

1 IN THE SENATE BY THE JUDICIARY COMMITTEE

2 CS FOR 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 Section 1.01 WILL DEFINED. As used in this Act the term  
14 "will" is construed to include all codicils as well as wills.

15 Sec. 1.02. WHO MAY MAKE. Every person of sound mind who  
16 is 19 or more years of age may make a will under the rules and  
17 limitations provided by law.

18 Sec. 1.03. MARINERS AND SOLDIERS. A mariner at sea, or  
19 soldier in the military service, may dispose of his wages or  
20 other personal property as he might have done by common law, or by  
21 reducing the same to writing.

22 Sec. 1.04. RIGHT TO BEQUEATH INSURANCE POLICY PROCEEDS. In  
23 the event the insured, his executor, or his estate is designated  
24 as the beneficiary in a life insurance, accident insurance, endow-  
25 ment insurance, or tontine insurance policy, the proceeds or  
26 avails of the policies may be bequeathed by will as part of the  
27 estate of the insured.

28 Sec. 1.05. CONSTRUCTION OF WILLS. All courts and others  
29 concerned in the execution of last wills shall have due regard to

1 the directions of the will and the true intent and meaning of the  
2 testator in all matters brought before them.

3 Sec. 1.06. WRITING AND OTHER FORMALITIES. A last will and  
4 testament, except when made by a soldier in actual military  
5 service or by a mariner at sea, is invalid unless it is in writing  
6 and executed with the formalities required by law.

7 Sec. 1.07. SUBSCRIPTION AND ATTESTATION. Every will shall  
8 be in writing, signed by the testator, or by some other person  
9 under his direction in his presence, and shall be attested to by  
10 two or more competent witnesses, subscribing their names to the  
11 will in the presence of the testator. However, olographic wills,  
12 with or without attestation, are admitted to probate the same as  
13 other wills and are proved in the same manner as other private  
14 writings.

15 Sec. 1.08. DEVISE OR BEQUEST TO SUBSCRIBING WITNESS. If a  
16 person attests the execution of any will to whom any beneficial  
17 devise, legacy, estate, interest, gift, or appointment of or  
18 affecting real or personal estate other than or except charges in  
19 lands, tenements, or hereditaments for the payment of any debts  
20 shall be thereby given or made, the devise, legacy, estate, gift,  
21 or appointment shall, so far only as it concerns the person attest-  
22 ing the execution of the will or any person claiming under him, be  
23 void, and the person shall be admitted as a witness to the  
24 execution of the will.

25 Sec. 1.09. RIGHTS OF SUBSCRIBING WITNESS IN ESTATE IN  
26 ABSENCE OF WILL. If the subscribing witness who receives a  
27 devise or bequest under the will would be entitled to a share  
28 in the testator's estate in the case the will should not be  
29 established, then so much of the estate as would have descended

1 or would have been distributed to the witness should be saved to  
2 him as will not exceed the value of the devise or bequest made to  
3 him in the will, and he may recover the same from the devisees  
4 or legatees named in the will in proportion to and out of the  
5 parts devised and bequeathed to him.

6 Sec. 1.10. WHEN WILL VALID AS TO SUBSCRIBING WITNESS. If the  
7 execution of a will is attested by a sufficient number of  
8 competent witnesses, as required by this Act, other than the  
9 witness receiving a devise or bequest under the will, then the  
10 devise, legacy, interest, estate, gift, or appointment to the  
11 witness is valid.

12 Sec. 1.11. VALIDITY OF FOREIGN WILL. A last will and testa-  
13 ment, executed outside this state in the mode prescribed by law,  
14 either of the place where executed or of the testator's domicile,  
15 is considered legally executed, and is of the same force and effect  
16 as if executed in the mode prescribed by the laws of this state,  
17 if the last will and testament is in writing and subscribed by  
18 the testator.

19 Sec. 1.12. ELECTION TO SURVIVING HUSBAND OR WIFE. (a) If a  
20 testator or testatrix leaving a surviving wife or husband bequeaths  
21 or devises away from the surviving wife or husband more than two-  
22 thirds of his or her net estate, the surviving wife or husband,  
23 in his or her option and notwithstanding the will, may take and  
24 receive one-third of the net estate of the testator or testatrix.  
25 The right to receive one-third of the next estate may be waived  
26 in writing in a premarital or submarital agreement.

27 (b) The surviving wife or husband must exercise the option  
28 by filing in the court in which the will is admitted to probate,  
29 within six months thereafter, his or her election, in writing,

1 to take and receive one-third of the net estate. Upon filing of  
2 the election within said time, the will is inoperative as to that  
3 one-third of the net estate. The failure to make and file the  
4 election within the six month period is conclusive evidence of  
5 the consent of the surviving wife or husband to the provisions  
6 of the will.

7 (c) If the surviving spouse is incompetent, the court shall  
8 make the election for the spouse which the court finds to be more  
9 advantageous to the spouse and the election is considered as  
10 effectual as if made by a competent spouse.

11 (d) The election set out in this section may be made and  
12 filed within six months from the admission to probate of any will  
13 admitted to probate prior to the taking effect of this section.  
14 The failure to make and file the election within the period of  
15 six months is conclusive evidence of the consent of the surviving  
16 wife or husband to the provisions of the will.

17 Sec. 1.13. MARRIAGE AND BIRTH OF ISSUE NOT PROVIDED FOR. If,  
18 after making a will disposing of the whole estate of the testator,  
19 the testator marries and dies leaving issue by the marriage living  
20 at the time of his death, or leaves issue of the marriage born to  
21 him after his death, the will shall be considered revoked unless  
22 provision has been made for the issue by some settlement, or  
23 unless the issue is provided for in the will, and no evidence  
24 shall be received to rebut the presumption of the revocation.

25 Sec. 1.14. SUBSEQUENT MARRIAGE OR DIVORCE. A will made by  
26 an unmarried person is considered revoked by his or her subse-  
27 quent marriage. A divorce subsequent to the making of a will  
28 revokes the will as to the divorced spouse.

29 Sec. 1.15. EFFECT OF AGREEMENT TO CONVEY. A bond, covenant,

1 or agreement made for a valuable consideration by a testator, to  
2 convey any property devised or bequeathed in any last will  
3 previously made, is not considered a revocation of the previous  
4 devise or bequest. However, the property passes by the devise or  
5 bequest, subject to the same remedies on the bond, covenant or  
6 agreement, for the specific performance or otherwise, against de-  
7 visees or legatees, as might be had by law against the heirs of the  
8 testator, or his next of kin, if the same had descended to them.

9       Sec. 1.16. CHARGE OR INCUMBRANCE. A charge or incumbrance  
10 upon any real or personal estate for the purpose of securing the  
11 payment of money or the performance of any covenant or agreement  
12 is not considered a revocation of any will relating to the same  
13 estate previously executed. The devises and legacies therein con-  
14 tained pass and take effect subject to the charge or incumbrance.

15       Sec. 1.17. EFFECT OF REVOCATION OF SUBSEQUENT WILL. If,  
16 after making any will the testator makes and executes a second  
17 will, the destruction, canceling, or revocation of the second will  
18 does not revive the first will, unless it appears by the terms of  
19 the revocation that it was his intention to revive and give effect  
20 to the first will, or unless he duly republishes his first will.

21       Sec. 1.18. DESTRUCTION OR ALTERATION OF WILL. A written  
22 will cannot be revoked or altered otherwise than by another  
23 written will, or another writing of the testator declaring the  
24 revocation or alteration and executed with the same formalities  
25 required by law for the will itself, or unless the will is burnt,  
26 torn, canceled, obliterated, or destroyed with the intent and  
27 for the purpose of revoking the will by the testator himself, or  
28 by another person in his presence, by his direction and consent.  
29 When this is done by another person the direction and consent of

1 the testator and the fact of the injury or destruction shall be  
2 proved by at least two witnesses.

3       Sec. 1.19. RIGHTS OF CHILDREN OR THEIR DESCENDANTS. If a  
4 person makes his last will and dies, leaving a child or children,  
5 or descendants of the child or children in case of their death,  
6 not named or provided for in the will, although born after the  
7 making of the will or the death of the testator, every such  
8 testator, so far as regarding the child or children or their  
9 descendants not provided for, is considered to die intestate. The  
10 child or children, or their descendants, are entitled to such pro-  
11 portion of the estate of the testator, real and personal, as if  
12 he had died intestate, and the same shall be assigned to them,  
13 and all the other heirs, devisees, and legatees shall refund  
14 their proportional part.

15       Sec. 1.20. EFFECT OF ADVANCEMENTS. If the child or children,  
16 or their descendants, have an equal proportion of the testator's  
17 estate bestowed on them in the testator's lifetime by way of  
18 advancement, they take nothing by virtue of the provisions of  
19 the preceding section.

20       Sec. 1.21 DEATH OF RELATIVE LEAVING LINEAL DESCENDANTS.  
21 When an estate is devised to a child or grandchild, or other  
22 relative of the testator, and the devisee dies before the  
23 testator, leaving lineal descendants, the descendants take the  
24 estate, real and personal, as the devisee would have done in  
25 case he had survived the testator.

26       Sec. 1.22. VOID BEQUEST OR DEVISE TO ATTESTING WITNESS. No  
27 person to whom an estate, gift or appointment is given or made  
28 which is hereby declared to be null and void, or who has refused  
29 to receive the legacy or bequest on tender made, and who has been

1 examined as a witness concerning the execution of the will shall,  
2 after he has been examined, demand or receive, except as provided  
3 in sec. 2.05, any profit or benefit of or from the estate, inter-  
4 est, gift, or appointment so given or made to him by any such  
5 will, or demand, receive, or accept from any person any such  
6 legacy or bequest, or any satisfaction or compensation for the  
7 same.

8       Sec. 1.23. DEVISE OF ESTATE FOR LIFE WITH REMAINDER TO  
9 HEIRS. If a person by last will devises real estate to a person  
10 for the term of the person's life, and after his death to his or  
11 her children or heirs, or right heirs in fee, the devise vests  
12 an estate for life only in the devisee, and the remainder in  
13 fee simple in the children.

14       Sec. 1.24. ESTATE BY DEED OR WILL. Where an estate, real or  
15 personal, is given by deed or will to a person for his life, and  
16 after his death to his heirs or to the heirs of his body, the  
17 conveyance is construed to vest an estate for his life only in  
18 such person, and a remainder in fee simple in his heirs or the  
19 heirs of his body.

20       Sec. 1.25. DEVISE OF REAL PROPERTY. A devise of real prop-  
21 erty is considered and taken as a devise of all the estate or  
22 interest of the testator therein subject to his disposal, unless  
23 it clearly appears from the will that he intended to devise a  
24 less estate or interest. Any estate or interest in real property  
25 acquired by anyone after the making of his or her will shall pass  
26 thereby unless it clearly appears therefrom that such was not the  
27 intention of the testator, nor shall any conveyance or disposition  
28 of real property by anyone after the making of his or her will  
29 prevent or affect the operation of the will upon an estate or

1 interest therein subject to the disposal of the testator at his  
2 or her death.

3 ARTICLE II

4 SUCCESSION

5 Sec. 2.01. REAL PROPERTY. When a person dies seized of  
6 real property, or a right thereto, or entitled to an interest  
7 therein in fee simple or for the life of another, not having  
8 lawfully devised the same, the real property descends as  
9 follows, subject to his debts:

10 (1) If the intestate leaves a widow or widower and  
11 issue, the widow or widower receives one-half the real property,  
12 the remainder, or if the intestate leaves no widow or widower,  
13 all the real property left by the intestate, to be divided  
14 equally among his or her children and to the issue of any deceased  
15 child by right of representation. If there is no child of the  
16 intestate living at the time of his or her death, the real  
17 property descends to his or her other lineal descendants, and if  
18 all such descendants are in the same degree of kindred to the  
19 intestate, they take the real property equally; otherwise they  
20 take according to the right of representation.

21 (2) If the intestate leaves no lineal descendants, the  
22 real property descends to his wife, or if the intestate is a  
23 married woman and leaves no lineal descendants, then the real  
24 property descends to her husband, and if the intestate leaves no  
25 wife or husband, then the real property descends to his or her  
26 father and mother in equal shares if both are living and otherwise  
27 to the surviving parent.

28 (3) If the intestate leaves no lineal descendants, and  
29 neither husband nor wife nor father nor mother, the real property

1 descends in equal shares to the brothers and sisters of the  
2 intestate and to the issue of any deceased brother or sister by  
3 right of representation.

4 (4) If the intestate leaves no lineal descendants, and  
5 neither husband nor wife, nor father, nor brother nor sister,  
6 living at his or her death, the real property descends to his or  
7 her mother, to the exclusion of the issue of the deceased brothers  
8 or sisters of the intestate.

9 (5) If the intestate leaves no lineal descendants, and  
10 neither husband nor wife, nor father nor mother, nor brother nor  
11 sister, the real property descends to his or her next of kin in  
12 equal degree, excepting that when there are two or more collateral  
13 kindred in equal degree, but claiming through different ancestors,  
14 those who claim through the nearest ancestor are preferred to  
15 those claiming through a more remote ancestor.

16 (6) If the intestate leaves one or more children, and  
17 the issue of one or more deceased children, and any of the surviv-  
18 ing children die under age without having been married, all the  
19 real property that came to the deceased child by inheritance from  
20 the intestate descends in equal shares to the other children of  
21 the intestate, and to the issue of any other children of the  
22 intestate who have died, by right of representation. But if all  
23 the other children of the intestate are also dead, and any of  
24 them have left issue, the real property so inherited by the  
25 deceased child descends to all the issue of the other children  
26 of the intestate in equal shares, if they are in the same degree  
27 of kindred to the deceased child; otherwise they take by right  
28 of representation.

29 (7) If the intestate leaves no lineal descendants or

1 kindred the property escheats to the state.

2           Sec. 2.02. PERSONAL PROPERTY. When a person dies possessed  
3 of personal property, or of any right to or interest therein, not  
4 having lawfully bequeathed the same, the personal property is  
5 applied and distributed as follows:

6           (1) If the intestate leaves a widow, she is allowed all  
7 articles of her apparel and ornament, according to the degree and  
8 estate of the intestate, and the property and provisions for the  
9 use and support of herself and minor children which are allowed  
10 and ordered in pursuance of secs. 10.01 - 10.04, and 11.01, and  
11 this allowance is made as well when the widow waives the provision  
12 made for her in the will of her husband as when he dies intestate

13           (2) The personal property of the intestate remaining  
14 after the allowance is applied to the payment of the debts of the  
15 deceased and the charges and expenses of administration as  
16 provided by law.

