

## CHAPTER 326

## PROBATE CODE

## S. F. 165

AN ACT to amend, revise and codify the law relating to probate, including descent and distribution, wills, administration and distribution of estates of decedents, trusts, administration of estates of persons under conservatorship, custody of persons under guardianship and to establish a probate code.

*Be It Enacted by the General Assembly of the State of Iowa:*

## DIVISION I—INTRODUCTION AND DEFINITIONS

## PART 1. INTRODUCTION

1 SECTION 1. Short title. This Act shall be known and may be cited  
2 as the "Iowa Probate Code".

1 SEC. 2. How Code to take effect.

2 1. *Effective date.* This Code shall take effect and be in force on  
3 and after January 1, 1964. The procedure herein prescribed shall  
4 govern all proceedings in probate brought after the effective date of  
5 this Code. It shall also govern further procedure in proceedings in  
6 probate then pending, except to the extent that, in the opinion of the  
7 court, its application in particular proceedings or parts thereof would  
8 not be feasible or would work injustice, in which event the former  
9 procedure shall apply.

10 2. *Rights not affected.* No act done in any proceeding commenced  
11 before this Code takes effect and no accrued or vested right shall be  
12 impaired by its provisions. When a right has been acquired, extin-  
13 guished, or barred upon the expiration of a prescribed period of  
14 time governed by the provision of any statute in force before this  
15 Code takes effect, such provision shall remain in force and be deemed  
16 a part of this Code with respect to such right.

17 3. *Severability.* If any provision of this Code or the application  
18 thereof to any person or circumstances is held invalid, such invalidity  
19 shall not affect other provisions or applications of this Code which  
20 can be given effect without the invalid provision or application, and  
21 to this end the provisions of this Code are declared to be severable.

## PART 2. DEFINITIONS AND USE OF TERMS

1 SEC. 3. Definitions and use of terms. When used in this Code,  
2 unless otherwise required by the context, the following words and  
3 phrases shall be construed as follows:

4 1. Administrator—any person appointed by the court to administer  
5 an intestate estate.

6 2. Bequeath—includes the word "devise" when used as a verb.

7 3. Bequest—includes the word "devise" when used as a noun.

8 4. Charges—includes costs of administration, funeral expenses, cost  
9 of monument, and federal and state estate taxes.

10 5. Child—includes an adopted child but does not include a grand-  
11 child or other more remote descendants, nor, except as provided in

12 sections two hundred twenty-one (221) and two hundred twenty-two  
13 (222), an illegitimate child.

14 6. Clerk—"Clerk of the District Court" in the county in which the  
15 matter is pending and includes the term "Clerk of the Probate Court".

16 7. Conservator—a person appointed by the court to have the cus-  
17 tody and control of the property of a ward under the provisions of this  
18 Code.

19 8. Costs of administration—includes court costs, fiduciary's fees,  
20 attorney fees, all appraisers' fees, premiums on corporate surety bonds,  
21 statutory allowance for support of surviving spouse and children, cost  
22 of continuation of abstracts of title, recording fees, transfer fees,  
23 transfer taxes, agents' fees allowed by order of court, and all other  
24 fees and expenses allowed by order of court in connection with the  
25 administration of the estate.

26 9. Court—the district court sitting in probate, and includes any  
27 judge of the judicial district in which the estate administration is  
28 pending.

29 10. Debts—includes liabilities of the decedent which survive,  
30 whether arising in contract, tort or otherwise.

31 11. Devise—when used as a noun, includes testamentary disposition  
32 of property, both real and personal.

33 12. Devise—when used as a verb, to dispose of property, both real  
34 and personal, by a will.

35 13. Devisee—includes legatee.

36 14. Distributee—a person entitled to any property of the decedent  
37 under his will or under the statutes of intestate succession.

38 15. Estate—the real and personal property of a decedent, a ward,  
39 or a trust, as from time to time changed in form by sale, reinvestment  
40 or otherwise, and augmented by any accretions or additions thereto  
41 and substitutions therefor, or diminished by any decreases and distri-  
42 butions therefrom.

43 16. Executor—means any person appointed by the court to admin-  
44 ister the estate of a testate decedent.

45 17. Fiduciary—includes personal representative, executor, admin-  
46 istrator, guardian, conservator and trustee to whom letters have been  
47 issued.

48 18. Full age—the state of legal majority attained through arriving  
49 at the age of twenty-one years or through having married, even  
50 though such marriage is terminated by divorce.

51 19. Guardian—the person appointed by the court to have the cus-  
52 tody of the person of the ward under the provisions of this Code.

53 20. Guardian of the property—at the election of the person ap-  
54 pointed by the court to have the custody and care of the property of  
55 a ward, the term "guardian of the property" may be used, which term  
56 shall be synonymous with the term "conservator".

57 21. Heir—any person, except the surviving spouse, who is entitled  
58 to property of a decedent under the statutes of intestate succession.

59 22. Incompetent—includes any person who has been adjudicated by  
60 a court to be incapable of managing his property, or caring for his  
61 own person, or both.

62 23. Issue—for the purposes of intestate succession, includes all  
63 lawful lineal descendants of a person, whether natural or adopted,

- 64 except those who are the lineal descendants of his living descendants.  
 65 24. Legacy—a testamentary disposition of personal property.  
 66 25. Legatee—a person entitled to personal property under a will.  
 67 26. Letters—includes letters testamentary, letters of administra-  
 68 tion, letters of guardianship, letters of conservatorship, and letters of  
 69 trusteeship.  
 70 27. Minor—a person who is not of full age.  
 71 28. Person—includes natural persons and corporations.  
 72 29. Personal representative—includes executor and administrator.  
 73 30. Property—includes both real and personal property.  
 74 31. Surviving spouse—the surviving wife or husband, as the case  
 75 may be.  
 76 32. Temporary administrator—any person appointed by the court  
 77 to care for an estate pending the probating of a proposed will, or to  
 78 handle any special matter designated by the court.  
 79 33. Trustee—the person or persons appointed as trustee by the  
 80 instrument creating the trust, or the person or persons appointed by  
 81 the court to administer the trust.  
 82 34. Trusts—include only: testamentary trusts; express trusts  
 83 where jurisdiction is specifically conferred on the court by the trust  
 84 instrument; express trusts where the jurisdiction of the court is in-  
 85 voked by the trustee, beneficiary or any interested party for a limited  
 86 purpose, or otherwise; and trusts which are established by a judg-  
 87 ment or a decree of court which results in administration of the trust  
 88 by the court, and the court entering the judgment or decree estab-  
 89 lishing such trust orders the administration of the trust transferred  
 90 to the probate court.  
 91 35. Will—includes codicil; it also includes a testamentary instru-  
 92 ment that merely appoints an executor, and a testamentary instru-  
 93 ment that merely revokes or revives another will.

1 SEC. 4. Gender and number. When used in this Code, unless other-  
 2 wise required by the context, the masculine gender includes the femi-  
 3 nine and the neuter; the singular number includes the plural and the  
 4 plural number includes the singular.

1 Sections 5 to 9, inclusive, reserved for future use.

## DIVISION II—PROBATE COURT, CLERK OF PROBATE COURT AND PROCEDURE IN PROBATE

### PART 1. PROBATE COURT

1 SEC. 10. Jurisdiction. The district court sitting in probate shall  
 2 have jurisdiction of:  
 3 1. Estates of decedents and absentees.  
 4 The probate and contest of wills; the appointment of personal rep-  
 5 resentatives; the granting of letters testamentary and of administra-  
 6 tion; the administration, settlement and distribution of estates of  
 7 decedents and absentees, whether such estates consist of real or per-  
 8 sonal property or both.

9       **2. Construction of wills and trust instruments.**

10       The construction of wills and trust instruments during the admin-  
11 istration of the estate or trust, whether said construction be incident  
12 to such administration, or as a separate proceeding.

13       **3. Conservatorships and guardianships.**

14       The appointment of conservators and guardians; the granting of  
15 letters of conservatorship and guardianship; the administration, set-  
16 tlement and closing of conservatorships and guardianships.

17       **4. Trusts and trustees.**

18       The appointment of trustees; the granting of letters of trusteeship;  
19 the administration of testamentary trusts; the administration of ex-  
20 press trusts where jurisdiction is specifically conferred on the court by  
21 the trust instrument; the administration of express trusts where the  
22 administration of the court is invoked by the trustee, beneficiary or  
23 any interested party; the administration of trusts which are estab-  
24 lished by a decree of court and result in the administration thereof  
25 by the court; and the settlement and closing of all such trusts.

1       **SEC. 11. Declaratory judgments—determination of heirship—dis-**  
2 **tribution.** During the administration of an estate, the district court  
3 sitting in probate shall have full, legal and equitable powers to make  
4 declaratory judgments in all matters involved in the administration  
5 of the estate, including those pertaining to the title of real estate, the  
6 determination of heirship, and the distribution of the estate. It shall  
7 have full, legal and equitable powers to enter final orders and decrees  
8 in all probate matters to effectuate its jurisdiction and to carry out  
9 its orders, judgments and decrees.

1       **SEC. 12. County of jurisdiction.** The court of each county shall  
2 have original and exclusive jurisdiction to administer the estates of  
3 all persons who are residents of the county, or who were residents at  
4 the time of their death, and all nonresidents of the state who have  
5 property, or who die leaving property in the county subject to admin-  
6 istration, or whose property is afterwards brought into the county;  
7 to appoint conservators for nonresidents having property in the  
8 county; and to appoint conservators and guardians of residents of the  
9 county.

1       **SEC. 13. Extent of jurisdiction.** The court of the county in which  
2 a will is probated, or in which administration, conservatorship or  
3 guardianship is granted, shall have jurisdiction coextensive with the  
4 state in the settlement of the estate, and in the sale and distribution  
5 thereof.

1       **SEC. 14. Concurrent jurisdiction.** When a case is originally within  
2 the jurisdiction of the courts of two or more counties, the one which  
3 first takes cognizance thereof by the commencement of the proceed-  
4 ings shall retain the same throughout.

1       **SEC. 15. Probate court always open.** The court sitting in probate  
2 shall always be open for the transaction of probate business.

1     **SEC. 16. Control of probate records.** The court shall have juris-  
2     diction and supervision of the probate records of the clerk, and may  
3     direct the destruction of records it deems to be old, obsolete or un-  
4     necessary, except that the probate record provided for in section  
5     twenty-nine (29) and the will record provided for in section three  
6     hundred two (302), or a copy thereof, shall be preserved at all times.

1     **SEC. 17. Judge disqualified—procedure.** Where the judge is a  
2     party, or is connected by blood or affinity with a person interested  
3     nearer than the fourth degree, or is personally interested in any pro-  
4     bate matter, the same shall be heard before another judge of the same  
5     district, or be transferred to the court of another district, or a judge  
6     of another district shall be procured to hold court for the hearing of  
7     such matter.

1     **SEC. 18. Uniform rules in probate.** The supreme court shall have  
2     power to adopt rules of procedure in probate not inconsistent with the  
3     provisions of this Code. The judges of the district court sitting en  
4     banc may adopt rules of procedure in probate matters within their  
5     respective districts not inconsistent with the rules adopted by the  
6     supreme court and the provisions of this Code.

1     **SEC. 19. Process revoked.** Any process or authority emanating  
2     from the court in probate matters may for good cause be revoked and  
3     a new one issued.

1     **SEC. 20. Referee—examination of accounts—fees.** For the audit-  
2     ing of the accounts of fiduciaries and for the performance of such  
3     other ministerial duties as the court may direct, the court may ap-  
4     point a referee in probate whenever in the opinion of the court it  
5     seems fit and proper to do so. The referee may be the clerk. No per-  
6     son shall be appointed as referee in any matter where he is acting as  
7     a fiduciary or as the attorney. All fees received by any county officer  
8     serving in the capacity of referee in probate shall become a part of  
9     the fees of his office and shall be accounted for as such.

1     **SEC. 21. Appraisers' fees and referees' fees fixed by rule.** The dis-  
2     trict court sitting en banc shall by rule fix the fees of probate referees.  
3     It shall also by rule provide, insofar as practicable, a uniform sched-  
4     ule of compensation for other appraisers, brokers, and agents em-  
5     ployed at estate expense.

## PART 2. CLERK OF PROBATE COURT

1     **SEC. 22. Probate powers of clerk.** The clerk shall have and may  
2     exercise within his county all the powers and jurisdiction of the court  
3     and of the judge thereof, in the following matters:

4     1. The appointment of personal representatives who are residents  
5     of the state, guardians and conservators for minors, the fixing and  
6     determining of the amount of the bond, or waiving the same when  
7     permitted by law or by will, and the approval of any and all bonds

8 given by fiduciaries in the discharge of their duties.

9 2. The examination and approval of all intermediate and interlocu-  
10 tory accounts and reports of fiduciaries.

11 3. The admission of wills of decedents to probate, when not con-  
12 tested, and the making of necessary orders in relation thereto, includ-  
13 ing orders for the issuance of commissions to take depositions. Proof  
14 may be made before the clerk in the same manner as is made in open  
15 court.

16 4. The making of all necessary orders in relation to the personal  
17 effects of a deceased person, where no objection is filed, and perform  
18 all other acts within his jurisdiction, as provided in this Code.

1 SEC. 23. **Clerk's actions reviewed.** Any person aggrieved by any  
2 order made or entered by the clerk under the powers conferred in  
3 section twenty-two (22) may have the same reviewed in court upon  
4 motion filed within six months or before the hearing on the final  
5 report of the fiduciary, whichever is the earlier, and upon such notice  
6 as the court may prescribe.

1 SEC. 24. **Docketing and hearing.** Upon the filing of such a motion,  
2 the clerk shall place the cause or proceeding on the docket without  
3 additional docket fee, and the matter shall stand for hearing or trial  
4 de novo in open court.

1 SEC. 25. **Validity of clerk's orders.** The records, orders, and judg-  
2 ments made and entered by the clerk, as hereinbefore provided, and  
3 not reversed, set aside, or modified by the court, shall stand, and shall  
4 be of the same force, validity, and effect, and be entitled to the same  
5 faith and credit, as if they had been made by the court.

1 SEC. 26. **Clerk not to prepare reports.** No clerk, deputy, or em-  
2 ployee of the clerk shall act as attorney for a fiduciary, or make or  
3 assist in making, drafting, or filling out any report of any fiduciary  
4 or any other report to be filed in his office.

1 SEC. 27. **Probate docket.** The clerk shall keep a book to be known  
2 as the Probate Docket, which shall show:

3 1. The name of every deceased person whose estate is administered  
4 or whose will is admitted to probate, and the date of his death.

5 2. The name of each person as to whom application for conservator-  
6 ship or guardianship is made.

7 3. The names of all the heirs in intestate estates and the surviving  
8 spouse of such deceased intestate, and their ages and places of resi-  
9 dence, so far as they can be ascertained.

10 4. The title of each trust where letters of trusteeship are issued.

11 5. A note of every sale of real estate made under the order of the  
12 court, with a reference to the volume and page of the record where a  
13 complete record thereof may be found.

1 SEC. 28. **Docketing trust proceedings.** When a trust is created by  
2 a will, the administration thereof shall be treated as a separate pro-

3 ceeding, with a separate docket number, from the date of the order  
4 of appointment or confirmation of the original trustee, unless other-  
5 wise ordered by the court.

1 **SEC. 29. Probate record.** The clerk shall also keep a book to be  
2 known as the Probate Record that shall contain full and complete  
3 journal entries of all orders made in relation to the business of each  
4 estate. When real estate is sold or mortgaged by a fiduciary under an  
5 order of court therefor, a complete record of the same shall be made  
6 in the probate record, including the petition, the notice, the returns of  
7 service, and all other papers filed, with the orders made relating  
8 thereto.

1 **SEC. 30. Bonds given by fiduciaries.** The clerk shall also keep a  
2 book known as Record of Bonds, in which he shall record all bonds  
3 given by fiduciaries.

1 **SEC. 31. Calendar.** The clerk shall keep a court calendar, and  
2 enter thereon such matters as the court may prescribe.

1 **SEC. 32. Delinquent inventories and reports.** On May 1 and No-  
2 vember 1 of each year, the clerk shall notify the fiduciary and his  
3 attorney of any delinquent inventories or reports due by law in any  
4 pending estate, trust, guardianship, or conservatorship, and that un-  
5 less such delinquent inventory or report is filed within sixty days  
6 thereafter, the matter shall be reported to the presiding judge. If the  
7 delinquent inventory is not filed within the time so specified, the  
8 fiduciary will be subject to removal under the provisions of section  
9 sixty-five (65) of this Code.

10 On July 1 and January 1 of each year, the clerk shall report to the  
11 presiding judge all delinquent inventories or reports in estates, trusts,  
12 guardianships or conservatorships on which such notice has been  
13 given and no report or inventory has been filed in response to the  
14 notice.

### PART 3. PROCEDURE IN PROBATE

1 **SEC. 33. Nature of proceedings in probate.** Actions to set aside or  
2 contest wills, for the involuntary appointment of guardians and con-  
3 servators, and for the establishment of contested claims shall be tri-  
4 able in probate as law actions, and all other matters triable in probate  
5 shall be tried by the probate court as a proceeding in equity.

1 **SEC. 34. Applicability of Rules of Civil Procedure.** All actions  
2 triable in probate shall be governed by the Rules of Civil Procedure,  
3 except as provided otherwise in this Code.

1 **SEC. 35. Reports and applications for orders.** All reports and ap-  
2 plications for orders in probate must be in writing, verified and self-  
3 explanatory, so that the clerk or court from a perusal thereof may  
4 understand the relief sought without explanations.

1     **SEC. 36. Orders in probate.** All orders and decrees of the court  
2 sitting in probate are final decrees as to the parties having notice and  
3 those who have appeared without notice.

1     **SEC. 37. Orders without notice.** All orders entered without notice  
2 or appearance are reviewable by the court at any time prior to the  
3 entry of the order approving the final report.

1     **SEC. 38. Time and place of hearing.** The hearing of any matter  
2 requiring notice shall be had at such time and place as the court may  
3 fix.

1     **SEC. 39. Place of hearing—noncontest or agreement.** In cases  
2 where no objection, resistance or appearance has been filed, or by  
3 agreement, such hearing may be had at any place within the judicial  
4 district.

1     **SEC. 40. Notice.** When the court fixes a time and place of hearing,  
2 it may direct what notice shall be given, and no hearing shall be had  
3 until proof of the giving or of the waiver of such notice has been  
4 made. When the manner of service of notice is not prescribed by the  
5 court or by this Code, such notice shall be served in the same manner  
6 that is provided by the Rules of Civil Procedure for the commence-  
7 ment of actions. In the case of proceedings against unknown persons,  
8 notice may be given by publication in accordance with the Rules of  
9 Civil Procedure. In no event shall notice be given by publication,  
10 except under order of court, nor shall notice be given at any time by  
11 posting.

1     **SEC. 41. Consular representatives—notice.** Whenever in the course  
2 of the administration of any estate, it shall appear that any subject,  
3 citizen, or national of a foreign country is interested as an heir,  
4 devisee, legatee, or otherwise, and the address of such person is un-  
5 known to the personal representative, the personal representative  
6 shall give notice by mail to the consular representative of such coun-  
7 try for Iowa of the pendency of such proceedings and of the particular  
8 interest of such foreign subject. If such consular representative shall  
9 not have filed his designation and address with the clerk, then such  
10 notice shall be mailed to the chief diplomatic representative of such  
11 foreign country at Washington, D. C. Failure to give such notice shall  
12 in no event and in no manner affect title to property.

1     **SEC. 42. Requests for notice.** At any time after the issuance of  
2 letters testamentary or of administration upon a decedent's estate,  
3 any person interested in the estate may file with the clerk a written  
4 request, in duplicate, for notice of the time and place of all hearings  
5 in such estate for which notice is required by law, by rule of court,  
6 or by an order in such estate. Such request for notice shall state the  
7 name and post-office address of such person and the name and post-  
8 office address of the attorney for the party requesting the notice.  
9 The clerk shall docket such request, and transmit the duplicate to the



10 personal representative of the estate of the decedent. Thereafter, the  
11 personal representative shall, unless otherwise ordered by the court,  
12 serve, by ordinary mail, upon such person, or his said attorney, a  
13 notice of each such hearing.

1     **SEC. 43. Notice and appearance.** In any matter pending in the  
2 probate court, the attorney general may request notice of all hearings  
3 therein as provided by section forty-two (42), and may, with the  
4 approval of the court, intervene in behalf of the public interest. The  
5 court, on its own motion, in any such matter involving the public  
6 interest, may direct the fiduciary to give notice of the hearing to the  
7 attorney general.

1     **SEC. 44. Waiver of service of notice.** Any notice required under  
2 this Code, or by order of court, may be waived in writing by the per-  
3 son, or the fiduciary, entitled to receive such notice.

1     **SEC. 45. Notice of order served on fiduciary and attorney.** When  
2 the court makes an order affecting a fiduciary, it shall be served upon  
3 him and his attorney of record in such manner as the court may pre-  
4 scribe.

1     **SEC. 46. Proof of publication.** Proof of the publication of all  
2 notices that are by this Code or by order of court required to be pub-  
3 lished shall be made by an affidavit of the publisher or of any em-  
4 ployee having knowledge of the facts.

1     **SEC. 47. Proof of service and taxation of costs.** Proof of service  
2 of any notice, required by this Code or by order of court, including  
3 those by publication, shall be filed with the clerk. The costs of serv-  
4 ing any notice given by the fiduciary shall be taxed by the clerk as  
5 part of the costs of administration in said estate.

1     **SEC. 48. Certified copies affecting foreign real estate.** A certified  
2 copy of any proceedings, order, judgment, or deed, affecting real  
3 estate in any county other than that in which administration or con-  
4 servatorship is originally granted, shall be furnished to the clerk of  
5 the court of the county where such real estate is situated, and shall by  
6 him be entered in the Probate Record.

1     **SEC. 49. Transfer to another county.** In any proceeding in pro-  
2 bate, the court may, upon written showing, supported by affidavit,  
3 and on such notice to interested parties as the court may prescribe,  
4 transfer such proceeding to any other county, when it is made to  
5 appear that such transfer will be in furtherance of justice. There-  
6 upon, the matter shall be pending in such other county.

1     **SEC. 50. Certified copy filed.** The clerk of the court which orders  
2 such a transfer shall retain the original files and papers, but shall  
3 make a certified copy thereof and of all record entries pertaining to the  
4 proceedings. He shall at once file the same in the office of the clerk of  
5 the court to which the transfer has been made.

1     **SEC. 51. Certified copy recorded.** The clerk of the court to which  
2 the proceedings are transferred shall record at length, in the probate  
3 record of his county, the certified copy of the record entries referred  
4 to in section forty-nine (49).

1     **SEC. 52. Mistakes corrected.** Mistakes in settlements may be cor-  
2 rected at any time before the final discharge of any fiduciary on such  
3 notice, if any, as the court may direct.

1     **SEC. 53. Submission and retention of vouchers and receipts.** In all  
2 accountings filed by fiduciaries, vouchers or receipts for all disburse-  
3 ments shall be filed or submitted by the fiduciary upon written request  
4 of any interested party, or upon order of court. After an order, or  
5 decree, has been entered approving such accounting, any vouchers or  
6 receipts which have been filed may be withdrawn under order of the  
7 court. Vouchers or receipts not filed, or which have been withdrawn,  
8 shall be preserved by the fiduciary until the accounting of such fiduci-  
9 ary becomes final.

1     Sections 54 to 63, inclusive, reserved for future use.

### DIVISION III—GENERAL PROVISIONS RELATING TO FIDUCIARIES

#### PART 1. QUALIFICATION, APPOINTMENT, SUBSTITUTION AND REMOVAL OF FIDUCIARIES

1     **SEC. 64. Qualification of fiduciary.** Any person of full age and any  
2 corporation authorized to act in a fiduciary capacity is qualified to  
3 serve as a fiduciary in this state except the following:

- 4         1. One who is a mental retardate, mentally ill, a chronic alcoholic,  
5 or a spendthrift.
- 6         2. Any other person whom the court determines to be unsuitable.

1     **SEC. 65. Removal of fiduciary.** When any fiduciary is, or becomes,  
2 disqualified under section sixty-four (64), has mismanaged the estate,  
3 failed to perform any duty imposed by law, or by any lawful order of  
4 court, or ceases to be a resident of the state, then the court may  
5 remove him. The court may upon its own motion, and shall upon the  
6 filing of a verified petition by any person interested in the estate,  
7 including a surety on the fiduciary's bond, order the fiduciary to  
8 appear and show cause why he should not be removed. Any such  
9 petition shall specify the grounds of complaint. The removal of a  
10 fiduciary after letters are duly issued to him shall not invalidate his  
11 official acts performed prior to removal.

1     **SEC. 66. Appointment of successor fiduciary.** When any fiduciary  
2 fails to qualify, dies, is removed by the court, or resigns, and such  
3 resignation is accepted by the court, the court may, and if he were  
4 the sole or last surviving fiduciary, and the administration has not  
5 been completed, the court shall appoint another fiduciary in his place.

