference; (3) any  
23 request for the appointment made by the spouse of an incompetent;  
24 (4) any relationship by blood or marriage to the person for whom  
25 guardianship is sought.

26 <sup>50</sup> Sec. <sup>120</sup> ~~7.14~~. ORDER APPOINTING GUARDIAN. If upon the hearing  
27 the court is satisfied that a guardian is required to protect  
28 the interests of an incompetent or missing person, the court shall  
29 appoint one or two guardians of the person or of the estate or

1 both; but not more than one guardian of the person shall be ap-  
2 pointed unless they are husband and wife. In every instance, the  
3 court shall appoint the same person as guardian of the person and  
4 estate of the ward, unless in the opinion of the court, the in-  
5 terests of the ward will be promoted by appointment of different  
6 persons as guardians of the person and of the estate.

7 <sup>60 - 1130</sup> Sec. ~~7.15~~. TEMPORARY GUARDIAN. If the court finds that the  
8 welfare of an incompetent or missing person requires the immediate  
9 appointment of a guardian of the person or estate of an incompetent,  
10 or of the estate of a missing person, it may, with or without  
11 notice, appoint a temporary guardian for the incompetent or missing  
12 person for a specified period not to exceed 60 days, subject to  
13 earlier termination by the court. The appointment may be to per-  
14 form duties respecting specific property or to perform particular  
15 acts as stated in the order of appointment. The temporary guardian  
16 shall make ~~such~~ <sup>such</sup> reports ~~as~~ <sup>as</sup> the court shall direct, and shall  
17 account to the court upon termination of his authority. In other  
18 respects the provisions of this Code concerning guardians shall  
19 apply to temporary guardians and an appeal may be taken from the  
20 order of appointment of a temporary guardian.

21 <sup>110 - 1140</sup> Sec. ~~7.16~~. GUARDIAN AD LITEM. The court shall have authority,  
22 in cases where it is necessary to protect the interests of a miss-  
23 ing or incompetent person, to appoint a guardian ad litem for the  
24 person, who is authorized, subject to the approval of the judge of  
25 probate, to engage counsel and do whatever is necessary to defend  
26 and protect the interests of the person.

27 <sup>60 - 1150</sup> Sec. ~~7.17~~. BOND OF GUARDIAN. The order appointing a  
28 guardian shall specify the amount of bond to be given. If the  
29 guardianship is of the person only, the amount of the bond shall

1 not exceed \$1,000, or the court may dispense with the bond alto-  
2 gether. At every accounting the court may inquire into the suf-  
3 ficiency of the bond and of the sureties, and if either or both  
4 are found insufficient, the guardian shall be ordered to file a  
5 new bond. If, by the terms of a will the testator expresses the  
6 wish that no bond is required of the person whom he requests to  
7 be appointed guardian, that person may be relieved of giving a  
8 guardian's bond so far as it applies to property given by the will  
9 to the incompetent. However, if the court subsequently deems it  
10 to be in the best interest of the estate, it may require a bond.  
11 ~~Secs. 5.01 to 5.10 inclusive, of this Code with respect to the~~  
12 ~~bonds of personal representatives,~~ are applicable to the bonds of  
13 guardians.

3.41-  
3.51

14 <sup>90</sup> Sec. ~~7.18~~<sup>160</sup>. WHEN LETTERS TO BE ISSUED. When a duly appointed  
15 guardian has given bond as may be required by the court, letters  
16 shall be issued to him.

17 <sup>100</sup> Sec. ~~7.19~~<sup>170</sup>. REQUEST FOR SPECIAL NOTICE OF HEARINGS. At any  
18 time after the issuance of letters of guardianship,

19 (1) any department, bureau or agency of the United  
20 States or of this state or ~~any~~ political subdivision of the state  
21 which makes or awards compensation, pension, insurance or other  
22 allowance for the benefit of the ward's estate, or

23 (2) any department, agency or subdivision of this state  
24 or ~~any~~ charitable organization of this state, which may be charged  
25 with the supervision, control or custody of the incompetent, or

26 (3) ~~any~~<sup>any</sup> interested person may serve upon the guardian  
27 or upon his attorney, and file with the clerk of the court where  
28 the proceedings are pending, a written request stating that he  
29 desires notice of all hearings on petitions for the settlement of

1 accounts, for the sale, mortgage, lease or exchange of any pro-  
2 perty of the estate, for allowances of any nature payable from the  
3 ward's estate, for the investment of funds of the estate, or for  
4 the removal, suspension, or discharge of the guardian or final  
5 termination of the guardianship. The applicant for the notice  
6 shall include in his written request his post office address or  
7 that of his attorney. Unless the court otherwise directs, upon  
8 filing the request, the person is entitled to notice of all hear-  
9 ings or of any of them as he designates in his request.

10 <sup>Article 2</sup>  
~~Part 3.~~ Duties of Guardian

11 <sup>170 - 190</sup>  
Sec. ~~7.40~~. GENERAL DUTIES OF GUARDIAN. a. ~~Guardian of the~~

12 ~~Person.~~ It is the duty of the guardian of the person to care for  
13 and maintain the ward and, if he is a minor, to see that he is  
14 properly trained and educated and that he has the opportunity to  
15 learn a trade, occupation or profession. <sup>7</sup> When a guardian has  
16 advanced, for the adequate care and maintenance of the ward, an  
17 amount not disproportionate to the value of the ward's estate or  
18 of his condition of life, the guardian shall be allowed credit for  
19 the advancement in his settlements. The guardian of the person  
20 may be required to report the condition of his ward to the court,  
21 at regular intervals or otherwise, as the court may direct.

22 b. ~~Guardian of the Estate.~~ It is the duty of the guardian  
23 of the estate to care for and manage the estate, to invest it  
24 prudently, to apply it as provided in this Code, to account for it  
25 faithfully, to perform all duties required of him by law, and, at  
26 the termination of the guardianship, to deliver the assets of the  
27 ward to the persons entitled thereto.

28 <sup>130 - 200</sup>  
Sec. ~~7.41~~. POWERS OF GUARDIAN OF THE PERSON. The guardian  
29 of the person shall be entitled to the custody of the ward, subject

1 to any provision the court may make regarding temporary custody  
2 consistent with the ward's welfare.

3 <sup>140</sup> ~~Sec. 7.42~~<sup>-210</sup>. TITLE AND POSSESSION OF ESTATE. The guardian of  
4 the estate shall take possession of all of the ward's real and  
5 personal property, and of rents, income, issues and profits there-  
6 from, whether accruing before or after his appointment, and of the  
7 proceeds arising from the sale, mortgage, lease or exchange there-  
8 of. The title to all such estate, and to the increment and pro-  
9 ceeds thereof, shall be in the ward and not in the guardian.