17           (3) The residue, if any, of the personal property is  
18 distributed among the persons who would be entitled to the real  
19 property of the intestate, as provided in this Act, and in the  
20 like proportion or share, except as herein otherwise provided.

21           (4) If the intestate leaves a husband and issue, the  
22 husband is entitled to receive one-half of the residue of the  
23 personal property, but if the intestate leaves a husband and no  
24 issue, the husband receives the whole of the residue of personal  
25 property.

26           (5) If the intestate leaves a widow and issue, the  
27 widow is entitled to receive one-half of the residue of the  
28 personal property, but if the intestate leaves a widow and no  
29 issue, the widow is entitled to receive the whole of the residue

1 of the personal property.

2 (6) If there is no husband, widow, or kindred of the  
3 intestate, the whole of the residue escheats to the state.

4 Sec. 2.03. ILLEGITIMATE CHILD AS HEIR. An illegitimate  
5 child is considered an heir of its mother, and inherits or  
6 receives her property, real or personal, in whole or in part, as  
7 the case may be, in like manner as if the child had been born in  
8 lawful wedlock. The child is not entitled to inherit or receive,  
9 as representing his mother, any property, real or personal, of the  
10 kindred, either lineal or collateral, of the mother. When the  
11 parents of the child have formally married, the child is not re-  
12 garded as illegitimate within the meaning of this Act, although  
13 the formal marriage is adjudged to be void.

14 Sec. 2.04. MOTHER AS HEIR OF ILLEGITIMATE CHILD. If an  
15 illegitimate child dies intestate without leaving a widow, husband,  
16 or lawful issue, the property, real and personal, of the intestate  
17 descends to or is received by the mother. If after the birth  
18 of an illegitimate child the parents thereof intermarry, the child  
19 is considered legitimate to all intents and purposes.

20 Sec. 2.05. COMPUTATION OF DEGREES OF KINDRED. The degrees  
21 of kindred are computed according to the rules of the civil law.  
22 The kindred of the half blood inherit or receive equally with  
23 those of the whole blood in the same degree.

24 Sec. 2.06. ADVANCEMENTS. If the intestate leaves a widow  
25 and issue, and any of the issue receives an advancement from the  
26 intestate in his lifetime, the value of the advancement is not  
27 taken into consideration in computing the part to be given to the  
28 widow, but the widow is only entitled to receive the one-half of  
29 the personal property owned by the husband at the time of his

1 death.

2       Sec. 2.07. ADVANCEMENT AS PART OF SHARE IN ESTATE. Property  
3 real or personal, that is given by the intestate in his lifetime  
4 as an advancement to any child or other lineal descendant is  
5 considered a part of the intestate's estate, so far as regards the  
6 division and distribution thereof among his issue, and is taken  
7 by the child or other descendant toward his share of the intes-  
8 tate's estate.

9       Sec. 2.08. SHARE AS AFFECTED BY AMOUNT OF ADVANCEMENT. If  
10 the amount of the advancement exceeds the share of the heir so  
11 advanced, the heir is excluded from any further share or portion  
12 in the division or distribution of the estate, but is not required  
13 to refund any part of the advancement. If the amount so received  
14 is less than his share, the heir is entitled to so much more as  
15 will give him his full share or portion of the estate of the  
16 intestate.

17       Sec. 2.09. ADVANCEMENT AS PART OF REALTY TO BE DIVIDED. If  
18 the advancement is made in real property the value thereof is  
19 considered for the purposes of sec. 2.08 as part of the real  
20 property to be divided. If the advancement is either in real or  
21 personal property, and in either case does not exceed the share  
22 or portion of the real or personal property that would come to  
23 the heir so advanced, the heir is not required to refund any  
24 part of it, but takes or receives so much less out of the whole  
25 part of the estate, as the case may be, as will make the whole  
26 share equal to those of the other heirs who are in the same  
27 degree with the heir so advanced.

28       Sec. 2.10. WHEN GRANTS AND GIFTS CONSIDERED ADVANCEMENTS.  
29 All grants and gifts are considered to be made in an advancement

1 if so expressed in the grant or gift, or if so charged, in writing,  
2 by the intestate, or acknowledged, in writing, to be so made by  
3 the child or other descendant to whom it is made, and not other-  
4 wise.

5       Sec. 2.11. DETERMINATION OF VALUE OF ADVANCEMENT. If the  
6 value of the property, real or personal, so advanced is expressed  
7 in the conveyance or writing whereby the same is granted or  
8 given, or in the charge thereof made by the intestate, or in the  
9 acknowledgment made by the party receiving it, in the division  
10 and distribution of the estate, the advancement is considered of  
11 the value so expressed. Otherwise, it is estimated at its value  
12 when granted or given.

13       Sec. 2.12. ADVANCEMENT AFFECTING RIGHTS OF ISSUE OF DECEASED  
14 CHILD OR DESCENDANT. If any child or lineal descendant to whom  
15 an advancement is made dies before the intestate, leaving issue,  
16 the advancement is considered made to the issue, and the division  
17 and distribution of the estate is made accordingly.

18       Sec. 2.13. PERSON CONVICTED OF MURDER OF DECEDENT NOT TO  
19 INHERIT FROM DECEDENT. No person convicted of the murder of a  
20 decedent, or as an accessory before or after the fact, may inherit  
21 from the decedent, or receive any interest in the estate of the  
22 decedent as surviving spouse, or take by devise or legacy from  
23 the decedent any portion of his estate, but the portion of the  
24 estate of the decedent to which the convicted person would other-  
25 wise be entitled to succeed shall, subject to devises in favor of  
26 other legatees if there is a will, be distributed among the  
27 other heirs of the decedent according to the rules of descent  
28 and distribution provided in this Act.

29       Sec. 2.14. DEFINITIONS. (a) As used in this article

1 (1) "issue" includes all the lawful lineal descendants  
2 of the ancestor;

3 (2) "real property" includes all lands, tenements, and  
4 hereditaments, and rights thereto, and all interest therein,  
5 whether in fee simple or for the life of another;

6 (3) "personal property" includes all goods and chattels  
7 money, credits, and effects of whatever nature not included in  
8 the term "real property."

9 (b) Inheritance by right of representation takes place when  
10 the lineal descendant of a deceased heir takes the same share or  
11 portion of the estate of an intestate that the parent of the  
12 descendant would have taken if living.

13 (c) For the purposes of this Act a posthumous child is  
14 considered living at the death of its parent.

15 ARTICLE III

16 PROBATE COURT

17 Sec. 3.01. SUPERIOR COURT JURISDICTION. The superior court  
18 has jurisdiction in all testamentary and probate matters to

19 (1) take proof of wills;

20 (2) grant and revoke letters testamentary, of  
21 administration, and of guardianship;

22 (3) direct and control the conduct and settle the  
23 accounts of executors, administrators, and guardians;

24 (4) direct the payment of debts and legacies and the  
25 distribution of the estates of intestates;

26 (5) order the sale and disposal of the real and  
27 personal property of deceased persons;

28 (6) order the renting, sale, or other disposal of the  
29 real and personal property of minors;

1 (7) take the care and custody of the person and estate  
2 of a lunatic or habitual drunkard and appoint and remove guardians  
3 therefor and direct and control the conduct of the guardians and  
4 settle their accounts.

5 Sec. 3.02. COSTS AND DISBURSEMENTS. Costs may be awarded in  
6 favor of one party against another, to be paid personally or out  
7 of the estate or fund, in proceedings contested adversely.

8 ARTICLE IV

9 PROBATE AND CONTEST OF WILLS

10 Sec. 4.01. WHERE PROOF OF WILL AUTHORIZED. Wills are  
11 proved and letters testamentary or of administration granted

12 (1) in the judicial district of which the decedent  
13 was a resident at or immediately before his death, wherever death  
14 occurred;

15 (2) in the judicial district in which the decedent  
16 died leaving estate therein, though he was not a resident of  
17 the state;

18 (3) in the judicial district in which any part of the  
19 estate is found, the decedent having died outside the state and  
20 not being a resident of the state at the time of his death;

21 (4) in the judicial district where real property which  
22 is devised by the decedent is located and the judge in another  
23 judicial district has not gained jurisdiction under (1) - (3)  
24 of this section.

25 Sec. 4.02. CONTENTS OF APPLICATION TO PROVE WILL OR FOR  
26 LETTERS. In an application to prove a will or for the appointment  
27 of an executor or administrator the petition shall set out the  
28 facts necessary to give the court jurisdiction, and also state  
29 whether the deceased left a will, and the names, age, and

1 residence, so far as known, of his heirs.

2       Sec. 4.03. CREDITORS AS WITNESSES. If by a will real estate  
3 is charged with a debt, and even though the creditor whose debt is  
4 charged has attested the execution of the will, he is admitted  
5 as a witness to the execution of the will.

6       Sec. 4.04. DEVISEE OR LEGATEE AS COMPETENT WITNESS. If a  
7 person attests the execution of a will to whom a legacy or  
8 bequest is thereby given, and the person, before giving testimony  
9 concerning the execution of the will, releases the bequest or  
10 legacy and renounces without valuable consideration all benefits  
11 under the will, the person is admitted as a witness to the  
12 execution of the will.

13       Sec. 4.05. DECEASED DEVISEE OR LEGATEE. If a legatee or  
14 devisee who attests the execution of a will dies in the lifetime  
15 of the testator, or before he has received or released the  
16 legacy or bequest so given to him, and before he has refused to  
17 receive the legacy or bequest on a tender made thereof, the  
18 legatee or devisee is considered a legal witness to the execution  
19 of the will.

20       Sec. 4.06. WHEN PROOF OF NUNCUPATIVE WILL RECEIVED. No  
21 proof of a nuncupative will shall be received unless it is  
22 offered within six months after speaking the testamentary words,  
23 or unless the words, or the substance of the words, were  
24 reduced to writing within 30 days after they were spoken.

25       Sec. 4.07. PROBATE OF NUNCUPATIVE WILL. No probate of a  
26 nuncupative will is granted for 14 days after the death of the  
27 testator, nor shall a nuncupative will be at any time proved, un-  
28 less the testamentary words, or the substance of the testamentary  
29 words are first committed to writing, and a citation issued,



- 1 (1) nonresidents of the state, except as provided in  
2 Sec. 5.02;  
3 (2) minors under 19 years of age, except as provided  
4 in Sec. 5.02;  
5 (3) judicial officers;  
6 (4) persons of unsound mind; or  
7 (5) persons who have been convicted of a felony or of  
8 a misdemeanor involving moral turpitude.

9 Sec. 5.02. NONRESIDENTS AND MINORS AS EXECUTORS. If a per-  
10 son is named in a will as executor who is a nonresident of the  
11 state or a minor under 19 years of age, upon the removal of the  
12 disability he is entitled to qualify as the executor, if he  
13 applies within 30 days from the removal of the disability, if he  
14 is otherwise competent. If in the meantime an administrator with  
15 the will annexed has been appointed, his powers and duties cease  
16 with the qualification of the executor. If another executor has  
17 qualified and is acting as such they become joint executors.  
18 However, a person named as executor who is a resident at the time  
19 of his appointment but thereafter becomes a nonresident, or a  
20 person who is a nonresident at the time of his appointment as an  
21 executor and does not thereafter become a resident, may qualify  
22 to serve or to continue to serve as executor, as the case may be,  
23 by filing a bond to be approved by the judge, and in addition,  
24 the executor shall appoint a lawyer who practices law in the  
25 judicial district in which the estate is being probated upon whom  
26 service of all papers may be made. The appointment shall be in  
27 writing and shall be filed in the court with all other papers  
28 of the estate.

29 Sec. 5.03. LETTERS TESTAMENTARY AND LETTERS OF ADMINISTRATION  
CS for SB#4 Engrossed -18-

1 TION WITH WILL ANNEXED. When a will is proven, letters testamen-  
2 tary are issued to the person, persons, corporation, or national  
3 or state banking association, therein named as executor or  
4 executors, or to such of them as give notice of their acceptance  
5 of the trust and are qualified. If all the persons, corporations,  
6 or national or state banking associations therein named decline  
7 to accept or are disqualified, letters of administration, with  
8 the will annexed, are issued to the person to whom the administra-  
9 tion would have been granted if there had been no will.

10 Sec. 5.04. PRIORITY IN LETTERS OF ADMINISTRATION. Admin-  
11 istration of the estate of an intestate shall be granted by  
12 the judge authorized to take proof of a will, as prescribed  
13 in sec. 4.01. Administration shall be granted, and letters  
14 thereof issued to

15 (1) the widow or next of kin, or both, in the discre-  
16 tion of the court;

17 (2) one or more of the principal creditors; or

18 (3) any other person, corporation, or national or  
19 state banking association competent and qualified whom the court  
20 may select.

21 Sec. 5.05. RENOUNCEMENT. The persons named in sec. 5.04,  
22 if qualified and competent for the trust, are entitled to the  
23 administration in the order therein named. If those named in  
24 sec. 5.04(1) do not apply for the administration within 30 days  
25 from the decease of the intestate, they are considered to have  
26 renounced their right thereto. However, the judge in his  
27 discretion may, if they reside within the judicial district,  
28 direct that a citation be issued to them, requiring them to  
29 apply for or renounce their right of administration within

1 that period. If the persons named in sec. 5.04(2) do not make  
2 application within 40 days from the decease, they are considered  
3 to have renounced their right to the administration also.

4 Sec. 5.06. PETITION FOR HEARING. When a petition for  
5 letters of administration is filed the judge must set the petition  
6 for hearing and publish notice thereof in some newspaper published  
7 in the judicial district, or by posting in at least three public  
8 places to be designated by the judge in his order, one of which  
9 shall be at or adjacent to the post office nearest the residence  
10 of the decedent at the time of his death if his residence was  
11 in the state, the posting to be for such length of time as may  
12 be considered reasonable but not less than 10 days before the  
13 date of the hearing. Any person interested may contest the  
14 petition on the grounds of incompetency of the petitioner or  
15 assert his own right to the administration and pray that letters  
16 be issued to him. The notice and publication or posting is not  
17 required of a petition of an executor for letters testamentary.