1    **SEC. 67. Powers of surviving cofiduciary.** When the instrument  
2 creating the estate or trust requires two or more fiduciaries, and a  
3 vacancy occurs on account of the death, resignation, or removal of one  
4 of the fiduciaries, during the period of the vacancy thus created, the  
5 remaining fiduciary or fiduciaries shall have all the rights, titles and  
6 powers, whether discretionary or otherwise, of all the fiduciaries.

1    **SEC. 68. Powers of successor fiduciary.** When a successor fiduciary  
2 is appointed, he shall have all the rights, powers, titles and duties of  
3 his predecessor, except that he shall not exercise powers given in the  
4 instrument creating the powers that by its express terms are personal  
5 to the fiduciary therein designated.

1    **SEC. 69. Substitution—effect.** The substitution of a fiduciary shall  
2 occasion no delay in the administration of an estate. The periods  
3 herein specified within which acts are to be performed after the ap-  
4 pointment of a fiduciary shall, unless otherwise ordered by the court,  
5 be computed from the issuing of the letters to the first fiduciary.

1    **SEC. 70. Property delivered—penalty.** Upon the removal of any  
2 fiduciary, he shall be required by order of the court to deliver to the  
3 person who may be entitled thereto all the property in his hands or  
4 under his control belonging to the estate, and if he fails or refuses to  
5 comply with any proper order of the court, he may be committed to  
6 the jail of the county until he does.

1    Sections 71 to 75, inclusive, reserved for future use.

## PART 2. POWERS APPLICABLE TO ALL FIDUCIARIES

1    **SEC. 76. Two or more fiduciaries—exercise of powers.** Where there  
2 are two or more fiduciaries, they shall all concur in the exercise of the  
3 powers conferred upon them, unless the instrument creating the  
4 estate provides to the contrary. In the event that the fiduciaries can-  
5 not concur upon the exercise of any power, any one of the fiduciaries  
6 may apply to the court for directions, and the court shall make such  
7 orders as it may deem to be the best interests of the estate.

1    **SEC. 77. Receipts by one fiduciary.** One of the several fiduciaries  
2 may receive and receipt for any money, which receipt shall be given  
3 by him in his own name only, and he must individually account for all  
4 the money thus received and receipted for by himself, and this shall  
5 not charge his cofiduciary, except insofar as it can be shown to have  
6 come into his hands.

1    **SEC. 78. Third parties protected.** A person who in good faith pays  
2 or transfers to a fiduciary any money or other property which the  
3 fiduciary as such is authorized to receive, is not responsible for the  
4 proper application thereof by the fiduciary; and any right or title  
5 acquired from the fiduciary in consideration of such payment or trans-  
6 fer is not invalid in consequence of a misapplication by the fiduciary.

1     **SEC. 79. Fiduciaries considered as one.** In an action against sev-  
2 eral fiduciaries, in their fiduciary capacity, they shall be considered  
3 one person, and judgment may be taken against all as such, although  
4 not all were served with notice.

1     **SEC. 80. Fiduciary of a fiduciary.** A fiduciary has no authority to  
2 act in a matter wherein his decedent or ward was merely a fiduciary,  
3 except that he shall file a report and accounting on behalf of his  
4 decedent or ward in said matter.

1     **SEC. 81. Suit by and against fiduciary.** Any fiduciary may sue, be  
2 sued and defend in such capacity.

1     **SEC. 82. Designation of attorney.** The designation of the attorney  
2 or attorneys employed by the fiduciary to assist him in the adminis-  
3 tration of the estate shall be filed in said estate proceedings. Such  
4 designation shall state the attorney's name and post-office address.

1     **SEC. 83. Continuation of business.** Upon a showing of advantage  
2 to the estate, the court may authorize the fiduciary to continue any  
3 business of the estate for the benefit thereof. The order may be with-  
4 out notice, or after such notice as the court may prescribe. The court  
5 may on its own motion, and upon the application of any interested  
6 party shall, review such authorization, and upon such review, may  
7 revoke or modify the same. The order may provide:

8         1. For the conduct of the business solely by the fiduciary, or jointly  
9 with one or more other persons; for the formation of a partnership  
10 for the conduct of such business; or for the formation of, or for the  
11 fiduciary to join in the formation of a corporation for the conduct of  
12 such business;

13         2. For the extent of the liability of the estate, or any part thereof,  
14 or of the fiduciary, for obligations incurred in the continuation of the  
15 business;

16         3. As to whether liabilities incurred in the conduct of the business  
17 are to be chargeable solely to the part of the estate set aside for use  
18 in the business, or to the estate as a whole;

19         4. As to the period of time for which the business may be con-  
20 ducted; and

21         5. Such other conditions, restrictions, regulations and requirements  
22 as the court may order.

1     **SEC. 84. Delegation of authority.** Under order of court, with or  
2 without notice, a fiduciary may engage, at estate expense, outside  
3 specialists, and he may delegate to them, or consult with them for  
4 advice regarding the performance of aspects of the estate manage-  
5 ment which require professional skills or facilities which he does not  
6 possess, or does not possess in sufficient degree, and he may employ,  
7 at estate expense, subordinates and agents to perform ministerial acts  
8 and carry on or complete details of estate business under the policies  
9 and terms established by him.

1     **SEC. 85. Liability of fiduciary employing agents.** The fiduciary  
 2 shall not be personally liable for the acts or omissions of any such  
 3 specialist, subordinate or agent, unless it can be shown that said acts  
 4 or omissions would have been a breach of duty by the fiduciary had  
 5 he done it himself, and that,  
 6     1. The fiduciary directed or permitted the breach; or  
 7     2. He did not select or retain the said specialist, subordinate or  
 8 agent with reasonable care; or  
 9     3. The fiduciary did not properly supervise the specialist, subordi-  
 10 nate or agent; or  
 11     4. The fiduciary approved, acquiesced or co-operated in the neglect,  
 12 omission, misconduct or default by the specialist, subordinate or  
 13 agent.

1     **SEC. 86. Reduction of fees when agents are employed.** The court  
 2 shall, in fixing the fees of any fiduciary, consider the compensation  
 3 allowed to any person employed by the fiduciary under the provisions  
 4 of section eighty-four (84). If the court determines that the services  
 5 rendered by such person were services that would normally have been  
 6 performed by the fiduciary, the compensation of the fiduciary may,  
 7 in the court's discretion, be reduced by all or any part of the compen-  
 8 sation allowed to any such person.

1     **SEC. 87. Deposit of money in banks.** A fiduciary may deposit  
 2 moneys and other assets belonging to the estate in any banking in-  
 3 stitution authorized to do business in the state of Iowa.

1     **SEC. 88. Law governing administration of estates of nonresidents.**  
 2 Except as otherwise provided in this Code, all provisions of the law  
 3 relating to the administration of domestic estates and to the fiduci-  
 4 aries appointed therein, shall apply to the administration of the estate  
 5 of a nonresident, the appointment of the fiduciary therein, and the  
 6 granting of letters.

1     Sections 89 to 93, inclusive, reserved for future use.

### PART 3. SPECIAL PROVISIONS RELATING TO PROPERTY

1     **SEC. 94. Platting.** When it is for the best interests of the estate  
 2 in order to dispose of real property, the court may, upon application  
 3 by the fiduciary, or any other interested person, after notice and upon  
 4 good cause shown, authorize the fiduciary, either alone or together  
 5 with other owners, to plat any land belonging to the estate in accord-  
 6 ance with the statutes in regard to platting. The court may author-  
 7 ize the fiduciary to execute any instruments which may be required of  
 8 the titleholder or proprietor in connection with the platting of such  
 9 land.

1     Cross reference: Ch. 409 of the Code of Iowa.

1     **SEC. 95. Release of liens and mortgages.** Any fiduciary qualified  
 2 under the laws of this state may, without prior order of court, release,

3 assign or discharge, in whole or in part any mortgage, judgment or  
4 other lien held by the estate.

1 **SEC. 96. Specific performance voluntary.** When an estate is under  
2 such an obligation to convey property as might be enforced by suit for  
3 specific performance, the fiduciary may without prior order of court  
4 execute such conveyance.

1 **SEC. 97. Specific performance involuntary.** When an estate is un-  
2 der obligation to convey property, the court may, upon application of  
3 any interested person, with or without notice as the court may direct,  
4 require the fiduciary to execute such a conveyance.

1 **SEC. 98. Certificate of appointment and authority.** When any in-  
2 strument executed in accordance with the preceding three sections is  
3 to be recorded in a county other than the county in which the estate is  
4 pending, there shall also be recorded a certificate executed by the  
5 clerk of the court making the appointment, with seal affixed, showing  
6 the name of the court making the appointment, the date of the same,  
7 and that such fiduciary had not been discharged at the time of the  
8 execution of such instrument.

1 **SEC. 99. Federal stock authority to purchase.** When the court  
2 shall enter an order authorizing the fiduciary to execute a mortgage  
3 to encumber any property of the estate to secure a loan obtained from  
4 any association or corporation created, or which may be created, by  
5 authority of the United States and as an instrumentality of the United  
6 States, the court may authorize the fiduciary to purchase stock in an  
7 association or corporation, when such a purchase of stock is necessary  
8 or required as an incident to, or condition of, obtaining the loan, and to  
9 mortgage the estate property for such purpose, as well as to make  
10 payment for the stock so purchased from the proceeds of the loan  
11 so obtained.

1 **SEC. 100. Waiver of exemption.** Any deed or mortgage executed  
2 by a fiduciary under order of court shall have the effect of waiving  
3 any exemption as to homestead or otherwise of any person owning an  
4 interest in said real estate as fully as such owner could do if he were  
5 sui juris.

1 **SEC. 101. Appraisal.** At any time that the court may determine  
2 it to be to the best interests of the estate, it may order an appraisal  
3 of any or all of the property of an estate.

1 **SEC. 102. Costs and expenses.** In connection with the sale, mort-  
2 gage, lease, pledge or exchange of property, the court may authorize  
3 the fiduciary to pay, out of the proceeds realized therefrom or out of  
4 other funds of the estate, the customary and reasonable auctioneers'  
5 and brokers' fees and any necessary expenses for abstracting, survey,  
6 revenue stamps, and other necessary costs and expenses in connection  
7 therewith.

1 Sections 103 to 107, inclusive, reserved for future use.

PART 4. PROVISIONS RELATING TO ADMINISTRATION  
BY ALL FIDUCIARIES

GENERAL PROVISIONS

1     **SEC. 108. Small legacies to minors—payment.** Whenever a minor  
2 shall become entitled under the terms of a will to a bequest or legacy,  
3 to a share of the estate of an intestate, or to a beneficial interest in  
4 a trust fund upon the distribution thereof, and the value of such be-  
5 quest, legacy, share, or interest shall not exceed the sum of one thou-  
6 sand dollars, and no conservator for such minor has theretofore been  
7 appointed, the court having jurisdiction of the distribution of such  
8 funds may, in its discretion, upon the application of the fiduciary,  
9 enter an order authorizing such fiduciary to pay such bequest, legacy,  
10 share or interest to the parents of such minor, or to the person with  
11 whom such minor resides, for the use of such minor, and the receipt  
12 of such person or persons therefor, when presented to the court or  
13 filed with the report of distribution of any such fiduciary, shall have  
14 the same force and effect as though such payment had been made to  
15 a duly appointed and qualified conservator for such minor.

1     **SEC. 109. Inability to distribute estate funds.** Any fiduciary hav-  
2 ing in his possession or under his control any funds, moneys or secu-  
3 rities due or to become due to any other person to whom payment or  
4 delivery cannot be made as shown by the report of the fiduciary on  
5 file, may, upon order of court, deposit such property with the clerk  
6 and take the receipt of the clerk for the same. Such receipt shall spe-  
7 cifically state from whom said property was derived, the description  
8 thereof, and the name of the person entitled to the same. Thereafter,  
9 such funds shall be held and disposed of by the clerk in accordance  
10 with the provisions of chapter six hundred eighty-two (682) of the  
11 Code of Iowa.

1     **SEC. 110. Receipts taken.** If such fiduciary shall otherwise dis-  
2 charge all the duties imposed upon him by such appointment, he may  
3 take the receipts of the clerk for such funds, moneys, or securities so  
4 deposited, which receipts shall specifically set forth from whom said  
5 funds, moneys, or securities were derived, the amount thereof, and the  
6 name of the person to whom due or to become due, if known.

1     **SEC. 111. Final discharge period.** Such fiduciary may file such re-  
2 cepts with his final report, and if it shall be made to appear to the  
3 satisfaction of the court that he has in all other respects complied with  
4 the law governing his appointment and duties, the court may approve  
5 such final report and enter his discharge.

1     **SEC. 112. Discovery of property.** The court may require any per-  
2 son suspected of having possession of any property, including records  
3 and documents, of the decedent, ward, or the estate, or of having had  
4 such property under his control, to appear and submit to an examina-  
5 tion under oath touching such matters, and if on such examination it

6 appears that he has the wrongful possession of any such property,  
7 the court may order the delivery thereof to the fiduciary. Such a per-  
8 son shall be liable to the estate for all damages caused by his acts.

1 **SEC. 113. Commitment.** If, upon being served with an order of  
2 the court requiring him to appear for interrogation, as provided in the  
3 preceding sections hereof, any person fails to appear in accordance  
4 therewith, or if, having appeared, he refuses to answer any question  
5 which the court thinks proper to be put to him in the course of such  
6 examination, or if he fails to comply with the order of the court  
7 requiring him to deliver the property to the fiduciary, he may be com-  
8 mitted to the jail of the county until he does.

1 **SEC. 114. Compromise of claims held by an estate.** When it ap-  
2 pears for the best interest of the estate, the fiduciary may, subject to  
3 approval of the court, effect a compromise with any debtor or other  
4 obligor, or extend, renew, or in any other manner, modify the terms  
5 of any obligation owing to the estate. If the fiduciary holds a mort-  
6 gage, pledge, or other lien upon property of another person, he may,  
7 in lieu of foreclosure, accept a conveyance or transfer of such encum-  
8 bered assets from the owner thereof in satisfaction of the indebtedness  
9 secured by such lien, if it appears for the best interests of the estate,  
10 and if the court shall so order.

1 **SEC. 115. Compromise of claims against an estate.** When a claim  
2 against an estate has been filed, or suit thereon is pending, the cred-  
3 itor and the fiduciary may, if it appears for the best interests of the  
4 estate, subject to approval of the court, compromise the claim, whether  
5 it is due or not due, absolute or contingent, liquidated or unliquidated.

1 **SEC. 116. Abandonment of property.** When any property is value-  
2 less, or is so encumbered, or in such condition, that it is of no benefit  
3 to the estate, the court may order the fiduciary to abandon it, or make  
4 such other disposition of it as may be suitable in the premises.

1 **SEC. 117. Encumbered assets.** When any assets of the estate are  
2 encumbered by mortgage, pledge or other lien, the fiduciary may pay  
3 such encumbrance or any part thereof, renew or extend any obliga-  
4 tion secured by the encumbrance, or may convey or transfer such  
5 assets to the creditor in satisfaction of his lien, in whole or in part,  
6 whether or not the holder of the encumbrance has filed a claim, or he  
7 may purchase lands claimed or contracted for by the decedent, if it  
8 appears to be for the best interests of the estate and if the court  
9 shall so order. The making of such payment shall not increase the  
10 share of the distributee entitled to such encumbered assets.

1 Cross reference: See section 423.

1 **SEC. 118. Attorney appointed for persons not represented.** At or  
2 before the hearing in any proceedings under this Code, where all the  
3 parties interested in the estate are required to be notified thereof, the



4 court, in its discretion, may appoint some competent attorney to rep-  
5 resent any interested person who has been served with notice and who  
6 is otherwise unrepresented.

1 **SEC. 119. Order and authority thereunder.** The order making the  
2 appointment of such attorney must specify the names of the parties,  
3 so far as known, for whom he is appointed, and he will be authorized  
4 to represent such parties in all such proceedings subsequent to his  
5 appointment.

1 **SEC. 120. Compensation.** Any attorney so appointed under the  
2 authority of section one hundred eighteen (118) shall be paid for  
3 his services out of the estate, as a part of the costs of administration,  
4 a fee to be fixed by the court, and upon distribution of the estate, the  
5 fee may be charged to the party represented by him.

1 **SEC. 121. Substitution—division of fee.** The court may substitute  
2 another attorney for the one first appointed under the authority of  
3 section one hundred eighteen (118), in which case the fees must be  
4 divided in proportion to the services rendered.

1 **SEC. 122. Settlement contested.** The acts of the fiduciary without  
2 prior approval of court after notice, may be contested by any inter-  
3 ested person at or before the entry of the order discharging the fiduci-  
4 ary.

#### INVESTMENTS BY FIDUCIARIES

1 **SEC. 123. Existing investments.** Any fiduciary may, by and with  
2 the consent of the court having jurisdiction over such fiduciary or un-  
3 der permission of the will or other instrument creating the estate,  
4 continue to hold any investment originally received by him, and, also,  
5 any increase thereof. The fiduciary may also make investments which  
6 he may deem necessary to protect and safeguard investments already  
7 made.

#### APPOINTMENT OF A NOMINEE BY BANKING INSTITUTIONS ACTING IN A FIDUCIARY CAPACITY

1 **SEC. 124. Investment may be held in name of nominee of bank or**  
2 **trust company.** If court approval is first obtained, any state or na-  
3 tional bank or trust company, when acting with the consent of its  
4 cofiduciary, if any, may cause any investment held in any such capac-  
5 ity to be registered and held in the name of a nominee or nominees of  
6 such bank or trust company. Such cofiduciary is hereby empowered  
7 to give such consent unless it is specifically forbidden in the instru-  
8 ment creating the fiduciary relationship. Such bank or trust company  
9 shall be liable for the acts of any such nominee with respect to any  
10 investment so registered.

1 **SEC. 125. Records of bank or trust company to show ownership.**  
2 The records of said bank or trust company shall at all times show the

3 ownership of any such investment, which investment shall be in the  
4 possession and control of such bank or trust company and be kept  
5 separate and apart from the assets of such bank or trust company.

#### COMMON TRUST FUNDS

1 **SEC. 126. Definitions.**

2 1. "Common trust fund" means a fund maintained by a bank or  
3 trust company exclusively for the collective investment and reinvest-  
4 ment of moneys contributed thereto by the bank or trust company in  
5 its capacity as a fiduciary or cofiduciary.

6 2. "Fiduciary", for the purposes of sections one hundred twenty-six  
7 (126) to one hundred twenty-nine (129), inclusive, of this Code,  
8 means acting in any of the following capacities, namely: testamen-  
9 tary trustee appointed by any court, trustee under any written agree-  
10 ment, declaration or instrument of trust, executor, administrator,  
11 guardian, or conservator.

1 **SEC. 127. Establishment of common trust funds.** Any bank or  
2 trust company qualified to act as fiduciary in this state may establish  
3 common trust funds for the purpose of furnishing investments to  
4 itself as fiduciary, or to itself and others, as cofiduciaries; and may,  
5 as such fiduciary or cofiduciary, invest funds which it lawfully holds  
6 for investment in interests in such common trust funds, if such in-  
7 vestment is not prohibited by the instrument, judgment, decree, or  
8 order creating such fiduciary relationship, and if, in the case of co-  
9 fiduciaries, the bank or trust company procures the consent of its co-  
10 fiduciaries to such investment. If the instrument creating the fiduci-  
11 ary relationship gives to the bank or trust company the exclusive  
12 right to select investments, the consent of the cofiduciary shall not be  
13 required.

1 **SEC. 128. Court accountings.** Unless ordered by a court of com-  
2 petent jurisdiction, the bank or trust company operating such common  
3 trust funds is not required to render a court accounting with regard  
4 to such funds; but it may, by application to the court, secure approval  
5 of such an accounting on such conditions as the court may establish.

6 When an accounting of a common trust fund is presented to a court  
7 for approval, the court shall assign a time and place for hearing, and  
8 order notice thereof by: (1) publication once each week for three  
9 consecutive weeks in a newspaper of general circulation, published  
10 in the county in which the bank or trust company operating the com-  
11 mon trust fund is located, the first publication to be not less than  
12 twenty days prior to the date of hearing, and (2) sending by ordinary  
13 mail not less than fourteen days prior to the date of hearing, a copy  
14 of the notice prescribed to all beneficiaries of the trust participating  
15 in the common trust fund whose names are known to the bank or  
16 trust company from the records kept by it in the regular course of  
17 business in the administration of said trusts, directed to them at the  
18 addresses shown by such records, and (3) such further notice, if any,  
19 as the court may order.

1     **SEC. 129. Uniformity of interpretation.** Sections one hundred  
2 twenty-six (126), one hundred twenty-seven (127) and one hundred  
3 twenty-eight (128) shall be so interpreted and construed as to effec-  
4 tuate their general purpose to make uniform the law of those states  
5 which enact the common trust funds.

#### SIMPLIFICATION OF FIDUCIARY SECURITY TRANSFERS

1     **SEC. 130. Registration in the name of a fiduciary.** A corporation  
2 or transfer agent registering a security in the name of a person who  
3 is a fiduciary or who is described as a fiduciary is not bound to inquire  
4 into the existence, extent, or correct description of the fiduciary rela-  
5 tionship, and thereafter the corporation and its transfer agent may  
6 assume without inquiry that the newly registered owner continues to  
7 be the fiduciary until the corporation or transfer agent receives writ-  
8 ten notice that the fiduciary is no longer acting as such with respect  
9 to the particular security.

1     **SEC. 131. Assignment by a fiduciary.** Except as otherwise pro-  
2 vided in this Code, a corporation or transfer agent making a transfer  
3 of a security pursuant to an assignment by a fiduciary:  
4     1. May assume without inquiry that the assignment, even though  
5 to the fiduciary himself or to his nominee, is within his authority and  
6 capacity, and is not in breach of his fiduciary duties;  
7     2. May assume without inquiry that the fiduciary has complied with  
8 any controlling instrument and with this Code, including any law re-  
9 quiring the fiduciary to obtain court approval of the transfer; and  
10    3. Is not charged with notice of, and is not bound to obtain or exam-  
11 ine, any court record, or any recorded or unrecorded document, relat-  
12 ing to the fiduciary relationship or the assignment, even though the  
13 record or document is in its possession.

1     **SEC. 132. Evidence of appointment or incumbency.** A corporation  
2 or transfer agent making a transfer pursuant to an assignment by a  
3 fiduciary who is not the registered owner shall obtain the following  
4 evidence of appointment or incumbency:  
5     1. In the case of a fiduciary appointed or qualified by a court, a cer-  
6 tificate issued by or under the direction or supervision of that court  
7 or an officer thereof, and dated within sixty days before the transfer;  
8 or  
9     2. In any other case, a copy of a document showing the appointment  
10 or a certificate issued by or on behalf of a person reasonably believed  
11 by the corporation or transfer agent to be responsible, or, in the ab-  
12 sence of such a document or certificate, other evidence reasonably  
13 deemed by the corporation or transfer agent to be appropriate. Cor-  
14 porations and transfer agents may adopt standards with respect to  
15 evidence of appointment or incumbency under this subsection two (2),  
16 provided such standards are not manifestly unreasonable. Neither  
17 the corporation nor transfer agent is charged with notice of the con-  
18 tents of any document obtained pursuant to this subsection two (2),  
19 except to the extent that the contents relate directly to the appoint-  
20 ment or incumbency.

1     **SEC. 133. Adverse claims.**

2     1. A person asserting a claim of beneficial interest adverse to the  
3 transfer of a security pursuant to an assignment by a fiduciary may  
4 give the corporation or transfer agent written notice of the claim.  
5 The corporation or transfer agent is not put on notice unless the writ-  
6 ten notice identifies the claimant, the registered owner and the issue  
7 of which the security is a part, provides an address for communica-  
8 tions directed to the claimant and is received before the transfer.  
9 Nothing in this Act relieves the corporation or transfer agent of any  
10 liability for making or refusing to make the transfer after it is put  
11 on notice, unless it proceeds in the manner authorized in subsection  
12 two (2).

13     2. As soon as practicable after the presentation of a security for  
14 transfer pursuant to an assignment by a fiduciary, a corporation or  
15 transfer agent which has received notice of a claim of beneficial in-  
16 terest adverse to the transfer may send notice of the presentation by  
17 certified or registered mail to the claimant at the address given by  
18 him. If the corporation or transfer agent so mails such a notice, it  
19 shall withhold the transfer for thirty days after the mailing, and  
20 shall then make the transfer unless restrained by a court order.

1     **SEC. 134. Nonliability of corporation and transfer agent.** A cor-  
2 poration or transfer agent incurs no liability to any person by making  
3 a transfer or otherwise acting in a manner authorized by sections one  
4 hundred thirty (130) through one hundred thirty-three (133).