10 <sup>150</sup> ~~Sec. 7.43~~<sup>-220</sup>. INVENTORY AND APPRAISEMENT. When a guardian of  
11 the estate has been appointed, an inventory and appraisement of  
12 the ward's estate shall be made in the same manner and subject to  
13 the same requirements as are provided in this <sup>code</sup> Code for the inven-  
14 tory and appraisement of a decedent's estate.

15 <sup>160</sup> ~~Sec. 7.44~~<sup>-230</sup>. APPLICATION OF INCOME AND PRINCIPAL FOR BENEFIT  
16 OF WARD. a. ~~Income and Principal~~. Subject to the ~~provisions of~~  
17 ~~Subsec. (b)~~ of this section, the income of the ward's estate shall  
18 be first applied to his adequate care, maintenance and education.  
19 If the income is not sufficient to adequately care for, maintain,  
20 and educate the ward, the guardian may expend any portion of the  
21 principal ~~as is~~ necessary from time to time for <sup>these</sup> such purposes.  
22 ~~Any~~ Expenditures are considered as valid if the court would have  
23 approved them at the time they were made. The guardian may obtain  
24 a court order for specific expenditures for the ward, prior to  
25 making them, though a court order is not necessary to make the  
26 expenditures valid.

27 b. ~~Care of Dependents~~. On order of the court, any surplus  
28 of the income may be applied to the care, maintenance and educa-  
29 tion of any dependents of the ward.

1 c. ~~When Parents Able to Care for Ward.~~ If the ward is a  
2 minor, and his parents or those standing in loco parentis are able  
3 to care for, maintain and educate him, neither the income nor the  
4 principal of the ward's estate shall be expended for any purpose  
5 except as ordered by the court.

6 170 - 240 Sec. 7.45. ORDER FOR PERIODIC ALLOWANCE. The guardian of the  
7 estate, or the person, department, bureau, agency or organization  
8 having the care and custody of a ward may apply to the court for  
9 an order directing the guardian of the estate to pay to the per-  
10 son, department, bureau, agency or organization, having the care  
11 and custody of the ward, a periodic amount as the court may direct,  
12 to be expended in the care, maintenance and education of the ward  
13 and of his dependents. If the guardian of the estate has custody  
14 of the ward, the order shall direct that he apply a periodic sum  
15 toward the above mentioned purposes. In its discretion, the court  
16 may order payment of amounts directly to the ward for his main-  
17 tenance or incidental expenses. The amounts authorized under this  
18 section may be decreased or increased from time to time by direc-  
19 tion of the court. If payments are made under the order of the  
20 court, the guardian of the estate is not bound to see to the  
21 application of the funds.

22 180 - 250 Sec. 7.46. INVESTMENTS. a. Generally. The guardian of the  
23 estate shall invest the property of the ward, not required for the  
24 maintenance and care of the ward and his dependents, within a  
25 reasonable time. The guardian shall be held to a standard of  
26 judgment and care which men of prudence, discretion, and intelli-  
27 gence exercise in the management of their own affairs, not in  
28 regard to speculation but in regard to the permanent disposition  
29 of their funds, considering the probable income as well as the

1 probable safety of their capital.

2 b. ~~Investment in Investment Corporation.~~ Investment in  
3 shares of an investment company or investment trust shall be  
4 specifically permitted, if the investment is consistent with the  
5 ~~provisions of Subsec. (a)~~ of this section.

6 190 - 260  
7 Sec. 7.47. PURCHASE OF HOME. If necessary for the support  
8 of the ward or the ward's dependents, the guardian may purchase  
9 a home for the ward, or for the ward's dependent family. A  
10 guardian who occupies the ward's property is chargeable with a  
11 reasonable rental fee, though he is living with and caring for the  
12 ward.

13 200 - 270  
14 Sec. 7.48. CONTINUATION OF BUSINESS. In all cases where the  
15 court deems it advantageous to continue the business of a ward, the  
16 business may be continued by the guardian of the estate on order  
17 of the court and according to the rules specified in <sup>AS 13.16.305</sup> Sec. 3.87  
18 and ~~Article VI~~ <sup>CHAPTER 31</sup> of this Code <sup>title</sup> for the continuation of the business  
19 of a decedent by a personal representative.

20 210 - 280  
21 Sec. 7.49. SALES, MORTGAGES, LEASES AND EXCHANGES. a. ~~When~~  
22 ~~Permitted.~~ The real or personal property of the ward, or any part  
23 thereof, may be sold, mortgaged, leased or exchanged by the  
24 guardian of the estate for the purpose of paying the ward's debts,  
25 providing for his care, maintenance and education and the care,  
26 maintenance and education of his dependents, investing the pro-  
27 ceeds or in any other case where it is for the best interests of  
28 the ward. In all the above transactions, the guardian shall be  
29 held to a standard of judgment and care which men of prudence,  
30 discretion, and intelligence exercise in the management of their  
31 own affairs.

32 b. ~~What Decedents Estate Law Applicable.~~ In other respects,

1 the provisions of <sup>AS 13.16.410-420 and AS 13.16.480,</sup> ~~Secs. 3.115, 3.117, 3.125, and 3.129~~ of this  
2 ~~code~~, relative to decedent's estates apply to sales, mortgages,  
3 leases, and exchanges of property of the ward.

4 <sup>220</sup> Sec. ~~7.50~~<sup>7.50</sup>. SALE OF WARD'S PROPERTY NOT AN ADEMPATION. If the  
5 guardian transfers any real or personal property specifically  
6 devised by a ward who was competent at the time when he made the  
7 will but was incompetent at the time of the sale or transfer and  
8 never regained competency, and the devised property is not con-  
9 tained in the estate at the time of the ward's death, the devisee  
10 may at his option treat the devise as general, having value equal  
11 to the value of the property at the time of the ward's death, or  
12 may treat the devise as specific, tracing the proceeds of the  
13 transfer.

14 <sup>300</sup> Sec. ~~7.51~~<sup>7.51</sup>. CLAIMS. a. ~~Duty of Guardian to Pay~~. A guardian  
15 of the estate is under a duty to pay from the estate all just  
16 claims against the estate of his ward, whether they constitute  
17 liabilities of the ward which arose <sup>before</sup> ~~prior to~~ the guardianship or  
18 liabilities properly incurred by the guardian for the benefit of  
19 the ward or his estate and whether arising in contract or in tort  
20 or otherwise. The duty of the guardian to pay from the estate  
21 shall not preclude his personal liability for his own contracts  
22 and acts made and performed on behalf of the estate as it exists  
23 according to the common law. If it appears that the estate is  
24 likely to be exhausted before all existing claims are paid, pre-  
25 ference shall be given to prior claims for the care, maintenance  
26 and education of the ward and of his dependents and existing  
27 claims for expenses of guardianship over other claims.