18 Sec. 5.07. HUSBAND'S RIGHT TO ADMINISTER WIFE'S ESTATE. If  
19 the deceased was a married woman the administration of her estate  
20 is in all cases granted to her husband, if he is qualified and  
21 competent for the trust and applies therefor within 30 days  
22 from her decease, unless by force of a marriage settlement or  
23 otherwise she has made some testamentary disposition of her  
24 property which renders it necessary and proper to grant the  
25 administration to some other person.

26 Sec. 5.08. SPECIAL ADMINISTRATORS. When for any reason  
27 there is a delay in issuing letters testamentary or of adminis-  
28 tration, and the property of the deceased is in danger of being  
29 lost, injured, or depreciated, the judge may appoint a special

1 administrator to take charge of the estate, who shall qualify  
2 in like manner and have the powers and perform the duties of  
3 an administrator generally, except that he is not authorized  
4 to pay the debts of or otherwise discharge any obligations against  
5 the deceased. Upon the issuing of letters testamentary or of  
6 administration the powers of the special administrator cease.

7       Sec. 5.09. WILL PROVED AFTER ADMINISTRATION GRANTED, OR WILL  
8 SET ASIDE AFTER PROBATE. If, after administration has been  
9 granted upon an estate, a will of the deceased is found and  
10 proven, the letters of administration shall be revoked and letters  
11 testamentary or of administration with the will annexed shall  
12 be issued. If, after a will has been proven and letters testa-  
13 mentary or of administration with the will annexed have been  
14 issued thereon, the will is set aside, declared void or inopera-  
15 tive, the letters shall be revoked and letters of administration  
16 issued.

17       Sec. 5.10. WHEN BOND OR UNDERTAKING REQUIRED. No executor  
18 or administrator is authorized to act as such until he files with  
19 the judge having jurisdiction of the estate an undertaking in  
20 a sum not less than the equal the probable value of the estate,  
21 with one or more sufficient sureties, to be approved by the  
22 judge, to be void upon condition that the executor or administrator  
23 faithfully performs the duties of his trust according to law.  
24 However, when by the terms of his will a testator expressly  
25 declares that no bonds shall be required of his executor, the  
26 executor may act upon taking an oath to faithfully fulfill the  
27 trust without filing the undertaking mentioned in this section.  
28 But the executor is criminally and civilly liable as other  
29 executors and administrators are for any dereliction of duty.

1           Sec. 5.11. WHEN SURETIES MAY BECOME SEVERALLY LIABLE FOR  
2 PORTION OF PENAL SUM. When the penal sum mentioned in the  
3 undertaking prescribed in sec. 5.10 exceeds \$2,000, three or more  
4 sureties may become severally liable for portions of the sum if  
5 the aggregate sum for which the sureties become liable equals the  
6 penal sum required in the undertaking.

7           Sec. 5.12. NEW UNDERTAKING. When the amount of an execu-  
8 tor's or administrator's undertaking is insufficient, or the  
9 sureties therein or either of them, become nonresidents of the  
10 state, or are likely to or have become insolvent, the executor  
11 or administrator is required to give a new and sufficient under-  
12 taking. The application for the new undertaking may be made by  
13 an heir, legatee, devisee, creditor, or other person interested  
14 in the estate, and in the manner prescribed in sec. 5.14(a)  
15 for the removal of executors and administrators.

16           Sec. 5.13. EFFECT OF NEW UNDERTAKING OR FAILURE TO GIVE.  
17 The new undertaking, when given and received, discharges the  
18 sureties in the former undertaking from any liabilities on  
19 account of their principal arising from his acts or omissions  
20 subsequent thereto. When a new undertaking is ordered, if the  
21 executor or administrator fails to comply within five days  
22 from the entry thereof, or such further time as the order may  
23 prescribe, from that time on the authority of the executor or  
24 administrator ceases and he is considered removed and his  
25 letters revoked.

26           Sec. 5.14. REMOVAL OF EXECUTOR OR ADMINISTRATOR. (a) An  
27 heir, legatee, devisee, creditor, or other person interested in  
28 the estate may apply for the removal of an executor or  
29 administrator who has become of unsound mind or been convicted

1 of a felony or a misdemeanor involving moral turpitude, or who  
2 has in any way been unfaithful to or neglectful of his trust, to  
3 the probable loss of the applicant. The application shall be  
4 by petition and upon notice to the executor or administrator,  
5 and if the court finds the charge to be true it shall make an  
6 order removing the executor or administrator and revoke his  
7 letters.

8 (b) If an executor, excepting one appointed under the  
9 provisions of sec. 5.02, or an administrator becomes a nonresident  
10 of the state, he may be removed and his letters revoked in the  
11 manner prescribed in (a) of this section, except that the  
12 notice may be given by publication or posting for such time as  
13 the judge may direct.

14 Sec. 5.15. PROCEDURE FOR REMOVAL OF EXECUTOR OR ADMINIS-  
15 TRATOR. When it appears probable to the judge that any of the  
16 causes for removal of an executor or administrator exist or  
17 have transpired, as specified in sec. 5.14(a), it is the duty  
18 of the judge to cite the executor or administrator to appear  
19 and show cause why he should not be removed, and if he fails to  
20 appear or show sufficient cause an order shall be made removing  
21 him and revoking his letters.

22 Sec. 5.16. SUPERVISORY CONTROL OF COURT. It is the duty of  
23 the judge to exercise a supervisory control over the executor or  
24 administrator, to the end that he faithfully and diligently  
25 performs the duties of his trust according to law.

26 Sec. 5.17. COEXECUTORS OR COADMINISTRATORS. When an  
27 executor or administrator dies, resigns, or is removed, if there  
28 is a coexecutor or coadministrator, he shall thereafter exercise  
29 the powers and perform the duties of the trust. If all the

1 executors or administrators die, resign, or are removed,  
2 administration of the estate remaining unadministered is granted  
3 to those next entitled, if they are competent and qualified.

4       Sec. 5.18. RIGHT OF SURVIVING OR REMAINING REPRESENTATIVE.  
5 The surviving or remaining executor or administrator, or the new  
6 administrator, as the case may be, is entitled to the exclusive  
7 administration of the estate, and for that purpose may maintain  
8 any necessary and proper action or proceeding on account thereof  
9 against the executor or administrator ceasing to act, or against  
10 his sureties or representatives.

11       Sec. 5.19. RESIGNATION OF EXECUTOR OR ADMINISTRATOR. The  
12 judge, in his discretion, may allow an executor or administrator  
13 to resign when it appears that the executor or administrator is  
14 not in default in any matter connected with the duties of his  
15 trust. The executor or administrator shall pay the cost of the  
16 proceeding, and, if the application is allowed, he shall surrender  
17 his letters to be canceled, and his powers as such cease from  
18 that time forward.

19       Sec. 5.20. POSSESSION AND CONTROL OF DECEDENT'S PROPERTY.  
20 The executor or administrator is entitled to the possession and  
21 control of the property of the deceased, both real and personal,  
22 and to receive the rents and profits from the property until the  
23 administration is completed, or the same is surrendered to the  
24 heirs or devisees by order of the judge. However, where the  
25 property or any portion of it is in possession of a third  
26 person, by virtue of a valid subsisting lease or bailment, the  
27 possession and control of the executor or administrator is  
28 subordinate to the right of the lessee or bailee. During the time  
29 the property is in the possession or control of the executor or

1 administrator, it is his duty to keep it in repair and preserve  
2 it from loss or decay as far as possible.

3       Sec. 5.21. PROPERTY CONCEALED OR WRONGFULLY DISPOSED OF. (a)  
4 When it appears probable from the affidavit of an executor or  
5 administrator, or of an heir or other person interested in the  
6 estate, that a person has concealed or in any way secreted or  
7 disposed of property of the estate, or a writing relating or  
8 pertaining thereto, or that the person has knowledge of any such  
9 property or writing being so concealed, secreted, or disposed of  
10 and refuses to disclose the same to the executor or administrator,  
11 the judge, upon the application of the executor or administrator,  
12 may cite the person to appear and answer under oath concerning  
13 the matter charged.

14       (b) The examination may be oral or upon written interroga-  
15 tories filed by the applicant, but in either case the answers of  
16 the persons cited shall be reduced to writing and subscribed by  
17 him and filed. If the person is not in the judicial district  
18 where administration is granted, the proceeding may be either  
19 before the judge of that judicial district or before the judge  
20 of the judicial district where the person resides or may be found.  
21 In the latter case a certified copy of the written interrogatories  
22 if any, and the examination or other proceeding thereon, or  
23 connected therewith, shall be filed with the judge where  
24 administration is granted.

25       (c) If the person cited refuses to appear or answer the  
26 interrogatories which are allowed to be put to him touching the  
27 matter charged, he may be punished for a contempt or may at  
28 once be committed to jail by the warrant of the judge, to remain  
29 there in close custody until he submits to the order of the judge.

1           Sec. 5.22. RIGHT TO COMPEL ACCOUNTING. The judge, upon the  
2 application of the executor or administrator, may cite any person  
3 who has been entrusted with any of the property of the deceased to  
4 appear and answer concerning the property when it appears  
5 probable that the person refuses or neglects to render to the  
6 executor or administrator a true account thereof. The application  
7 is made and the proceeding conducted in the manner prescribed  
8 in sec. 5.21 concerning property or writings alleged to be  
9 concealed, and with like effect.

10           Sec. 5.23. CONVERSION OF DECEDENT'S PROPERTY BEFORE  
11 ADMINISTRATION. If a person, before administration is granted,  
12 embezzles, aliens, or in any way converts to his own use any of  
13 the property of a deceased person, he is liable to the executor  
14 or administrator in double the amount of damages which may be  
15 assessed therefor.

16           Sec. 5.24. INVENTORY AND APPRAISEMENT OF PARTNERSHIP  
17 PROPERTY. The executor or administrator of a deceased person who  
18 was a member of a copartnership shall include in the inventory  
19 of the person's estate, in a separate schedule, the whole of  
20 the property of the partnership. The appraisers shall estimate  
21 the value of the partnership property and also the value of the  
22 person's individual interest in the partnership property after  
23 the payment or satisfaction of all the debts and liabilities of  
24 the partnership.

25           Sec. 5.25. CUSTODY AND CONTROL OF PARTNERSHIP PROPERTY.  
26 After the inventory is taken the partnership property shall be  
27 in the custody and control of the executor or administrator  
28 for the purpose of administration, unless the surviving partner,  
29 within five days from the filing of the inventory, or such

1 further time as the judge may allow, applies for the administration  
2 thereof and gives the undertaking therefor hereinafter prescribed.

3       Sec. 5.26. POWERS AND DUTIES OF SURVIVING PARTNER. If  
4 the surviving partner applies for it, as provided in sec. 5.25,  
5 he is entitled to the administration of the partnership estate  
6 if he has the qualifications and competency required for a  
7 general administrator. He is denominated an administrator of  
8 the partnership, and his powers and duties extend to the settle-  
9 ment of the partnership business generally and the payment or  
10 transfer of the interest of the deceased in the partnership  
11 property remaining after the payment of satisfaction of the  
12 debts and liabilities of the partnership to the executor or  
13 general administrator within six months from the date of his  
14 appointment, or such further time, if necessary, as the judge  
15 may allow. In the exercise of his powers and the performance  
16 of his duties the administrator of the partnership is subject  
17 to the same limitations and liabilities and control and  
18 jurisdiction of the court as a general administrator.

19       Sec. 5.27. UNDERTAKING OF ADMINISTRATOR OF PARTNERSHIP. The  
20 undertaking of the administrator of the partnership shall be in  
21 a sum not less than double the value of the partnership property  
22 and is given in the same manner and with the same effect as the  
23 undertaking of a general administrator.

24       Sec. 5.28. EXECUTOR OR GENERAL ADMINISTRATOR AS ADMINISTRA-  
25 TOR. In case the surviving partner is not appointed administrator  
26 of the partnership, the administration devolves upon the  
27 executor or general administrator. Before entering upon the  
28 duties of the administration the executor or general administra-  
29 tor shall give an additional undertaking in double the value

1 of the partnership property.

2 Sec. 5.29. DUTY OF SURVIVING PARTNER TOWARD ADMINISTRATOR.

3 (a) Every surviving partner, on the demand of an executor or  
4 administrator of a deceased partner, shall exhibit and give  
5 information concerning the property of the partnership at the  
6 time of the death of the deceased partner, so that the same may  
7 be correctly inventoried and appraised. In case the administra-  
8 tion of the partnership property devolves upon the executor  
9 or administrator, the survivor shall deliver or transfer to him  
10 on demand all the property of the partnership, including all  
11 books, papers, and documents pertaining to the same, and shall  
12 afford him all reasonable information and facilities for the  
13 performance of the duties of his trust.

14 (b) A surviving partner who refuses or neglects to comply  
15 with the requirements of (a) of this section may be cited to  
16 appear before the judge, and unless he show cause to the contrary  
17 the judge shall require him to comply with (a) of this section  
18 in the particular complained of.

19 Sec. 5.30. VARIANCE WITH UNIFORM ACT. Sections 5.24 - 5.29,  
20 shall govern, notwithstanding any conflict between these sections  
21 and the Uniform Partnership Act, secs. 28-1-42 and 28-1-59,  
22 ACLA 1949.

23 Sec. 5.31. ALL CAUSES OF ACTION SURVIVE. All causes of  
24 action by one person against another, whether arising on contract  
25 or otherwise, except those involving defamation of character,  
26 survive to the personal representatives of the former and  
27 against the personal representative of the latter, but this  
28 shall not be construed so as to abate the action mentioned in  
29 sec. 55-3-13, ACLA 1949 or to defeat or prejudice the right of

1 action given by sec. 55-3-8, ACLA 1949. The executors or  
2 administrators may maintain an action thereon against the party  
3 against whom the cause of action accrued, or, after his death,  
4 against his personal representatives.

5       Sec. 5.32 ACTION FOR WRONGFUL DEATH. When the death of a  
6 person is caused by the wrongful act or omission of another, the  
7 personal representatives of the former may maintain an action  
8 therefor against the latter, if the former might have maintained  
9 an action, had he lived, against the latter for an injury done by  
10 the same act or omission. The action shall be commenced within  
11 two years after the death, and the damages therein shall be  
12 such damages as the court or jury may consider fair and just and  
13 the amount recovered, if any, shall be exclusively for the  
14 benefit of the decedent's husband or wife and children when he  
15 or she leaves a husband, wife or children, him or her surviving,  
16 or other dependents. When the decedent leaves no husband, wife  
17 or children, him or her surviving, or other dependents, the  
18 amount recovered shall be administered as other personal property  
19 of the deceased person but shall be limited to pecuniary loss.  
20 When the plaintiff prevails, the trial court shall determine  
21 the allowable costs and expenses of the action and may, in its  
22 discretion, require notice and hearing thereon. The amount  
23 recovered shall be distributed only after payment of all costs  
24 and expenses of suit and debts and expenses of administration.