1     **SEC. 135. Nonliability of third persons.**

2     1. No person who participates in the acquisition, disposition, as-  
3 signment or transfer of a security by or to a fiduciary, including a  
4 person who guarantees the signature of the fiduciary, is liable for  
5 participation in any breach of fiduciary duty by reason of failure to  
6 inquire whether the transaction involves such a breach unless it is  
7 shown that he acted with actual knowledge that the proceeds of the  
8 transaction were being, or were to be, used wrongfully for the indi-  
9 vidual benefit of the fiduciary, or that the transaction was otherwise  
10 in breach of duty.

11     2. If a corporation or transfer agent makes a transfer pursuant to  
12 an assignment by a fiduciary, a person who guaranteed the signature  
13 of the fiduciary is not liable on the guarantee to any person to whom  
14 the corporation or transfer agent by reason of sections one hundred  
15 thirty (130) through one hundred thirty-three (133) incurs no lia-  
16 bility.

17     3. This section does not impose any liability upon the corporation  
18 or its transfer agent.

1     **SEC. 136. Territorial application.**

2     1. The rights and duties of a corporation and its transfer agents in  
3 registering a security in the name of a fiduciary, or in making a  
4 transfer of a security pursuant to an assignment by a fiduciary, are  
5 governed by the law of the jurisdiction under whose laws the corpo-  
6 ration is organized.

7     2. Sections one hundred thirty (130) through one hundred thirty-  
8 five (135) apply to the rights and duties of a person other than the

9 corporation and its transfer agents with regard to acts and omissions  
10 in this state in connection with the acquisition, disposition, assign-  
11 ment or transfer of a security by or to a fiduciary, and of a person  
12 who guarantees in this state the signature of a fiduciary in connection  
13 with such a transaction.

1 **SEC. 137. Tax obligations.** Sections one hundred thirty (130)  
2 through one hundred thirty-six (136) do not affect any obligation of  
3 a corporation or transfer agent with respect to estate, inheritance,  
4 succession, or other taxes imposed by the laws of this state.

1 **SEC. 138. Uniformity of interpretation.** Sections one hundred  
2 thirty (130) through one hundred thirty-seven (137) shall be so con-  
3 strued as to effectuate their general purpose to make uniform the  
4 transfers of securities by fiduciaries.

1 Sections 139 to 143, inclusive, reserved for future use.

#### PART 5. POWERS OF FOREIGN FIDUCIARIES

1 **SEC. 144. Mortgages and judgments.** Judgments rendered by any  
2 court in the state of Iowa and mortgages belonging to an estate, trust,  
3 or to a person under conservatorship may, without prior order of  
4 court, be released, discharged or assigned, in whole or in part as to  
5 any particular property, and deeds may be executed in performance  
6 of real estate contracts entered into before the creation of the estate,  
7 trust, or conservatorship, by any foreign fiduciary, receiver, referee,  
8 assignee or commissioner, or by any other person acting in a fiduciary  
9 capacity appointed by a court of record of any foreign state or coun-  
10 try, where a statement is filed by said fiduciary that no fiduciary,  
11 receiver, referee, assignee, or commissioner has been appointed and  
12 qualified in this state. Such release, satisfaction, discharge, assign-  
13 ment or deed may be made without any order of court in any manner  
14 or by any instrument which would be valid and effective if made by  
15 a like officer qualified under the law of this state.

1 **SEC. 145. Certificate of appointment and authority.** Before any  
2 instrument executed by such foreign fiduciary or officer as authorized  
3 by section one hundred forty-four (144) shall be effective, a certificate  
4 executed by the court or clerk making the appointment, with seal  
5 attached, if such officer has a seal, shall be recorded. Such certificates  
6 shall state the name of the court making such appointment, the date  
7 of the appointment, and that such fiduciary or officer has not been  
8 discharged at the time of the execution of said instrument.

1 **SEC. 146. Filing of certificate.** The certificate aforesaid shall be  
2 filed for record:

3 1. In the case of judgments, in the office of the clerk in which the  
4 judgment is of record or in which it has been filed, and

5 2. In the case of mortgages and deeds executed in performance of  
6 real estate contracts, in the office of the appropriate county recorder.

1     **SEC. 147. Record.** Such certificate shall be recorded by the proper  
2 officer in the judgment records of the court in which the same appears  
3 of record, or in the appropriate chattel or real estate records, as the  
4 case may be.

1     **SEC. 148. Maintaining actions.** When there is no administration  
2 of an estate nor a petition therefor pending, in this state, a foreign  
3 fiduciary may maintain actions and proceedings in this state subject  
4 to the requirements and conditions imposed upon nonresident suitors  
5 generally.

1     **SEC. 149. Filing of bond.** At the time of commencing any action  
2 or proceeding in any court of this state, the foreign fiduciary shall file  
3 with the court an authenticated copy of his appointment, and of his  
4 official bond, if he has given a bond. If the court believes that the  
5 security furnished by him in the domiciliary administration is in-  
6 sufficient to cover the proceeds of the action or the proceeding, or for  
7 any other reason or cause, it may at any time order the action or  
8 proceeding stayed until sufficient security is furnished in the action  
9 or proceeding.

1     Sections 150 to 154, inclusive, reserved for future use.

#### PART 6. LIABILITY OF FIDUCIARIES

1     **SEC. 155. Self-dealing by fiduciary prohibited.** No fiduciary shall  
2 in any manner deal with himself, except on order of court after notice  
3 to all interested persons, and shall derive no profit other than his dis-  
4 tributive share in the estate from the sale or liquidation of any prop-  
5 erty belonging to the estate.

1     **SEC. 156. Deposits by corporate fiduciaries.** Section one hundred  
2 fifty-five (155) shall not be construed to prohibit a corporate fiduciary  
3 from making a deposit of estate funds in its own banking department.

1     **SEC. 157. Liability for property of estate.** Every fiduciary shall  
2 be liable for, and chargeable in his accounts with, all of the estate  
3 that comes into his possession at any time, including all the income  
4 therefrom; but he shall not be accountable for any debts due to the  
5 estate or other assets of the estate that remain uncollected without  
6 his fault. He shall not be entitled to profit from the increase in value  
7 of any asset of the estate, nor shall he be chargeable with loss result-  
8 ing, without his fault, from the decrease in value or the destruction  
9 of any part of the estate, excepting, only to the extent of his pro rata  
10 share in such gain or loss as one of the distributees of the estate.

1     **SEC. 158. Liability for property not a part of estate.** Every fiduci-  
2 ary shall be chargeable in his accounts with property not a part of the  
3 estate that comes into his hands at any time, and shall be liable to  
4 the persons entitled thereto, if:

5     1. The property was received under a duty imposed upon him by  
6 law in the capacity of fiduciary; or

7     2. He has commingled such property with the assets of the estate.

1     **SEC. 159. Judgment—execution.** If judgment is rendered against  
2 a fiduciary for costs in any action prosecuted or defended by him in  
3 that capacity, execution shall be awarded against him as for his own  
4 debt, if it appears to the court that such action was prosecuted or  
5 defended without reasonable cause.

1     **SEC. 160. Breach of duty.** Every fiduciary shall be liable and  
2 chargeable in his accounts for neglect or unreasonable delay in collect-  
3 ing the credits or other assets of the estate or in selling, mortgaging  
4 or leasing the property of the estate; for neglect in paying over  
5 money or delivering property of the estate he shall have in his hands;  
6 for failure to account for or to close the estate within the time pro-  
7 vided by this Code; for any loss to the estate arising from his em-  
8 bezzlement or commingling of the assets of the estate with other  
9 property; for loss to the estate through self-dealing; for any loss to  
10 the estate arising from wrongful acts or omissions of his cofiduciaries  
11 which he could have prevented by the exercise of ordinary care; and  
12 for any other negligent or willful act or nonfeasance in his adminis-  
13 tration of the estate by which loss to the estate arises.

1     **SEC. 161. Examination of fiduciaries.** The fiduciary may be exam-  
2 ined under oath by the court upon any matter relating to his accounts.

1     **SEC. 162. Penalty.** In fixing the fees of any fiduciary, the court  
2 shall take into consideration any violation of this Code by the fiduci-  
3 ary, and may diminish the fee of such fiduciary to the extent the court  
4 may determine to be proper.

1     Sections 163 to 167, inclusive, reserved for future use.

#### PART 7. OATH AND BOND OF FIDUCIARIES

1     **SEC. 168. Oath.** Every fiduciary, before entering upon the duties  
2 of his office and within such time as the court or clerk directs, shall  
3 subscribe an oath that he will faithfully discharge the duties imposed  
4 upon him by law, according to the best of his ability.

1     **SEC. 169. Bond.** Except as herein otherwise provided, every fidu-  
2 ciary shall execute and file with the clerk a bond with sufficient surety  
3 or sureties, as hereinafter provided. It shall be conditioned upon the  
4 faithful discharge of all the duties of his office according to law, in-  
5 cluding his duty to account. It shall be procured at the expense of the  
6 estate, if an approved surety company bond is furnished.

1     **SEC. 170. Amount of bond.** Except as herein otherwise provided,  
2 the court or the clerk shall fix the penalty of the bond in an amount  
3 equal to the value of the personal property of the estate, plus the  
4 estimated gross annual income of the estate during the period of  
5 administration.

1     **SEC. 171. Approval by clerk.** The bond shall not be deemed suffi-  
2 cient until it has been examined and approved by the clerk who shall  
3 endorse such approval thereon. In the event that the bond is not ap-

4 proved, the fiduciary shall, within such time as the court or the clerk  
5 directs, secure and file a bond with satisfactory surety or sureties.

1 **SEC. 172. Will—waiver of bond.** When, by the terms of the will,  
2 the testator has directed or expressed the desire that no bond shall be  
3 required, such direction or expression shall be construed to be a  
4 waiver of the posting of a bond by the fiduciary for all purposes,  
5 and no bond shall be required unless the court for good cause finds it  
6 proper to require one; if no bond is initially required, the court may  
7 nevertheless, for good cause, at any subsequent time require that a  
8 bond be given.

1 **SEC. 173. Waiver of bond by distributees.** If the distributees, in  
2 writing waive the statutory requirement that a bond shall be filed by  
3 the fiduciary with the clerk, and the court finds that the interests of  
4 the creditors will not thereby be prejudiced, no bond shall be required.

1 **SEC. 174. Guardians—bond.** When the guardian appointed for a  
2 person is not the conservator of the property of that person, no bond  
3 shall be required of the guardian, unless the court for good cause finds  
4 it proper to require one. If no bond is initially required, the court  
5 may, nevertheless, for good cause, at any subsequent time, require  
6 that a bond be given.

1 **SEC. 175. Waiver of bond by court.** The court may, for good cause  
2 shown, exempt any fiduciary from giving bond, provided the court  
3 finds that the interests of creditors and distributees will not thereby  
4 be prejudiced.

1 **SEC. 176. Reduction of bond by deposit.** Personal property of the  
2 estate may be deposited with a bank or trust company located in the  
3 state of Iowa upon such terms as may be prescribed by order of the  
4 court. The amount of the bond of the fiduciary may be then reduced  
5 as the court may determine.

1 **SEC. 177. Deposit in lieu of bond.** The court may permit the fidu-  
2 ciary to deposit cash or other prescribed securities of his own in lieu  
3 of bond.

1 **SEC. 178. Letters.** Upon the filing of an oath of office and a bond,  
2 if any is required, the clerk shall issue letters under the seal of the  
3 court, giving the fiduciary the powers authorized by law.

1 **SEC. 179. Review by clerk when inventory is filed.** At the time the  
2 inventory of the estate is filed, the clerk shall review the amount of  
3 bond, and report to the court as to any apparent insufficiency thereof.

1 **SEC. 180. Bond changed.** The court may at any time require a new  
2 bond, or increase or decrease the amount of the penalty of the bond of  
3 any fiduciary, when good cause therefor appears.



1     **SEC. 181. Obligees of bond—joint and several liability.** The bond  
2 of the fiduciary shall run to the use of all persons interested in the  
3 estate, and shall be for the security and benefit of such persons. The  
4 sureties shall be jointly and severally liable with the fiduciary, and  
5 with each other.

1     **SEC. 182. Qualifications for sureties.** Qualifications for sureties on  
2 probate bonds shall be the same as those provided by section six hun-  
3 dred eighty-two point four (682.4) or section six hundred eighty-two  
4 point fourteen (682.14) of the Code of Iowa, provided, however, that  
5 no attorney shall act as surety on any such bond.

1     **SEC. 183. Authority for fiduciary and surety to enter into agree-**  
2 **ment for deposit of property or joint control.** It shall be lawful for  
3 the fiduciary to agree with his surety for the deposit of any or all  
4 moneys and other property of the estate with a bank, safe deposit or  
5 trust company, authorized by law to do business as such, or other  
6 depository approved by the court, if such deposit is otherwise proper,  
7 in such manner as to prevent the withdrawal of such moneys or other  
8 property without the written consent of the surety, or on order of the  
9 court made on such notice to the surety as the court may direct.

1     **SEC. 184. Release of sureties before estate fully administered.**

2     1. Release for cause. For good cause, the court may, before the  
3 estate is fully administered, order the release of the sureties of the  
4 fiduciary and require the fiduciary to furnish a new bond.

5     2. Extent of liability of original and new sureties. The original  
6 sureties shall be liable for all breaches of the obligation of the bond  
7 up to the time of filing of the new bond and the approval thereof by  
8 the clerk, but not for acts and omissions of the fiduciary thereafter.  
9 The new bond shall bind the sureties thereon with respect to acts and  
10 omissions of the fiduciary from the time when the sureties on the  
11 original bond are no longer liable therefor.

1     **SEC. 185. Insolvency of fiduciary.** If, at any time, a fiduciary be-  
2 comes insolvent after qualifying as such fiduciary, and after the  
3 maturity of a debt owing by such fiduciary to the estate, then the  
4 fiduciary and the sureties on his bond shall be liable to the estate for  
5 the indebtedness owing by the fiduciary to the estate. If the fiduciary  
6 is not solvent at any time after his qualification and after the matu-  
7 rity of the debt, the sureties on his bond shall not be liable to the  
8 estate for the indebtedness.

1     **SEC. 186. Suit on bond.**

2     1. Execution of bond deemed as appearance. The execution and  
3 filing of the bond by a fiduciary, any other provisions of law notwith-  
4 standing, shall be deemed an appearance by the surety in the proceed-  
5 ing for the administration of the estate including all hearings with  
6 respect to the bond.

7     2. Summary enforcement in proceedings for administration. Sub-  
8 ject to the provisions of subsection three (3) hereof, the court may,  
9 upon the breach of the obligation of the bond of a fiduciary, after

10 notice to the obligors on the bond and to such other persons as the  
 11 court directs, summarily determine the damages as a part of the pro-  
 12 ceeding for the administration of the estate, and by appropriate  
 13 process enforce the collection thereof from those liable on the bond.  
 14 Such determination and enforcement may be made by the court upon  
 15 its own motion or upon application of a successor fiduciary, or of any  
 16 other interested person. The court may hear the application at the  
 17 time of settling the accounts of the defaulting fiduciary or at such  
 18 other time as the court may direct. Damages shall be assessed on  
 19 behalf of all interested persons and may be paid over to the succes-  
 20 sor or other nondefaulting fiduciary and distributed as other assets  
 21 held by the fiduciary in his official capacity.

22 3. Enforcement by separate suit. If the estate is already distrib-  
 23 uted, or if, for any reason, the procedure to recover on the bond pro-  
 24 vided in subsection two (2) hereof, is inadequate, any interested  
 25 person may bring a separate suit in a court of competent jurisdiction  
 26 on his own behalf for damages suffered by him by reason of the  
 27 default of the fiduciary.

28 4. Bond not void upon first recovery. The bond of the fiduciary  
 29 shall not be void upon the first recovery, but may be proceeded upon  
 30 from time to time until the whole penalty is exhausted.

31 5. Denial of liability by surety—intervention. If the court has  
 32 already determined the liability of the fiduciary, the sureties shall  
 33 not be permitted thereafter to deny such liability in any action or  
 34 hearing to determine their liability; but the surety may intervene in  
 35 any hearing to determine the liability of the fiduciary.

1 SEC. 187. **Limitation of action on bond.** No proceedings upon the  
 2 bond of a fiduciary shall be brought subsequent to two years after the  
 3 discharge of the fiduciary or six months after the discovery of fraud,  
 4 whichever is later.

1 Sections 188 and 196, inclusive, reserved for future use.

#### PART 8. COMPENSATION OF FIDUCIARIES AND ATTORNEYS

1 SEC. 197. **Compensation.** Personal representatives shall be allowed  
 2 such reasonable fees as may be determined by the court for services  
 3 rendered, but not in excess of the following commissions upon the  
 4 gross assets of the estate listed in the probate inventory for Iowa  
 5 inheritance tax purposes, which shall be received as full compensation  
 6 for all ordinary services:

7 For the first one thousand dollars, six percent;

8 For the overplus between one and five thousand dollars, four per-  
 9 cent;

10 For all sums over five thousand dollars, two percent.

1 Cross reference: See sections 86 and 162.

1 SEC. 198. **Attorney fee.** There shall also be allowed and taxed as  
 2 part of the costs of administration of estates as an attorney's fee for  
 3 the personal representative's attorney, such reasonable fee as may

4 be determined by the court, for services rendered, but not in excess  
5 of the schedule of fees herein provided for personal representatives.

1 **SEC. 199. Expenses and extraordinary services.** Such further al-  
2 lowances as are just and reasonable may be made by the court to  
3 personal representatives and their attorneys for actual necessary and  
4 extraordinary expenses or services. Necessary and extraordinary  
5 services shall be construed to also include services in connection with  
6 real estate, tax matters, and litigated matters.

1 **SEC. 200. Compensation of other fiduciaries and their attorneys.**  
2 The court shall allow and fix from time to time the compensation for  
3 fiduciaries, other than personal representatives, and their attorneys  
4 for such services as they shall render as shown by an itemized claim  
5 or report made and filed setting forth what such services consist of  
6 during the period of time they continue to act in such capacities.

1 **SEC. 201. Court officers as fiduciaries.** Judges, clerks and deputy  
2 clerks serving as fiduciaries shall not be allowed any compensation for  
3 services as such fiduciaries.

1 **SEC. 202. Affidavit relative to compensation.** In no case shall the  
2 compensation of fiduciaries and their attorneys be allowed or paid  
3 until there shall have been filed with the clerk of the district court in  
4 which administration of the estate is pending an affidavit of the fidu-  
5 ciary, or attorney, as the case may be, stating that there is no con-  
6 tract, agreement, or arrangement, either oral or written, express or  
7 implied, contemplating any division of compensation for such services,  
8 or participation therein, directly or indirectly, by any other person,  
9 firm, or corporation with such fiduciary or attorney, unless it be with  
10 a regular and bona fide law partner, or with one jointly serving with  
11 them in the same capacity in relation to the estate in which such  
12 compensation is allowed, in which event the affidavit shall show such  
13 fact.

1 **SEC. 203. Affidavit for corporate fiduciary.** In any case where a  
2 corporation is acting as a fiduciary under and by virtue of the provi-  
3 sions of chapter five hundred thirty-two (532) of the Code of Iowa,  
4 the affidavit required by section two hundred two (202) shall be exe-  
5 cuted and made by an officer of such corporation.

1 **SEC. 204. Fees of deceased fiduciary.** When a fiduciary dies, all  
2 fees to which his personal representative and his attorney are entitled  
3 shall be a charge against the estate assets until paid.

1 Sections 205 to 209, inclusive, reserved for future use.

## DIVISION IV—INTESTATE SUCCESSION

## PART 1. RULES OF INHERITANCE

1     **SEC. 210. Rules of descent.** The estate of a person dying intestate  
2 shall descend as provided in sections two hundred eleven (211)  
3 through two hundred twenty-six (226).

1     **SEC. 211. Share of surviving spouse if decedent left issue.** If the  
2 decedent dies intestate leaving a surviving spouse and leaving issue,  
3 the surviving spouse shall receive the following share:

4     1. One-third in value of all the legal or equitable estates in real  
5 property possessed by the decedent at any time during the marriage,  
6 which have not been sold on execution or other judicial sale, and to  
7 which the surviving spouse has made no relinquishment of his right.

8     2. All personal property that, at the time of death, was, in the  
9 hands of the decedent as the head of a family, exempt from execution.

10    3. One-third of all other personal property of the decedent which is  
11 not necessary for the payment of debts and charges.

12    4. If the property received by the surviving spouse under subsections  
13 one (1), two (2) and three (3) of this section is not equal in  
14 value to the sum of fifteen thousand dollars, then so much additional  
15 of the remaining real and personal property of the decedent that is  
16 subject to payment of debts and charges against the decedent's estate,  
17 after payment of such debts and charges, even to the extent of the  
18 whole of the net estate, as may be necessary to make the amount of  
19 fifteen thousand dollars.

1     **SEC. 212. Share of surviving spouse where decedent left no issue.**  
2 If the decedent dies intestate leaving a surviving spouse and leaving  
3 no issue, the surviving spouse shall receive the following share:

4     1. One-third in value of all the legal or equitable estates in real  
5 property possessed by the decedent at any time during the marriage,  
6 which have not been sold on execution or other judicial sale, and to  
7 which the surviving spouse has made no relinquishment of his right.

8     2. All personal property that, at the time of death, was in the hands  
9 of the decedent as the head of a family, exempt from execution.

10    3. One-third of all other personal property of the decedent which is  
11 not necessary for the payment of debts and charges.

12    4. If the property received by the surviving spouse under subsections  
13 one (1) and three (3) of this section is not equal in value to the  
14 sum of fifteen thousand dollars, then so much additional of the non-  
15 exempt real and personal property of the decedent remaining after  
16 payment of the debts and charges against the estate, as may be neces-  
17 sary (even to the extent of the entire net estate) to make the amount  
18 of fifteen thousand dollars.

19    5. So much additional of the remaining real and personal property  
20 belonging to the decedent as is necessary to make the entire share of  
21 the surviving spouse, including the property received under subsections  
22 one (1), three (3) and four (4) of this section, equal in value  
23 to the aforesaid sum of fifteen thousand dollars plus one-half of the  
24 net value of the estate over and above the said sum of fifteen thousand  
25 dollars and the value of the exempt personal property.

1     **SEC. 213. Appraisal.** Prior to the settlement of every intestate  
2 estate in which there is a surviving spouse, and in which appraisal has  
3 not been waived by the surviving spouse and all the heirs of the  
4 decedent, it shall be the duty of the court, upon application of the  
5 personal representative, the surviving spouse, or any of the heirs of  
6 the decedent, to appoint three competent disinterested appraisers to  
7 appraise such estate and to make their report to the court, at such  
8 time as the court may direct by order, unless the court, after notice,  
9 finds further appraisal unnecessary. In such appraisement, the home-  
10 stead, if any, shall be appraised separately.

1     **SEC. 214. Procedure determined by court.** At the time it appoints  
2 the appraisers provided for by section two hundred thirteen (213),  
3 the court shall prescribe the kind of notice and the method of service  
4 thereof, whether by publication or otherwise.

1     **SEC. 215. Notice.** Such notice shall designate the names of the  
2 appraisers, the time and place of the appraisement, and the date on  
3 which the appraisers shall file with the clerk the report of their ap-  
4 praisement, directed to all persons interested in such appraisement.

1     **SEC. 216. Objections.** All persons interested in such report and  
2 having objections to it and the appraisement, shall file their objec-  
3 tions within ten days after the date fixed in said notice for the filing  
4 of the report of such appraisement.

1     **SEC. 217. Trial.** Such objections, if any, shall be tried to the court  
2 as in equity, and the court shall enter a final order in the matter.

1     **SEC. 218. Right of spouse to select property.** After such proceed-  
2 ings, and after payment of debts and charges, the surviving spouse  
3 shall have the right to select from the property so appraised, at its  
4 appraised value thus fixed, property equal in value to the amount to  
5 which she is entitled under section two hundred eleven (211) or two  
6 hundred twelve (212) which selection shall be in writing filed with  
7 the clerk of court.

1     **SEC. 219. Share of others than surviving spouse.** The portion of  
2 the estate remaining after the payment of the debts and charges, and  
3 not distributed to the surviving spouse, as provided in this Code, or if  
4 there is no surviving spouse, then the remaining estate after payment  
5 of the debts and charges, shall descend and be distributed as follows:

6     1. In equal shares to the decedent's children, unless one or more of  
7 them is dead, in which case the issue of such deceased child shall  
8 inherit his or her share in accordance with the rules herein prescribed,  
9 in the same manner as though said child had outlived his parents.

10    2. If there is no person to take under subsection one (1) of this  
11 section, then to the surviving parents in equal shares; and if either  
12 parent is dead, the portion that would have gone to such deceased  
13 parent, shall go to the survivor.

14    3. If there is no person to take under either subsection one (1) or  
15 two (2) of this section, the portion uninhaired shall go to such per-

16 sons as would have been entitled to take if the parents of the decedent  
17 had outlived the intestate and had died in possession and ownership  
18 of the portion thus falling to their share, and so on, through their  
19 ascending ancestors and their heirs.