28 b. ~~Claims May be Presented~~. <sup>A</sup> Any person having a claim  
29 against the estate of a ward, or against the guardian of his

1 estate as such, may file it with the court for determination at  
2 any time before it is barred by the statute of limitations, and,  
3 upon proof thereof, procure an order for its allowance and payment  
4 from the estate. <sup>An</sup> ~~Any~~ action against the guardian of the estate  
5 as such shall be <sup>considered</sup> deemed a claim duly filed.

6 c. ~~When Decedents' Estate Law Applicable.~~ The provisions  
7 of <sup>AS 13.16.330 13.16.365</sup> ~~Sees. 3.95 and 3.102 thereof~~ as to claims against decedents'  
8 estates shall be applicable to claims against estates under  
9 guardianship, but other provisions regarding claims against de-  
10 cedents' estates shall not apply to estates under guardianship.

11 <sup>240</sup> Sec. <sup>310</sup> 7.52. COMPROMISE. Whenever it is proposed to compro-  
12 mise or settle ~~any~~ claim by or against the ward, whether arising  
13 as a result of personal injury or otherwise, and whether arising  
14 before or after appointment of a guardian, the court on petition  
15 of the guardian of the estate, if satisfied that <sup>the</sup> ~~such~~ compromise  
16 or settlement will be for the best interests of the ward, may  
17 enter an order authorizing the settlement or compromise to be  
18 made.

19 <sup>320</sup> Sec. 7.53. ACCOUNTING. a. ~~Guardian to Account.~~ Unless  
20 otherwise directed by the court, every guardian of the estate  
21 shall file with the court annually within 30 days after the  
22 anniversary date of his appointment, and also within 30 days after  
23 termination of his appointment, a written verified account of his  
24 administration. Notice of hearing of every accounting shall be  
25 given to the same persons and in the same manner as is required  
26 by Sec. <sup>910</sup> ~~7.11~~ of this <sup>chapter</sup> Article. The account shall show with  
27 respect to each item for which credit is claimed whether or not  
28 the amount has been paid, and in either event the court may allow  
29 any item or disallow it in whole or in part except to the extent

1 that it has been approved in advance.

2 b. ~~Effect of Settlement.~~ When notice has been given as pro-  
3 vided in ~~Subsec. (a)~~ <sup>of this section</sup> the settlement by the court of any account,  
4 subject to the right of appeal, is binding upon all persons except  
5 the ward, or, if he shall die after the settlement, his personal  
6 representative. The ward, or, if he shall die after the settle-  
7 ment, his personal representative, may question any item of any  
8 settlement within two years after the date of the discharge of the  
9 guardian but not afterward. Z

10 c. ~~When Decedents' Estate Law Applicable.~~ The provisions of  
11 ~~Secs. 3.131, 3.133 through 3.137, 3.139, and 3.140 of this Code~~ <sup>AS 13.16.495, AS 13.16.515 - 13.16.525, AS 13.16.535 and AS 13.16.540</sup>  
12 as to accounting in decedents' estates shall apply to guardianship  
13 estates.

14 <sup>76</sup> Sec. 7.54. <sup>-330</sup> COMPENSATION OF GUARDIAN AND ATTORNEY. A  
15 guardian shall be allowed such compensation for his services as  
16 guardian ~~as~~ <sup>as</sup> the court shall deem just and reasonable. Addi-  
17 tional compensation may be allowed for his necessary services as  
18 attorney and for other necessary services not required of a  
19 guardian. He may also be allowed compensation for necessary ex-  
20 penses in the administration of his trust, including reasonable  
21 attorney fees if the employment was necessary. In all cases, com-  
22 pensation of the guardian and his expenses including attorney fees  
23 shall be fixed by the court and may be allowed at any annual or  
24 final accounting; but at any time during the administration of the  
25 estate, the guardian or his attorney may apply to the court for  
26 an allowance upon the compensation or necessary expenses of the  
27 guardian and for attorney fees for services already performed.  
28 If the court finds that the guardian has substantially failed to  
29 discharge his duties, it may deny him any compensation whatsoever

1 or may reduce the compensation which would otherwise be allowed.

2 ~~Part 4.~~ <sup>ARTICLE 3</sup> Removal and Termination of Guardianship

3 <sup>240</sup> ~~Sec. 7.70.~~ <sup>350</sup> WHEN GUARDIAN MAY BE REMOVED. When a minor ward  
4 is of sufficient age to form an intelligent preference, the  
5 guardian of his person may be removed on petition of the ward to  
6 have another person appointed guardian if it is for the best in-  
7 terests of the ward that another person be appointed. A guardian  
8 may also be removed on the same grounds and in the same manner as  
9 is provided for the removal of a personal representative.

10 <sup>240</sup> ~~Sec. 7.71.~~ <sup>360</sup> APPOINTMENT OF SUCCESSOR GUARDIAN. When a  
11 guardian dies, is removed by order of the court, or resigns and  
12 the resignation is accepted by the court, the court may appoint  
13 another guardian in his place in the same manner and subject to  
14 the same requirements as are provided for an original appointment  
15 of a guardian.

16 <sup>300</sup> ~~Sec. 7.72.~~ <sup>370</sup> TERMINATION OF GUARDIANSHIP. a. ~~Termination~~  
17 ~~Without Court Order.~~ A guardianship is terminated

- 18 (1) if the guardianship was solely because of the  
19 ward's minority, by the ward attaining his majority;  
20 (2) by an adjudication of competency of the ward;  
21 (3) by the death of the ward;  
22 (4) if the guardianship of the person was solely be-  
23 cause of the ward's minority, by the marriage of the ward.

24 b. ~~Termination on Court Order.~~ A guardianship may be ter-  
25 minated by court order after such notice as the court may require  
26 if the guardianship is no longer necessary for any reason.

27 c. ~~Effect of Termination.~~ When a guardianship terminates  
28 otherwise than by the death of the ward, the powers of the guar-  
29 dian cease, except that a guardian of the estate may make

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1 disbursement for claims that are or may be allowed by the court,  
2 for liabilities already properly incurred for the estate or for  
3 the ward, and for expenses of administration. When a guardian-  
4 ship terminates by death of the ward, the guardian of the estate  
5 may proceed under Sec. <sup>390</sup>~~7.72~~ of this <sup>Chapter</sup> Article, but the rights of all  
6 creditors against the ward's estate shall be determined by the law  
7 of decedents' estates.