25       Sec. 5.33. COREPRESENTATIVES CONSIDERED AS ONE PERSON. In  
26 an action against several executors or administrators they  
27 shall all be considered as one person, representing their  
28 testator or intestate, and judgment may be given and execution  
29 issued against all of them who are defendants in the action,

1 although the summons is served only on part of them, in the  
2 same manner and with like effect as if served on all, except  
3 as provided in sec. 5.34.

4 Sec. 5.34. WHEN JUDGMENT DEEMED EVIDENCE OF ASSETS. When a  
5 judgment is given against an executor or administrator for want  
6 of an answer the judgment is not to be considered evidence of  
7 assets in his hands unless it appears that the complaint alleged  
8 assets and that the summons was served upon him.

9 Sec. 5.35. INVENTORY AS EVIDENCE. (a) In an action against  
10 executors or administrators in which the fact of their having  
11 administered the estate of their testator or intestate or any  
12 part of it is put in issue and the inventory of the property of  
13 the deceased returned by them is given in evidence the same may  
14 be contradicted or avoided by evidence that

15 (1) property has been omitted in the inventory or  
16 was not returned therein at its full value or that since the  
17 return thereof the property has increased in value; and

18 (2) the property has perished or been lost without the  
19 fault of the executors or administrators or that it has been  
20 fairly and duly sold by them at a less price than the value  
21 so returned, or that since the return of the inventory the  
22 property has deteriorated in value.

23 (b) In the action the defendants cannot be charged for  
24 any things in action specified in their inventory unless it  
25 appears that they have been collected or with due diligence  
26 might have been collected.

27 Sec. 5.36. EXECUTOR OF HIS OWN WRONG. No person is liable  
28 to an action as executor of his own wrong for having taken,  
29 received, or interfered with the property of a deceased person,

1 but is responsible to the executors or administrators of the  
2 deceased person for the value of all property which he has  
3 taken or received and for all injury caused by his interference  
4 with the estate of the deceased.

5       Sec. 5.37. TIME WITHIN WHICH ACTIONS BROUGHT. An action  
6 may be commenced against an executor or administrator at any  
7 time after the expiration of six months from the granting of  
8 letters testamentary or of administration, and until the final  
9 settlement of the estate and discharge of the executor or  
10 administrator from the trust, and not otherwise.

11       Sec. 5.38. PRESENTATION OF CLAIM AS PREREQUISITE TO ACTION.  
12 The action shall not be commenced until the claim of the plaintiff  
13 has been presented to the executor or administrator and dis-  
14 allowed by him. If the claim is presented after the expiration  
15 of the period of six months mentioned in secs. 12.01 and 12.02,  
16 the executor or administrator in an action therefor shall only  
17 be liable to the extent of the assets in his hands at the  
18 time the summons is served upon him.

19       Sec. 5.39. PROVISIONAL REMEDIES. In an action against an  
20 executor or administrator as such the provisional remedies of  
21 arrest and attachment shall not be allowed on account of the  
22 acts of his testator or intestate, but for his own acts as  
23 executor or administrator the remedies shall be allowed for the  
24 same causes and in like manner and with like effect as in actions  
25 generally.

26       Sec. 5.40. DUTY TO PETITION FOR LEAVE TO PROSECUTE. When  
27 the assets of the estate are insufficient to satisfy the funeral  
28 charges, expenses of administration, and the claims against the  
29 estate, and the deceased has, in his lifetime, made or suffered



EQUITABLE ACTIONS

1  
2           Sec. 6.01. RIGHT OF ACTION. The provisions of secs. 5.31 -  
3 5.42 apply to actions of an equitable nature by and against  
4 executors and administrators except as in this article otherwise  
5 or specially provided. Secs. 5.31 and 5.32 do not so apply.  
6 All causes of actions of an equitable nature by one person  
7 against another, however arising, survive to the personal repre-  
8 sentatives of the former and against the personal representatives  
9 of the latter. When the cause of action survives, as herein  
10 provided, the executors or administrators may maintain an action  
11 of an equitable nature thereon against the party against whom  
12 the cause of action accrued, or after his death against his  
13 personal representatives.

14           Sec. 6.02. ACTION AGAINST NEXT OF KIN FOR SHARES RECEIVED.

15 (a) The next of kin of a deceased person are liable to an action  
16 by a creditor of the estate to recover the distributive shares  
17 received out of the estate, or so much thereof as may be neces-  
18 sary to satisfy his debt. The action may be against all the next  
19 of kin jointly or against one or more of them severally.

20 (b) The plaintiff may recover the value of all the assets  
21 received by all the defendants in the action if necessary to  
22 satisfy his debt. The amount of the recovery shall be apportioned  
23 among the defendants, in proportion to the value of the assets  
24 received by each. No allowance or deduction shall be made  
25 from the amount on account of there being other next of kin  
26 to whom assets have also been delivered.

27           Sec. 6.03. ACTION BY NEXT OF KIN FOR CONTRIBUTION. Any  
28 one of the next of kin against whom a recovery is had under  
29 sec. 6.02(b) may maintain an action against all the other next

1 of kin of the deceased person to whom any such assets have been  
2 delivered jointly, or against any of them separately, for a  
3 just and equal contribution, and may recover of each defendant  
4 such amount as is in the same proportion to the whole sum  
5 collected of the plaintiff as to the value of the assets  
6 delivered to the defendant bore to the value of all the assets  
7 delivered to all the next of kin of the deceased.

8       Sec. 6.04. ACTION AGAINST LEGATEES FOR LEGACY RECEIVED. (a)  
9 Legatees are liable to an action by a creditor of the testator  
10 to recover the value of a legacy received by them. The action  
11 may be maintained against all the legatees jointly or against  
12 one or more of them severally. The plaintiff shall not recover  
13 unless he shows that

14               (1) no assets were delivered by the executor or  
15 administrator of the testator to his next of kin;

16               (2) the value of the assets has been recovered by  
17 some other creditor; or

18               (3) the assets are not sufficient to satisfy the  
19 demand of the plaintiff.

20       (b) Under (a)(3) of this section the plaintiff recovers  
21 only the deficiency. The whole amount which the plaintiff  
22 recovers shall be apportioned among all the legatees of the  
23 testator in proportion to the value of their legacies, respec-  
24 tively, and his proportion shall be recovered of each legatee  
25 only.

26       Sec. 6.05. APPORTIONMENT OF COSTS IN ACTION. In an action  
27 against several next of kin or legatees jointly for assets  
28 delivered to them, if a recovery is had against the next of  
29 kin or legatees, the cost of the action shall be apportioned

1 among the several defendants in proportion to the amount recovered  
2 against each of them.

3       Sec. 6.06. SATISFACTION OF JUDGMENT. A decree against  
4 several next of kin or legatees shall be satisfied as to any  
5 one of them by the payment or satisfaction of the amount recovered  
6 against the defendant.

7       Sec. 6.07. ACTION FOR DEBTS OF DECEDENT. (a) Heirs and  
8 devisees are liable to an action by a creditor of a deceased  
9 person to recover the debt of their ancestor or testator to  
10 the extent of the value of real property inherited by or devised  
11 to them. If the action is against the heirs, all the heirs who  
12 are liable shall be made parties to the action.

13       (b) The heirs are not liable for the debt unless it appears  
14 that the personal assets of the deceased were insufficient to  
15 discharge it, or that after due proceedings the creditor has  
16 been unable to collect the debt from the personal representatives  
17 of the deceased, or from his next of kin or legatees. If the  
18 personal assets were sufficient to pay a part of the debt, or in  
19 case a part thereof has been collected, the heirs of the deceased  
20 person are liable for the residue.

21       (c) The provisions of (b) of this section do not affect the  
22 liability of heirs for a debt of their ancestor where the debt  
23 was by his will expressly charged exclusively on the real  
24 property descended to the heirs, or where the debt is by the will  
25 expressly directed to be paid out of the real property descended  
26 before resorting to the personal property.

27       Sec. 6.08. PRIORITY OR PREFERENCE RIGHTS. Where the next  
28 of kin, legatees, heirs, and devisees are liable for the debts  
29 of their ancestors, as herein provided, they are liable therefor

1 without other priority or preference than the ancestors would be.

2       Sec. 6.09. ENFORCEMENT OF JUDGMENTS. A judgment against  
3 an heir or devisee on account of the debt of his ancestor or  
4 testator may be enforced by execution against the real property  
5 shown to have descended to the heir or devisee, and not otherwise.  
6 The judgment has preference as a lien on the real property to  
7 a judgment or decree obtained against the heir or devisee on  
8 account of a debt or demand due in his own right.

9       Sec. 6.10. ENFORCEMENT OF JUDGMENT WHERE PROPERTY ALIENED.  
10 When it appears in the action that before the commencement of  
11 the action the heir or devisee has aliened the real property  
12 descended to him, or any part of it, he is personally liable  
13 for the value of the property so aliened, and a judgment may be  
14 given against him for it, to be enforced by execution as if the  
15 judgment were for his own debt. No real property aliened in  
16 good faith and for a valuable consideration by an heir or devisee  
17 before an action is commenced against him is liable to an  
18 execution for the debt of his ancestor or testator, or in any  
19 manner affected by the judgment therefor against the heir or  
20 devisee.

21       Sec. 6.11. APPORTIONMENT OF JUDGMENT. In an action against  
22 several heirs jointly, or several devisees jointly, the amount  
23 which the plaintiff recovers must be apportioned among all the  
24 heirs of the ancestor or devisees of the testator in proportion  
25 to the value of the real property descended or devised, and only  
26 that portion may be recovered of each heir or devisee.

27       Sec. 6.12. DEVISEE'S LIABILITY. A devisee is not liable to  
28 the creditor of his testator unless it appears that the personal  
29 assets of the testator and the real property descended to his

1 heirs were insufficient to discharge the debt, or unless it  
2 appears that after due proceedings the creditor has been unable  
3 to recover the debt, or any part of it, from the personal rep-  
4 resentatives of the testator or from his next of kin, legatees,  
5 or heirs.

6 Sec. 6.13. LIMITATION OF RECOVERY. In either of the cases  
7 specified in sec. 6.12 the amount of the deficiency of the  
8 personal assets, and of the real property descended, to satisfy  
9 the debt of the plaintiff, or the amount which the plaintiff  
10 may have failed to recover from the personal representatives of  
11 the testator, his next of kin, legatees, and heirs, may be  
12 recovered of the devisees of the testator, to the extent of the  
13 value of the real property devised to them respectively.

14 Sec. 6.14. APPLICATION OF SECS. 6.12 AND 6.13. Secs. 6.12  
15 and 6.13 do not affect the liability of devisees for a debt of  
16 their testator where the debt was by his will expressly charged  
17 exclusively upon the real property devised, or by the terms of  
18 the will made payable by the devisee, or out of the real property  
19 devised, before resorting to the personal property or to any  
20 other real property descended or devised.

21 Sec. 6.15 DEFINITION OF DEBT. As used in this article  
22 "debt" is construed to include all claims for the payment of money  
23 which survive against the personal representatives of the  
24 deceased, as provided in sec. 6.01.

## 25 ARTICLE VII

### 26 INVENTORY AND APPRAISEMENT

27 Sec. 7.01. TIME FOR FILING INVENTORY. An executor or  
28 administrator shall, within one month from the date of his  
29 appointment, or such further time as the judge may allow, make

1 and file with the judge an inventory, verified by his oath, of  
2 all the real and personal property of the deceased which comes  
3 to his possession or knowledge.

4       Sec. 7.02. CONTENTS OF INVENTORY. The inventory shall  
5 contain an account of all money belonging to the deceased, or a  
6 statement that none has come to the possession or knowledge of  
7 the executor or administrator. It shall also contain a statement  
8 of all debts due the deceased, the written evidence thereof,  
9 and the security for the debts, if any exist, specifying the  
10 name of each debtor, the date of each written evidence of debt,  
11 the security therefor, the sum originally payable, the endorse-  
12 ments thereon, if any, and their dates, and the sum appearing  
13 then to be due thereon.

14       Sec. 7.03. APPRAISEMENT. Before the inventory is filed  
15 the property specified in the inventory shall be appraised at  
16 its true cash value by three disinterested and competent persons,  
17 who shall be appointed by the judge. If any part of the property  
18 is in a judicial district other than the one where administration  
19 is granted, the appraisers may be appointed by that judge or  
20 by the judge of the judicial district where the property is  
21 located. In the latter case a certified copy of the order of  
22 appointment shall be filed with the inventory.

23       Sec. 7.04. OATH OF APPRAISERS. Before making the appraise-  
24 ment the appraisers shall each make and subscribe an affidavit,  
25 to be filed with the inventory, to the effect that he will  
26 honestly and impartially appraise the property which is  
27 exhibited to him according to the best of his knowledge and  
28 ability.

29       Sec. 7.05. APPRAISEMENT OF ARTICLES OF PROPERTY. The

1 appraisers shall appraise each article of property separately  
2 and set down the value thereof in dollars and cents opposite the  
3 entry of the article in the inventory. Money, of whatever  
4 nature, that is legal tender is to be appraised at its nominal  
5 value. Debts of all descriptions or kinds are to be appraised  
6 at that sum which, in the judgment of the appraisers may be  
7 realized from them by due process of law. When the appraisement  
8 is completed the inventory shall be signed by the appraisers.

9       Sec. 7.06. EXECUTOR'S LIABILITY ON CLAIM IN TESTATOR'S  
10 FAVOR. The naming of an executor in a will does not operate to  
11 discharge the executor from any claim which the testator had  
12 against him, but the claim shall be included in the inventory.  
13 If the person so named afterwards takes upon himself the admin-  
14 istration of the estate he shall be liable for the sum as for  
15 so much money in his hands at the time the claim became due  
16 and payable. Otherwise he is liable for the claim as any  
17 other debtor of the deceased.

18       Sec. 7.07. DISCHARGE OR BEQUEST OF CLAIM BY WILL. The  
19 discharge or bequest in a will of a claim of the testator against  
20 a person named as executor therein, or against any other person,  
21 is, as against the creditors of the deceased, invalid. The  
22 claim shall be included in the inventory, and for all purposes  
23 of administration is considered and treated as a specific  
24 legacy of that amount.