20 4. If heirs are not thus found under subsection one (1), two (2) or  
21 three (3) of this section, the portion uninherited shall go to the  
22 spouse of the intestate; and if the spouse is dead, then to the heirs  
23 of the spouse, according to like rules. If such intestate has had more  
24 than one spouse who either died or survived in lawful wedlock, it  
25 shall be equally divided between the one who is living and the heirs  
26 of those who are dead, or between the heirs of all such heirs, taking  
27 per stirpes and not per capita.

28 5. If there is no person who qualifies under either subsection one  
29 (1), two (2), three (3) or four (4) of this section, the intestate prop-  
30 erty shall escheat to the state of Iowa.

1 **SEC. 220. Afterborn heirs—time of determining relationship.** De-  
2 scendants and other heirs of an intestate, begotten before his death  
3 but born thereafter, shall inherit as if they had been born in the life-  
4 time of the intestate and had survived him. With this exception, the  
5 intestate succession shall be determined by the relationships existing  
6 at the time of the death of the intestate.

1 **SEC. 221. Illegitimate child—inheritor from mother.** Unless he has  
2 been adopted, an illegitimate child shall inherit from his natural  
3 mother, and she from the child.

1 **SEC. 222. Illegitimate child—inheritor from father.** Unless he has  
2 been adopted, an illegitimate child shall inherit from his natural  
3 father when the paternity is proven during the father's lifetime, or  
4 when the child has been recognized by the father as his child; but  
5 such recognition must have been general and notorious, or else in  
6 writing. Under such circumstances, if the recognition has been  
7 mutual, and the child has not been adopted, the father may inherit  
8 from his illegitimate child.

1 **SEC. 223. Effect of adoption.** A lawfully adopted person and his  
2 heirs shall inherit from and through the adoptive parents the same as  
3 a natural born child. The adoptive parents and their heirs shall in-  
4 herit from and through the adopted person the same as though he  
5 were a natural born child.

1 **SEC. 224. Advancements—in general.** When the owner of prop-  
2 erty transfers it as an advancement to a person who would be an heir  
3 of such transferor were the latter to die at that time, and the trans-  
4 feror dies intestate, then the property thus advanced shall be counted  
5 toward the share of the transferee in the estate, (which for this pur-  
6 pose only shall be increased by the value of the advancement at the  
7 time the advancement was made). The transferee shall have no lia-  
8 bility to the estate for such part, if any, of the advancement as may  
9 be in excess of his share in the estate as thus determined. Every  
10 gratuitous inter vivos transfer is presumed to be an absolute gift, and  
11 not an advancement. Such presumption is rebuttable.

1    **SEC. 225. Valuation of advancements.** An advancement under sec-  
 2    tion two hundred twenty-four (224) shall be valued as of the time  
 3    when the advancee came into possession or enjoyment or as of the  
 4    date of the death of the intestate, whichever first occurs.

1    **SEC. 226. Death of advancee before intestate.** If an advancee  
 2    under section two hundred twenty-four (224) dies before the intes-  
 3    tate, leaving an heir who takes from the intestate, the advancement  
 4    shall be taken into account in the same manner as if it had been made  
 5    directly to such heir. If such heir is entitled to a lesser share in the  
 6    estate than the advancee would have been entitled to, had he survived  
 7    the intestate, then the heir shall be charged with only such propor-  
 8    tion of the advancement as the amount he would have inherited, had  
 9    there been no advancement, bears to the amount which the advancee  
 10   would have inherited, had there been no advancement.

**PART 2. PROCEDURE FOR OPENING ADMINISTRATION  
 OF INTESTATE ESTATES**

1    **SEC. 227. Administration granted.** Where there is no will, admin-  
 2    istration shall be granted to any qualified person on the petition of:  
 3    1. The surviving spouse;  
 4    2. The heirs of the decedent;  
 5    3. Creditors of the decedent;  
 6    4. Other persons showing good grounds therefor.

1    **SEC. 228. Time allowed.** To file such petition, there shall be al-  
 2    lowed, commencing with the death of the decedent:  
 3    1. To the surviving spouse, a period of twenty days;  
 4    2. To each other class in succession, a period of ten days.  
 5    The period allowed each class shall be advanced to the period al-  
 6    lowed the preceding class if there is no member of such preceding  
 7    class. Any member of any class may file such petition after the ex-  
 8    piration of the period allowed to him if letters have not been issued  
 9    prior thereto.

1    **SEC. 229. Petition for administration of an intestate estate.** The  
 2    petition for administration of an intestate estate shall contain the  
 3    following:  
 4    1. The name, domicile and date of death of the decedent.  
 5    2. If the decedent was domiciled outside the state at the time of his  
 6    death, a statement that he had property within the county in which  
 7    the petition is filed, or any other basis for jurisdiction in such county.  
 8    3. The name and address of the surviving spouse, if any, and the  
 9    name and address of each heir so far as known to the petitioner.  
 10   4. The estimated value of the property belonging to the decedent  
 11   that might be readily convertible into money.

1    **SEC. 230. Notice in intestate estates.** In intestate matters, the  
 2    administrator shall, as soon as letters are issued, cause to be pub-  
 3    lished once each week for two consecutive weeks in a daily or weekly





13 clerk of such court refusing to take under the provisions of such will,  
14 such surviving spouse shall take under the provisions of the will, pro-  
15 vided, however, that if within such period of six months an affidavit  
16 is filed setting forth that such surviving spouse is incapable to make  
17 such election, the court shall determine whether there shall be an  
18 election to take against the will in accordance with section two hun-  
19 dred thirty-eight (238); provided further, that the court on applica-  
20 tion may, prior to the expiration of such period of six months, for  
21 cause shown, enter an order extending the time for making such elec-  
22 tion. If such surviving spouse shall be the executor of the will and  
23 fails, within six months after the will is admitted to probate, to file  
24 with the clerk of the court an election to refuse to take under the  
25 provisions of the will of the deceased, it shall be conclusively pre-  
26 sumed that such survivor consents to the provisions of the will and  
27 elects to take thereunder.

1     **SEC. 238. Share of surviving spouse who elects to take against will.**  
2 If the surviving spouse elects to take against the will, the share of  
3 such surviving spouse will be:

4     1. One-third in value of all the legal or equitable estates in real  
5 property possessed by the decedent at any time during the marriage,  
6 which have not been sold on execution or other judicial sale, and to  
7 which the surviving spouse has made no relinquishment of his right.

8     2. All personal property that, at the time of death, was in the hands  
9 of the decedent as the head of a family, exempt from execution.

10     3. One-third of all other personal property of the decedent that is  
11 not necessary for the payment of debts and charges.

1     **SEC. 239. Share to embrace homestead.** The share of the surviv-  
2 ing spouse in such real estate shall be set off in such manner as to  
3 include the ordinary dwelling house given by law to the homestead,  
4 or so much thereof as will be equal to the share allotted to him by  
5 section two hundred thirty-eight (238) unless he prefers a different  
6 arrangement; but no such different arrangement shall be permitted  
7 unless there be sufficient property remaining to pay the claims and  
8 charges against the decedent's estate.

1     **SEC. 240. Election to occupy homestead.** In intestate estates, or  
2 where the surviving spouse elects to take against the will, the sur-  
3 viving spouse may, in lieu of his share in the real property possessed  
4 by the decedent at any time during their marriage which has not been  
5 sold on execution or other judicial sale, and to which the surviving  
6 spouse has made no relinquishment of his right, elect to occupy the  
7 homestead. Such election shall be made and entered of record as pro-  
8 vided in section two hundred forty-five (245). In making such elec-  
9 tion, the surviving spouse shall have all the rights as to personal  
10 property provided in subsections two (2) and three (3) of section  
11 two hundred thirty-eight (238). In case of failure to make such elec-  
12 tion, the right to occupy the homestead shall be waived.

1     **SEC. 241. Time for election to occupy homestead.** In case the sur-  
2 viving spouse does not make an election to occupy the homestead and

3 file it with the clerk within six months from the date of the second  
4 publication of the notice to creditors, it shall be conclusively presumed  
5 that such surviving spouse waives the right to make such election.  
6 The court on application may, prior to the expiration of such period  
7 of six months, for cause shown, enter an order extending the time  
8 for making such election.

1 **SEC. 242. Rights of election personal to surviving spouse.** The  
2 right of the surviving spouse to elect to take against the will and the  
3 right of the surviving spouse to occupy the homestead are personal.  
4 They are not transferable, and cannot be exercised for him subsequent  
5 to his death. If the surviving spouse dies prior to filing an election to  
6 take against the will, it shall be conclusively presumed that the sur-  
7 viving spouse takes under the provisions of the will.

1 **SEC. 243. Filing elections.** The election to take against the will  
2 and the election to occupy the homestead shall be filed in the office of  
3 the clerk.

1 **SEC. 244. Incompetent spouse—election by court.** In case an affi-  
2 davit is filed that the surviving spouse is incapable of making an elec-  
3 tion to take against the will, or to elect to occupy the homestead, the  
4 court shall fix a time and place of hearing on the matter, and cause a  
5 notice thereof to be served upon said surviving spouse in such manner  
6 and for such time as the court may direct. At the hearing, a guardian  
7 ad litem shall be appointed to represent such spouse, and the court  
8 shall enter such orders as it may deem to be for the best interests of  
9 such person.

1 **SEC. 245. Record of election.** The elections of the surviving spouse  
2 under section two hundred thirty-six (236), two hundred forty (240)  
3 or two hundred forty-four (244) shall be entered on the proper  
4 records of the court.

1 **SEC. 246. Election not subject to change.** An election by or on  
2 behalf of a surviving spouse to take the share provided in either sec-  
3 tion two hundred thirty-six (236) or two hundred forty (240) or two  
4 hundred forty-four (244) hereof once made shall be binding and shall  
5 not be subject to change except for such causes as would justify an  
6 equitable decree for the rescission of a deed.

## PART 2. PROCEDURE FOR SETTING OFF SHARE

1 **SEC. 247. Setting off share of surviving spouse when electing to**  
2 **take against the will—time limit.** The share of the surviving spouse  
3 under section two hundred thirty-six (236) may be set off by the  
4 mutual consent of all parties in interest, or by referees appointed by  
5 the court. An application to have it set off by referees shall be made  
6 in writing within six months after the second publication of notice of  
7 the probate of the will, or within one month after the election to take  
8 against the will is filed with the clerk, whichever is the longer. The

9 application must describe the land in which the share is claimed, and  
10 pray for the appointment of referees to set it off.

1     **SEC. 248. Referee—notice.** In the absence of mutual consent to  
2 the appointment of referees, the court shall fix a time and place for  
3 hearing upon such application and of the fact that referees will be  
4 appointed if such application is granted, and shall prescribe the time  
5 and manner of the service of notice of the hearing.

1     **SEC. 249. Mode of setting off share in real estate.** The referees  
2 may employ a surveyor, and may cause the shares in real estate to be  
3 set off by legally sufficient land descriptions. They shall make a report  
4 of their proceedings to the court as early as reasonably possible.

1     **SEC. 250. Report—delinquency.** The court may require a report  
2 by such a time as it deems reasonable. If the referees fail to obey  
3 this or any other of its orders, the court may discharge them and  
4 appoint others in their stead, and impose upon the first referees the  
5 payment of all costs previously made, unless they show good cause  
6 against it.

1     **SEC. 251. Confirmation—new reference.** The court may set the  
2 report for hearing and prescribe the notice to be given to interested  
3 parties. The court may confirm the report, or may set it aside and  
4 refer the matter to the same or other referees, at its discretion.

1     **SEC. 252. Confirmation conclusive—possession.** An order confirm-  
2 ing a report of the referees shall be binding and conclusive unless  
3 appealed from within thirty days, and the surviving spouse may bring  
4 an action to obtain possession of the land set apart to him.

1     **SEC. 253. Right contested.** Nothing in sections two hundred forty-  
2 seven (247) through two hundred fifty-two (252) shall prevent any  
3 person interested from controverting the right of the surviving  
4 spouse to the share thus set apart before confirmation of the report  
5 of the referees.

1     **SEC. 254. Sale—division of proceeds.** If it appears to the court,  
2 upon application of the personal representative, the surviving spouse,  
3 or the report of the referee, that the property, or any part of it,  
4 cannot be advantageously divided, the court may order the whole, or  
5 any part of such property, sold, and the share of the surviving spouse  
6 in the proceeds paid over to him.

1     **SEC. 255. Purchase of new homestead.** In case the homestead is  
2 sold, the surviving spouse may use any or all of her share to procure  
3 a homestead which shall be exempt from liability for all debts from  
4 which the former homestead would have been exempt.

1     **SEC. 256. Security to avoid sale.** No sale shall be made under  
2 section two hundred fifty-four (254) if anyone interested gives secu-

3 rity to the satisfaction of the court, conditioned to pay the surviving  
4 spouse the appraised value of the share with seven percent interest  
5 on the same, within such reasonable time as the court may fix, not  
6 exceeding one year.

1 **SEC. 257. Security by surviving spouse.** If no such arrangement  
2 is made, the surviving spouse may keep the property by giving like  
3 security to pay the claims of all others interested upon like terms.

1 **SEC. 258. Sale prohibited.** Such sale under section two hundred  
2 fifty-four (254) shall not be ordered so long as those in interest shall  
3 express a contrary desire and agree upon some mode of sharing and  
4 dividing the rents, profits, or use thereof, or shall consent that the  
5 court shall order the division of such rents, profits or use.

1 Sections 259 to 263, inclusive, reserved for future use.

## DIVISION VI—WILLS

### PART 1. GENERAL PROVISIONS RELATING TO WILLS

1 **SEC. 264. Disposal of property by will.** Subject to the rights of  
2 the surviving spouse to elect to take against the will as provided by  
3 section two hundred thirty-six (236), any person of full age and sound  
4 mind may dispose by will of all his property, except sufficient to pay  
5 the debts and charges against his estate.

1 **SEC. 265. Procedure prescribed by will.** When the interests of  
2 creditors will not thereby be prejudiced, a testator may prescribe the  
3 entire manner in which his estate shall be administered, and, also, the  
4 manner in which his affairs shall be conducted until his estate is finally  
5 settled.

1 Cross reference: Section 172.

1 **SEC. 266. Limitation on disposal by will.** If the total of the devises  
2 in the decedent's will to corporations organized under the chapter re-  
3 lating to corporations not for profit, to foreign corporations of a similar  
4 character, to unincorporated associations of a similar character, or  
5 to a trustee for the use and benefit of any such organization is in  
6 excess of one-fourth of the testator's estate valued as of the date of  
7 death after the payment of debts and charges, then the surviving  
8 spouse, any child, child of a deceased child or parent of the decedent  
9 shall have the right to make an election as follows:

10 1. The amount by which such devises described in this section ex-  
11 ceeds such one-fourth of the testator's estate shall be first determined.

12 2. Each of such persons shall have the right to elect to receive the  
13 portion of such excess to which he would have been entitled had such  
14 excess been intestate property, provided, that in no event shall he  
15 receive in the aggregate under the will and as the result of such elec-

16 tion, an amount greater than he would have received had the dece-  
17 dent died intestate.

18 3. Such election shall be made in writing by said person and filed  
19 with the clerk within six months after the second publication of the  
20 notice of appointment of the personal representative, unless the time  
21 is extended by order of court, or unless an affidavit is filed under the  
22 provisions of subsection four (4) hereof.

23 4. In case an affidavit is filed within six months after the second  
24 publication of the notice of appointment of the personal representative  
25 that the said surviving spouse, child, child of a deceased child or par-  
26 ent is under legal disability or is otherwise incapable of making the  
27 election provided for in this section, the court shall fix a time and  
28 place of hearing on the matter and cause a notice thereof to be served  
29 upon said person in such manner and for such time as the court may  
30 determine. At the hearing, a guardian ad litem shall be appointed to  
31 represent such person, and the court shall enter such orders as it may  
32 deem to be for the best interests of such person.

33 5. Any portion of the excess determined under the provisions of  
34 this section which is not distributed under an election provided in this  
35 section, shall be distributed under the will of the decedent the same  
36 as if no election had been made under subsection two (2) by anyone.

37 6. The right of election as provided for in this section is personal,  
38 is not transferable, and cannot be exercised for him subsequent to his  
39 death.

40 7. All elections hereunder shall be entered upon the records of the  
41 court, shall be binding, and shall not be subject to change except for  
42 such cause as would justify an equitable decree for the rescission of  
43 a deed.

44 8. In the event that there is more than one devise affected by the  
45 election provided for in this section, any reduction shall be made rat-  
46 ably in the absence of express testamentary intent to the contrary.

1 **SEC. 267. Children born or adopted after execution of will.** When  
2 a testator fails to provide in his will for any of his children born to  
3 or adopted by him after the making of his last will, such child, whether  
4 born before or after the testator's death, shall receive a share in the  
5 estate of the testator equal in value to that which he would have re-  
6 ceived if the testator had died intestate, unless it appears from the  
7 will that such omission was intentional.

1 **SEC. 268. Presumption attending devise to spouse.** Where the tes-  
2 tator's spouse is named as a devisee in a will, it shall be presumed,  
3 unless the intent is clear and explicit to the contrary, and except as  
4 provided in section two hundred seventy-two (272), that such devise  
5 is in lieu of the intestate share and homestead rights of the surviving  
6 spouse.

1 **SEC. 269. After acquired property.** Any property acquired by the  
2 testator after the making of his will shall pass thereby, and in like  
3 manner as if title thereto were vested in him at the time of making  
4 the will, unless the intent is clear and explicit to the contrary.

1     **SEC. 270. Contractual or mutual wills.** No will shall be construed  
2 to be contractual or mutual, unless in such will the testator shall ex-  
3 pressly state his intent that such will shall be so construed.

1     **SEC. 271. Effect of divorce.** If after making a will the testator is  
2 divorced, all provisions in the will in favor of the testator's spouse so  
3 divorced are thereby revoked.

1     **SEC. 272. Partial intestacy.** If part but not all of the estate of a  
2 decedent is validly disposed of by will, the part not disposed of by will  
3 shall be distributed as provided herein for intestate estates. If the tes-  
4 tator left a surviving spouse, and the spouse does not elect to take  
5 against the will, such spouse shall receive, in addition to the property  
6 given to him by the will, one-third of the intestate property, and that  
7 one-third shall be subject to the payment of its proportionate share  
8 of debts and charges against the estate.

1     **SEC. 273. Antilapse statute.** If a devisee die before the testator,  
2 his heirs shall inherit the property devised to him, unless from the  
3 terms of the will, the intent is clear and explicit to the contrary.

1     **SEC. 274. Exception to antilapse statute.** The devise to a spouse  
2 of the testator, where the spouse does not survive the testator, shall  
3 lapse notwithstanding the provisions of section two hundred seventy-  
4 three (273), unless from the terms of the will, the intent is clear and  
5 explicit to the contrary.

1     **SEC. 275. Testamentary additions to trusts.** A devise or bequest,  
2 the validity of which is determinable by the law of this state, may be  
3 made by a will to the trustee of a trust established, or to be estab-  
4 lished, by the testator, or by the testator and some other person or  
5 persons, or by some other person or persons, (including a funded or  
6 unfunded life insurance trust, although the trustor has reserved some  
7 or all rights of ownership of the insurance contracts) if the trust is  
8 identified in the testator's will, and if its terms are set forth in a  
9 written instrument (other than a will) executed before or concu-  
10 rrently with the execution of the testator's will, or in the valid last  
11 will of a person who has predeceased the testator (regardless of the  
12 existence, size, or character of the corpus of the trust). The devise  
13 or bequest shall not be invalid because the trust is amendable or rev-  
14 ocable, or both, or because the trust was amended after the execution  
15 of the will or after the death of the testator. Unless the testator's  
16 will provides otherwise, the property so devised or bequeathed: (1)  
17 shall not be deemed to be held under a testamentary trust of the tes-  
18 tator, but shall become a part of the trust to which it is given; and,  
19 (2) shall be administered and disposed of in accordance with the pro-  
20 visions of the instrument or will setting forth the terms of the trust,  
21 including any amendments thereto made before the death of the  
22 testator (regardless of whether any such amendment was made be-  
23 fore or after the execution of the testator's will), and, if the testator's  
24 will so provides, including any amendments to the trust made after

25 the death of the testator. A revocation or termination of the trust  
26 before the death of the testator shall cause the devise or bequest to  
27 lapse.

1 **SEC. 276. Effect on prior wills.** Section two hundred seventy-five  
2 (275) shall not invalidate any devise or bequest made by a will exe-  
3 cuted prior to the effective date of this Code.

1 **SEC. 277. Uniformity of interpretation.** Section two hundred sev-  
2 enty-five (275) shall be so construed as to effectuate its general pur-  
3 pose to make uniform the law of those states which have adopted  
4 a similar provision.

1 **SEC. 278. Devise of encumbered property.** When any property  
2 subject to a mortgage or other lien is specifically devised, the devisee  
3 shall take such property so devised subject to such mortgage or other  
4 lien, unless the will provides expressly or by necessary implication  
5 that such mortgage or other lien be otherwise paid. If there is a tes-  
6 tamentary direction to discharge such mortgage or other lien, the rules  
7 of abatement specified in section four hundred thirty-six (436) of  
8 this Code shall be applied. The term "mortgage or other lien" as used  
9 in this section shall not include a pledge of personal property.

## PART 2. EXECUTION AND REVOCATION

1 **SEC. 279. Formal execution.** All wills and codicils, except as pro-  
2 vided in section two hundred eighty-three (283), to be valid, must be  
3 in writing, signed by the testator, or by some person in his presence  
4 and by his express direction writing his name thereto, and declared  
5 by the testator to be his will, and witnessed, at his request, by two  
6 competent persons who signed as witnesses in the presence of the  
7 testator and in the presence of each other; provided, however, that  
8 the validity of the execution of any will or instrument which was exe-  
9 cuted prior to the effective date of this Code shall be determined by  
10 the law in effect immediately prior to the effective date of this Code.

1 **SEC. 280. Competency of witnesses.** Any person who is sixteen  
2 years of age, or older, and who is competent to be a witness generally  
3 in this state, may act as an attesting witness to a will.

1 **SEC. 281. Interest of witnesses.** No will is invalidated because  
2 attested by an interested witness; but any interested witness shall,  
3 unless the will is also attested by two competent and disinterested  
4 witnesses, forfeit so much of the provisions therein made for him as  
5 in the aggregate exceeds in value, as of the date of the decedent's  
6 death, that which he would have received had the testator died intes-  
7 tate. No attesting witness is interested unless he is devised or be-  
8 queathed some portion of the testator's estate.

1 **SEC. 282. Defect cured by codicil.** If a codicil to a defectively exe-  
2 cuted will is duly executed, and such will is clearly identified in said

3 codicil, the will and the codicil shall be considered as one instrument  
4 and the execution of both shall be deemed sufficient.

1 **SEC. 283. Will executed in foreign state or country.** A will exe-  
2 cuted outside this state, in the mode prescribed by the law, either of  
3 the place where executed or of the testator's domicile, shall be deemed  
4 to be legally executed, and shall be of the same force and effect as if  
5 executed in the mode prescribed by the laws of this state, provided  
6 said will is in writing and subscribed by the testator.

1 **SEC. 284. Revocation—cancellation—revival.** A will can be re-  
2 voked in whole or in part only by being canceled or destroyed by the  
3 act or direction of the testator, with the intention of revoking it, or  
4 by the execution of a subsequent will. When done by cancellation, the  
5 revocation must be witnessed in the same manner as the making of a  
6 new will. No will, nor any part thereof, which shall be in any manner  
7 revoked, or which shall be or become invalid, can be revived otherwise  
8 than by a re-execution thereof, or by the execution of another will or  
9 codicil in which the revoked or invalid will, or part thereof, is incor-  
10 porated by reference.

### PART 3. CUSTODY

1 **SEC. 285. Custodian—filing—penalty.** After being informed of  
2 the death of the testator, the person having custody of his will shall  
3 deliver it to the court having jurisdiction of his estate. Every person  
4 who willfully refuses or fails to deliver a will after being ordered by  
5 the court to do so shall be guilty of contempt of court. He shall also  
6 be liable to any person aggrieved for the damages which may be sus-  
7 tained by such refusal or failure.

1 **SEC. 286. Deposit of will with clerk.** The clerk shall maintain a  
2 file for the safekeeping of wills. There shall be placed therein wills  
3 deposited with the clerk by living testators or by persons on their  
4 behalf, and wills of deceased testators not accompanied by petitions  
5 for the probate thereof, when deposited with the clerk by persons  
6 having custody thereof as provided in section two hundred eighty-five  
7 (285) of this Code.

1 **SEC. 287. Manner of deposit.** Every such will shall be enclosed in  
2 a sealed wrapper. The clerk shall endorse thereon the name of the  
3 testator, the name of the depositor, the date of deposit, and, if pro-  
4 vided, the name of the person to be notified of the deposit of such will  
5 upon the death of the testator. The clerk shall hold such will until  
6 disposed of as provided in section two hundred eighty-eight (288) or  
7 two hundred eighty-nine (289).