8 <sup>380</sup> Sec. ~~7.73~~. DISCHARGE OF GUARDIAN. When a guardian of the  
9 estate shall file <sup>s</sup> with the court proper receipts or other evidence  
10 satisfactory to the court, showing that he has delivered to the  
11 persons entitled thereto all the property for which he is account-  
12 able as guardian, the court shall enter an order of discharge.  
13 The discharge so obtained shall operate as a release from the  
14 duties of his office which have not theretofore terminated, and  
15 shall operate as a bar to any suit against the guardian and his  
16 sureties unless such suit be commenced within two years from the  
17 date of the discharge.

18 <sup>370</sup> Sec. ~~7.74~~. ADMINISTRATION OF DECEASED WARD'S ESTATE. Upon  
19 the death of a ward intestate the guardian of his estate has power  
20 under the letters issued to him and subject to the direction of  
21 the court to administer the estate as the estate of the deceased  
22 ward without further letters unless within 30 days after the  
23 death of the ward a petition is filed for letters of administra-  
24 tion or for letters testamentary and the petition is granted.  
25 Notice to creditors and other persons interested in the estate  
26 shall be published and may be combined with the notice of the  
27 guardian's final account. All claims which are not filed within  
28 60 days after first publication shall be barred against the  
29 estate. Upon the hearing, the account may be allowed and the

1 balance distributed to the persons entitled thereto, after the  
2 payment of such claims as may be allowed. Liability on the guar-  
3 dian's bond shall continue and shall apply to the complete ad-  
4 ministration of the estate of the deceased ward. If letters of  
5 administration or letters testamentary are granted, upon petition  
6 filed within 30 days after the death of the ward, the adminis-  
7 trator or executor shall supersede the guardian in the adminis-  
8 tration of the estate and the provisions of <sup>chapter 16</sup> ~~Article III~~ of this  
9 Code shall apply to all proceedings in the administration, includ-  
10 ing the publication of notice to creditors and other interested  
11 persons and the barring of creditors' claims.

12 <sup>ARTICLE 4</sup> Part 5. Dispensing with Guardianship of Estate

13 <sup>310 - 410</sup> Sec. 7.80: CONDITIONS FOR DISPENSING WITH GUARDIANSHIP OF  
14 ESTATE. a. ~~Estate of MINOR of a Value not Exceeding \$1,000.~~

15 When the whole estate of a minor does not exceed the value of  
16 \$1,000, the court may, before or after the appointment of a guar-  
17 dian or the giving of bond, authorize

18 (1) The deposit of the estate in a depository author-  
19 ized to receive fiduciary funds, payable to the guardian of the  
20 estate when appointed or to the minor upon his attaining the age  
21 of majority; or

22 (2) If the assets do not consist of money, the de-  
23 livery thereof to a suitable person designated by the court, de-  
24 liverable to the guardian of the estate when appointed or to the  
25 minor upon his attaining the age of majority; or

26 (3) The payment or delivery thereof to the parent of  
27 the minor, or to the person having the care or custody of the  
28 minor, or to the minor himself.

29 The person receiving such money or other assets shall hold and

1 dispose of the same in a manner as the court shall direct.  
2 b. ~~Estate of Adult Incompetent of a Value not Exceeding~~  
3 \$1,000. When the whole estate of a person over the age of 21 who  
4 has been adjudicated incompetent does not exceed the value of  
5 \$1,000, the court may, without the appointment of a guardian or  
6 the giving of bond, authorize the deposit thereof in a depository  
7 authorized to receive fiduciary funds in the name of a suitable  
8 person designated by the court, or if the assets do not consist of  
9 money, authorize the delivery thereof to a suitable person desig-  
10 nated by the court. The person receiving such money or other  
11 assets shall hold and dispose of the same in such manner as the  
12 court shall direct.

13 c. ~~Deposit of Funds Subject to Order of Court.~~ If the  
14 estate of an incompetent consists of money in an amount greater  
15 than \$1,000 and it is for the best interest of the incompetent  
16 that no guardian of the estate be appointed or that an existing  
17 guardianship be terminated and that such estate be deposited in a  
18 depository authorized to receive fiduciary funds, the court may,  
19 on reasonable notice to all persons who would be entitled to  
20 receive notice of a hearing on a petition to appoint a guardian,  
21 so order. <sup>under (a) - (c) of this section</sup> The person receiving such money shall hold and dispose  
22 of the same in such manner as the court shall direct.

*Definition  
might be  
placed at  
end of  
chapter*

23 ~~Part 6. Veterans Guardianship~~  
24 ~~Sec. 7.90. DEFINITIONS. As used in this part:~~ <sup>SECS 430 - 600 of this chapter</sup>

- 25 (1) "Person" means an individual, a partnership, cor-  
26 poration or an association;
- 27 (2) "Veterans Administration" means the Veterans  
28 Administration, its predecessors or successors;
- 29 (3) "Income" means moneys received from the Veterans

1 Administration and revenue or profit from any property wholly or  
2 partially acquired therewith;

3 (4) "Estate" means income on hand and assets acquired  
4 partially or wholly with "income;"

5 (5) "Benefits" means all moneys paid or payable by  
6 the United States through the Veterans Administration;

7 (6) "Administrator" means the Administrator of Vet-  
8 erans Affairs of the United States or his successor;

9 (7) "Ward" means a beneficiary of the Veterans Admin-  
10 istration;

11 (8) "Guardian" means any fiduciary for the person or  
12 estate of a ward.

13 <sup>130</sup> Sec. <sup>-440</sup> ~~7.91~~. ADMINISTRATOR AS PARTY IN INTEREST. The Admin-  
14 istrator shall be a party in interest in any proceeding for the  
15 appointment or removal of a guardian or for the removal of the  
16 disability of minority or mental incapacity of a ward, and in  
17 any suit or other proceeding affecting in any manner the admin-  
18 istration by the guardian of the estate of any present or former  
19 ward whose estate includes assets derived in whole or in part  
20 from benefits heretofore or hereafter paid by the Veterans  
21 Administration. Not less than 15 days prior to hearing in  
22 such matter notice in writing of the time and place thereof  
23 shall be given by mail (unless waived in writing) to the  
24 office of the Veterans Administration having jurisdiction over  
25 the area in which any such suit or any such proceeding is  
26 pending.

27 <sup>450</sup> Sec. <sup>cancel</sup> ~~7.92~~. APPLICATION. Whenever, pursuant ~~to~~ any law  
28 of the United States or regulation of the Veterans Administra-  
29 tion, it is necessary, prior to payment of benefits, that a

1 guardian be appointed, the appointment may be made in the  
2 manner hereinafter provided.