25       Sec. 7.08. PROPERTY DISCOVERED AFTER FILING INVENTORY. If,  
26 after the filing of the inventory, property not mentioned in  
27 the inventory comes to the knowledge or possession of the  
28 executor or administrator, it is his duty to immediately make  
29 an inventory of the property and cause it to be appraised in

1 the manner prescribed in this Act, and file the same with the  
2 judge.

3 ARTICLE VIII

4 SETTLEMENT OF ESTATES WITHOUT ADMINISTRATION

5 Sec. 8.01. PROCEDURE IN NONINTERVENTION WILLS. Where the  
6 last will and testament of a deceased provides that the estate  
7 shall be settled without the intervention of any court, title of  
8 decedent passes to the devisees or heirs on death. It is only  
9 necessary that the executor, or person or corporation nominated  
10 in his place if he fails to serve, submit the will to the court,  
11 prove the same, secure letters testamentary, file an inventory,  
12 and submit proof of solvency. Thereafter the estate shall be  
13 managed and settled without the intervention of any court.  
14 However, notice to creditors requiring them to submit their claims  
15 within three months shall be published once each week for four  
16 weeks in a newspaper of general circulation within the judicial  
17 district where the will is probated. The party probating the  
18 will may file a final account with the court if he desires and  
19 he shall make a report of any inheritance tax due the state or  
20 the United States and pay the same from estate funds.

21 ARTICLE IX

22 ADMINISTRATION OF SMALL ESTATES

23 Part 1. Estates of \$2,000 or less

24 Sec. 9.01. COLLECTION OF PERSONAL PROPERTY BY DISTRIBUTEES.  
25 The distributees of an estate are entitled to the personal  
26 property of the estate without awaiting the appointment of a  
27 personal representative or the probate of a will when  
28 (1) no petition for the appointment of a personal  
29 representative is pending or has been granted, and

- 1 (2) 30 days have elapsed since the death of the  
2 decedent, and  
3 (3) the value of the entire assets of the estate  
4 does not exceed \$2,000, and  
5 (4) there are no known creditors, and no inheritance  
6 tax due, and  
7 (5) there is furnished to any person owing any money,  
8 or having custody of any property or evidence of interest in  
9 property, an affidavit showing the existence of the foregoing  
10 conditions and the right of the distributees to receive the  
11 money or property or to have the evidences transferred.

12 Sec. 9.02. DETERMINATION OF TITLE TO REAL PROPERTY. (a)  
13 The distributees of an estate are entitled to the real property  
14 of the estate and may make record evidence of title without the  
15 appointment of a personal representative if

- 16 (1) no petition for the appointment of a personal  
17 representative is pending or has been granted, and  
18 (2) 30 days have elapsed since the death of the  
19 decedent, and  
20 (3) the value of the entire assets of the estate does  
21 not exceed \$2,000, and  
22 (4) there are no known creditors, and no inheritance  
23 tax due, and  
24 (5) there is furnished to any person having custody  
25 of any real property, or acting as registrar or transfer agent  
26 of any evidence of interest, property or right, an affidavit  
27 showing the existence of the foregoing conditions and the right  
28 of the distributees to receive such property or to have such  
29 evidence transferred, and

1 (6) there is recorded in the office of the recorder  
2 of each recording district where the real property is situated,  
3 an affidavit, executed by any person having knowledge of the  
4 facts, showing the existence of the foregoing conditions,  
5 describing the real property, naming the persons entitled thereto,  
6 and showing their right to succeed to the property, and stating  
7 that there are no unsecured claims against the decedent or  
8 his estate including the expenses of the funeral and last illness,  
9 and

10 (7) a notice is published in a newspaper of general  
11 circulation in each judicial district in which the property is  
12 located not less than once a week for four successive weeks;  
13 the notice shall describe the real property, state that an  
14 affidavit has been recorded on behalf of the persons who claim  
15 to be entitled to succeed to the real property showing the  
16 names of the distributees and their right to succeed to the  
17 property, and notify all persons having claims against the  
18 decedent or his estate to file a petition for the appointment of  
19 a personal representative within three months after the first  
20 publication of the notice or be barred from asserting any right  
21 or claim against the real property described, and

22 (8) there is recorded in the office of the recorder  
23 in each recording district in which the property is situated,  
24 proof of publication of the notice, and

25 (9) no petition for the appointment of a personal  
26 representative is filed within three months after the first  
27 publication of the notice.

28 (b) The occurrence of the above conditions has the same  
29 effect in establishing the right of distributees to succeed

1 to the real property as if complete administration had occurred;  
2 but nothing in this section affects the rights of secured  
3 creditors with respect to any real property or the right of the  
4 state to collect inheritance tax.

5       Sec. 9.03. EFFECT OF AFFIDAVIT. The person making payment,  
6 delivery, transfer, or issuance pursuant to the affidavit  
7 described in secs. 9.01 and 9.02 is released to the same extent  
8 as if the person had made payment, delivery, transfer, or  
9 issuance to a personal representative of the decedent. The  
10 person is not required to see to the application of the payment,  
11 delivery, transfer, or issuance, or to inquire into the truth  
12 of any statement in the affidavit. The distributees to whom  
13 payment, delivery, transfer, or issuance is made are answerable  
14 to any person having a prior right and are accountable to any  
15 personal representative subsequently appointed.

16       Sec. 9.04. SUIT BY DISTRIBUTEES. If the person to whom the  
17 affidavit described in secs. 9.01 and 9.02 is delivered refuses  
18 to pay, deliver, transfer, or issue the property as above  
19 provided, it may be recovered or compelled in an action brought  
20 for such purpose by or on behalf of the distributees entitled  
21 thereto, upon proof of the facts required to be stated in the  
22 affidavit.

23       Sec. 9.05. ADMINISTRATION DIRECTED BY COURT. When a judge  
24 receives information that a person has died in his judicial  
25 district leaving an estate of \$2,000 or less and no qualified  
26 person has appeared to take charge of the assets, the judge may  
27 immediately appoint some person, corporation, or attorney to  
28 administer the estate in the manner provided for in administra-  
29 tion of estates of \$2,000 or less.

1 Part 2. Estates of \$6,000, or less

2 Sec. 9.06. NOTICE TO CREDITORS. If in the administration  
3 of the estate of a deceased person in the state the appraisal  
4 of the property shows the value of all of the property of the  
5 estate is \$6,000 or less, the judge may in his discretion order  
6 that no notice to creditors be published as is required by law  
7 in the administration of estates of deceased persons, and the  
8 judge may order that the notices to creditors be posted instead  
9 in three public places in the judicial district in which the  
10 estate is being administered. The posted notices shall require  
11 all persons having claims against the estate to present them  
12 to the executor or administrator with proper vouchers within  
13 60 days from the date of posting the notices.

14 Sec. 9.07. SALE, MORTGAGE, OR LEASE OF PROPERTY. (a) At  
15 any time after the expiration of 10 days from the date notices  
16 to creditors are posted, if it appears to the judge that the  
17 real or personal property, or both, of the estate should be sold  
18 for any of the purposes or reasons specified in the law governing  
19 the general administration of estates of deceased persons in  
20 the state, the judge, without notice or citation to the heirs,  
21 devisees, creditors, or other persons interested in the estate,  
22 may order all or any of the property of the estate, both real  
23 and personal, to be sold for cash at the best price obtainable.  
24 The real property shall be sold upon posting notice thereof in  
25 three public places within the judicial district in which it is  
26 situated for a period of not less than 20 days before the day  
27 of sale. The personal property may be sold at public or private  
28 sale, as the judge considers best. If he orders it sold at  
29 public sale, notice thereof shall be given as in the case of

1 sale of personal property on execution. All notices of sale  
2 shall contain a description of the property to be sold and the  
3 time, place, and conditions of the sale.

4 (b) The executor or administrator shall make return of  
5 each sale within 10 days after the date of the sale.

6 (c) The judge may permit the executor or administrator to  
7 lease or mortgage any property of the estate when he considers  
8 it in the best interests of the estate.

9 Sec. 9.08. FINAL REPORT AND ACCOUNT. (a) At the expira-  
10 tion of 60 days from the date of posting the notices to creditors  
11 the executor or administrator shall file in court his final  
12 report and account with proper vouchers. The report and account  
13 shall be in the form and contain the same information as is  
14 required by law in estates having the value of more than \$6,000.  
15 Upon the filing of the report and account the judge shall require  
16 that notice of it be given by posting notices to that effect  
17 in three public places in the judicial district. The notices  
18 shall also state that at a certain time not less than 10 days  
19 after the date of posting the notices a hearing will be had by  
20 said judge upon the final report and account and of any objections  
21 thereto.

22 (b) Upon the day appointed the judge shall examine into the  
23 final report and account and shall hear all objections thereto  
24 and give his decision, which shall be final, except in case  
25 of appeal.

26 (c) Every administrator shall include in the final account  
27 the names and addresses, as far as known to him, of the heirs  
28 of the deceased, and the notice of hearing of objections to the  
29 account shall further contain a notification to all that the

1 court at the hearing will adjudicate and decree who are the  
2 heirs and distributees of the deceased person.

3 Sec. 9.09. CLAIMS TO HEIRSHIP. (a) On or before the day  
4 appointed for the hearing of objections to the final account  
5 any person or corporation may file his or its claim to heirship,  
6 and after a full hearing the court shall, either as part of  
7 the decree as to the final account or as a separate decree,  
8 adjudicate and determine who are the heirs of the deceased person  
9 and in what proportion they are entitled to descent and distri-  
10 bution of the estate.

11 (b) The adjudication is conclusive in favor of any  
12 innocent purchaser relying upon its verity, and as to others,  
13 it is prima facie evidence of the facts therein contained. How-  
14 ever, for purposes of appeal, the adjudication is considered  
15 a part of the decree allowing or disallowing the final account.

16 Sec. 9.10. NOTICE OF HEARING ON FINAL REPORT AND ACCOUNT  
17 NOT REQUIRED. Where estates are valued at \$6,000 or less, as  
18 provided in sec. 9.06, it is not necessary to publish a notice  
19 of hearing upon the final report and account of the executor  
20 or administrator as is required in other case. Upon the report  
21 of the executor or administrator, showing that the order or  
22 decision of the judge on the final report and account has been  
23 complied with, the executor or administrator may be discharged.

24 Part 3. Preservation of property

25 Sec. 9.11. PRESERVATION OF PROPERTY BEFORE ADMINISTRATION.  
26 The judge is empowered within his judicial district, when the  
27 occasion requires, before administration, to cause some officer  
28 or person to take charge of and preserve the assets and property  
29 of a deceased person subject to administration under secs.

1 9.01 - 9.10. Upon the appointment of an executor or an adminis-  
2 trator of the estate of a decedent which may have been taken  
3 in charge by a judge hereunder, the judge shall deliver all of  
4 the property of the estate which has come into his possession  
5 to the executor or administrator, together with a statement of  
6 his expense, if any, in connection with the care and preservation  
7 of the property and estate. All necessary expenses incurred  
8 by a judge for the care and preservation of an estate under  
9 this section are a charge against the estate and shall be paid  
10 by the executor or administrator as a part of the expenses of  
11 the administration.

12 ARTICLE X

13 SUPPORT OF THE FAMILY

14 Sec. 10.01. PROVISIONS BEFORE ADMINISTRATION. Until admin-  
15 istration of the estate has been granted and the inventory  
16 filed the widow and minor children of the deceased are entitled  
17 to remain in possession of the homestead, all the wearing  
18 apparel of the family, and household furniture of the deceased,  
19 and also to have a reasonable provision allowed for their sup-  
20 port during the period, to be allowed by the judge.

21 Sec. 10.02. AWARD FOR SUPPORT. (a) After the filing of  
22 the inventory, if the deceased died leaving a widow or minor  
23 children, the judge, upon such notice as may be fixed by him,  
24 upon being satisfied that the funeral expenses, expenses of last  
25 illness and of administration have been paid or provided for,  
26 and upon petition for that purpose, shall award and set off  
27 to the surviving widow or minor children property of the estate  
28 not exceeding the value of \$8,000, exclusive of any mortgage  
29 or mechanic's, laborer's or other lien upon the property so

1 set off, which property so set off shall include the home and  
2 household goods, if any, and all property of the deceased  
3 exempt from execution. The award shall be by an order or  
4 judgment of the judge and vest the absolute title, and there  
5 shall be no further administration upon the portion of the  
6 estate so set off and awarded, but the remainder of the estate,  
7 if any, shall be settled as other estates. The property thus  
8 set apart, if there is a widow, shall be decreed by the judgment  
9 her property to be used and expended by her for the maintenance  
10 of herself and the minor children of the deceased, if any, or  
11 if there is no widow it shall be decreed the property of the  
12 minor child, or if there are more than one, of the minor children  
13 in such proportion as the judge considers proper, taking into  
14 consideration their age and the expense of maintenance, to be  
15 used and expended in the nurture, maintenance and support of  
16 the child or children, until they become of legal age, by the  
17 guardian thereof, as the law may direct. The judgment, decree  
18 and award shall specifically describe the property set apart  
19 and is final, except in case of appeal or for fraud.

20 Sec. 10.03. ADDITIONAL ALLOWANCE. In addition to the  
21 award provided for in sec. 10.02, the judge may make further  
22 reasonable allowance out of the estate as may be necessary for  
23 the maintenance of the widow and minor children, according to  
24 their circumstances and condition in life, during the progress  
25 of the settlement of the estate, as he considers proper, and  
26 the allowance shall be paid by the executor or administrator  
27 in preference to all other charges except funeral charges,  
28 expenses of last illness, and expenses of administration.

29 Sec. 10.04. AWARD OF ENTIRE ESTATE FOR SUPPORT. No other  
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1 or further awards to the widow and children shall be made from  
2 the estate of the deceased for her or their maintenance and  
3 support except that, should the value of the estate not exceed  
4 \$500 over and above \$8,000, the judge may, upon petition filed  
5 for that purpose, by decree provide that the whole estate,  
6 after payment of funeral expenses, expenses of last illness,  
7 and of administration, be set apart for the widow and minor  
8 children in like manner and with like effect as in other cases  
9 under this article providing for the support of the widow and  
10 minor children.