1 **SEC. 288. Delivery by clerk during lifetime of testator.** During  
2 the lifetime of the testator, such will shall be delivered only to him, or  
3 to some person authorized by him by an order in writing duly ac-  
4 knowledged.



1     **SEC. 289. Delivery by clerk after death of testator.** After being  
 2 informed of the death of a testator, the clerk shall notify the person,  
 3 if any, named in the endorsement on the wrapper of said will. If no  
 4 petition for the probate thereof has been filed within thirty days after  
 5 the death of the testator, it shall be publicly opened, and the court  
 6 shall make such orders as it deems appropriate for the disposition of  
 7 said will. The clerk shall notify the executor named therein and such  
 8 other persons as the court shall designate of such action. If the  
 9 proper venue is in another court, the clerk, upon request, shall trans-  
 10 mit such will to such court, but before such transmission, he shall  
 11 made a true copy thereof and retain the same in his files.

#### PART 4. PROCEDURE FOR PROBATE OF WILLS

1     **SEC. 290. Petition for probate of will.** At the time the will of a  
 2 decedent is filed with the clerk, or thereafter, any interested person  
 3 may file a verified petition in the district court of the proper county:

4         1. To have the will admitted to probate;

5         2. For the appointment of the executor.

6 A petition for probate may be combined with a petition for appoint-  
 7 ment of the executor, and any person interested in either the probate  
 8 of a will or in the appointment of the executor, may petition for both.

1     **SEC. 291. Contents of petition.** A petition for probate of a will  
 2 shall state:

3         1. The name, domicile, and date of death of the decedent.

4         2. If the decedent was not domiciled in the state at the time of his  
 5 death, then, that he had property within the county in which the peti-  
 6 tion is filed, or any other basis for jurisdiction in such county.

1     **SEC. 292. Petition for appointment of executor.** A petition for  
 2 the appointment of an executor shall state the name and address of  
 3 the person nominated or proposed as executor, and that such person is  
 4 qualified to act as executor. If the person proposed in said petition  
 5 is not the person nominated in the will, the petition shall state the  
 6 reason why the person nominated is not proposed as executor. Unless  
 7 bond is waived in the will, the petition shall state the estimated value  
 8 of the property belonging to the decedent which might be readily con-  
 9 vertible into money.

1     **SEC. 293. Hearing upon petition.** Upon the filing of a petition for  
 2 probate of a will, the date for proving it shall be fixed by the court or  
 3 the clerk, and the clerk shall give notice addressed TO ALL WHOM IT  
 4 MAY CONCERN, signed by him, of such time fixed, by one publication  
 5 in a daily or weekly newspaper published in the county where the will  
 6 is filed, the publication to be at least seven days prior to the time fixed  
 7 for such hearing.

1     **SEC. 294. Order of preference for appointment of executor.** Let-  
 2 ters testamentary may be granted to one or more persons found to be  
 3 qualified. Preference for appointment shall be in the following order:

- 4 1. The person designated in the will;
- 5 2. Any beneficiary named in the will, or a person nominated by the
- 6 beneficiaries;
- 7 3. Any creditor of the deceased, or a person nominated by such
- 8 creditor;
- 9 4. Such other person as the court may find to be qualified.

1 SEC. 295. Nonresident executors of resident decedents. A nonres-

2 ident of this state, named as executor in the will of a resident of this

3 state, may, upon application, be appointed executor after said will

4 has been admitted to probate in this state, provided a resident executor

5 be appointed to serve with the nonresident executor named in said

6 will, except that the court for good cause shown may appoint the non-

7 resident executor to serve alone without the appointment of a resident

8 executor.

1 SEC. 296. Testimony of witnesses. The proof may be made by the

2 oral or written testimony of one or more of the subscribing witnesses

3 to the will. If such testimony is in writing, it shall be substantially

4 in the following form executed and sworn to after the death of the

5 decedent:

6 In the District Court of Iowa

7 In and for ..... County

8 In the Matter of the Estate of ..... Probate No. ....

9 ..... Deceased Testimony of Subscribing

10 State of ..... } ss Witness on Probate of Will.

11 ..... County }

12 I, ....., being first duly sworn, state:

13 I reside in the County of ....., State of .....

14 the testator on the ..... day of ....., 19....., the date of the

15 instrument, the original or exact reproduction of which is attached

16 hereto, now shown to me, and purporting to be the last will and

17 testament of the said ....., deceased; I am one of the

18 subscribing witnesses to said instrument; at the said date of said

19 instrument, I knew ....., the other subscribing witness;

20 that said instrument was exhibited to me and to the other subscri-

21 ing witness by the testator, who declared the same to be his last will

22 and testament, and was signed by the testator at ....., in

23 the County of ....., State of ....., on the date shown in

24 said instrument, in the presence of myself and the other subscribing

25 witness; and the other subscribing witness and I then and there, at

26 the request of the testator, in the presence of said testator and in the

27 presence of each other, subscribed our names thereto as witnesses.

28 .....

29 Name of witness

30 .....

31 Address

30 Subscribed and sworn to before me this ..... day of .....,

31 19.....

32

33 .....

34 (SEAL) Notary Public in and for the

County of.....

State of .....

1     **SEC. 297. Deposition.** If it is desired to prove the execution of  
2 the will by deposition, rather than by use of the affidavit form pro-  
3 vided in section two hundred ninety-six (296), upon application, the  
4 clerk shall issue a commission to some officer authorized by the law  
5 of this state to take depositions, with the will annexed, and the officer  
6 taking the deposition shall exhibit it to the witness for identification,  
7 and, when identified by him, shall mark it as "Exhibit ....." and  
8 cause the witness to connect his identification with it as such exhibit.  
9 Before sending out the commission, the clerk shall make and retain  
10 in his office a true copy of such will.

1     **SEC. 298. Witnesses unavailable.** If all of such witnesses are de-  
2 ceased or otherwise not available, then it shall be permissible to prove  
3 said will by the sworn testimony of two credible disinterested wit-  
4 nesses that the signature to the will is in the handwriting of the per-  
5 son whose will it purports to be, and that the signatures of the wit-  
6 nesses are in the handwriting of such witnesses, or it may be proved  
7 by other sufficient evidence of the execution of such will.

1     **SEC. 299. Order admitting or disallowing probate of will.** The  
2 court or the clerk shall enter an order either admitting said will to  
3 probate, or disallowing probate because of insufficient proof thereof.

1     **SEC. 300. Order appointing executor.** If a petition for appoint-  
2 ment of an executor has been filed, the order admitting the will to  
3 probate shall include appointment of an executor thereof, unless the  
4 court or clerk shall determine that no appointment should be made at  
5 such time.

1     **SEC. 301. Certificate of probate.** When a will has been admitted  
2 to probate the clerk shall have a certificate of such fact, endorsed  
3 thereon or annexed thereto, signed by the clerk and attested by the  
4 seal of the court; and, when so certified, it, or the record thereof, or  
5 the transcript of such record properly authenticated, may be read in  
6 evidence in all courts without further proof.

1     **SEC. 302. Record—copy for executor.** When a will has been ad-  
2 mitted to probate, it, together with the certificate herein required,  
3 shall be recorded in a book kept for that purpose, and the clerk shall  
4 cause an authenticated copy thereof to be placed in the hands of the  
5 executor to whom letters are issued. The clerk shall retain the will  
6 in a separate file provided for that purpose until the time for contest  
7 has expired, and promptly thereafter shall place it with the files of  
8 said estate.

1     **SEC. 303. Notice of appointment.** On admission of a will to pro-  
2 bate, the executor shall, as soon as letters are issued, cause to be pub-  
3 lished once each week for two consecutive weeks in a daily or weekly  
4 newspaper of general circulation published in the county in which  
5 the estate is pending, a notice of admission of the will to probate and  
6 of the appointment of the executor. There shall be included therein

7 a notice to debtors to make payment, and to creditors having claims  
8 against said estate to file them with the clerk within six months from  
9 the second publication of said notice, or thereafter be forever barred.

10 Such notice shall be substantially in the following form:

11 Notice of Probate of Will, of Appointment of Executor,  
12 and Notice to Creditors

13 In the District Court of Iowa  
14 in and for ..... County Probate No. ....  
15 In the Estate of .....

Deceased

16 To all persons interested in the estate of ..... deceased:  
17 You are hereby notified that on the ..... day of ....., 19.....,  
18 the last will and testament of ....., deceased, bearing  
19 date the ..... day of ....., 19....., was admitted to probate  
20 in the above named court and that ..... was appointed  
21 executor of said estate.

22 Notice is given that all persons indebted to said estate are requested  
23 to make immediate payment to the undersigned, and creditors having  
24 claims against said estate shall file them with the clerk of the above  
25 named district court, as provided by law, duly authenticated, for  
26 allowance; and unless so filed within six months from the second  
27 publication of this notice (unless otherwise allowed or paid) such  
28 claim shall thereafter be forever barred.

29 Dated this ..... day of ....., 19.....

30 .....  
31 Executor of said estate

32 .....  
33 Address

34 .....  
35 Attorney for said executor

36 .....  
37 Address

38 Date of second publication  
39 ..... day of ....., 19.....  
(date to be inserted by publisher)

1 SEC. 304. Notice where no administration. On admission of a will  
2 to probate without administration of the estate, the clerk shall cause  
3 to be published, in the manner prescribed in the preceding section, a  
4 notice of the admission of the will to probate.

5 Such notice shall be substantially in the following form:

6 Notice of Proof of Will without Administration

7 In the District Court of Iowa  
8 in and for ..... County.  
9 In the Estate of ..... Probate No. ....

Deceased

10 To all persons interested in the estate of ..... deceased:  
11 You are hereby notified that on the ..... day of ....., 19.....,  
12 the last will of ....., deceased, bearing date the  
13 ..... day of ....., 19....., was admitted to probate in the above  
14 named court and there will be no present administration of the estate.

15 Dated this ..... day of ....., 19.....

16

.....  
Clerk of the district court

17

.....  
Attorney for said estate.

18 Date of second publication

19 ..... day of ....., 19.....

(Above date to be inserted by publisher)

1     **SEC. 305. Record in foreign county.** Whenever it shall appear  
2 that the testator died seized of real estate located in a county of this  
3 state other than that in which probate is granted, a complete tran-  
4 script, properly authenticated, of the record entry of the order of  
5 court admitting the will to probate, and, if a copy of such will is  
6 not contained therein, a certified copy of such will shall be attached  
7 thereto, and the same shall be filed by the clerk in the office of the  
8 clerk of the district court in such other county, who shall cause the  
9 same to be entered in the probate docket, and said transcript shall  
10 be recorded in full in the book kept for the recording of wills in such  
11 county. When so recorded, such record may be read in evidence in all  
12 courts without further proof.

1     Cross reference: Sections 403 and 404.

1     **SEC. 306. Costs of transcript.** The cost of such transcript and of  
2 the recording thereof shall be taxed against the estate of the decedent  
3 unless administration thereof is closed, in which event it shall be paid  
4 by the owner of the real estate involved.

#### PART 5. ACTIONS TO SET ASIDE OR CONTEST OF WILLS

1     **SEC. 307. Setting aside probate of will.** Any interested person  
2 may petition to set aside the probate of a will by filing a written peti-  
3 tion in the probate proceedings. The petition for such purpose shall  
4 state the grounds therefor.

1     **SEC. 308. Time within which petition must be filed.** A petition to  
2 contest or set aside the probate of a will must be filed in the court in  
3 which the will was admitted to probate within one year from the date  
4 of second publication of notice of admission of such will to probate  
5 and not thereafter.

1     **SEC. 309. Objections prior to admission of will to probate.** Noth-  
2 ing herein contained shall prevent any interested person from filing  
3 objections to probate of a proposed will prior to probate thereof. If  
4 such objections are filed prior to the admission of the will to probate,  
5 the will shall not be admitted to probate pending trial and determina-  
6 tion as to whether or not said instrument is the last will of the  
7 decedent.

1     **SEC. 310. Contest or objection shall be tried as a law action.** An  
2 action objecting to the probate of a proffered will, or to set aside a  
3 will, is triable in the probate court as an action at law, and the Rules

4 of Civil Procedure governing law actions, including demand for jury  
5 trial, shall be applicable thereto.

1 **SEC. 311. Joinder of parties.** In all actions to contest or set aside  
2 a will, all known interested parties who have not joined with the con-  
3 testants as plaintiffs in the action, shall be joined with proponents as  
4 defendants. When additional interested parties become known, the  
5 court shall order them brought in as party defendants. All such de-  
6 fendants shall be brought in by serving them with notice pursuant to  
7 the Rules of Civil Procedure.

1 **SEC. 312. Election of defendants to join with contestants.** Any  
2 person named as a defendant in an action to contest or set aside a  
3 will may, at time of appearance, or by leave of court at any time there-  
4 after, elect to join with the contestants.

1 **SEC. 313. Taxation of costs.** The court shall tax the costs in an  
2 action to contest or set aside a will. No costs shall be taxed against  
3 a losing party who has been joined in the action but who does not  
4 appear.

1 **SEC. 314. Allowance for defending will.** When any person is des-  
2 ignated as executor in a will, or has been appointed as executor, and  
3 defends or prosecutes any proceedings in good faith and with just  
4 cause, whether successful or not, he shall be allowed out of the estate  
5 his necessary expenses and disbursements, including reasonable at-  
6 torney fees in such proceedings.

1 **SEC. 315. Notice to devisees in other wills.** If the ground of objec-  
2 tion is that another will of the decedent has been discovered, each  
3 devisee named in such other will shall be joined in the action.

1 **SEC. 316. Where will is filed after letters of administration have**  
2 **been granted.** If, after letters of administration have been granted,  
3 a will of the decedent is admitted to probate, such letters of admin-  
4 istration are thereby revoked, and the person to whom such letters  
5 were issued shall promptly file a final report and make an accounting  
6 to the court.

1 **SEC. 317. Where will is filed after letters testamentary have been**  
2 **granted.** If, after a will has been admitted to probate, another instru-  
3 ment purporting to be the will of the decedent, which has not been  
4 previously presented for probate, is filed, the court shall determine  
5 whether or not the former grant of letters should be revoked pend-  
6 ing determination of which instrument constitutes the will of the  
7 decedent.

1 **SEC. 318. Proof of execution.** If the lack of the due execution of  
2 a will constitutes a ground for objection, proof of such execution shall  
3 not be made by affidavit as provided in section two hundred ninety-  
4 six (296).

1     **SEC. 319. Declaratory judgment to determine last will.** The exec-  
 2     utor or any person named as a beneficiary in a will may bring an  
 3     action for a declaratory judgment to have such will declared to be the  
 4     last will of the decedent. In such action, all known interested per-  
 5     sons, including heirs of the decedent and persons named as benefi-  
 6     ciaries in said instrument and other known instruments purporting to  
 7     be wills of the decedent, shall be joined as parties.

1     Sections 320 to 329, inclusive, reserved for future use.

## DIVISION VII—ADMINISTRATION OF ESTATES OF DECEDENTS

### PART 1. GENERAL PROVISIONS

#### LIMITATION

1     **SEC. 330. Character of proceedings.** The administration of the  
 2     estate of a decedent from the filing of the petition for probate and  
 3     admission or for administration until the order approving the final  
 4     report and discharge of the last personal representative shall be con-  
 5     sidered as one proceeding for purposes of jurisdiction. Such entire  
 6     proceeding is a proceeding in rem.

1     **SEC. 331. Limitation of administration.** Probate of a will, original  
 2     administration of an intestate estate, or ancillary administration of  
 3     an estate, shall not be granted after five years from the death of the  
 4     decedent, whether he die within or without this state, unless a petition  
 5     therefor is filed prior to the expiration of the five-year period. Pro-  
 6     vided, however, that the limitation herein provided shall not apply  
 7     to the probate of a will of a decedent who died prior to January 1, 1964.

#### EXEMPT PROPERTY AND INSURANCE

1     **SEC. 332. Exempt personal property.** When the decedent left  
 2     a surviving spouse all personal property, which in the hands of the  
 3     decedent as head of a family would be exempt from execution, after  
 4     being inventoried and appraised, shall be set aside to the surviving  
 5     spouse, and be exempt in the hands of such surviving spouse as in  
 6     the hands of the decedent.

1     **SEC. 333. Proceeds of insurance.** The avails of any life or accident  
 2     insurance, or other sum of money made payable to the decedent's  
 3     estate by any mutual aid or benevolent society upon the death or dis-  
 4     ability of a member thereof, are not subject to the debts of the de-  
 5     cedent, except by contract or by express provision in the will, and shall  
 6     be disposed of like other property left by the decedent.

1     **SEC. 334. Surviving spouse included as "heir".** The words "heirs"  
 2     and "legal heirs", and other equivalent words used to designate the  
 3     beneficiaries in any life insurance policy or certificate of membership  
 4     in any mutual aid or benevolent association, where no contrary inten-

5 tion is expressed in such instrument, shall be construed to include the  
6 surviving husband or wife of the insured.

1 **SEC. 335. Share of survivor.** The share of such survivor in the  
2 proceeds of such policy or certificate made payable as aforesaid shall  
3 be the same as that provided by law for the distribution of the per-  
4 sonal property of intestates.

#### WRONGFUL DEATH

1 **SEC. 336. Damages for wrongful death.** When a wrongful act pro-  
2 duces death, damages recovered therefor shall be disposed of as per-  
3 sonal property belonging to the estate of the deceased, but if the de-  
4 ceased leaves a spouse, child, or parent, it shall not be liable for the  
5 payment of debts of the estate.

1 Sections 337 to 341, inclusive, reserved for future use.

#### PART 2. TEMPORARY ADMINISTRATION

1 **SEC. 342. Temporary administration.** When, from any cause, pro-  
2 bate of a will or administration cannot be immediately granted, a tem-  
3 porary administrator may be appointed to collect, manage, preserve  
4 and dispose of the property of the deceased, as the court may pre-  
5 scribe, and no appeal from such appointment shall prevent his proceed-  
6 ing in the discharge of his duties.

1 **SEC. 343. Inventory—preservation of property.** Such temporary  
2 administrator shall make and file an inventory of the property of the  
3 deceased in the same manner as is required of personal representa-  
4 tives, and shall preserve such property from injury, and may do all  
5 needful acts under the direction of the court, including the sale of  
6 property and the payment of claims as directed by the court. Upon  
7 the granting of administration, the powers of the temporary admin-  
8 istrator shall cease, and the administration of the estate shall be trans-  
9 ferred to the personal representative to whom letters are granted.

1 Sections 344 to 348, inclusive, reserved for future use.

#### PART 3. TITLE AND POSSESSION OF DECEDENT'S PROPERTY

1 **SEC. 349. Security to sustain devise or bequest.** When a person  
2 by his will makes such a disposition of his property as to prejudice the  
3 rights of creditors, the will may be sustained, by giving security to the  
4 satisfaction of the court for the payment of the debts and charges to  
5 the extent of the value of the property devised.

1 **SEC. 350. Title to decedent's estate—when property passes—pos-  
2 session and control thereof—liability for administration expenses,  
3 debts and family allowance.** Except as otherwise provided in this  
4 Code, when a person dies, the title to his property, real and personal,



5 passes to the person to whom it is devised by his last will, or, in the  
6 absence of such disposition, to the persons who succeed to his estate  
7 as provided in this Code, but all of his property shall be subject to the  
8 possession of the personal representative as provided in section three  
9 hundred fifty-one (351) and to the control of the court for the pur-  
10 poses of administration, sale, or other disposition under the provisions  
11 of law, and such property, except homestead and other exempt prop-  
12 erty, shall be chargeable with the payment of debts and charges  
13 against his estate. There shall be no priority as between real and per-  
14 sonal property, except as provided in this Code or by the will of the  
15 decedent.

1 **SEC. 351. Possession of real and personal property.** If there is no  
2 distributee of the real estate present and competent to take possession,  
3 or if there is a lease of such real estate outstanding, or if the dis-  
4 tributees present and competent consent thereto, the personal repre-  
5 sentative shall take possession of such real estate, except the home-  
6 stead and other property exempt to the surviving spouse. Every  
7 personal representative shall take possession of all the personal prop-  
8 erty of the decedent, except the property exempt to the surviving  
9 spouse. The personal representative may maintain an action for the  
10 possession of such real and personal property or to determine the title  
11 to any property of the decedent.

1 **SEC. 352. Collection of rents and payment of taxes and charges.**  
2 Unless otherwise provided by the will, the personal representative  
3 shall collect the income from such property, pay the taxes and fixed  
4 charges thereon and apply the balance of such income to general es-  
5 tate obligations. Unless otherwise provided, any unexpended portion  
6 of such income shall become a part of the general assets of such estate.

1 **SEC. 353. Surrender of possession upon application by personal**  
2 **representative.** Upon application by the personal representative, and  
3 after such notice, if any, as the court may prescribe, for good cause  
4 shown, the court may enter an order authorizing said personal repre-  
5 sentative to surrender any of such property to the person or persons  
6 who, under the will or under the rules of intestate succession, will ulti-  
7 mately be entitled to such property.

1 **SEC. 354. Surrender of possession upon application by any inter-**  
2 **ested person.** Upon application of any interested person and after  
3 such notice to the personal representative and to such other persons,  
4 if any, as the court may prescribe, and for good cause shown, the court  
5 may enter an order authorizing said personal representative to sur-  
6 render any of such property to the person or persons who, under the  
7 will or under the rules of intestate succession, will ultimately be en-  
8 titled to such property. The court may require a bond or other secu-  
9 rity conditioned as it may determine in connection with the delivery of  
10 such property.

1 **SEC. 355. Delivery of specific devise after nine months.** Unless  
2 the court, for cause shown, determines that the possession of the per-

3 sonal representative shall continue for a longer period, the personal  
 4 representative shall deliver all specifically devised property to the  
 5 devisees entitled thereto after the expiration of nine months from the  
 6 date of appointment of the personal representative. This section shall  
 7 not preclude the court from directing that such delivery be made be-  
 8 fore such period has expired, nor shall the personal representative  
 9 be prevented from sooner settling the estate and delivering such prop-  
 10 erty.

1 Sections 356 to 360, inclusive, reserved for future use.

#### PART 4. INVENTORY

1 **SEC. 361. Inventory and report.** Within sixty days after his quali-  
 2 fication, unless a longer time shall be granted by the court, the per-  
 3 sonal representative shall file with the clerk, in duplicate, a verified,  
 4 full and detailed report and inventory of the property of the deceased,  
 5 so far as the same has come to his knowledge, as follows:

- 6 1. Name, age and last residence of decedent.
- 7 2. Date of death.
- 8 3. Whether decedent died testate or intestate.
- 9 4. Name and post-office address of personal representative.
- 10 5. Name, age and post-office address of surviving spouse, if any.
- 11 6. If testate, name, age, relationship and post-office address of each  
 12 beneficiary under will.
- 13 7. If testate, the name, age and address of each child, if any, born to  
 14 or adopted by decedent after execution of the will.
- 15 8. If intestate, name, age, relationship and post-office address of  
 16 each heir.
- 17 9. Inventory of all the real estate of the decedent in the state of  
 18 Iowa, giving value and accurate description of each tract.
- 19 10. Any real property located outside of the state of Iowa not other-  
 20 wise reported.
- 21 11. Personal property regarded as exempt from execution.
- 22 12. All other personal property.
- 23 13. All property whether subject to probate or not, not otherwise  
 24 listed which is subject to the Iowa inheritance tax as provided in  
 25 chapter four hundred fifty (450) of the Code of Iowa.
- 26 14. A statement as to whether or not there is any property not  
 27 therein inventoried which must be reported for federal estate tax pur-  
 28 poses.

1 **SEC. 362. Filing mandatory.** Such inventory must be filed in all  
 2 cases, notwithstanding the provisions of any will or the action of any  
 3 heirs or devisees waiving the filing thereof, and no administration  
 4 shall be closed until the same has been filed.

1 **SEC. 363. Reporting failure to court.** The failure of the personal  
 2 representative promptly to make said inventory and report shall be  
 3 forthwith reported by the clerk to the court for such order as may be  
 4 necessary to enforce the making and filing of the same.

1     **SEC. 364. Supplementary inventory.** Whenever any additional in-  
2 formation or property not mentioned in the inventory comes to the  
3 knowledge of a personal representative, he shall make a supplementary  
4 inventory thereof, such supplementary inventory to be filed within  
5 thirty days after such discovery.

1     **SEC. 365. Appraisement.** Property belonging to the estate need  
2 not be appraised unless required for inheritance tax purposes under  
3 the provisions of this Code, or by order of court.

1     **SEC. 366. Debts of executor.** The naming of any person as execu-  
2 tor in a will shall not operate as a discharge or bequest of any right  
3 of action owned by the testator against such persons, if it is a right  
4 that otherwise survives against such person. Every such right of  
5 action shall be included among the assets of the decedent in the in-  
6 ventory.