3 <sup>460</sup> Sec. ~~7.93~~. LIMITATION ON NUMBER OF WARDS. No person  
4 other than a bank or trust company shall be guardian of more  
5 than five wards at one time, unless all the wards are members  
6 of one family. Upon presentation of a petition by an attorney  
7 of the Veterans Administration or other interested person, al-  
8 leging that a guardian is acting in a fiduciary capacity for  
9 more than five wards as herein provided and requesting his dis-  
10 charge for that reason, the court, upon proof substantiating the  
11 petition, shall require a final accounting forthwith from such  
12 guardian and shall discharge him from guardianships in excess of  
13 five and forthwith appoint a successor.

14 <sup>470</sup> Sec. ~~7.94~~. APPOINTMENT OF GUARDIAN. a. A petition for the  
15 appointment of a guardian may be filed by any relative or friend  
16 of the ward or by any person who is authorized by law to file  
17 such a petition. If there is no person so authorized or if the  
18 person so authorized refuses or fails to file such a petition  
19 within thirty days after mailing of notice by the Veterans  
20 Administration to the last known address of the person, if any,  
21 indicating the necessity for the same, a petition for appoint-  
22 ment may be filed by any resident of this state.

23 b. The petition for appointment shall set forth the name,  
24 age, place of residence of the ward, the name and place of  
25 residence of the nearest relative, if known, and the fact that  
26 the ward is entitled to receive benefits payable by or through  
27 the Veterans Administration and shall set forth the amount of  
28 moneys then due and the amount of probable future payments.

29 c. The petition shall also set forth the name and address

1 of the person or institution, if any, having actual custody of  
2 the ward and the name, age, relationship, if any, occupation and  
3 address of the proposed guardian and if the nominee is a natural  
4 person, the number of wards for whom the nominee is presently  
5 acting as guardian. Notwithstanding any law as to priority of  
6 persons entitled to appointment, or the nomination in the  
7 petition, the court may appoint some other individual or a bank  
8 or trust company as guardian, if the court determines it is for  
9 the best interest of the ward.

10 d. In the case of a mentally incompetent ward the petition  
11 shall show that such ward has been rated incompetent by the  
12 Veterans Administration on examination in accordance with the  
13 laws and regulations governing the Veterans Administration.

14 <sup>470</sup> ~~480~~ Sec. 7-95. EVIDENCE OF NECESSITY FOR GUARDIAN OF INFANT.

15 Where a petition is filed for the appointment of a guardian for  
16 a minor, a certificate of the Administrator or his authorized  
17 representative, setting forth the age of such minor as shown  
18 by the records of the Veterans Administration and the fact that  
19 the appointment of a guardian is a condition precedent to the  
20 payment of any moneys due the minor by the Veterans Administra-  
21 tion shall be prima facie evidence of the necessity for such  
22 appointment.

23 <sup>490</sup> Sec. 7-96. EVIDENCE OF NECESSITY FOR GUARDIAN FOR INCOM-

24 PETENT. Where a petition is filed for the appointment of a  
25 guardian for a mentally incompetent ward, a certificate of the  
26 administrator or his duly authorized representative, that such  
27 person has been rated incompetent by the Veterans Administration  
28 on examination in accordance with the laws and regulations  
29 governing such Veterans Administration and that the appointment

1 of a guardian is a condition precedent to the payment of any  
2 moneys due such ward by the Veterans Administration, shall be  
3 prima facie evidence of the necessity for such appointment.

4 <sup>490 - 500</sup> Sec. ~~7.97~~. NOTICE. Upon the filing of a petition for the  
5 appointment of a guardian under this <sup>chapter</sup> Article, notice shall be  
6 given to the ward, to such other persons, and in such manner as  
7 is provided by the general law of this state, and also to the  
8 Veterans Administration as provided <sup>in</sup> by this <sup>chapter</sup> Article.

9 <sup>500 - 510</sup> Sec. ~~7.98~~. BOND. a. Upon the appointment of a guardian,  
10 he shall execute and file a bond to be approved by the court in  
11 an amount not less than the estimated value of the personal  
12 estate and anticipated income of the ward during the ensuing  
13 year. The bond shall be in the form and be conditioned as  
14 required of guardians appointed under the general guardianship  
15 laws of this state. The court may from time to time require  
16 the guardian to file an additional bond.

17 .b. Where a bond is tendered by a guardian with personal  
18 sureties, there shall be at least two such sureties and they  
19 shall file with the court a certificate under oath which shall  
20 describe the property owned, both real and personal, and shall  
21 state that each is worth the sum named in the bond as the penalty  
22 thereof over and above all his debts and liabilities and the  
23 aggregate of other bonds on which he is principal or surety and  
24 exclusive of property exempt from execution. The court may re-  
25 quire additional security or may require a corporate surety bond,  
26 the premium thereon to be paid from the ward's estate.

27 <sup>510</sup> Sec. ~~7.99~~. PETITIONS AND ACCOUNTS: NOTICES AND HEARINGS.

28 a. Every guardian, who has received or shall receive on account  
29 of his ward any moneys or other thing of value from the Veterans

1 Administration shall file with the court annually, on the anni-  
2 versary date of the appointment, in addition to such other  
3 accounts as may be required by the court, a full, true, and  
4 accurate account under oath of all moneys or other things of  
5 value so received by him, all earnings, interest or profits  
6 derived therefrom and all property acquired therewith and of all  
7 disbursements therefrom, and showing the balance thereof in his  
8 hands at the date of the account and how invested.

9       b. The guardian, at the time of filing any account, shall  
10 exhibit all securities or investments held by him to an officer  
11 of the bank or other depository wherein said securities or invest-  
12 ments are held for safekeeping or to an authorized representative  
13 of the corporation which is surety on his bond, or to the judge  
14 or clerk of a court of record in this state, or upon request of  
15 the guardian or other interested party, to any other reputable  
16 person designated by the court, who shall certify in writing  
17 that he has examined the securities or investments and inden-  
18 tified them with those described in the account, and shall note  
19 any omissions or discrepancies. If the depository is the guar-  
20 dian, the certifying officer shall not be the officer verifying  
21 the account. The guardian may exhibit the securities or invest-  
22 ments to the judge of the court, who shall endorse on the account  
23 and copy thereof a certificate that the securities or investments  
24 shown therein as held by the guardian were each in fact exhibited  
25 to him and that those exhibited to him were the same as those  
26 shown in the account, and noting any omission or discrepancy.  
27 That certificate and the certificate of an official of the bank  
28 in which are deposited any funds for which the guardian is  
29 accountable, showing the amount on deposit, shall be prepared

1 and signed in duplicate and one of each shall be filed by the  
2 guardian with his account.