11 ARTICLE XI

12 INSOLVENT ESTATES

13 Sec. 11.01. DETERMINATION AND CLOSING OF INSOLVENT ESTATE.

14 (a) If an intestate leaves neither widow nor minor children,  
15 all the property of the estate is assets in the hands of the  
16 administrator for the payment of funeral expenses, expenses of  
17 last illness, and of administration, payment of the debts or  
18 distribution according to law. However, should it appear to the  
19 judge at the time of filing the inventory or afterwards that  
20 the estate is insolvent and the value of the estate does not  
21 exceed the amount of claims for funeral expenses, expenses of  
22 last illness and of administration, he may issue a citation to all  
23 persons interested in the estate to show cause, if any, why  
24 the estate should not be closed immediately.

25 (b) The citation may be incorporated in the notice of  
26 appointment of administrator and served by publication or post-  
27 ing as provided for service of the notice, and shall require  
28 all persons to appear before the judge at a day and hour certain  
29 which shall be no less than 30 days after the first publication

1 or day of posting the notice, as the case may be, and show  
2 cause why an order should not be issued for the immediate  
3 closing of the estate.

4 (c) If at the hearing on the citation the judge is satis-  
5 fied that the estate is insolvent and the assets of the estate  
6 are not more than sufficient to pay the funeral expenses,  
7 expenses of last illness and expenses of administration, he shall  
8 enter an order that the administrator immediately reduce the  
9 assets of the estate to form for liquidation, and also provide  
10 therein for the immediate sale and disposal of the real and  
11 personal property of the estate in the manner provided by law,  
12 without other or further showing or citation to the heirs or  
13 persons interested in the estate.

14 (d) As soon as possible thereafter, the administrator  
15 shall, on order from the judge, after the payment of the expenses  
16 of administration, pay and discharge all claims for funeral  
17 expenses and expenses of last illness in the order of their  
18 priority, or so much thereof as the assets will discharge, and  
19 the administration shall be closed immediately and the adminis-  
20 trator discharged. Should the value of the estate as realized  
21 by the administrator exceed the amount of the preferred claims  
22 mentioned above, and expenses of administration, the judge  
23 shall direct the surplus to be paid pro rata on the other claims  
24 presented against the estate, if any, in the order of their  
25 priority, and the estate shall be closed immediately and the  
26 administrator discharged.

27 (e) If at any time before the final closing of the estate,  
28 as provided in this section, additional property to that set  
29 out in the inventory is found of value sufficient to satisfy

1 and discharge, in whole or in part, other claims against the  
2 estate than the preferred claims mentioned above, the administra-  
3 tion of the estate shall continue in the usual manner.

4 (f) Nothing contained in this section shall be construed  
5 to prevent the appointment of an administrator de bonis non  
6 when the necessity therefor may appear.

7 ARTICLE XII

8 CLAIMS AGAINST ESTATE

9 Sec. 12.01. NOTICE TO CREDITORS. Every executor or admin-  
10 istrator shall, immediately after his appointment, publish a  
11 notice thereof in some newspaper published in the judicial  
12 district, if there is one, or otherwise in such paper as may be  
13 designated by the judge, as often as once a week for four  
14 successive weeks. In case of publication in a paper published  
15 outside the judicial district, the executor or administrator  
16 shall also post a notice in at least three public places, to  
17 be designated by the judge in his order, one of which shall be  
18 at or immediately adjacent to the post office nearest the  
19 residence of the decedent at the time of his death. The notice  
20 shall require all persons having claims against the estate to  
21 present them, with the proper vouchers, within three months  
22 from the date of the notice, to the executor or the administrator,  
23 at a place within the judicial district specified. Before  
24 the expiration of the three months, a copy of the notice as  
25 published, with the proper proof of publication, shall be  
26 filed with the judge.

27 Sec. 12.02. TIME FOR PRESENTING CLAIMS. A claim not  
28 presented within three months after the first publication of  
29 the notice is not barred, but it cannot be paid until the claims

1 presented within that period have been satisfied, and if the  
2 claim is not then due, or if it is contingent, it shall never-  
3 theless be presented as any other claim. Until the administration  
4 has been completed a claim against the estate not barred by the  
5 statute of limitations may be presented, allowed, and paid out  
6 of any assets then in the hands of the executor or administrator  
7 not otherwise appropriated or liable.

8       Sec. 12.03. VERIFICATION OF CLAIMS. Every claim presented  
9 to the executor or administrator shall be verified by the  
10 affidavit of the claimant or some one on his behalf who has  
11 personal knowledge of the facts, to the effect that the amount  
12 claimed is justly due; that no payments have been made thereon,  
13 except as stated; and that there is no just counterclaim to the  
14 same, to the knowledge of the affiant. When it appears or is  
15 alleged that there is written evidence of the claim, the same  
16 may be demanded by the executor or administrator, or its non-  
17 production be accounted for.

18       Sec. 12.04. ALLOWANCE OR REJECTION OF CLAIMS. (a) When  
19 the claim is presented to the executor or administrator, as  
20 prescribed in sec. 12.03, if he is satisfied that the claim  
21 presented is just, he shall endorse upon it the words "examined  
22 and approved," with the date thereof, and sign the same offi-  
23 cially, and pay the claim in due course of administration. If he  
24 is not so satisfied he shall endorse thereon the words "examined  
25 and rejected," with the date thereof, and sign the same officially.

26       (b) Every executor or administrator shall keep a list of  
27 all demands legally exhibited against the estate of the testator  
28 or intestate, and every three months shall file with the judge  
29 a statement of all claims presented and whether they have

1 been allowed or rejected by him.

2 (c) If the executor or administrator rejects the claim or  
3 disallows any part of it, he shall, within 20 days after  
4 presentation of the claim to him, notify the claimant, his agent,  
5 or attorney, of the rejection or disallowance by mail or personal  
6 notice.

7 Sec. 12.05. PRESENTATION OF REJECTED CLAIMS TO JUDGE. If  
8 an executor or administrator refuses to allow a claim or demand  
9 against the deceased after the same has been exhibited to him  
10 in accordance with the provisions of this article, the claimant  
11 may present his claim to the judge for allowance, giving the  
12 executor or administrator 30 days' notice of the application  
13 to the judge. The judge has power to hear and determine in a  
14 summary manner all demands against an estate agreeably to the  
15 provisions of this article, and which have been so rejected by  
16 the executor or administrator, and shall cause a concise entry  
17 of the order of allowance or rejection to be made on the record,  
18 which order has the force and effect of a judgment, from which  
19 an appeal may be taken as in ordinary cases. However, no claim  
20 which is rejected by the executor or administrator, as afore-  
21 said, shall be allowed by a judge, referee, or jury, except  
22 upon some competent or satisfactory evidence other than the  
23 testimony of the claimant. No claim which is barred by the  
24 statute of limitations shall be allowed by the executor or  
25 administrator or the judge.

26 Sec. 12.06. EFFECT OF JUDGMENT ON CLAIM. The effect of a  
27 judgment against an executor or administrator, on account of a  
28 claim against the estate of his testator or intestate, is only  
29 to establish the claim as if it had been allowed by him, so as

1 to require it to be satisfied in due course of administration,  
2 unless it appears that the complaint alleged assets in his hands  
3 applicable to the satisfaction of the claim, and that the  
4 allegation was admitted or found to be true, in which case the  
5 judgment may be enforced against the executor or administrator  
6 personally.

7       Sec. 12.07. CLAIM ESTABLISHED BY JUDGMENT AGAINST DECEDENT  
8 IN LIFETIME. (a) A claim established by judgment against the  
9 deceased in his lifetime need not be verified by affidavit.  
10 It is sufficient to present a certified copy of the judgment  
11 docket thereof to the executor or administrator for allowance  
12 or rejection, as in other cases.

13       (b) This section is not to be construed to prevent an  
14 execution from being issued upon the judgment, as elsewhere  
15 provided by law.

16       Sec. 12.08. REFERENCE OF CLAIMS. (a) If the executor or  
17 administrator doubts the validity of a claim presented to him,  
18 he may agree, in writing, with the claimant that an order of  
19 reference be made by the judge thereof concerning the same.  
20 Upon the filing of the agreement the judge shall make the order  
21 accordingly.

22       (b) The referee shall proceed to hear and examine the  
23 matter, and report thereon to the judge where the order of  
24 reference was made, in the same manner and with like effect as if  
25 the order was made in an action upon the claim.

26       Sec. 12.09. CLAIM OF EXECUTOR OR ADMINISTRATOR. (a) If  
27 the executor or administrator is himself a creditor of the  
28 testator or intestate, his claim, duly verified, may be presented  
29 to the judge for allowance or rejection. The allowance of the

1 claim by the judge does not conclude a creditor, heir, or other  
2 person interested in the estate in an action or proceeding  
3 between the executor or administrator and the creditor, heir,  
4 or other person.

5 (b) If the judge rejects the claim of the executor or  
6 administrator, either in whole or in part, or if the same is  
7 not presented for allowance, as provided in (a) of this section,  
8 the executor or administrator may retain the amount thereof  
9 until the final settlement of his accounts, when, if the same  
10 is controverted or objected to by any person interested in the  
11 estate, the right of the executor or administrator to have the  
12 allowance claimed shall be tried and determined by the court.

13 (c) If the claim is not presented to the judge, as provided  
14 in (a) of this section, before it is barred by the statute of  
15 limitations, the claim cannot be allowed, retained, or recovered.

16 Sec. 12.10. ORDER OF PAYMENT. The charges and claims  
17 against the estate which have been presented and allowed, or  
18 presented and disallowed but subsequently established by judg-  
19 ment within the first three months, except when a longer period  
20 is allowed if the claim is in litigation, after the date of the  
21 notice of appointment of the executor or administrator, shall  
22 be paid in the following order, and those presented and allowed  
23 or established in like manner with each succeeding period of  
24 three months thereafter during the continuance of the administra-  
25 tion in the same manner:

- 26 (1) funeral charges and expenses of last illness;  
27 (2) taxes of whatever nature due the United States  
28 for which lien claim has been filed for record in accordance  
29 with sec. 48-9-1, ACLA 1949;

1 (3) taxes of whatever nature due the state for which  
2 it holds a prior, paramount lien;

3 (4) all other taxes of whatever nature to whomsoever  
4 due and all debts which at decedent's death were a lien upon  
5 his property or any right or interest therein according to the  
6 respective priority of the several liens of the taxes and debts;

7 (5) debts preferred by the bankruptcy laws of the  
8 United States and debts due employees of decedent for wages  
9 earned within the 90 days immediately preceding the death of the  
10 decedent;

11 (6) all other claims against the estate.

12 Sec. 12.11. LIEN CLAIMS. (a) The preference given by sec.  
13 12.10 to debts which at decedent's death were a lien upon his  
14 property extends only to the proceeds of the property upon  
15 which the lien exists and as to the proceeds the debt is to be  
16 preferred to any of the classes mentioned in sec. 12.10 other  
17 than the taxes upon the property.

18 (b) If the debt has been established by judgment against the  
19 deceased in his lifetime, the judgment, if the proceeds of the  
20 personal property are not sufficient to satisfy it, may, in the  
21 discretion of the judge, be either satisfied from the proceeds  
22 of the sale of the property upon which it is a lien, by the  
23 executor or administrator or enforced by execution against  
24 the property. The sale by the executor or administrator dis-  
25 charges the property from the lien of the judgment, but the  
26 same attaches to the proceeds, after deducting the expenses  
27 of sale.

28 Sec. 12.12. PRORATION. Except as specially provided in  
29 secs. 12.10 and 12.11, if the estate is insufficient to pay

1 all the claims and charges of any one class, payable within  
2 any period of three months during the administration, as provided  
3 in sec. 12.10, each creditor of such class is paid in proportion  
4 to the amount of his claim, and not otherwise.

5       Sec. 12.13. FUNERAL CHARGES. The executor named in the  
6 will, or if there is none, or if he does not attend to it, then  
7 the husband, widow, or next of kin, in the order herein named,  
8 are authorized to incur funeral charges on account of the  
9 estate in the burial of the deceased before administration of  
10 the estate is granted, and the burial of the deceased may be in  
11 a manner and at a cost according to his circumstances and  
12 condition in life. However, no funeral charges, except those  
13 necessary to give the deceased a plain and decent burial, shall  
14 be allowed out of the estate where the assets are not sufficient  
15 to satisfy all other claims against it, including the legacies  
16 and devises, if there are any.

17       Sec. 12.14. COMPENSATION FOR REPRESENTATIVE AND EXPENSES  
18 OF ADMINISTRATION. The executor or administrator may retain in  
19 his hands, in preference to any claim or charge against the  
20 estate, the amount of his own compensation and the necessary  
21 expenses of administration.

22       Sec. 12.15. DEBTS NOT DUE. A debt due and payable is not  
23 entitled to preference over one of the same class not due if  
24 the latter is presented within the same period. A debt not due,  
25 whether contingent or absolute, upon being presented, if absolute,  
26 is satisfied by the payment of the sum the judge may prescribe  
27 by order to be equal to its present value, and if contingent,  
28 by the payment into court for the benefit of the creditors,  
29 subject to the contingency, of a sum, to be ascertained in

1 like manner, equal to its present value.

2           Sec. 12.16. WHEN REPRESENTATIVE PERSONALLY LIABLE. When,  
3 upon the filing of a semiannual account, an order is made  
4 determining and prescribing the amount of assets applicable  
5 to the claims then presented, as provided in sec. 15.03, there-  
6 after the executor or administrator is personally liable to  
7 each creditor included in the order for the amount.

8                           ARTICLE XIII

9                                   SALES

10           Sec. 13.01. ORDER FOR SALE OF REAL OR PERSONAL PROPERTY.  
11 No sale of the property of an estate is valid unless made by  
12 order of the judge as set out in this article, unless otherwise  
13 provided herein. The application for an order of sale is by  
14 the petition of the executor or administrator and in case of  
15 real property a citation to the heirs and others interested in  
16 the property.

17           Sec. 13.02. SALE OF PERSONAL PROPERTY. (a) Upon the filing  
18 of the inventory the executor or administrator may make an  
19 application to sell the personal property of the estate for  
20 the purpose of paying the funeral charges, expenses of adminis-  
21 tration, the claims, if any, against the estate, and for the  
22 purpose of distribution. It is the duty of the judge to grant  
23 the order if, in his judgment, it is for the best interest of  
24 the estate, and to direct and prescribe the terms of sale upon  
25 which the property is sold, whether for cash or on credit.