1     **SEC. 367. Inventory and appraisement as evidence.** Inventories  
2 and appraisements may be given in evidence in all proceedings, but  
3 shall not be conclusive, and other evidence may be introduced to vary  
4 the effect thereof.

1     **SEC. 368. Property for payment of creditor's claims.** The property  
2 liable for the payment of debts and charges against a decedent's es-  
3 tate shall include all property transferred by him with intent to  
4 defraud his creditors or any of them, or transferred by any other  
5 means which is in law void or voidable as against his creditors or any  
6 of them; and the right to recover such property, so far as necessary  
7 for the payment of the debts and charges against the estate of the  
8 decedent, shall be exclusively in the personal representative, who  
9 shall take such steps as may be necessary to recover the same. Such  
10 property shall constitute general assets for the payment of all credi-  
11 tors.

1     Sections 369 to 373, inclusive, reserved for future use.

PART 5. ALLOWANCE FOR SURVIVING SPOUSE  
AND MINOR CHILDREN

1     **SEC. 374. Allowance to surviving spouse.** The court shall, upon  
2 application, set off and order paid to the surviving spouse, as part of  
3 the costs of administration, sufficient of the decedent's property as it  
4 deems reasonable for the proper support of the surviving spouse for  
5 the period of twelve months following the death of the decedent.  
6 When said application is not made by the personal representative,  
7 notice of hearing upon the application shall be given to the personal  
8 representative. The court shall take into consideration the station in  
9 life of the surviving spouse and the assets and condition of the estate.  
10 The allowance shall also include such additional amount as the court  
11 deems reasonable for the proper support, during such period, of de-  
12 pendents of the decedent who reside with the surviving spouse. Such

13 allowance to the surviving spouse shall not abate upon the death or  
14 remarriage of such spouse.

1 **SEC. 375. Review of allowance to surviving spouse.** The court  
2 may, upon the petition of the spouse, or other person interested, and  
3 after hearing pursuant to notice to all interested parties, review such  
4 allowance and increase the same.

1 **SEC. 376. Allowance to minor children who do not reside with sur-**  
2 **viving spouse.** The court may also make an allowance to the minor  
3 children of the decedent, who do not reside with the surviving spouse,  
4 of such an amount as it deems reasonable in the light of the assets  
5 and condition of the estate, to provide for their proper support dur-  
6 ing such period of twelve months.

1 **SEC. 377. Review of allowance to minor children.** The court may,  
2 upon the petition of any interested person, review the allowance made  
3 to the minor children who do not reside with the surviving spouse and  
4 may increase or decrease the same and make such other orders as it  
5 may deem proper.

1 Sections 378 to 382, inclusive, reserved for future use.

#### PART 6. SALE OF PROPERTY

1 **SEC. 383. When power given in will.** When power to sell, mort-  
2 gage, lease, pledge or exchange property of the estate has been given  
3 to any personal representative under the terms of any will, the statu-  
4 tory requirements with reference to procedure for such purposes  
5 shall not apply.

1 **SEC. 384. Equitable conversion and power of sale.** A testamentary  
2 direction to sell real property, and the exercise of a testamentary power  
3 of sale of real property, shall constitute an equitable conversion of  
4 real estate into personal property, but shall not affect distribution of  
5 the estate under the provisions of the will.

1 **SEC. 385. Conversion.**

2 1. When realty treated as personalty. Real property acquired by  
3 the personal representative by the completion of foreclosure proceed-  
4 ings, or by the forfeiture of real estate contracts, after the death of  
5 the decedent shall be deemed to be personal property for the purpose of  
6 administration and distribution of the estate.

7 2. When personalty treated as realty. In all cases of sale of real  
8 property by a personal representative under order of court, the sur-  
9 plus of the proceeds of such sale remaining after the payment of  
10 debts and charges shall be deemed to be real property and disposed of  
11 in the same proportions as the real property would have been if it had  
12 not been sold.

1 **SEC. 386. Sale, mortgage, pledge, lease or exchange of property—**  
2 **purposes.** Any real or personal property belonging to the decedent,

3 except exempt personal property and the homestead, is set off, may  
4 be sold, mortgaged, pledged, leased or exchanged for any of the follow-  
5 ing purposes:

- 6 1. The payment of debts and charges against the estate;
- 7 2. The distribution of the estate or any part thereof;
- 8 3. Any other purpose in the best interests of the estate.

1 **SEC. 387. Sale of personal property.** Personal property belonging  
2 to the estate may be sold and transferred as follows:

3 1. Personal property of a perishable nature and personal property  
4 for which there is a regularly established market may be sold by the  
5 personal representative without order of court.

6 2. Any personal property belonging to the decedent may be sold,  
7 mortgaged, exchanged, pledged or leased under order of court by the  
8 personal representative with or without notice as the court may deter-  
9 mine.

1 **SEC. 388. Petition to sell, mortgage, exchange, pledge or lease**  
2 **property.** A petition to sell, mortgage, exchange, pledge or lease any  
3 real or personal property shall set forth the reasons for the applica-  
4 tion and describe the property involved. It may apply for different  
5 authority as to separate parts of the property; or it may apply in the  
6 alternative for authority to sell, mortgage, exchange, pledge or lease.  
7 Whenever it is for the best interests of the estate, real and personal  
8 property of the estate may be sold, mortgaged, exchanged, pledged  
9 or leased as a unit.

1 **SEC. 389. Notice and hearing on sale, mortgage, exchange, pledge**  
2 **or lease of property.** Upon the filing of the petition, the court shall  
3 fix the time and place for the hearing thereof, provided, however, that  
4 as to personal property the court may, in its discretion, hear the  
5 petition without notice. In those instances where notice is required,  
6 the notice shall state briefly the nature of the application and shall  
7 be such notice as the court may prescribe. At the hearing and upon  
8 satisfactory proof, the court may order the sale, mortgage, exchange,  
9 pledge or lease of the property described, or any part thereof, at such  
10 price and upon such terms and conditions as the court may authorize.  
11 In any transaction involving only personal property, no report or con-  
12 firmation shall be necessary except as required by the court. When  
13 a claim secured by a mortgage on real property is, under the provisions  
14 of this Code, payable at the time of distribution of the estate or prior  
15 thereto, the court may with the consent of the mortgagee, order the  
16 sale of the real property subject to the mortgage, but such consent  
17 shall release the estate should a deficiency later appear.

1 **SEC. 390. Leasing for term of not to exceed one year.** The per-  
2 sonal representative may under order of court lease any property not  
3 specifically devised for a period of not to exceed one year.

1 **SEC. 391. Quieting adverse claims.** Upon any petition to sell or  
2 mortgage real property, the court shall have power to investigate and  
3 determine all questions of conflicting and controverted title, remove

4 clouds from any title or interest involved, and invest purchasers or  
5 mortgagees with a marketable title to the property sold or mortgaged.  
6 When the petition to sell or mortgage seeks such relief, notice shall  
7 be given as provided by the Rules of Civil Procedure, and subsequent  
8 proceedings shall be in the manner of an equitable action, and shall be  
9 governed by such rules.

1 **SEC. 392. Terms of sale.** In all sales of property, the court may  
2 authorize credit to be given by the personal representative on such  
3 terms as the court may prescribe. Credit for more than twelve  
4 months shall be extended only after hearing pursuant to notice to  
5 interested parties.

1 **SEC. 393. Purchase by holder of lien.** At any sale of real or per-  
2 sonal property upon which there is a mortgage, pledge or other lien,  
3 the holder of such lien may become the purchaser, and may apply the  
4 amount of his lien on the purchase price in the following manner. If  
5 no claim thereon has been filed or allowed, the court, at the hearing  
6 on the report of sale and for confirmation of the sale, may examine  
7 into the validity and enforceability of the lien or charge and the  
8 amount due thereunder and secured thereby, and may authorize the  
9 personal representative to accept the receipt of such purchaser for the  
10 amount due thereunder and secured thereby as payment pro tanto.  
11 If such mortgage, pledge or other lien is a valid claim against the  
12 estate and has been allowed, the receipt of the purchaser for the  
13 amount due him from the proceeds of the sale is a payment pro  
14 tanto. If the amount for which the property is purchased, whether  
15 or not a claim for it has been filed or allowed, is insufficient to defray  
16 the expenses and discharge his mortgage, pledge or other lien, the  
17 purchaser must pay an amount sufficient to pay the balance of such  
18 expenses. Nothing permitted under the terms of this section shall  
19 be deemed to be an allowance of a claim based upon such mortgage,  
20 pledge or other lien.

1 **SEC. 394. Order to sell, mortgage, pledge, exchange or lease to be**  
2 **refused if bond given.** An order authorizing a personal representative  
3 to sell, mortgage, pledge, exchange or lease real or personal property  
4 for the payment of obligations of the estate shall not be granted if  
5 any of the persons interested in the estate shall execute and file in the  
6 court a bond in such sum and with such sureties as the court may  
7 approve, conditioned to pay all obligations of the estate to the extent  
8 that the other property of the estate is insufficient therefor, within  
9 such time as the court shall direct. An action may be maintained on  
10 such bond by the personal representative on behalf of any person in-  
11 terested in the estate who is prejudiced by breach of any obligation  
12 of the bond.

1 **SEC. 395. Validity of proceedings.** No proceedings for sale, mort-  
2 gage, pledge, lease, exchange or conveyance by a personal represent-  
3 ative of property belonging to the estate shall be subject to collateral  
4 attack on account of any irregularity in the proceedings which is not  
5 such as to deprive the court of jurisdiction.

1     **SEC. 396. Order for sale, mortgage, pledge, exchange or lease of**  
2 **real property.** The order shall describe the property to be sold, mort-  
3 gaged, pledged, exchanged or leased, and may designate the sequence  
4 in which the several parcels shall be sold, mortgaged, pledged, ex-  
5 changed or leased. An order for sale may direct whether the property  
6 shall be sold at private sale or public auction, and, if the latter, the  
7 place or places of sale. The order of sale may prescribe the terms,  
8 conditions and manner of sale. The court may, in its discretion, pro-  
9 vide for appraisal for its guidance as to value of the property, and  
10 determine whether or not additional bond shall be deposited by the  
11 personal representative. If real property is to be mortgaged, it may  
12 fix the maximum amount of principal, the earliest and latest dates of  
13 maturity, and the purposes for which the proceeds shall be used. An  
14 order for sale, mortgage, pledge, exchange or lease shall remain in  
15 force until terminated by the court.

1     **SEC. 397. Sale at public auction.** In all sales of property at public  
2 auction, the personal representative shall give such notice, in such  
3 form and manner, and to such persons or parties, as the court may  
4 prescribe. If no provision for notice is made by the court, the notice  
5 shall be published once each week for two consecutive weeks in some  
6 newspaper of general circulation in the county where sale is to be  
7 held, the last publication to be not less than one day nor more than  
8 seven days before the day of sale. If the property to be sold is located  
9 in more than one county, the sale may be held and notice given in any  
10 one or more of said counties. Unless otherwise provided by order of  
11 the court, the notice shall state the time and place of the sale and  
12 describe the property to be sold. Proof of service of the notice re-  
13 quired shall be filed before confirmation of the sale.

1     **SEC. 398. Adjournment of sale at public auction.** The personal  
2 representative may adjourn any sale from time to time when, in his  
3 discretion, it is deemed for the best interests of the estate to do so,  
4 but no adjournment shall be to a time more than three months from  
5 the date first fixed for the sale. Every adjournment shall be an-  
6 nounced publicly at the time and place at which adjournment is made.

1     **SEC. 399. Report and confirmation.** Within thirty days after mak-  
2 ing any sale, mortgage, exchange, or lease of real property, the per-  
3 sonal representative shall make a verified report of his proceedings to  
4 the court. The court shall examine said report, and if satisfied that  
5 the sale, mortgage, exchange, or lease has been at the price and terms  
6 advantageous to the estate, and, in all respects, made in conformity  
7 with law, and that it ought to be confirmed, shall confirm the same  
8 and order the personal representative to execute a deed, mortgage,  
9 lease or other proper instruments to the persons entitled thereto; pro-  
10 vided, however, that in the event said real property has been sold at  
11 private sale without an appraisal made for the purpose of such sale, or  
12 if it has been appraised and has been sold at private sale for less than  
13 the appraised value thereof, then, upon the filing of such report, the  
14 court shall enter an order fixing a time and place for hearing thereon,  
15 and shall prescribe a notice of such hearing to be served upon all inter-

16 ested persons, any one of whom, prior to the time fixed for such hear-  
 17 ing, may file written objections to the entry of an order approving  
 18 said sale. If not satisfied that the sale, mortgage, exchange, or lease  
 19 has been made in conformity with law and that it is to the best inter-  
 20 ests of the estate, the court may reject the sale, mortgage, exchange,  
 21 or lease, and require a re-execution of the order upon such terms and  
 22 conditions as it may direct.

1 **SEC. 400. Execution of conveyance or other instrument.** Upon  
 2 the confirmation of any sale, mortgage, exchange or lease in accord-  
 3 ance with the preceding section hereof, the personal representative  
 4 shall execute the deed, mortgage, lease or other instrument according  
 5 to the order of confirmation.

1 **SEC. 401. Endorsement of confirmation.** The clerk shall, without  
 2 further order of court, endorse such confirmation upon such instru-  
 3 ment, and cause such instrument to be recorded in the records of his  
 4 office.

1 **SEC. 402. Effect of conveyance—presumption.** When so endorsed,  
 2 said instrument shall be presumptive evidence of the validity thereof  
 3 and of the regularity of all the proceedings connected therewith.

1 **SEC. 403. Record in foreign county.** When real property so con-  
 2 veyed or encumbered is located in a county other than that in which  
 3 such proceedings are had, a complete transcript of the record of all  
 4 proceedings relating thereto shall be filed by the personal representa-  
 5 tive in the office of the clerk in such county.

1 **SEC. 404. Transcript of court conveyance—record—effect.** Any  
 2 person interested therein may procure from the clerk a transcript of  
 3 any such conveyance or other instrument which has been so recorded  
 4 in the office of the clerk for more than five years, and such transcript,  
 5 when certified by the clerk under the seal of his office, may be filed in  
 6 the office of the recorder of the county in which said property is lo-  
 7 cated, and shall have the same effect, when so recorded, as the original  
 8 conveyance.

1 Sections 405 to 409, inclusive, reserved for future use.

#### PART 7. CLAIMS AGAINST DECEDENT'S ESTATE TIME AND MANNER OF FILING CLAIMS

1 **SEC. 410. Limitation on filing claims against decedent's estate.** All  
 2 claims against a decedent's estate, other than costs of administration,  
 3 whether due or to become due, absolute or contingent, liquidated or  
 4 unliquidated, founded on contract or otherwise, shall be forever barred  
 5 against the estate, the personal representative, and the distributees of  
 6 the estate, unless filed with the clerk within six months after the date  
 7 of the second publication of the notice to creditors; provided, however,  
 8 that the personal representative may waive such limitation on filing;



9 and this provision shall not bar claimants entitled to equitable relief  
10 due to peculiar circumstances.

1 **SEC. 411. Pleading statute of limitations.** It shall be within the  
2 discretion of the personal representative to determine whether or not  
3 the applicable statute of limitations shall be pleaded to bar a claim  
4 which he believes to be just, provided, however, that this section shall  
5 not apply where the personal representative was appointed upon the  
6 application of a creditor.

1 **SEC. 412. When claim not affected by statute of limitation.** No  
2 claim shall be barred by the statutes of limitation which was not  
3 barred at the time of the decedent's death, if the claim shall have been  
4 filed against the decedent's estate within six months from the date of  
5 the decedent's death.

1 **SEC. 413. Claims barred when no administration commenced.** All  
2 claims barrable under the provisions of section four hundred ten (410)  
3 shall, in any event, be barred if administration of the estate, whether  
4 testate or intestate, original or ancillary is not commenced within five  
5 years after the death of the decedent.

1 **SEC. 414. Liens not affected by failure to file claim.** Nothing in  
2 sections four hundred ten (410), four hundred twelve (412) and four  
3 hundred thirteen (413) shall affect or prevent any action or proceed-  
4 ing to enforce any mortgage, pledge or other lien upon property of  
5 the estate.

1 **SEC. 415. Commencement or continuance of separate action.** Any  
2 action pending against the decedent at the time of his death that sur-  
3 vives, shall also be considered a claim filed against the estate if notice  
4 of substitution is served on the personal representative as defend-  
5 ant, and a duplicate of the proof of service of notice of such proceeding  
6 is filed in the probate proceedings within the time provided for filing  
7 claims in section four hundred ten (410).

8 A separate action based on a debt or other liability of the decedent  
9 may be commenced against the personal representative of the decedent  
10 in lieu of filing a claim in the estate. Such an action shall be com-  
11 menced by serving an original notice on the personal representative  
12 and filing a duplicate of the proof of service of notice of such proceed-  
13 ing in the probate proceedings within the time provided for filing  
14 claims in section four hundred ten (410), and such action shall also  
15 be considered a claim filed against the estate. Such action may be  
16 commenced only in a county wherein the venue would have been  
17 proper had the decedent survived and the action been commenced  
18 against him.

19 A judgment or decree in favor of the plaintiff in any such action  
20 shall constitute an adjudication against the estate.

21 In all cases where by the death of the party to be charged, the bring-  
22 ing of the action against his estate shall have been delayed beyond  
23 the period provided by the statute of limitations, the action may be  
24 brought if the original notice is served on the personal representative

25 as defendant, and proof of service of notice of such proceeding is filed  
26 in the probate proceedings within the time provided for filing claims  
27 in section four hundred ten (410).

1 **SEC. 416. Compulsory counterclaims—Rules of Civil Procedure.** In  
2 an action commenced by or against the fiduciary under the provisions  
3 of section four hundred fifteen (415), or in any action pending by or  
4 against the decedent that survives under the provisions of section  
5 four hundred fifteen (415), the Rules of Civil Procedure as to com-  
6 pulsory counterclaims shall apply in such action.

1 **SEC. 417. Separate action in lieu of proceeding on claims.** The  
2 provisions of sections four hundred thirty-eight (438) through four  
3 hundred forty-eight (448), inclusive, are not applicable to actions  
4 continued or commenced under section four hundred fifteen (415) of  
5 of this Code.

1 **SEC. 418. Form and verification of claims—general requirements.**  
2 No claims shall be allowed against an estate on application of the  
3 claimant unless it shall be in writing, filed in duplicate with the clerk,  
4 stating the claimant's name and address, describing the nature and  
5 the amount thereof, if ascertainable, and accompanied by the affidavit  
6 of the claimant, or someone for him, that the amount is justly due,  
7 or if not yet due, when it will or may become due, that no payments  
8 have been made thereon which are not credited, and that there are no  
9 offsets to the same, to the knowledge of the affiant, except as therein  
10 stated. If the claim is contingent, the nature of the contingency shall  
11 also be stated. The duplicate of said claim shall be mailed by the clerk  
12 to the personal representative or his attorney of record.

1 **SEC. 419. Requirements when claim founded on written instru-**  
2 **ment.** If a claim is founded on a written instrument, the original or  
3 a copy thereof with all endorsements must be attached to the claim.  
4 The original instrument must be exhibited to the personal representa-  
5 tive or court, upon demand, unless it is lost or destroyed, in which case  
6 its loss or destruction must be stated in the claim..

1 **SEC. 420. How claim entitled.** All claims filed against the estate  
2 shall be entitled in the name of the claimant against the personal rep-  
3 resentative as such, naming the estate, and in all further proceedings  
4 thereon that title shall be preserved.

1 **SEC. 421. Unsecured claims not yet due.** Upon proof of an un-  
2 secured claim which will become due at some future time, the same  
3 may be paid if the claimant will consent to such discount as the court  
4 thinks reasonable; otherwise, the court shall direct the investment  
5 of an amount which will provide for the payment of the claim when  
6 it becomes due.

1 **SEC. 422. Secured claims not yet due.** When a creditor holds any  
2 security for a claim not yet due, he may file his claim as a claim not

3 yet due with the right of withdrawing the claim if the compromise  
 4 offer is not satisfactory, and, after such withdrawal, rely entirely on  
 5 his security, or he may elect to rely entirely on his security without  
 6 the necessity of filing a claim.

1 **SEC. 423. Procedure for secured claims.** When a creditor holds  
 2 any security for his claim, the security shall be described in the claim.  
 3 If the claim is secured by a mortgage, pledge or other lien which has  
 4 been recorded, it shall be sufficient to describe the lien by date, and  
 5 refer to the volume, page and place of recording. The claim shall be  
 6 allowed in the amount remaining unpaid at the time of its allowance,  
 7 and the judgment allowing it shall describe the security. Payment of  
 8 the claim shall be upon the basis of the full amount thereof if the  
 9 creditor shall surrender his security; otherwise payment shall be  
 10 upon the basis of one of the following:

11 1. If the creditor shall exhaust his security before receiving pay-  
 12 ment, then upon the full amount of the claim allowed, less the amount  
 13 realized upon exhausting the security; or

14 2. If the creditor shall not have exhausted, or shall not have the  
 15 right to exhaust, his security, then upon the full amount of the claim  
 16 allowed, less the value of the security determined by agreement, or as  
 17 the court may direct.

1 **SEC. 424. Contingent claims.** Contingent claims which cannot be  
 2 allowed as absolute debts shall, nevertheless, be filed in the court and  
 3 proved. If allowed as a contingent claim, the order of allowance shall  
 4 state the nature of the contingency. If such claim shall become abso-  
 5 lute before distribution of the estate, it shall be paid in the same man-  
 6 ner as absolute claims of the same class. In all other cases, the court  
 7 may provide for the payment of contingent claims in any one of the  
 8 following methods:

9 1. The creditor and personal representative may determine, by  
 10 agreement, arbitration or compromise, the value thereof, according  
 11 to its probable present worth, and upon approval thereof by the court,  
 12 it may be allowed and paid in the same manner as an absolute claim, or

13 2. The court may order the personal representative to make distri-  
 14 bution of the estate but to retain in his hands sufficient funds to pay  
 15 the claim if and when the same becomes absolute; but, for this pur-  
 16 pose, the estate shall not be kept open longer than two years after dis-  
 17 tribution of the remainder of the estate; and if such claim has not  
 18 become absolute within that time, distribution shall be made to the  
 19 distributees of the funds so retained, after paying any costs and ex-  
 20 penses accruing during such period, and such distributees shall be  
 21 liable to the creditor to the extent of the estate received by them, if  
 22 such contingent claim thereafter becomes absolute. When distribution  
 23 is so made to distributees, the court may require such distributees to  
 24 give bond for the satisfaction of their liability to the contingent cred-  
 25 itor, or

26 3. The court may order distribution of the estate as though such  
 27 contingent claim did not exist, but the distributees shall be liable to  
 28 the creditor to the extent of the estate received by them, if the con-  
 29 tingent claim thereafter becomes absolute; and the court may require

- 30 such distributees to give bond for the performance of their liability  
 31 to the contingent creditor, or  
 32 4. Such other method as the court may order.

**CLASSIFICATION, ALLOWANCE AND PAYMENT OF DEBTS  
AND CHARGES**

- 1 **SEC. 425. Classification of debts and charges.** In any estate in  
 2 which the assets are, or appear to be, insufficient to pay in full all  
 3 debts and charges of the estate, the personal representative shall  
 4 classify such debts and charges as follows:  
 5 1. Court costs.  
 6 2. Other costs of administration.  
 7 3. Reasonable funeral and burial expenses.  
 8 4. All debts and taxes having preference under the laws of the  
 9 United States.  
 10 5. Reasonable and necessary medical and hospital expenses of the  
 11 last illness of the decedent, including compensation of persons attend-  
 12 ing him at his last illness.  
 13 6. All taxes having preferences under the laws of this state.  
 14 7. All debts owing to employees for labor performed during the  
 15 ninety days next preceding the death of the decedent.  
 16 8. All other claims allowed.

- 1 **SEC. 426. Order of payment of debts and charges.** Payment of  
 2 debts and charges of the estate shall be made in the order provided  
 3 in the preceding section, without preference of any claim over another  
 4 of the same class. If the assets of the estate are insufficient to pay  
 5 in full all of the claims of a class, then such claims shall be paid on a  
 6 pro rata basis, without preference between claims then due and those  
 7 of the same class not due.

- 1 **SEC. 427. Payment of contingent claims by distributees—contri-**  
 2 **bution.** If a contingent claim shall have been filed and allowed against  
 3 an estate and all the assets of the estate shall have been distributed,  
 4 and the claim shall thereafter become absolute, the creditor shall have  
 5 the right to recover thereon against those distributees whose dis-  
 6 tributive shares have been increased by reason of the fact that the  
 7 amount of said claim as finally determined was not paid prior to  
 8 final distribution, provided an action therefor shall be commenced  
 9 within six months after the claim becomes absolute. Such distribu-  
 10 tees shall be jointly and severally liable, but no distributee shall be  
 11 liable for an amount exceeding the amount of the estate or fund so  
 12 distributed to him. If more than one distributee is liable to the  
 13 creditor, the creditor shall make parties to the action all such dis-  
 14 tributees who can be reached by process. By its judgment, the court  
 15 shall determine the amount of the liability of each of the distributees  
 16 as between themselves, but if any be insolvent or unable to pay his  
 17 proportion, or beyond the reach of process, the others, to the extent  
 18 of their respective liabilities, shall nevertheless be liable to the credi-  
 19 tor for the whole amount of his debt. If any person liable for the

20 debt fails to pay his just proportion to the creditors, he shall be liable  
21 to indemnify all who, by reason of such failure on his part, have paid  
22 more than their just proportion of the debt, the indemnity to be re-  
23 covered in the same action or in separate actions.