3 c. At the time of filing in the court any account, a  
4 certified copy thereof and a signed duplicate of each certifi-  
5 cate filed with the court shall be sent by the guardian to the  
6 office of the Veterans Administration having jurisdiction over  
7 the area in which the court is located. A signed duplicate or  
8 a certified copy of any petition, motion or other pleading, per-  
9 taining to an account, or to any matter other than an account,  
10 and which is filed in the guardianship proceedings or in any  
11 proceeding for the purpose of removing the disability of minor-  
12 ity or mental incapacity, shall be furnished by the person filing  
13 the same to the proper office of the Veterans Administration.  
14 Unless hearing be waived in writing by the attorney of the  
15 Veterans Administration, and by all other persons, if any, en-  
16 titled to notice, the court shall fix a time and place for the  
17 hearing on the account, petition, motion or other pleading not  
18 less than fifteen days nor more than thirty days from the date  
19 same is filed, unless a different available date be stipulated  
20 in writing. Unless waived in writing, written notice of the  
21 time and place of hearing shall be given to the Veterans Admin-  
22 istration office concerned and the guardian and any others  
23 entitled to notice not less than 15 days prior to the date fixed  
24 for the hearing. The notice may be given by mail in which event  
25 it shall be deposited in the mails not less than 15 days prior  
26 to said date. The court, or clerk thereof, shall mail to said  
27 Veterans Administration office a copy of each order entered in  
28 any guardianship proceeding wherein the Administrator is an  
29 interested party.

1 d. If the guardian is accountable for property derived  
2 from sources other than the Veterans Administration, he shall  
3 be accountable as is or may be required under the applicable  
4 law of this state pertaining to the property of minors or per-  
5 sons of unsound mind who are not beneficiaries of the Veterans  
6 Administration, and as to such other property shall be entitled  
7 to the compensation provided by such law. The account for  
8 other property may be combined with the account filed in  
9 accordance with this section.

10 <sup>670 - 1530</sup> Sec. ~~7.100~~. PENALTY FOR FAILURE TO ACCOUNT. If any  
11 guardian shall fail to file with the court any account as  
12 required by this Article, <sup>in chapter</sup> or by an order of the court, when  
13 any account is due or within thirty days after citation issues  
14 as provided by law, or shall fail to furnish the Veterans Admin-  
15 istration a true copy of any account, petition or pleading as  
16 required by this Article, <sup>in chapter</sup> such failure may in the discretion of  
17 the court be ground for his removal.

18 <sup>670 - 1540</sup> Sec. ~~7.101~~. COMPENSATION OF GUARDIAN. Compensation pay-  
19 able to guardians shall be based upon services rendered and  
20 shall not exceed five per cent of the amount of moneys received  
21 during the period covered by the account. In the event of extra-  
22 ordinary services by any guardian, the court, upon petition and  
23 hearing thereon may authorize reasonable additional compensation  
24 therefor. A copy of the petition and notice of hearing thereon  
25 shall be given to the proper office of the Veterans Administra-  
26 tion in the manner provided in the case of hearing on a  
27 guardian's account or other pleading. No commission or  
28 compensation shall be allowed on the moneys or other assets  
29 received from a prior guardian nor upon the amount received from

1 liquidation of loans or other investments. *fund after 8*  
2 <sup>540</sup> ~~Sec. 7.102.~~ <sup>550</sup> INVESTMENTS. Every guardian shall invest the  
3 surplus funds of his ward's estate in such securities or pro-  
4 perty as authorized under the laws of this state but only upon  
5 prior order of the court; except that the funds may be invested,  
6 without prior court authorization, in direct unconditional in-  
7 terest-bearing obligations of this state or of the United States  
8 and in obligations the interest and principal of which are un-  
9 conditionally guaranteed by the United States. A signed duplicate  
10 or certified copy of the petition for authority to invest shall  
11 be furnished the proper office of the Veterans Administration,  
12 and notice of hearing thereon shall be given said office as pro-  
13 vided in the case of hearing on a guardian's account.

14 <sup>560</sup> ~~Sec. 7.103.~~ MAINTENANCE AND SUPPORT. A guardian shall not  
15 apply any portion of the income or the estate for the support  
16 or maintenance of any person other than the ward, the spouse and  
17 the minor children of the ward, except upon petition to and prior  
18 order of the court after a hearing. A signed duplicate or cer-  
19 tified copy of said petition shall be furnished the proper office  
20 of the Veterans Administration and notice of hearing thereon  
21 shall be given said office as provided in the case of hearing on  
22 a guardian's account or other pleading.

23 <sup>570</sup> ~~Sec. 7.104.~~ PURCHASE OF HOME FOR WARD. a. The court may  
24 authorize the purchase of the entire fee simple title to real  
25 estate in this state in which the guardian has no interest, but  
26 only as a home for the ward, or to protect his interest, or (if  
27 he is not a minor) as a home for his dependent family. Such  
28 purchase of real estate shall not be made except upon the entry  
29 of an order of the court after hearing upon verified petition.

1 A copy of the petition shall be furnished the proper office of  
2 the Veterans Administration and notice of hearing thereon shall  
3 be given said office as provided in the case of hearing on a  
4 guardian's account.

5 b. Before authorizing such investment the court shall  
6 require written evidence of value and of title and of the  
7 advisability of acquiring such real estate. Title shall be  
8 taken in the ward's name. This section does not limit the  
9 right of the guardian on behalf of his ward to bid and to be-  
10 come the purchaser of real estate at a sale thereof pursuant  
11 to decree of foreclosure of lien held by or for the ward, or at  
12 a trustee's sale, to protect the ward's right in the property  
13 so foreclosed or sold; nor does it limit the right of the guar-  
14 dian, if such be necessary to protect the ward's interest and  
15 upon prior order of the court in which the guardianship is pend-  
16 ing, to agree with co-tenants of the ward for a partition in  
17 kind, or to purchase from co-tenants the entire undivided inter-  
18 ests held by them, or to bid and purchase the same at a sale  
19 under a partition decree, or to compromise adverse claims of title  
20 to the ward's realty.

21 <sup>910</sup> — .580  
21 Sec. 7.105. COPIES OF PUBLIC RECORD TO BE FURNISHED.

22 When a copy of any public record is required by the Veterans  
23 Administration to be used in determining the eligibility of any  
24 person to participate in benefits made available by the Veterans  
25 Administration the official custodian of such public record  
26 shall without charge provide the applicant for such benefits or  
27 any person acting on his behalf or the authorized representative  
28 of the Veterans Administration with a certified copy of such  
29 record.

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Sec. ~~7-106~~ <sup>590</sup>

DISCHARGE OF GUARDIAN AND RELEASE OF SURETIES.

