LDIR#218
ANCILLARY ADMINISTRA-TION ART. V.

ARTICLE V

ANCILLARY ESTATES

GENERAL COMMENT:

This Article has specific application to the situation where a decedent, domiciled elsewhere, leaves assets in Alaska. Several complex problems arise in this context. Of a fundamental importance is a determination of the necessity for ancillary administration, and of the relationship between the domiciliary administration and the ancillary one if the latter occurs. If there is a will, further difficulties arise as to the effect of domiciliary probate or rejection from probate on the estate in the ancillary jurisdiction, and as to the procedure for probate there.

Few states have codified law applicable to ancillary estates. In some states statutory provisions regarding the subject are practically nonexistent. Alaska is presently one of these states. Outside of one provision (Sec. 61-3-1, ACLA 1949) prohibiting a nonresident from acting as an executor or administrator, and two regarding foreign wills (Secs. 61-2-8, 9, ACLA 1949), the entire Alaskan law is silent regarding special provisions for ancillary probate or administration. This is undoubtedly a direct consequence of the traditional common law view which regards each administration as an entirely separate proceeding. E.g., In re Braun's Estate, 276 Mich. 598, 268 N.W. 890 (1936). The theory of separate administrations, while legally defensible, has declined steadily in recent years. The decline may be traced to the fact that a strict adherence to the individual nature of affairs in each state may result in administration costs wholly out of proportion to the size of the affairs involved. This fact, coupled with the duplication and confusion which may accompany present procedures of ancillary administration, has resulted in a strong movement toward a complete re-evaluation of the separation theory. E.g., Goodrich, "Problems of Foreign Administration," 39 HARV. L. REV. 797 (1928). Atkinson, "The Uniform Ancillary Administration and Probate Acts," 67 HARV. L. REV. 619 (1954).

In recognition of the problems inherent in separate administration and probate proceedings, the National Conference of Commissioners on Uniform State Laws has promulgated three acts on the subject. Those acts compose the fundamental source of the first three parts of this Article. The purpose of the Acts as a whole is to allow ancillary and domiciliary administration to proceed as a unit, insofar as possible. In all three cases, it is recognized that the only feasible method for accomplishing this end is to allow the proceedings at the domicile to control all ancillary proceedings. Each act deals with the situation from the standpoint of the ancillary state; the provisions have no application when the decedent was domiciled in the state enacting the laws.

Part 1 of the Article is directed toward obviating the [illegible] ancillary administrations, by allowing the domiciliary representative to act in this state without the necessity of acquiring ancillary letters