26           (b) Thereafter the executor or administrator shall sell  
27 the personal property from time to time for the purposes speci-  
28 fied in (a) of this section, and as often and as much of it as  
29 may be necessary. The sale is conducted in the same manner as

1 a sale of personal property on execution, unless otherwise  
2 provided in this article.

3 Sec. 13.03. PRIVATE SALE. If, upon the application for  
4 an order of sale, or upon a subsequent application for that  
5 purpose, it appears to the judge that it would be for the  
6 interest of the estate, he may order that the executor or  
7 administrator may sell all the personal property of the estate  
8 or any article of it at private sale.

9 Sec. 13.04. ARTICLES SPECIALLY BEQUEATHED. If any articles  
10 of personal property have been specially bequeathed, they are  
11 to be exempt from the operation of the order of sale so long  
12 as any property of the estate not specially devised or bequeathed  
13 remains unsold or appropriated to the purposes specified in  
14 sec. 13.02(a).

15 Sec. 13.05. SALE OF REAL PROPERTY. When the proceeds of  
16 the sale of personal property have been exhausted, and the  
17 charges, expenses, and claims specified in sec. 13.02(a) have  
18 not all been satisfied, the executor or administrator shall  
19 sell the real property of the estate, or so much of it as may  
20 be necessary for that purpose. When it appears to the satis-  
21 faction of the court that it would be for the best interest of  
22 the heirs, devisees, or legatees that all or a part of the real  
23 property of the estate be sold for the purpose of distribution,  
24 the executor or administrator shall sell the real property  
25 of the estate or so much of it as may be appropriate for that  
26 purpose. The court may order that the real property or any  
27 part of it be sold for the above purposes without reference  
28 to whether or not the personal property has been sold if it  
29 appears to the satisfaction of the court that it is for the

1 best interest of the estate or of the heirs, devisees, or  
2 legatees thereof.

3 Sec. 13.06. REALTY SPECIALLY DEVISED. If any of the real  
4 property has been specially devised, it is exempt from the  
5 operation of the order of sale in the same manner as personal  
6 property specially bequeathed.

7 Sec. 13.07. PETITION AND CITATION FOR SALE OF REAL PROPERTY.

8 (a) The petition for the sale of real property shall state  
9 the amount of sales of personal property, the charges, expenses,  
10 and claims still unsatisfied, so far as the same can be ascer-  
11 tained, a description of the real property of the estate, the  
12 condition and probable value of the different portions or lots  
13 thereof, the amount and nature of any liens thereon, the names,  
14 ages, and residence of the devisees, if any, and of the heirs  
15 of the deceased, so far as known, and if it is desired to sell  
16 the real property or any part of it for the purpose of distri-  
17 bution or without reference to whether or not the personal  
18 property has been sold, the petition shall set out the reasons  
19 therefor.

20 (b) Upon the filing of the petition a citation shall issue  
21 to the devisees and heirs therein mentioned, and to all others  
22 unknown, if there are any, to appear at a time therein mentioned,  
23 not less than 30 days after the service of the citation, to  
24 show cause, if any exist, why an order of sale should not be  
25 made as prayed for in the petition.

26 Sec. 13.08. SERVICE AND RETURN OF CITATION. The citation  
27 shall be served and returned as a summons upon an heir or  
28 devisee known and resident within the state; and may be served  
29 by publication or posting, or both, not less than four weeks, or

1 for such further time as the judge may prescribe, upon an heir  
2 or devisee unknown or nonresident. When service is had by  
3 posting, the citation shall be posted at no less than three  
4 public places within the judicial district, one of which shall  
5 be the post office nearest the place where the decedent resided  
6 at the time of his death. When service of the citation is made  
7 by publication or posting, there shall be given with it a brief  
8 description of the property described in the petition.

9       Sec. 13.09. ORDER FOR SALE OF REAL PROPERTY. If, upon  
10 the hearing, the judge finds that it is necessary that the  
11 real property, or any portion of it, should be sold, he shall  
12 make the order accordingly, and prescribe the terms of the  
13 sale, whether for cash or credit, or both, and if the property  
14 cannot be divided without probable injury and loss to the  
15 estate, he may order that it, or any specific lot or portion of  
16 it, be sold wholly, whether otherwise necessary or not.

17       Sec. 13.10. TERMS AND MANNER OF SALE. (a) Upon the order  
18 being made, the executor or administrator shall sell the property  
19 therein specified upon the terms directed and in the manner  
20 herein otherwise provided. The sale shall be made in the same  
21 manner as like property is sold on execution. However, the judge  
22 may, if he considers it best, order the property to be sold  
23 on the premises.

24       (b) When the property is offered for sale as hereinabove  
25 provided and no bid or no acceptable bid is received, then the  
26 judge shall, upon application of the executor or administrator,  
27 direct that the property may be sold at a private sale. When  
28 the sale is upon credit the executor or administrator shall  
29 take the note of the purchaser for the purchase money, with

1 a mortgage upon the property to secure the payment thereof.

2 Sec. 13.11. RETURN OF SALE AND OBJECTIONS TO CONFIRMATION.

3 Within 10 days after the sale of real property the executor  
4 or administrator shall make a return of his proceedings concern-  
5 ing the sale. Upon such return any of the persons cited to  
6 appear on the application for the order of sale may file his  
7 objections to the confirmation of the sale.

8 Sec. 13.12. CONFIRMATION OR RESALE OF REAL PROPERTY. Upon  
9 the hearing the judge shall confirm the sale and decree that  
10 the executor or administrator make a conveyance to the purchaser,  
11 unless it appears that there were irregularities in the sale,  
12 or that the sum bidden for the property is disproportionate  
13 to the value of the property, and that a sum exceeding the bid  
14 at least 10 per cent, exclusive of the expenses of a new sale,  
15 may be obtained for the property, in either of which cases the  
16 judge shall make an order vacating the sale and directing that  
17 the property be resold. Upon the second sale the property, or  
18 any specific portion or lot of it, ordered to be resold shall  
19 be sold as if no previous sale had taken place. If no objections  
20 are made to the confirmation of the sale as provided in sec.  
21 13.11, the judge shall nevertheless examine the proceedings  
22 concerning the sale, and, if it appears proper, may make the  
23 order of resale provided for in this section in the same  
24 manner and with like effect as if objections had been filed.

25 Sec. 13.13. CONVEYANCE OF REAL PROPERTY. A conveyance  
26 executed by an executor or administrator shall set out the date  
27 of the order directing the sale, and the book, number thereof,  
28 and page containing the same, and the date of the order confirm-  
29 ing the sale and directing the conveyance, and the book,

1 number thereof, and page containing the same, and the title of  
2 the court making the orders, and operates to convey all the  
3 estate, right, and interest of the testator or intestate in  
4 the premises at the time of his death.

5       Sec. 13.14. SALE OF REAL PROPERTY TO PAY CLAIMS AND  
6 EXPENSES OF ADMINISTRATION. When a testator has specially  
7 bequeathed a specific article of personal property, or given a  
8 legacy by will, and there is not sufficient personal property,  
9 besides the specific article or the value of the legacy, to  
10 pay the funeral charges, expenses of administration, and claims  
11 against the estate, the executor or administrator shall  
12 obtain an order to sell the real property sufficient to make  
13 up the deficiency, in the manner provided above.

14       Sec. 13.15. SALE OF PROPERTY DESIGNATED IN WILL. (a)  
15 When the testator makes provision in his will for the sale or  
16 disposition of all or any particular portion of his estate,  
17 for the payment of funeral charges, expenses of administration,  
18 or of claims against the estate, the property so appropriated  
19 may be sold or disposed of as directed by the executor or  
20 administrator with the will annexed, without an order of the  
21 court therefor. The executor or administrator shall conduct  
22 the sale and make a return thereof in all respects as if it  
23 were made by order of the court, unless there are special  
24 directions in the will concerning the manner and terms of  
25 sale, in which case he shall be governed by the directions.

26       (b) If the provision made by the will or the property  
27 thereby appropriated is insufficient for the purpose intended,  
28 the remaining portion of the estate may be sold for that purpose,  
29 according to the provisions of this article.

1           Sec. 13.16. WHEN DEVISES AND LEGACIES LIABLE FOR DEBTS.  
2           The property, real and personal, given by the will to a devisee  
3           or legatee is liable for the payment of the funeral charges,  
4           expenses of administration, and of claims against the estate,  
5           and if there is more than one such devisee or legatee, then  
6           in proportion to the value or amount of the several devises  
7           and legacies. However, specific devises and legacies are  
8           exempt from the liability if that appears to have been the  
9           intention of the testator and there is other sufficient property  
10          to satisfy the charges, expenses, and claims.

11          Sec. 13.17. SALE OF INTEREST UNDER CONTRACT TO PURCHASE  
12          REAL PROPERTY. If the deceased was, at the time of his death,  
13          a party to a contract for the purchase of real property, his  
14          interest in the real property by virtue of the contract may be  
15          sold in the same manner as if the contract had been executed  
16          in the lifetime of the deceased, by a conveyance to him of  
17          the property according to the legal effect and terms of the  
18          contract.

19          Sec. 13.18. SALE TO BE MADE SUBJECT TO PAYMENTS TO PROTECT  
20          VENDOR. If there are payments due, or to become due, on the  
21          contract, to the vendor of the deceased, the sale is made  
22          subject thereto, and before the same can be confirmed or the  
23          contract assigned to the purchaser, the purchaser shall execute  
24          an undertaking, with one or more sufficient sureties, in an  
25          amount not less than double the value of all the payments then  
26          due or to become due, for the benefit of whom it may concern,  
27          to be void upon the condition that the purchaser will make  
28          all the payments according to the terms of the contract, and  
29          indemnify the executor or administrator or others whom it may

1 concern against all damages, costs, and expenses by reason of  
2 any covenant or agreement contained in the contract.

3       Sec. 13.19. CONFIRMATION ORDER. The order of confirmation  
4 of the sale shall direct the executor or administrator to make  
5 an assignment of the contract to the purchaser, which assignment  
6 vests in the purchaser, his heirs and assigns, all the estate,  
7 right, and interest in the real property of the deceased at  
8 the time of his death, and give to the purchaser the same  
9 rights and remedies against the vendor thereof as the deceased  
10 would have had or been entitled to if living.

11       Sec. 13.20. REDEMPTION OF MORTGAGED PROPERTY. If the  
12 deceased left any property, real or personal, under mortgage,  
13 and did not devise or provide for the redemption of it by will,  
14 the judge, upon the application of the executor or administrator,  
15 or the application of an heir or creditor or other person  
16 interested in the estate, may order the executor or administrator  
17 to redeem the property out of the proceeds of the other personal  
18 property, if it appears that the redemption would be for the  
19 interest of the estate, and not prejudicial to creditors.

20       Sec. 13.21. SALE OF MORTGAGED PROPERTY. (a) If, upon  
21 application, the redemption is not considered proper or in-  
22 expedient, the judge shall order the property to be sold in  
23 like manner and with like effect as is provided in other cases  
24 of the sale of real property by this article.

25       (b) The conveyance to the purchaser operates to convey to  
26 him all the estate, right, and interest which the deceased  
27 would have had in the property if it had not been mortgaged by  
28 him.

29       Sec. 13.22. APPLICATION OF PROCEEDS. Ten days before

1 making an order for the application of the proceeds of the sale,  
2 the mortgagee or other person to whom the debt which is secured  
3 by the mortgage is payable shall be cited to appear and show  
4 the amount of his debt, and make his objections, if any, to  
5 the report of the expenses of the proceeding and sale as claimed  
6 by the executor or administrator. Thereupon the court shall  
7 order that the proceeds of the sale be first applied to  
8 the payment of the proper expenses of the proceeding and  
9 sale, and second, to the satisfaction of the debt, and the  
10 residue, if any, in due course of administration.

11       Sec. 13.23. CONSTRUCTION OF PRECEDING SECTIONS. Secs.  
12 13.20 - 13.22 shall not be construed to include a mortgage  
13 which has been foreclosed, or upon which a suit has been  
14 commenced for foreclosure before the application for the order  
15 of redemption or sale is made, nor to any other lien arising  
16 upon judgment or decree given against the deceased in his  
17 lifetime.

18       Sec. 13.24. SATISFACTION OF DEBT SECURED BY MORTGAGE WHEN  
19 NOT DUE. If the debt secured by the mortgage mentioned in  
20 sec. 13.20 is not due at the time of the making of the order  
21 for redemption or application of the proceeds of sale, the  
22 party to whom it is payable is entitled to receive in satis-  
23 faction thereof the sum ascertained to be equal to the present  
24 value thereof.

25       Sec. 13.25. CONCLUSIVENESS OF ORDERS OF CONFIRMATION AND  
26 PURCHASE BY EXECUTOR OR ADMINISTRATOR. (a) The order of con-  
27 firmation of sale mentioned in this article is conclusive as to  
28 the regularity of the sale and no further.

29       (b) All purchases of the property of the estate by an

1 executor or administrator, however made, whether directly or  
2 indirectly, are prohibited, and if made are void.

3       Sec. 13.26. SALE OF REAL AND PERSONAL PROPERTY CONJOINTLY.  
4 When it is found, upon petition duly presented, that it is for  
5 the best interest of the estate of a decedent to sell the  
6 personal and real property thereof conjointly, the same may  
7 be sold like real estate under the provisions of secs. 5.39 -  
8 5.41, 13.01 - 13.25, and 14.01.

9       Sec. 13.27. CONTRIBUTION BETWEEN DEVISEES AND LEGATEES.  
10 When a testator, in his last will, gives any chattel or real  
11 estate to any person and the same is taken in execution for  
12 the payment of the testator's debts, then all the other legatees,  
13 devisees, and heirs shall refund their proportional part of  
14 the loss to the person from whom the bequest is taken.

15       Sec. 13.28. REQUEST BY HEIRS TO SELL REAL PROPERTY. When  
16 all claims, debts and expenses have been paid and real property  
17 remain in the hands of the executor or administrator, he may  
18 sell the real property if the heir or heirs so direct in a  
19 written request duly acknowledged as in a deed and filed in the  
20 court having the probate of the estate.

21                                   ARTICLE XIV

22                                   NOTES AND MORTGAGES

23       Sec. 14.01. AUTHORITY OF EXECUTOR OR ADMINISTRATOR TO  
24 BORROW OR MORTGAGE. It is lawful for an executor or administrator  
25 of the estate of a deceased person in the state, with the  
26 approval and consent of the judge in whose court the estate is  
27 being administered and upon giving the notice required by law  
28 of an application to sell real property belonging to the estate  
29 of a decedent in the state, to borrow money for the estate,

1 and as security therefor to execute a mortgage upon any of the  
2 property of the estate, for the purpose of paying the costs  
3 and expenses of administration or the claims against the estate  
4 or both.