In addition to any other provisions of law relating to judicial restoration and discharge of guardian, a certificate by the Veterans Administration showing that a minor ward has attained majority, or that an incompetent ward has been rated competent by the Veterans Administration upon examination in accordance with law shall be prima facie evidence that the ward has attained majority, or has recovered his competency. Upon hearing after notice as provided by this Article and the determination by the court that the ward has attained majority or has recovered his competency, an order shall be entered to that effect, and the guardian shall file a final account. Upon hearing after notice to the former ward and to the Veterans Administration as in case of other accounts, upon approval of the final account, and upon delivery to the ward of the assets due him from the guardian, the guardian shall be discharged and his sureties released.

Sec. ~~7-107~~ <sup>600</sup>

COMMITMENT TO VETERANS ADMINISTRATION OR OTHER AGENCY OF UNITED STATES GOVERNMENT.

a. Whenever, in any proceeding under the laws of this state for the commitment of a person alleged to be of unsound mind or otherwise in need of confinement in a hospital or other institution for his proper care, it is determined after such adjudication of the status of such person as may be required by law that commitment to a hospital for mental disease or other institution is necessary for safekeeping or treatment and it appears that <sup>the</sup> such person is eligible for care or treatment by the Veterans Administration or other agency of the United States Government, the court, upon receipt of a certificate from the Veterans Administration or <sup>the</sup> such other agency showing that facilities are available and that such

1 person is eligible for care or treatment therein, may commit  
2 such person to said Veterans Administration or other agency. The  
3 person whose commitment is sought shall be personally served  
4 with notice of the pending commitment proceeding in the manner as  
5 provided by the law of this state; and nothing in this Article  
6 shall affect his right to appear and be heard in the proceedings.  
7 Upon commitment, such person, when admitted to any facility  
8 operated by any such agency within or without this state shall  
9 be subject to the rules and regulations of the Veterans Adminis-  
10 tration or other agency. The Chief Officer of any facility of  
11 the Veterans Administration or institution operated by any other  
12 agency of the United States to which the person is so committed  
13 shall with respect to such person be vested with the same powers  
14 as superintendents of state hospitals for mental diseases within  
15 this state with respect to retention of custody, transfer, parole  
16 or discharge. Jurisdiction is retained in the committing or other  
17 appropriate court of this state at any time to inquire into the  
18 mental condition of the person so committed, and to determine  
19 the necessity for continuance of this restraint, and all commit-  
20 ments pursuant to this Article are so conditioned.

21 b. The judgment or order of commitment by a court of com-  
22 petent jurisdiction of another state or of the District of Col-  
23 umbia, committing a person to the Veterans Administration, or  
24 other agency of the United States Government for care or treat-  
25 ment shall have the same force and effect as to the committed  
26 person while in this state as in the jurisdiction in which is  
27 situated the court entering the judgment or making the order;  
28 (and the courts of the committing state, or of the District of  
29 Columbia, shall be deemed to have retained jurisdiction of the

1 person so committed for the purpose of inquiring into the mental  
2 condition of such person, and of determining the necessity for  
3 continuance of his restraint; as is provided in subsection a. of  
4 this section with respect to persons committed by the courts of  
5 this state. Consent is hereby given to the application of the  
6 law of the committing state or District in respect to the  
7 authority of the chief officer of any facility of the Veterans  
8 Administration, or of any institution operated in this state by  
9 any other agency of the United States to retain custody, or  
10 transfer, parole or discharge the committed person.)

11 c. Upon receipt of a certificate of the Veterans Adminis-  
12 tration or such other agency of the United States that facilities  
13 are available for the care or treatment of any person heretofore  
14 committed to any hospital for the insane or other institution  
15 for the care or treatment of persons similarly afflicted and that  
16 such person is eligible for care or treatment, the superintendent  
17 of the institution may cause the transfer of such person to the  
18 Veterans Administration or other agency of the United States for  
19 care or treatment. Upon effecting any such transfer, the com-  
20 mitting court or proper officer thereof shall be notified thereof  
21 by the transferring agency. No person shall be transferred to  
22 the Veterans Administration or other agency of the United States  
23 if he be confined pursuant to conviction of any felony or mis-  
24 demeanor or if he has been acquitted of the charge solely on  
25 the ground of insanity, unless prior to transfer the court  
26 or other authority originally committing such person shall enter  
27 an order for such transfer after appropriate motion and  
28 hearing.

29 d. Any person transferred as provided in this section shall

1 be deemed to be committed to the Veterans Administration or other  
2 agency of the United States pursuant to the original commitment.

3 ~~CHAPTER 37~~  
~~ARTICLE VIII~~

4 GENERAL PROVISIONS

5 <sup>50</sup> ~~Sec. 8.01.~~ <sup>13.37.010</sup> SHORT TITLE. This Act may be cited as the  
6 Alaska Probate Code.

7 <sup>40</sup> ~~Sec. 8.02.~~ <sup>02.0</sup> DEFINITIONS AND USE OF TERMS. When used in this  
8 ~~Code,~~ <sup>title,</sup> unless <sup>the context requires</sup> otherwise apparent from the context:

9 (1) "Child" includes an adopted child and an illegiti-  
10 mate child but does not include a grandchild or other more remote  
11 descendants.

12 (2) "Claims" include liabilities of the decedent which  
13 survive, whether arising in contract or in tort or otherwise,  
14 funeral expenses, the expense of a tombstone, expenses of adminis-  
15 tration, and all estate and inheritance taxes.

16 (3) "Devise," when used as a noun, means a testamentary  
17 disposition of real or personal property or both.

18 (4) "Devise," when used as a verb, means to dispose of  
19 real or personal property or both by will.

20 (5) "Devisee" includes legatee.

21 (6) "Distributee" denotes a person who is entitled to  
22 the real and personal property of a decedent under his will or  
23 under the statutes of intestate succession.

24 (7) "Estate" denotes the real and personal property of  
25 the decedent or ward, as from time to time changed in form by sale,  
26 reinvestment or otherwise, and augmented or diminished by any  
27 accretions, additions, decreases, or distributions therefrom.

28 (8) "Fiduciary" includes personal representative,  
29 guardian, and testamentary trustee.

1           (9) "Heirs" denotes those persons, including the sur-  
2 viving spouse, who are entitled under the statutes of intestate  
3 succession to the property of a decedent on his death intestate.

4           (10) "Interested persons" means heirs, devisees, spouses,  
5 creditors, representatives of the deceased, or any others having a  
6 property right in or claim against the estate of a decedent being  
7 administered.

8           (11) "Issue" of a person, when used to refer to persons  
9 who take by intestate succession, includes all lineal descendants  
10 except those who are the lineal descendants of living lineal  
11 descendants of the intestate.

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

13           (13) "Legacy" means a testamentary disposition of per-  
14 sonal property.

15           (14) "Legatee" means a person entitled to personal  
16 property under a will.

17           (15) "Letters" includes letters testamentary, letters of  
18 administration and letters of guardianship.