1     **SEC. 428. Allowance by personal representative.** Where a claim has  
2 been filed and is admitted in writing by the personal representative,  
3 it shall stand allowed in the absence of fraud or collusion.

1     **SEC. 429. Compelling payment of claims.** No claimant shall be  
2 entitled to compel payment unless his claim has been duly filed and  
3 allowed.

1     **SEC. 430. Execution and levies prohibited.** No execution shall  
2 issue upon, nor shall any levy be made against, any property of the  
3 estate under any judgment against a decedent or a personal represent-  
4 ative, but the provisions of this section shall not be construed to pre-  
5 vent the enforcement of mortgages.

1     **SEC. 431. Claims of personal representative.** If the personal rep-  
2 resentative is a creditor of the decedent, he shall file his claim as  
3 other creditors, and the court shall appoint some competent person  
4 as temporary administrator to represent the estate in the matter of  
5 allowing or disallowing such claim. The same procedure shall be fol-  
6 lowed in the case of corepresentatives where all such representatives  
7 are creditors of the estate; but if one of the corepresentatives is not  
8 a creditor of the estate, such disinterested representative shall rep-  
9 resent the estate in the matter of allowing or disallowing such claim  
10 against the estate by a corepresentative.

1     **SEC. 432. Allowance or disallowance of claim of personal represent-**  
2 **ative.** The temporary administrator shall, after investigation, file a  
3 report with the court recommending the allowance or disallowance  
4 of such claim. Unless the court allows the claim, it shall then be dis-  
5 posed of as a contested claim in accordance with the provisions of  
6 sections four hundred thirty-nine (439) through four hundred forty-  
7 eight (448).

1     **SEC. 433. Payment of debts and charges before expiration of six**  
2 **months period.** As soon as the personal representative is possessed  
3 of sufficient means over and above the other costs of administration, he  
4 shall pay any allowance made by the court for the surviving spouse  
5 and children of the decedent, and may pay the expenses of funeral,  
6 and burial and last illness. Prior to the expiration of six months after  
7 the date of the second publication of notice to creditors, the personal  
8 representative shall pay such other debts and charges against the  
9 estate as the court shall order, and the court may require bond or other  
10 security to be given by the creditor to refund such part of such pay-  
11 ment as may be necessary to make payment in accordance with the  
12 provisions of this code. All payments made by the personal repre-  
13 sentative without order of court shall be at his own peril.

1     **SEC. 434. Payment of debts and charges after expiration of six**  
2 **months period.** Upon the expiration of six months after the date of  
3 the second publication of notice to creditors, the personal representa-  
4 tive shall proceed to pay the debts and charges against the estate in  
5 accordance with the provisions of this code. If it appears at any time  
6 that the estate is or may be insolvent, that there are insufficient funds  
7 on hand, or that there is other good and sufficient cause, the per-  
8 sonal representative may report that fact to the court and apply for  
9 any order that he deems necessary in connection therewith.

1     **SEC. 435. Debts and charges not filed.** The personal representative  
2 may pay any valid debts and charges against the estate even though  
3 no claim for such debts and charges has been filed, but all such pay-  
4 ments made by the personal representative shall be at his own peril.

1     **SEC. 436. General order for abatement.** Except as provided in  
2 section two hundred eleven (211) hereof, shares of the distributees  
3 shall abate, for the payment of debts and charges, federal and state  
4 estate taxes, legacies, the shares of children born or adopted after  
5 the making of a will, or the share of the surviving spouse who elects  
6 to take against the will, without any preference or priority as be-  
7 tween real and personal property, in the following order:  
8     1. Property not disposed of by the will;  
9     2. Property devised to the residuary devisee, except property de-  
10  vised to a surviving spouse who takes under the will;  
11     3. Property disposed of by the will, but not specifically devised and  
12  not devised to the residuary devisee, except property devised to a  
13  surviving spouse who takes under the will;  
14     4. Property specifically devised, except property devised to a sur-  
15  viving spouse who takes under the will;  
16     5. Property devised to a surviving spouse who takes under the will.  
17  A general devise charged on any specific property or fund shall, for  
18  purposes of abatement, be deemed property specifically devised to the  
19  extent of the value of the property on which it is charged. Upon the  
20  failure or insufficiency of the property on which it is charged, it shall  
21  be deemed property not specifically devised to the extent of such fail-  
22  ure or insufficiency.

1     **SEC. 437. Contrary provision as to abatement.** If the provisions  
2 of the will, the testamentary plan, or the express or the implied pur-  
3 pose of the devise would be defeated by the order of abatement stated  
4 in sections four hundred thirty-six (436) hereof, the shares of dis-  
5 tributees shall abate in such other manner as may be found necessary  
6 to give effect to the intention of the testator.

#### DENIAL AND CONTEST OF CLAIMS

1     **SEC. 438. General denial of claims.** Where a claim has been filed,  
2 but not admitted in writing by the personal representative before a  
3 request for hearing has been given as hereinafter provided, the claim  
4 shall be considered as denied without any pleading on behalf of the  
5 personal representative.

1    **SEC. 439. Disallowance by personal representative.** At any time  
2 after the filing of a claim against an estate, the personal representative  
3 shall give the claimant written notice of disallowance of claim. Such  
4 a notice shall be given by certified mail addressed to the claimant  
5 at the address stated in the claim.

1    **SEC. 440. Contents of notice of disallowance.** Such a notice of  
2 disallowance shall advise the claimant that the claim has been disal-  
3 lowed and will be forever barred unless the claimant shall within  
4 twenty days after the date of mailing the notice, file a request for  
5 hearing on the claim with the clerk, and mail a copy of such request  
6 for hearing to the personal representative by certified mail.

1    **SEC. 441. Proof of service.** Proof of service of the notice of dis-  
2 allowance shall be made by affidavit, shall show the date and place of  
3 mailing, and shall be filed with the clerk.

1    **SEC. 442. Claims barred after twenty days.** Unless the claimant  
2 shall within twenty days after the date of mailing said notice of  
3 disallowance, file a request for hearing with the clerk, and mail a copy  
4 thereof to the personal representative, the claim shall be deemed  
5 disallowed, and shall be forever barred.

1    **SEC. 443. Request for hearing by claimant.** At the time of the  
2 filing of a claim against an estate, or at any time thereafter prior to  
3 the time that the claim may be barred by the provisions of section  
4 four hundred forty-two (442), or the approval of the final report of  
5 the personal representative after notice to the claimant, the claimant  
6 may file a written request, in duplicate, for hearing on his claim with  
7 the clerk who shall mail the duplicate to the personal representative,  
8 or to his attorney of record.

1    **SEC. 444. Applicability of Rules of Civil Procedure.** Within twenty  
2 days from the filing of the request for hearing on a claim, the personal  
3 representative shall move or plead to said claim in the same manner as  
4 though the claim were a petition filed in an ordinary action, and  
5 thereafter, all provisions of law and Rules of Civil Procedure applicable  
6 to motions, pleadings and the trial of ordinary actions shall apply as  
7 otherwise provided herein.

1    **SEC. 445. Offsets and counterclaims.** At the time of the filing of  
2 an answer to a claim, the personal representative shall plead all offsets  
3 against the claim, and shall plead all counterclaims against the claim-  
4 ant of which he has knowledge. An offset or counterclaim may or  
5 may not diminish or defeat the recovery sought by the opposing party.  
6 It may claim relief exceeding the amount, or different in kind, from  
7 that sought in the claim.

1    **SEC. 446. Burden of proof.** The burden of proving that a claim is  
2 unpaid shall not be placed upon the party filing a claim against the  
3 estate; but the personal representative may on the trial of the cause,

4 subject the claimant to an examination on the question of payment  
5 or consideration, and the estate shall not be concluded or bound there-  
6 by.

1 **SEC. 447. Trial and hearing.** The trial of a claim and the offsets  
2 or counterclaims, if any, shall be to the court without a jury; provided,  
3 however, that the court may, in its discretion, either on its own  
4 motion or upon the motion of any party, submit the same to a jury;  
5 and provided further, that in the event that the amount of the claim  
6 or a counterclaim exceeds the sum of three hundred dollars, either  
7 party shall be entitled to a jury trial, if written demand therefor is  
8 made as provided in the Rules of Civil Procedure in relation to the  
9 trial of ordinary actions.

1 **SEC. 448. Allowance and judgment.** Upon the trial of a claim,  
2 offsets and counterclaims, the amount owing by or to the estate, if  
3 any, shall be determined. A claim against the estate shall be allowed  
4 for the net amount. Judgment shall be rendered for any amount  
5 found to be due the estate. If a judgment is rendered against a  
6 claimant for any net amount, execution may issue in the same manner  
7 as on judgments in civil cases.

1 **SEC. 449. Payment of federal estate taxes.** All federal and state  
2 estate taxes (as distinguished from state inheritance taxes) owing  
3 by the estate of a decedent shall be paid from the property of the  
4 estate, and, in testate matters, from the residue of the estate, unless  
5 the will of the decedent, or other trust instrument, provides expressly  
6 to the contrary.

1 Sections 450 to 468, inclusive, reserved for future use.

#### PART 8. ACCOUNTING, DISTRIBUTION, FINAL REPORT AND DISCHARGE

1 **SEC. 469. Interlocutory report.** The personal representative may  
2 at any time file an interlocutory accounting to the court showing the  
3 condition of the estate, its debts and property, the amount of money  
4 received, and the disposition made of any of the assets of the estate.  
5 The court may on application of any interested party, or on its own  
6 motion, order such an accounting at any time. Such an accounting  
7 shall embrace all matters directed by the court. The court may order  
8 such further accountings from time to time as it may determine to  
9 be to the best interests of the estate.

1 **SEC. 470. Waiver of accounting.** The distributee, if under no legal  
2 disability, may waive the accounting.

1 **SEC. 471. Right of retainer.** When a distributee of an estate is  
2 indebted to the estate, or if a distributee takes as an heir of a  
3 deceased devisee indebted to the estate, the amount of such indebted-  
4 ness, if due, or the present worth of the indebtedness, if not due, shall



5 be treated as an offset and retained by the personal representative out  
6 of any testate or intestate property, real or personal, of the estate to  
7 which such distributee is entitled. The right of setoff and retainer  
8 shall be prior and superior to the rights of judgment creditors, heirs  
9 or assigns of such distributee and shall not be barred by the statute of  
10 limitations, nor by a discharge in bankruptcy.

1 SEC. 472. Proceeds distributed in kind. Property not otherwise  
2 disposed of by the personal representative may be distributed in kind.

1 SEC. 473. Final settlement—time limit. Final settlement shall be  
2 made within three years, after the second publication of the notice  
3 to creditors, unless otherwise ordered by the court after notice to all  
4 interested parties.

1 SEC. 474. Certificate as to payment of personal taxes. Prior to or  
2 at the time of filing the final report, there shall be filed in the estate  
3 proceedings, the certificate of the treasurer of the county in which the  
4 administration of the estate is pending, that all personal taxes due  
5 and to become due the county in such estate matter have been paid  
6 in full. When no assets remain in the hands of the personal repre-  
7 sentative after the payment of debts and charges having priority under  
8 the provisions of section four hundred twenty-five (425), such cer-  
9 tificate need not be filed. No charge shall be made by the county treas-  
10 urer for the issuance of such certificate.

1 SEC. 475. Compromise of personal taxes. For the purpose of fa-  
2 cilitating the speedy settlement and distribution of estates, the county  
3 treasurer of such county, by and with the consent of the board of  
4 supervisors may compromise and agree upon the amount of personal  
5 taxes at any time due or to become due the county from an estate,  
6 and payment in accordance with such compromise or agreement shall  
7 be for the satisfaction of all taxes in such estate matter. No com-  
8 pensation shall be allowed any person because of such compromise  
9 or agreement.

1 SEC. 476. Action against distributees—costs—tender. In an ac-  
2 tion against the distributees, where the judgment is to be against  
3 them in proportion to the respective amounts received by them from  
4 the estate, costs awarded against them shall be in like proportion,  
5 and anyone may tender the amount due from him to the plaintiff,  
6 which shall have the same effect, as far as he is concerned, as though  
7 he were the sole defendant.

1 SEC. 477. Final report. Each personal representative shall, in his  
2 final report, set forth:

- 3 1. An accurate description of all the real estate of which the dece-  
4 dent died seized, stating the nature and extent of his interest therein,  
5 which has not been sold and conveyed by the personal representative.
- 6 2. Whether the deceased died testate or intestate.
- 7 3. The name and place of residence of the surviving spouse, or that  
8 none survived the deceased.

9 4. In intestate estates, the name and place of residence of each of  
10 the heirs and their relationship to the deceased.

11 5. In testate estates, the name and place of residence of each of the  
12 devisees and their relationship to the deceased, and the name and  
13 residence of after-born children, if any, as defined in section two hun-  
14 dred sixty-seven (267).

15 6. Whether any legacy or devise remains a charge on the real es-  
16 tate, and, if so, the nature and amount thereof.

17 7. Whether any distributee is under any legal disability.

18 8. The name of the conservator or trustee for any distributee, and  
19 the court from which his letters were issued.

20 9. An accounting of all the moneys and personal property coming  
21 into the hands of the personal representative. The accounting may  
22 be omitted if waived by all interested parties.

23 10. A statement as to whether or not all statutory requirements  
24 pertaining to taxes have been complied with.

1 **SEC. 478. Notice of application for discharge.** Unless notice be  
2 waived in writing, no personal representative shall be discharged from  
3 further duty or responsibility upon final settlement until notice of  
4 hearing on his final report or of an application for discharge shall have  
5 been served upon all persons interested as required for the commence-  
6 ment of a civil action, unless a different service be ordered by the  
7 court. Such an order may be made before or after the filing of the  
8 final report.

1 **SEC. 479. Discharge.** Upon final settlement of an estate, an order  
2 shall be entered discharging the personal representative from further  
3 duties and responsibilities. The order approving the final report shall  
4 constitute a waiver of the omission from the final report of any of the  
5 recitals required in section four hundred seventy-seven (477).

1 **SEC. 480. Change of title certificate with administration.** After  
2 the entry of the order approving the final report, the clerk shall issue  
3 a certificate under the provisions of chapter five hundred fifty-eight  
4 (558) of the Code of Iowa relative to each parcel of real estate de-  
5 scribed in the final report of the personal representative which has not  
6 been sold by the personal representative, and deliver such certificate  
7 to the county auditor of the county in which such real estate is sit-  
8 uated.

1 **SEC. 481. Change of title certificate without administration.** When-  
2 ever an order is entered under the provisions of section four hundred  
3 fifty point forty (450.40) of the Code of Iowa, without administration  
4 of the estate of a decedent, the clerk shall issue and deliver to the  
5 county auditor of the county in which such real estate is situated a  
6 like certificate pertaining to each parcel of real estate described in the  
7 application for such order.

1 Sections 482 to 486, inclusive, reserved for future use.

## PART 9. REOPENING

1     **SEC. 487. Limitation on rights.** No person, having been served  
 2 with notice of the hearing upon the final report and accounting of a  
 3 personal representative or having waived such notice, shall, after the  
 4 entry of the final order approving the same and discharging the said  
 5 personal representative, have any right to contest, in any proceeding,  
 6 other than by appeal, the correctness or the legality of the inventory,  
 7 the accounting, distribution, or other acts of the personal representa-  
 8 tive, or the list of heirs set forth in the final report of the personal  
 9 representative, provided, however, that nothing contained in this sec-  
 10 tion shall prohibit any action against the personal representative and  
 11 his bondsman under the provisions of section one hundred ninety  
 12 (190)\* on account of any fraud committed by the personal representa-  
 13 tive.

1     **SEC. 488. Reopening settlement.** Whenever a final report has been  
 2 approved and a final accounting has been settled in the absence of  
 3 any person adversely affected and without notice to him, the hearing  
 4 on such report and accounting may be reopened at any time within  
 5 five years from the entry of the order approving the same, upon the  
 6 application of such person, and, upon a hearing, after such notice as  
 7 the court may prescribe to be served upon the personal representative  
 8 and the distributees, the court may require a new accounting, or a  
 9 redistribution from the distributees. In no event, however, shall any  
 10 distributee be liable to account for more than the property distributed  
 11 to him. If any property of the estate shall have passed into the hands  
 12 of good faith purchasers for value, the rights of such purchasers shall  
 13 not, in any way, be affected.

1     **SEC. 489. Reopening administration.** Upon the petition of any  
 2 interested person, the court may, with such notice as it may prescribe,  
 3 order an estate reopened if other property be discovered, if any neces-  
 4 sary act remains unperformed, or for any other proper cause appear-  
 5 ing to the court. It may reappoint the personal representative, or  
 6 appoint another personal representative, to administer any additional  
 7 property or to perform other such acts as may be deemed necessary.  
 9 The provisions of law as to original administration shall apply, inso-  
 10 far as applicable, to accomplish the purpose for which the estate is  
 11 reopened, but a claim which is already barred can, in no event, be  
 12 asserted in the reopened administration.

1     Sections 490 to 494, inclusive, reserved for future use.

## DIVISION VIII—FOREIGN WILLS AND ANCILLARY ADMINISTRATION

## PART 1. FOREIGN WILLS

1     **SEC. 495. Admission of wills of nonresidents.** A will of a nonresi-  
 2 dent of this state, not probated in any other state or county, may be

\*Section 186 probably intended.

3 admitted to probate in any county of this state where either real or  
4 personal property of the deceased nonresident is located.

1 **SEC. 496. Foreign probated wills.** A will probated in any other  
2 state or country shall be admitted to probate in this state upon the  
3 production of a copy thereof and of the original record of probate,  
4 authenticated by the attestation of the clerk of the court in which  
5 such probate was made, or, if there be no clerk, then by the attes-  
6 tation of the judge of such court, and by the seal of office of such  
7 officer if he or his office has a seal.

1 **SEC. 497. Foreign wills as a muniment of title.** After the expira-  
2 tion of the five-year period provided in section three hundred thirty-  
3 one (331), an exemplified copy of a will which has not been denied  
4 probate in Iowa, and of the order admitting it to probate in a foreign  
5 state or country, may be recorded in the office of the county recorder  
6 of any county where real estate owned by the testator is located. The  
7 record of such a will and of the order admitting the will to probate  
8 shall operate to dispose of said property as though said will had been  
9 admitted to probate in this state. Nothing contained in this section  
10 shall operate to defeat the rights, acquired prior to such record, of  
11 purchasers for value whose rights are shown of record.

1 **SEC. 498. Foreign wills—procedure.** All provisions of law relat-  
2 ing to the carrying of domestic wills into effect after their probate  
3 shall apply, so far as applicable, to foreign wills admitted to probate  
4 in this state.

1 **SEC. 499. Appointment where no foreign probate.** The fiduciary  
2 named in the will of a nonresident that has not been probated in any  
3 other state, may, upon application, after such will has been admitted  
4 to probate in this state, be appointed fiduciary in this state; provided  
5 that a resident fiduciary be appointed to serve with the nonresident  
6 fiduciary; provided, further, that, for good cause shown, the court  
7 may appoint the nonresident fiduciary to act alone without the ap-  
8 pointment of a resident fiduciary.

## PART 2. ANCILLARY ADMINISTRATION

1 **SEC. 500. Appointment of foreign administrator.** If administra-  
2 tion of the estate of a deceased intestate nonresident has been granted  
3 in accordance with the law of the state where he resided, the duly  
4 qualified administrator of the estate of the nonresident may upon  
5 application be appointed administrator in this state, unless another  
6 has already been appointed and provided that a resident administra-  
7 tor be appointed to serve with the nonresident administrator; pro-  
8 vided further, however, that for good cause shown, the court may  
9 appoint the nonresident administrator to act alone without the ap-  
10 pointment of a resident administrator.

1 **SEC. 501. Application for appointment of foreign administrator.**  
2 The application for any such appointment under section five hundred

3 (500) shall contain the name and address of the foreign administrator  
4 and of the resident administrator, if any, to be appointed, and shall  
5 be accompanied by a certificate of the clerk of the court of original  
6 jurisdiction certifying that such estate is under administration, and  
7 a certification of the original letters or other authority authorizing  
8 the nonresident administrator to act in that estate.

1 **SEC. 502. Appointment of foreign fiduciary.** The duly qualified  
2 fiduciary under a will admitted to probate in another state, may upon  
3 application be appointed fiduciary in this state, after said will has  
4 been admitted to probate in this state, provided that a resident fiduci-  
5 ary be appointed to serve with the nonresident fiduciary; provided  
6 further, however, that, for good cause shown, the court may appoint  
7 the nonresident fiduciary to act alone without the appointment of a  
8 resident fiduciary.

1 **SEC. 503. Application for appointment of foreign executor or trustee.** The application for appointment of a nonresident executor or  
2 trustee shall include the name and address of the nonresident executor  
3 or trustee, and the name and address of the resident executor or  
4 trustee, if any, to be appointed. It shall be accompanied by a certifi-  
5 cate of the clerk of the foreign court granting the original letters or  
6 other authority conferring the power upon the nonresident executor  
7 or trustee to act as such. The application shall also state the cause  
8 for the appointment of the nonresident executor or trustee to act as  
9 the sole executor or trustee, if such appointment is desired. When  
10 the will has not been admitted to probate in any other state, the appli-  
11 cation shall include the name and address of the executor or trustee,  
12 if any, named in the will of the nonresident, and of the resident execu-  
13 tor or trustee to be appointed.  
14

1 **SEC. 504. Removal of property—payment of claims.** In all es-  
2 tates of nonresidents, being administered in this state, the court may  
3 require payment of all claims filed and allowed belonging to residents  
4 of this state, and all legacies or distributive shares payable to residents  
5 of this state, before allowing any of the property in the estate to be  
6 removed from the state.

1 Sections 505 to 509, inclusive, reserved for future use.

#### DIVISION IX—ESTATES OF ABSENTEES

1 **SEC. 510. Administration authorized — petition.** Administration  
2 may be had upon the estate of an absentee. A petition therefor must  
3 be filed in the office of the clerk and must allege:

- 4 1. Whether the absentee was a resident or a nonresident of this  
5 state, and his address at his last known domicile; that he has, without  
6 known cause, absented himself from his usual place of residence, and  
7 concealed his whereabouts from his family, for a period of five years.
- 8 2. That the said absentee has property in this state (describing it  
9 with reasonable certainty), all or part of which is situated in the  
10 county in which the petition is filed.

11 3. The names of the persons, so far as known to the petitioner, who  
12 would be entitled to share in the estate of the absentee if he were  
13 dead.

14 4. In the case of a nonresident, whether administration upon the  
15 estate has been granted in the state of last known domicile.

16 5. Facts showing that the petitioner is a party who would be en-  
17 titled to administer the estate of the said absentee in case the ab-  
18 sentee were known to be dead.

1 SEC. 511. **Notice.** Upon filing of such petition, the court shall, by  
2 a proper order, prescribe the notice and the return day therein, which  
3 shall be addressed to and served upon such absentee and the alleged  
4 distributees of his estate.

1 SEC. 512. **Service.** Said notice shall in all cases be served:  
2 1. By publication in the county in which the petition is filed, once  
3 each week for three consecutive weeks, in a newspaper designated by  
4 the court; and  
5 2. Upon all the alleged distributees of the estate of said absentee by  
6 ordinary mail addressed to them at their last known address.

1 SEC. 513. **Proof of service—filing.** Proof of the publication and  
2 service of such notice shall be filed with the clerk aforesaid on or  
3 before the day set for hearing.

1 SEC. 514. **Hearing—continuance—orders.** If, on the day set for  
2 hearing, the absentee fails to appear, the court shall appoint some dis-  
3 interested person as guardian ad litem to appear for the absentee and  
4 all distributees not appearing, and said cause shall thereupon stand  
5 continued for twenty days. The court shall have authority to make  
6 further continuance upon proper showing. The guardian ad litem  
7 shall investigate the matter and things alleged in the petition. Upon  
8 the further hearing, the court shall hear the proofs, and, if satisfied  
9 of the truth of the allegations of the petition, shall enter an order  
10 establishing the death of the absentee as a matter of law.

1 SEC. 515. **Administration.** Upon the entry of such further order  
2 under section five hundred fourteen (514), administration of the es-  
3 tate of such absentee, whether testate or intestate, shall proceed as  
4 provided herein for the administration of the estates of other dece-  
5 dents, notwithstanding the provisions of section three hundred thirty  
6 (330).