5       Sec. 14.02. PETITION, NOTICE, HEARING, AND ORDER. The  
6 petition for leave to borrow money for the estate and to mortgage  
7 the property thereof shall be in substantially the same form  
8 and contain the same information as is prescribed by sec.  
9 13.07(a), and the notice to be given to the devisees and heirs  
10 and to all other persons interested in the estate shall be  
11 substantially in the same form and given in the same manner  
12 as is prescribed by secs. 13.07(b) and 13.08, and the hearing  
13 upon the petition and the order of the court thereon shall be  
14 held and made in substantially the same manner and form as  
15 is prescribed by sec. 13.09. The order of the court granting  
16 leave to mortgage property of the estate shall state the terms  
17 of the mortgage and the conditions thereof and the conditions  
18 upon which the money may be borrowed. The judge may authorize  
19 the executor or administrator to make and issue a promissory  
20 note as well as a mortgage for the money borrowed. The money  
21 obtained by mortgaging the estate shall be expended and dis-  
22 bursed as directed by the judge.

23                                   ARTICLE XV

24                                   COMPENSATION AND ACCOUNTING

25       Sec. 15.01. EXECUTOR OR ADMINISTRATOR. An executor or  
26 administrator shall, within three months from the date of the  
27 notice of his appointment, and within every six months there-  
28 after until the administration is completed and he is discharged  
29 from his trust, render an account, verified by his own oath,

1 and file the same with the judge, showing the amount of money  
2 received and expended by him, from whom received and to whom  
3 paid, with the proper vouchers for the payments; the amount of  
4 the claims presented against the estate and allowed or disallowed,  
5 and the name of the claimants of each; and any other matter neces-  
6 sary to show the condition of the affairs thereof.

7       Sec. 15.02. PROCEEDINGS UPON FAILURE TO FILE ACCOUNT. An  
8 executor or administrator who fails to file an account, as  
9 required in sec. 15.01, may be required by a citation or  
10 ordered by a judge to appear and do so, either upon the applica-  
11 tion of an heir or creditor, or other person interested in the  
12 estate, or without it. If the executor or administrator  
13 refuses or neglects to appear when cited, or to file the  
14 account as required, he may be punished as for a contempt, or  
15 by warrant of the judge he may be committed to close custody  
16 in jail until he consents to do so.

17       Sec. 15.03. ORDER TO PAY CLAIMS AND EXPENSES. Within 30  
18 days after the filing of the first semiannual account, and at  
19 each semiannual account thereafter, the judge shall ascertain  
20 and determine if the estate is sufficient to satisfy the  
21 claims allowed by the executor or administrator, within the  
22 first three months or any succeeding period within six months  
23 thereafter, after the date of the notice of his appointment,  
24 after paying the funeral charges and expenses of administration;  
25 and if so, he shall so order and direct. If the estate is  
26 insufficient for that purpose, he shall ascertain what per  
27 cent of the claims it is sufficient to satisfy, and order and  
28 direct accordingly.

29       Sec. 15.04. FINAL ACCOUNT. (a) Except in a nonintervention

1 will, when the estate is fully administered it is the duty of  
2 the executor or administrator to file his final account. The  
3 account shall be verified and contain a detailed statement  
4 of the amount of money received and expended by him, from  
5 whom received and to whom paid, and refer to the vouchers for  
6 the payments, and the amount of money and property, if any,  
7 remaining unexpended or unappropriated. Upon the filing of  
8 the final account, the court shall make an order setting the  
9 time and place for hearing objections to the final account,  
10 and directing notice of hearing to be given by publishing the  
11 order one time in a newspaper of general circulation within the  
12 judicial district and posting notices in three public places  
13 within the judicial district, for not less than 30 days.

14 (b) No final order or decree shall be made or entered in  
15 the administration of any estate in which the state is interested,  
16 either as a creditor or by way of escheat, unless it is made  
17 to appear to the satisfaction of the court that certified copies  
18 of the final account and the notice of hearing thereon have  
19 been forwarded to the commissioner of revenue.

20 Sec. 15.05. OBJECTIONS TO FINAL ACCOUNT. An heir,  
21 creditor, or other person interested in the estate may, on or  
22 before the day appointed for the hearing and settlement, file  
23 his objections thereto, or to any particular item thereof,  
24 specifying the particulars of the objections. No creditor is  
25 allowed to object to the account whose claim has been satisfied,  
26 as allowed by the executor or administrator or established by  
27 judgment.

28 Sec. 15.06. DECREE ON FINAL ACCOUNT. Upon the hearing  
29 the court shall give a decree allowing or disallowing the

1 final account, either in whole or in part, as may be just  
2 and right. The decree in any other action or proceeding  
3 between the parties interested or their representatives is  
4 primary evidence of the correctness of the account as thereby  
5 allowed and settled.

6 Sec. 15.07. EXECUTOR OR ADMINISTRATOR CHARGEABLE WITH  
7 AMOUNT OF INVENTORY. An executor or administrator is charge-  
8 able in his account with all the property of the estate which  
9 may come into his possession at the value of the appraisement  
10 contained in the inventory except as otherwise provided in  
11 this article.

12 Sec. 15.08. LIABILITY OF EXECUTOR OR ADMINISTRATOR. An  
13 executor or administrator shall not make profit by the increase  
14 in value of the property of the estate or suffer loss for  
15 the decrease in value or the destruction thereof without his  
16 fault. If any of the property of the estate sells for more  
17 than its appraised value he shall account for the excess, and  
18 if any of the property sells for less than its appraised value  
19 he is not responsible for the loss, unless occasioned by his  
20 fault. He is not accountable for the debts due the estate if  
21 it appears that they remain uncollected without his fault. He  
22 shall not purchase any claim against the estate which he  
23 represents, and if he satisfies a claim for less than its  
24 nominal value he is only entitled to charge in his account  
25 the sum actually paid.

26 Sec. 15.09. EXPENSES AND COMPENSATION ALLOWED IN SETTLE-  
27 MENT OF ACCOUNTS. An executor or administrator is allowed,  
28 in the settlement of his account, all necessary expenses  
29 incurred in the care, management, and settlement of the estate,

1 including reasonable attorney fees in any necessary litigation  
2 or matter requiring legal advice or counsel. For his services  
3 he shall receive the compensation the law provides, but when  
4 the deceased, by his will has made special provision for the  
5 compensation of his executor, the executor is not entitled to  
6 any other compensation for his services unless within 10 days  
7 after his appointment he subscribes and files with the judge  
8 a written declaration renouncing the compensation provided  
9 by the will.

10 Sec. 15.10. REDUCTION OF COMPENSATION PROVIDED BY WILL.  
11 Notwithstanding the provision in the will for the compensation  
12 of an executor, if the estate is insufficient to satisfy the  
13 claims against it, the judge shall reduce the compensation, so  
14 far as may be necessary to satisfy the claims, to an amount  
15 equal to what the executor would have been entitled to if the  
16 provision had not been made.

17 Sec. 15.11. COMPENSATION ALLOWED BY LAW. (a) The compen-  
18 sation provided by law for an executor or an administrator is  
19 a commission upon the whole estate accounted for by him, as  
20 follows:

21 (1) for the first \$1,000 or any less sum, at the  
22 rate of seven per cent thereof;

23 (2) for all above \$1,000 and not exceeding \$2,000,  
24 at the rate of five per cent thereof;

25 (3) for all above \$2,000 and not exceeding \$4,000,  
26 at the rate of four per cent thereof;

27 (4) for all above \$4,000, at the rate of two per cent  
28 thereof.

29 (b) In all cases, further compensation which is just and

1 reasonable may be allowed by the judge for any extraordinary and  
2 unusual services not ordinarily required of an executor or  
3 administrator in the discharge of his trust.

4       Sec. 15.12. FILING COPY OF NOTICE OF FINAL ACCOUNT AND  
5 PROOF OF PUBLICATION. Before the time appointed for the hearing  
6 and settlement of a final account the executor or administrator  
7 shall file with the judge a copy of the notice thereof, with the  
8 proper proof of its publication or posting as directed.

9       Sec. 15.13. PROCEEDINGS UPON FAILURE TO FILE FINAL ACCOUNT.  
10 An executor or administrator who fails to file his final account  
11 as provided in sec. 15.04 may be proceeded against in like  
12 manner and with like effect as provided in sec. 15.02 in case of  
13 failure to file a semiannual account.

14       Sec. 15.14. COMPOUNDING DEBTS TO ESTATE. When a debtor of a  
15 deceased person is unable to pay all his debts, an executor or  
16 administrator, by an order of the judge, may compound with him and  
17 give him a discharge upon receiving a fair and just proportion of  
18 his effects. If the compounding is procured or produced by the  
19 fraudulent representations or conduct of the debtor, the payment  
20 only operates to discharge a like amount of the debt.

21                                   ARTICLE XVI

22                                   DETERMINATION OF HEIRSHIP

23       Sec. 16.01. FINAL ACCOUNT TO INCLUDE NAMES AND ADDRESSES OF  
24 HEIRS. Every administrator shall include in his final account  
25 the names and addresses, as far as known to him, of the heirs of  
26 the deceased, and the notice of the hearing of objections to the  
27 account shall further contain a notification to all that the judge  
28 at the hearing will adjudicate and decree who the heirs and  
29 distributees of the deceased person are.



1 law or is devised by will, subject to the possession of the  
2 executor or administrator, and to be applied to the satisfaction  
3 of claims against the estate, as provided by secs. 12.01 - 12.16.  
4 However, upon the settlement of the estate and the termination  
5 of the administration thereof so much of the real property as  
6 remains unsold or unappropriated is discharged from the possession  
7 and liability without an order or decree therefor. But if  
8 there is any surplus of the proceeds of sale of the real property,  
9 or any part of it, the judge shall order and direct a distri-  
10 bution of the surplus among those who would have been entitled  
11 to the land if the same had not been sold.

12 Sec. 17.03. PARTIAL DISTRIBUTION. At any time after the  
13 filing of the first account an heir, devisee, or legatee may  
14 apply to the judge by petition for an order that he have the  
15 possession and rents and profits thereof of the portion of  
16 the real property to which he may be entitled, and that payment  
17 be made to him of his legacy or distributive share of the  
18 personal property of the estate, as the case may be.

19 Sec. 17.04. NOTICE, HEARING AND DETERMINATION OF PARTIAL  
20 DISTRIBUTION. Notice of the application shall be given to  
21 the executor or administrator 30 days before the time it is  
22 made. If, upon the hearing it appears that the estate is but  
23 little in debt, the judge may in his discretion grant the  
24 petition or some part of it upon the condition that the applicant  
25 file with the judge, within a time in the order specified, an  
26 undertaking, with one or more sufficient sureties, for the  
27 benefit of whom it may concern, in a sum double the value of the  
28 real property, legacy, or distributive share, to be void upon  
29 the condition that the heir, legatee, or devisee will pay,

1 when required, his portion toward satisfying any claim against  
2 the estate.

3 Sec. 17.05. DECREE AGAINST PARTY AND SURETIES. If, upon  
4 the hearing it appears necessary and proper that the payment  
5 should be made, the judge shall decree accordingly, specifying  
6 therein the amount to be paid and within what time. If the  
7 amount is not paid within the time specified, the decree may be  
8 enforced against the party and the sureties in the undertaking,  
9 by execution, in the same manner as any judgment in the  
10 superior court.

11 Sec. 17.06. QUALIFICATIONS OF SURETIES. The sureties in  
12 the undertaking shall have the same qualifications as sureties  
13 in bail upon arrest and justify before the judge in like manner.  
14 The costs of the proceeding are paid by the applicant.

15 Sec. 17.07. PROCEEDINGS AGAINST SURETIES. If, after the  
16 giving of the undertaking, it becomes necessary in order to  
17 satisfy a claim against the estate, to require the payment of  
18 all or any part of the sum therein specified, it is the duty of  
19 the executor or administrator to apply by petition to the judge  
20 for a decree to that effect. Notice of the application shall be  
21 given to the party filing the undertaking 20 days before the  
22 time the application is made.

23 ARTICLE XVIII

24 GENERAL PROVISIONS

25 Sec. 18.01. SHORT TITLE. This Act may be cited as the  
26 Alaska Probate Code.

27 Sec. 18.02. REPEALER. Secs. 59-1-1 - 59-5-4, ACLA 1949;  
28 secs. 60-1-1 - 60-1-15, ACLA 1949 as amended by Ch. 35, SLA  
29 1951 and Ch. 193, SLA 1955; secs. 61-1-1 - 61-19-3, ACLA 1949

1 as amended by Ch. 89, SLA 1949, Ch. 102, SLA 1949, Ch. 52, SLA  
2 1951, Ch. 71, SLA 1953, Ch. 120, SLA 1953, Ch. 81, SLA 1955,  
3 Ch. 94, SLA 1955, Ch. 106, SLA 1955, Ch. 153, SLA 1955, Ch. 6,  
4 SLA 1957, Ch. 125, SLA 1959, Ch. 64, SLA 1960, Ch. 163, SLA  
5 1960, and Ch. 75, SLA 1961; secs. 63-1-1 - 63-1-21, ACLA 1949;  
6 and secs. 64-1-1-64-1-4, ACLA 1949 are repealed.

7 Sec. 18.03. HOW CODE TO TAKE EFFECT. This Act takes effect  
8 on January 1, 1963, subject to the following provisions:

9 (1) Wills: All wills made under the law of this state  
10 as it existed before the effective date of this Act, are valid  
11 if valid under that former law. However, if the will is amended,  
12 revoked, or added to after the effective date of this Act, the  
13 validity of the entire will is governed by this Act. What acts  
14 constitute amendment revocation, or adding to a will, as well  
15 as the legal effect of those acts, are governed by this Act.

16 (2) Proceedings: The provisions prescribed in this  
17 Act govern all proceedings in probate brought after the effec-  
18 tive date of this Act, and also all further procedure in  
19 proceedings in probate then pending. However, if due to proceed-  
20 ings commenced under the law of this state as it existed before  
21 the effective date of this Act, the application of this Act  
22 in particular proceedings or parts thereof would not be  
23 feasible or would work injustice, the court may apply the former  
24 statutory provisions.

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