19           (16) "Mortgage" includes deed of trust, vendor's lien,  
20 and chattel mortgage.

21           (17) "Person" includes natural persons and corporations,  
22 except where corporations are specifically excluded from the  
23 definition.

24           (18) "Personal property" includes interests in goods,  
25 money, choses in action, evidences of debt, and chattels real. ]

26           (19) "Personal representative" includes executor,  
27 administrator, and special administrator.

28           (20) "Property" includes both real and personal  
29 property.

1 (21) "Real property" includes estates and interests in  
2 land, corporeal or incorporeal, legal or equitable, other than  
3 chattels real.

4 (22) "Will" includes codicil and testamentary instru-  
5 ments which merely appoint an executor or which merely revoke or  
6 revive another will.

7 (23) The singular number includes the plural; the  
8 plural number includes the singular.

9 (24) The masculine gender includes the feminine and  
10 neuter.

11 <sup>030</sup> Sec. ~~8.03~~. DISQUALIFICATION OF JUDGE. When any judge or  
12 his spouse are related within and including the third degree  
13 of consanguinity according to the civil law to any of the parties  
14 or their attorneys, or have drawn the will of the decedent, or  
15 are interested or have been counsel in any probate proceeding  
16 or any matter therein, the same shall be grounds for disqualify-  
17 ing the judge from acting in the proceeding or the particular  
18 matter with respect to which his disqualification exists. When  
19 grounds for disqualification exist, the judge may refuse to act  
20 as judge in the proceedings or, upon the filing of a petition  
21 to disqualify the judge, stating the grounds for disqualification,  
22 by any person interested in the estate or the particular matter  
23 with respect to which his disqualification exists, the judge  
24 shall not act therein.

25 <sup>040</sup> Sec. ~~8.04~~. NOTICE. No notice to interested persons need be  
26 given except as specifically provided for in this Code or as  
27 ordered by the court. When no notice is required by this Code,  
28 the court may require notice as it deems desirable.

29 <sup>050</sup> Sec. 8.05. WAIVER OF NOTICE. Any person legally competent

1 who is interested in any hearing in a probate proceeding may in  
2 person or by attorney waive notice of the hearing. Any person  
3 who submits to the jurisdiction of the court in any hearing shall  
4 be deemed to have waived notice thereof.

5 *\*Sec. 2 The following laws are repealed;*  
*\*Sec. 2 The following laws are* owing laws and parts of laws  
6 are repealed: Sec. 59-1-1, 59-1-2, 59-1-3, 59-1-4, 59-1-5,  
7 59-2-1, 59-2-2, 59-2-3, 59-2-4, 59-2-5, 59-2-6, 59-3-1, 59-3-2,  
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14 63-1-18, 63-1-19, 63-1-20, 63-1-21, 64-1-1, 64-1-2, 64-1-3,  
15 64-1-4, ACLA 1949.

16 Sec. 60-1-3, ACLA 1949, as amended by Sec. 1, Ch. 35,  
17 SLA 1951; Sec. 60-1-4, ACLA 1949, as amended by Sec. 2, Ch. 35,  
18 SLA 1951; Sec. 60-1-15, ACLA 1949, as added by Sec. 1, Ch. 193,  
19 SLA 1955; Sec. 61-2-9 ACLA 1949, as amended by Sec. 1, Ch. 81,  
20 SLA 1955; Sec. 61-3-1, ACLA 1949, as amended by Sec. 1, Ch. 120,  
21 SLA 1953; Sec. 61-3-2, ACLA 1949, as amended by Sec. 2, Ch.  
22 120, SLA 1953; Sec. 61-3-4, ACLA 1949, as amended by Sec. 1,  
23 Ch. 94, SLA 1955; Sec. 61-5-2, ACLA 1949, as amended by Sec. 3,  
24 Ch. 120, SLA 1953; Sec. 61-7-1, ACLA 1949, as amended by Sec. 1,  
25 Ch. 102, SLA 1949, repealed and reenacted by Sec. 1, Ch. 125,  
26 SLA 1959; Sec. 61-7-3, ACLA 1949, as amended by Sec. 1, Ch. 89,  
27 SLA 1949, as amended by Sec. 1, Ch. 153, SLA 1955, as amended  
28 by Sec. 1, Ch. 6, SLA 1957, as amended by Sec. 1, Ch. 163,  
29 SLA 1960; Sec. 61-13-21, ACLA 1949, as amended by Sec. 1,

1 Ch. 71, SLA 1953; Sec. 61-14-5, ACLA 1949, as amended by Sec. 1,  
2 Ch. 64, SLA 1960; Sec. 61-14-6, ACLA 1949, as amended by Sec.  
3 2, Ch. 64, SLA 1960; Sec. 61-14-10, ACLA 1949, as amended by  
4 Sec. 1, Ch. 106, SLA 1955; Sec. 61-16-4, ACLA 1949, as amended  
5 by Sec. 1, Ch. 52, SLA 1951; Sec. 62-1-4, ACLA 1949, as amended  
6 by Sec. 3, Ch. 37, SLA 1959; Sec. 62-1-5, ACLA 1949 as amended  
7 by Sec. 1, Ch. 91, SLA 1951; Sec. 62-2-1, ACLA 1949, as amended  
8 by Sec. 2, Ch. 91, SLA 1951; Sec. 62-2-3, ACLA 1949, as amended  
9 by Sec. 3, Ch. 91, SLA 1951; Sec. 62-2-14, ACLA 1949, as  
10 amended by Sec. 4, Ch. 91, SLA 1951.

11 \* ~~Sec. 3.~~

11 ~~Sec. 8.07. HOW CODE TO TAKE EFFECT.~~ Effective Date.

12 This Code takes effect on January 1, <sup>1969</sup> ~~1962~~, subject to the  
13 following provisions:

14 (1) Wills: All wills made under the law of this  
15 state as it existed prior to the effective date of this Code,  
16 shall be valid if valid under that former law. However, if the  
17 will is amended, revoked, or added to after the effective date  
18 of this Code, the validity of the entire will shall be governed  
19 by this Code. What acts constitute amendment, revocation, or  
20 adding to a will, as well as the legal effect of those acts,  
21 shall be governed by this Code.

22 (2) Proceedings: The provisions prescribed in this  
23 Code shall govern all proceedings in probate and guardianship  
24 brought after the effective date of this Code, and also all  
25 further procedure in proceedings in probate and guardianship  
26 then pending. However, if due to proceedings commenced under  
27 the law of this state as it existed prior to the effective date  
28 of this Code, the application of this Code in particular  
29 proceedings or parts thereof would not be feasible or would

1 work injustice, the court may apply the former statutory  
2 provisions.

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SB. #4