1 SEC. 516. **Rights of absentee barred—sale by spouse.** Such an or-  
2 der establishing the death of an absentee shall forever bar the rights  
3 of homestead and distributive share of the absentee, and his interest  
4 in and to any real estate owned or held by the spouse of such absen-  
5 tee, and in which said spouse may have a legal or equitable interest.  
6 Conveyance of any such real estate by such spouse, after six months  
7 or more from date of publication of second notice of appointment of  
8 a personal representative, shall be free and clear of any claim or right  
9 of homestead or distributive share on the part of such absentee.

1     **SEC. 517. Missing soldiers or sailors—presumption of death.**

2     1. A written finding of presumed death, made by the secretary of  
3 defense, or other officer or employee of the United States authorized to  
4 make such finding, pursuant to the federal Missing Persons Act (56  
5 Stat. 143, 1092, and P.L. 408, Ch. 371, 2d Session 78th Congress; 50  
6 U.S.C. App. Supp. 1001-17), as now or hereafter amended, or a duly  
7 certified copy of such a finding, shall be received in any court, office or  
8 other place in this state, as evidence of the death of the person therein  
9 found to be dead, and of the date, circumstances, and place of his  
10 disappearance.

11     2. An official written report or record, or a duly certified copy there-  
12 of, that a person is missing, missing in action, interned in a neutral  
13 country, or beleaguered, besieged, or captured by an enemy, or is dead,  
14 or is alive, made by any officer or employee of the United States au-  
15 thorized by the act referred to in subsection one (1) of this section,  
16 or by any other law of the United States, to make such a report or  
17 record, shall be received in any court, office or other place in this state  
18 as evidence that such person is missing, missing in action, interned in  
19 a neutral country, or beleaguered, besieged, or captured by an enemy,  
20 or is dead, or is alive, as the case may be.

21     3. For the purposes of subsections one (1) and two (2) of this sec-  
22 tion, any finding, report, or record, or duly certified copy thereof, pur-  
23 porting to have been signed by such an officer or employee of the  
24 United States as is described in said subsections, shall prima facie be  
25 deemed to have been signed and issued by such an officer or employee  
26 pursuant to law, and the person signing the same shall prima facie be  
27 deemed to have acted within the scope of his authority. If a copy  
28 purports to have been certified by a person authorized by law to cer-  
29 tify the same, such certified copy shall be prima facie evidence of  
30 his authority so to certify.

1     Sections 518 to 522, inclusive, reserved for future use.

DIVISION X—UNIFORM SIMULTANEOUS DEATH ACT

1     **SEC. 523. No sufficient evidence of survivorship.** Where the title  
2 to property or the devolution thereof depends upon priority of death,  
3 and there is no sufficient evidence that the persons have died otherwise  
4 than simultaneously, the property of each person shall be disposed of  
5 as if he had survived, except as provided otherwise in sections five  
6 hundred twenty-four (524) to five hundred twenty-seven (527) in-  
7 clusive.

1     **SEC. 524. Beneficiaries of another person's disposition of property.**  
2 Where two or more beneficiaries are designated to take successively,  
3 by reason of survivorship, under another person's disposition of prop-  
4 erty, and there is no sufficient evidence that these beneficiaries have  
5 died otherwise than simultaneously, the property thus disposed of  
6 shall be divided into as many equal portions as there are successive  
7 beneficiaries, and these portions shall be distributed respectively to  
8 those who would have taken in the event that each designated bene-  
9 fiary had survived.

1     **SEC. 525. Joint tenants.** Where there is no sufficient evidence that  
2 two joint tenants have died otherwise than simultaneously, the prop-  
3 erty so held shall be distributed one-half as if one had survived and  
4 one-half as if the other had survived. If there are more than two  
5 joint tenants and all of them have so died, the property thus distrib-  
6 uted shall be in the proportion that one bears to the whole number  
7 of joint tenants.

1     **SEC. 526. Insurance policies.** Where the insured and the benefici-  
2 ary in a policy of life or accident insurance have died, and there is no  
3 sufficient evidence that they have died otherwise than simultaneously,  
4 the proceeds of the policy shall be distributed as if the insured had  
5 survived the beneficiary.

1     **SEC. 527. Limitation of application.** Sections five hundred twen-  
2 ty-three (523) and five hundred twenty-four (524) shall not apply in  
3 the case of wills, living trusts, deeds, or contracts of insurance where-  
4 in provision has been made for distribution of property different from  
5 the provisions of said sections.

1     **SEC. 528. Uniformity of interpretation.** Sections five hundred  
2 twenty-three (523) through five hundred twenty-seven (527) shall be  
3 so construed and interpreted as to effectuate their general purpose to  
4 make uniform the law relating to simultaneous death.

1     Sections 529 to 534, inclusive, reserved for future use.

#### DIVISION XI—FELONIOUS DEATH

1     **SEC. 535. Feloniously causing death.** No person who feloniously  
2 takes or causes or procures another to take the life of another shall  
3 inherit from such person, or receive any interest in the estate of the  
4 decedent as surviving spouse, or take by devise or legacy from him,  
5 any portion of his estate.

1     **SEC. 536. Insurance beneficiary feloniously causing death.** No ben-  
2 efiary of any policy of insurance or certificate of membership issued  
3 by any benevolent association or organization, payable upon the death  
4 or disability of any person, who feloniously takes or causes or pro-  
5 cures to be taken the life upon which such policy or certificate is  
6 issued, or who feloniously causes or procures a disability of such per-  
7 son, shall take the proceeds of such policy or certificate.

1     **SEC. 537. Distribution to other heirs or insured.** In every instance  
2 mentioned in sections five hundred thirty-five (535) and five hundred  
3 thirty-six (536), all benefits that would accrue to any such person upon  
4 the death or disability of the person whose life is thus taken or who is  
5 thus disabled shall be distributed to the other persons who would take  
6 under the will of the decedent or according to the rules of intestate  
7 succession, as the case may be.

1     Sections 538 to 542, inclusive, reserved for future use.



## DIVISION XII—PROCEEDINGS FOR ESCHEAT

1 SEC. 543. **Proceedings for escheat.** When the court has reason to  
2 believe that any property of the estate of a decedent within the county  
3 should by law escheat, he must forthwith inform the attorney general  
4 of the state of Iowa thereof, and appoint some suitable person as  
5 personal representative to take charge of such property, unless a  
6 personal representative has already been appointed.

1 SEC. 544. **Notice to persons interested.** The personal representa-  
2 tive must give such notice of the death of the deceased, and of the  
3 amount and kind of property left by him within the state, as, in the  
4 opinion of the court appointing him shall be best calculated to notify  
5 those interested, or supposed to be interested, in the property.

1 SEC. 545. **Sale—proceeds.** If within six months from the giving of  
2 such notice, no claimant thereof appears, such property may be sold  
3 and the proceeds paid over by the personal representative to the state  
4 comptroller for the benefit of the school fund.

1 SEC. 546. **Payment to person entitled.** The money or any portion  
2 of it shall be paid at any time within ten years after the sale of the  
3 property or the appropriation of the money, but not afterwards, to  
4 anyone showing himself entitled thereto.

1 Sections 547 to 551, inclusive, reserved for future use.

## DIVISION XIII—OPENING GUARDIANSHIPS AND CONSERVATORSHIPS

## PART 1. OPENING GUARDIANSHIPS

1 SEC. 552. **Petition for appointment of guardian.** Any person may  
2 file with the clerk a verified petition for the appointment of a guardian.  
3 The petition shall state the following information so far as known to  
4 the petitioner.

5 1. The name, age and post-office address of the proposed ward.

6 2. That the proposed ward is: a minor, a mental retardate, mentally  
7 ill, senile, a chronic alcoholic, or a spendthrift.

8 3. The name and post-office address of the proposed guardian, and  
9 that such person is qualified to serve in that capacity.

10 4. That the proposed ward is a resident of the state of Iowa or is  
11 present in the state, and that his best interests require the appoint-  
12 ment of a guardian in this state.

13 5. The name and address of the person or institution, if any, having  
14 the care, custody or control of the proposed ward.

1 SEC. 553. **No notice required—minor.** No notice of the filing of  
2 such petition need be given when the proposed ward is a minor and  
3 such petition is filed by the person having custody of the proposed  
4 ward.

1     **SEC. 554. Notice governed by Rules of Civil Procedure.** In all  
2 other cases, notice of the filing of such petition shall be served upon  
3 the proposed ward in the manner of an original notice and the Rules  
4 of Civil Procedure governing original notices shall also govern such  
5 notice as to content.

1     **SEC. 555. Pleadings and trial—Rules of Civil Procedure.** All other  
2 pleadings and the trial of the cause shall be governed by the Rules of  
3 Civil Procedure. The cause shall be tried as a law action, and either  
4 party shall be entitled to a jury trial if demand is made therefor as  
5 provided by the Rules of Civil Procedure.

1     **SEC. 556. Appointment of guardian.** If the allegations of the peti-  
2 tion as to the status of the proposed ward and the necessity for the  
3 appointment of a guardian are proved, the court may appoint a guar-  
4 dian.

1     **SEC. 557. Appointment of guardian on voluntary petition.** A guar-  
2 dian may also be appointed by the court upon the verified petition of  
3 the proposed ward, if he is other than a mental retardate, a mentally  
4 ill person, or a minor under the age of fourteen years, provided that  
5 the court determine that such an appointment inures to the best  
6 interest of the applicant.

1     Cross reference: See sections 572 and 635.

1     **SEC. 558. Appointment of temporary guardian.** A temporary  
2 guardian may be appointed, but only after a hearing on such notice,  
3 and subject to such conditions, as the court shall prescribe.

1     **SEC. 559. Preference as to appointment.** The parents of a minor,  
2 or either of them, if qualified and suitable, shall be preferred over all  
3 others for appointment as guardian. Preference shall then be given  
4 to any person, if qualified and suitable, nominated as guardian for a  
5 minor child by a will executed by the parent having custody of a  
6 minor child, and any qualified and suitable person requested by a  
7 minor fourteen years of age or older. Subject to these preferences,  
8 the court shall appoint as guardian a qualified and suitable person who  
9 is willing to serve in that capacity.

1     **SEC. 560. Appointment of guardian on a standby basis.** A petition  
2 for the appointment of a guardian on a standby basis may be filed by  
3 any person under the same procedure and requirements as provided in  
4 sections five hundred ninety-one (591) through five hundred ninety-  
5 seven (597), both inclusive, for appointment of standby conservator,  
6 insofar as applicable.

1     Sections 561 to 565, inclusive, reserved for future use.

## PART 2. OPENING CONSERVATORSHIPS

1     **SEC. 566. Petition for appointment of conservator.** Any person  
2 may file with the clerk a verified petition for the appointment of a  
3 conservator. The petition shall state the following information, so  
4 far as known to the petitioner:

5         1. The name, age and post-office address of the proposed ward.

6         2. That the proposed ward is: a minor, a mental retardate, mentally  
7 ill, senile, a chronic alcoholic, or a spendthrift.

8         3. The name and post-office address of the proposed conservator,  
9 and that such person is qualified to serve in that capacity.

10        4. A general description of the property of the proposed ward with-  
11 in this state and of the right to receive property, together with the  
12 probable present value of such property and rights. If any money is  
13 payable, or to become payable, to the proposed ward by the United  
14 States through the Veterans Administration, the petition shall so  
15 state.

16        5. The name and address of the person or institution, if any, having  
17 the care, custody or control of the proposed ward.

18        6. That the proposed ward resides in the state of Iowa, is a nonresi-  
19 dent, or that his residence is unknown, and that his best interests re-  
20 quire the appointment of a conservator in the state of Iowa.

1     **SEC. 567. No notice required—minor.** No notice of the filing of  
2 such petition need be given when the proposed ward is a minor and  
3 such petition is filed by the person having custody of the proposed  
4 ward.

1     **SEC. 568. Notice governed by Rules of Civil Procedure.** In all  
2 other cases, notice of the filing of such petition shall be served upon  
3 the proposed ward in the manner of an original notice and the Rules  
4 of Civil Procedure governing original notice shall also govern such  
5 notice as to content.

1     **SEC. 569. Pleadings and trial—Rules of Civil Procedure.** All other  
2 pleadings and the trial of the cause shall be governed by the Rules of  
3 Civil Procedure. The cause shall be tried as a law action, and either  
4 party shall be entitled to a jury trial if demand is made therefor as  
5 provided by the Rules of Civil Procedure.

1     **SEC. 570. Appointment of conservator.** If the allegations of the  
2 petition as to the status of the proposed ward and the necessity for  
3 the appointment of a conservator are proved, the court may appoint a  
4 conservator.

1     **SEC. 571. Preference as to appointment of conservator.** The par-  
2 ents of a minor, or either of them, if qualified and suitable, shall be  
3 preferred over all others for appointment as conservator. Preference  
4 shall then be given to any person, if qualified and suitable, nominated  
5 as conservator for a minor child by a will executed by the parent hav-  
6 ing custody of a minor child, and any qualified and suitable person  
7 requested by a minor fourteen years of age or older. Subject to these

8 preferences, the court shall appoint as conservator a qualified and  
9 suitable person who is willing to serve in that capacity.

1 **SEC. 572. Appointment of conservator on voluntary petition.** A  
2 conservator may also be appointed by the court upon the verified peti-  
3 tion of the proposed ward, if he is other than a mental retardate, or a  
4 mentally ill person, or a minor under the age of fourteen years, pro-  
5 vided that the court determines that such an appointment inures to  
6 the best interest of the applicant. Such petition shall state whether  
7 a notice of involuntary petition for the appointment of a conservator  
8 has been served on the proposed ward.

1 Cross reference: See sections 557 and 635.

1 **SEC. 573. Appointment of temporary conservator.** A temporary  
2 conservator may be appointed but only after a hearing on such notice,  
3 and subject to such conditions, as the court shall prescribe.

1 **SEC. 574. Procedure in lieu of conservatorship.** If no conservator  
2 has been appointed, money due a minor or other property to which a  
3 minor is entitled, not exceeding in the aggregate the sum of one  
4 thousand dollars in value, may be paid or delivered to a parent of the  
5 minor who is entitled to the custody of such minor, upon written state-  
6 ment verified by the oath of such parent, that all money or property  
7 of such minor does not exceed in the aggregate the sum of one thou-  
8 sand dollars; and the written receipt of such parent shall constitute an  
9 acquittance of the person making such payment of money or delivery  
10 of such property.

1 Cross reference: See chapter 565A of the 1962 Code of Iowa.

1 Sections 575 to 579, inclusive, reserved for future use.

### PART 3. CONSERVATORSHIPS FOR ABSENTEES

1 **SEC. 580. Petition for appointment of conservator for absentee.**  
2 When a person owns property located in the state of Iowa, his where-  
3 abouts are unknown, and no provision for the care, control and super-  
4 vision of such property has been made, with the result that such prop-  
5 erty is likely to be lost or damaged, or that the dependents of such  
6 owner are likely to be deprived of means of support because of such  
7 absence, it shall be proper for any person to file with the clerk a peti-  
8 tion for the appointment of a conservator of such property of the  
9 absentee. The petition shall state the following information, so far as  
10 known to the petitioner:

11 1. The name, age and last known post-office address of the pro-  
12 posed ward.

13 2. The facts concerning the disappearance of the absentee.

14 3. The name and post-office address of the proposed conservator,  
15 and that he is qualified to serve in that capacity.

16 4. A general description of the property of the absentee within this

17 state and of his right to receive property; also, the probable present  
18 value of such property and right. If any money is payable, or to be-  
19 come payable to the absentee by the United States through the Veter-  
20 ans Administration, the petition shall so state.

21 5. That the property of the absentee is likely to be lost or damaged,  
22 or that his dependents are likely to be deprived of means of support,  
23 because of his absence, and that no proper provision has been made  
24 for the care, control and supervision over such property.

1 **SEC. 581. Original notice governed by Rules of Civil Procedure.**  
2 Notice of the filing of such a petition and of the hearing thereon shall  
3 be served upon the absentee by publication in the manner of an origi-  
4 nal notice and the Rules of Civil Procedure governing original notices  
5 by publication shall also govern such a notice as to content.

1 **SEC. 582. Notice on county attorney.** Such notice shall also be  
2 served on the county attorney of the county in which the petition is  
3 filed and on the spouse and children of the absentee as provided by the  
4 Rules of Civil Procedure. If there are no spouse or children, such  
5 notice shall be served on such persons and in such manner as the  
6 court may prescribe.

1 **SEC. 583. Pleadings and trial—Rules of Civil Procedure.** All other  
2 pleadings and the trial of the cause shall be governed by the Rules of  
3 Civil Procedure.

1 **SEC. 584. Appointment of conservator.** In the event that the ab-  
2 sentee does not appear at said hearing, the court shall hear the peti-  
3 tion and the proof offered. All evidence shall be made a part of a  
4 transcript to be filed in such proceedings. If the allegations of the  
5 petition are proved, the court may appoint a conservator.

1 **SEC. 585. Appointment of temporary conservator.** A temporary  
2 conservator may be appointed, but only after a hearing on such notice,  
3 and subject to such conditions as the court shall prescribe.

1 Sections 586 to 590, inclusive, reserved for future use.

#### PART 4. STANDBY CONSERVATORSHIPS

1 **SEC. 591. Voluntary petition for appointment of conservator—**  
2 **standby basis.** Any person of full age and sound mind may execute  
3 a verified petition for the voluntary appointment of a conservator of  
4 his property upon the express condition that such petition shall be  
5 acted upon by the court only upon the occurrence of an event specified  
6 or the existence of a described condition of the mental or physical  
7 health of the petitioner, the occurrence of which event, or the exist-  
8 ence of which condition, shall be established in the manner directed  
9 in said petition.

1 Cross reference: See section 635.

1     **SEC. 592. Petition may nominate conservator.** Such petition may  
2 nominate a person for appointment to serve as such conservator, and  
3 may request that the appointment be made without bond, or with bond  
4 of a certain stated sum. The court in appointing the conservator shall  
5 give due regard to such nomination and other requests and recommen-  
6 dations contained in the petition.

1     **SEC. 593. Deposit of petition.** Such petition may be deposited with  
2 the clerk of the county in which the party resides, or with any person,  
3 firm, bank or trust company selected by the petitioner.

1     **SEC. 594. Revocation of petition.** Such petition may be revoked by  
2 the petitioner at any time before appointment of a conservator by the  
3 court, provided that the petitioner is of sound mind. Revocation shall  
4 be accomplished by the destruction of the petition by the petitioner, or  
5 by the execution of an acknowledged instrument of revocation. If the  
6 petition has been deposited with the clerk, the revocation may like-  
7 wise be deposited there.

1     **SEC. 595. Filing petition upon occurrence of condition.** At any  
2 time after the deposit of the petition with the clerk, and before its  
3 revocation, it may be brought on for hearing by the filing of a verified  
4 statement to the effect that the occurrence of the event or the condi-  
5 tion provided for in the petition has come to pass. If the petition has  
6 not been deposited with the clerk under the provisions of section five  
7 hundred ninety-three (593), then it may be brought on for hearing  
8 at any time by the filing of it and such a verified statement with the  
9 clerk of the county in which the person who executed the petition  
10 then resides.

1     **SEC. 596. Time of appointment of conservator.** At the time such  
2 petition is filed, the court, without any notice, may appoint the con-  
3 servator nominated in such petition or may set the petition for hearing  
4 on such notice as the court may prescribe.

1     **SEC. 597. Conservator shall have same powers and duties.** The  
2 powers and duties of such a conservator shall be the same as those of  
3 a conservator appointed in response to any of the other petitions  
4 authorized in this Code.

1     Sections 598 to 602, inclusive, reserved for future use.

#### PART 5. FOREIGN CONSERVATORS

1     **SEC. 603. Appointment of foreign conservators.** When there is  
2 no conservatorship, nor any application therefor pending, in this state,  
3 the duly qualified foreign conservator or guardian of a nonresident  
4 ward may, upon application, be appointed conservator of the property  
5 of such person in this state; provided that a resident conservator is  
6 appointed to serve with the foreign conservator; and provided further,  
7 that, for good cause shown, the court may appoint the foreign con-

8 servator to act alone without the appointment of a resident conserva-  
9 tor.

1 **SEC. 604. Application.** The application for appointment of a for-  
2 eign conservator or guardian as conservator in this state shall include  
3 the name and address of the nonresident ward, and of the nonresident  
4 conservator or guardian, and the name and address of the resident  
5 conservator to be appointed. It shall be accompanied by an exempli-  
6 fied copy of the original letters or other authority conferring the  
7 power upon the foreign conservator or guardian to act as such. The  
8 application shall also state the cause for the appointment of the for-  
9 eign conservator to act as sole conservator, if such be the case.

1 **SEC. 605. Personal property.** A foreign conservator or guardian  
2 of a nonresident may be authorized by the court of the county wherein  
3 such ward has personal property to receive the same upon compliance  
4 with the provisions of sections six hundred six (606), six hundred  
5 seven (607) and six hundred eight (608).

1 **SEC. 606. Copy of bond.** Such foreign conservator or guardian  
2 shall file in the office of the clerk in the county where the property is  
3 situated, a certified copy of his official bond, duly authenticated by  
4 the court granting his letters, and shall also execute a receipt for the  
5 property received by him.

1 **SEC. 607. Order for delivery.** Upon the filing of the bond as above  
2 provided, and the court being satisfied with the amount thereof, it  
3 shall order the personal property of the ward delivered to such con-  
4 servator or guardian.

1 **SEC. 608. Recording of bond—notice to court.** The clerk shall  
2 record the bonds and the receipt, and notify by mail the court which  
3 granted the letters of conservatorship or guardianship of the amount  
4 of property delivered to the fiduciary and the date of delivery thereof.

1 Sections 609 to 613, inclusive, reserved for future use.

#### PART 6. CONSERVATORSHIPS INVOLVING VETERANS ADMINISTRATION

1 **SEC. 614. Application of other provisions to veterans' conservator-**  
2 **ships.** Whenever moneys are paid or are payable pursuant to any law  
3 of the United States through the Veterans Administration to a con-  
4 servator or a guardian, the provisions of sections six hundred fifteen  
5 (615) through six hundred twenty-one (621) shall apply to the admin-  
6 istration of said moneys. However, such provisions shall be con-  
7 strued to be supplementary to the other provisions for conservators,  
8 and shall not be exclusive of such provisions.

1 **SEC. 615. Administrator of veterans affairs—party in interest.**  
2 The administrator of veterans affairs of the United States, his succes-  
3 sor, or the designee of either, shall be a party in interest in any pro-  
4 ceeding for the appointment or removal of a conservator, or for the

5 termination of the conservatorship, and in any suit or other proceed-  
6 ing, including reports and accountings, affecting in any manner the  
7 administration of those assets that were derived in whole or in part  
8 from benefits paid by the Veterans Administration. Not less than  
9 fifteen days prior to the time set for a hearing in any such matters,  
10 notice, in writing, of the time and place thereof shall be given by mail  
11 to the office of the Veterans Administration having jurisdiction over  
12 the area in which such matter is pending.

1 **SEC. 616. Ward rated incompetent by Veterans Administration.**  
2 Upon the trial of an issue arising upon a prayer for the appointment  
3 of either a temporary or a permanent conservator, a certificate of the  
4 administrator of Veterans Administration, or his representative, set-  
5 ting forth the fact that the defendant ward has been rated incompe-  
6 tent by the Veterans Administration upon examination in accordance  
7 with the laws and regulations governing the Veterans Administration;  
8 and that the appointment of a conservator is a condition precedent  
9 to the payment of any moneys due such person by the Veterans Ad-  
10 ministration, shall be prima facie evidence of the necessity for such  
11 appointment, and the court may appoint a conservator for the prop-  
12 erty of such person.

1 **SEC. 617. Limitation on conservator acting for more than ten**  
2 **wards.** Except as hereinafter provided, it shall be unlawful for any  
3 person to accept appointment as conservator for any ward if such pro-  
4 posed conservator shall at that time be acting as conservator for as  
5 many as ten wards. In any case, upon presentation of a petition by  
6 an attorney of the Veterans Administration under this section alleging  
7 that a conservator is acting in a fiduciary capacity for more than ten  
8 wards, and requesting his discharge for that reason, the court, upon  
9 proof substantiating the petition, shall require a final accounting forth-  
10 with from such conservator, and shall discharge such conservator in  
11 the particular case. The limitations of this section shall not apply  
12 where the conservator is a bank or a trust company. A person may  
13 be conservator of more than ten wards if they are all members of the  
14 same family.

1 **SEC. 618. Compensation in conservatorships involving Veterans**  
2 **Administration.** In conservatorships involving the Veterans Admin-  
3 istration, compensation payable to conservators for ordinary services  
4 shall not exceed five percent of the income of the ward during any  
5 accounting year, provided, however, that the court may grant compen-  
6 sation to such conservator in a sum not to exceed twenty-five dollars  
7 where five percent of the income of the ward during the accounting  
8 year will not adequately compensate the conservator for services per-  
9 formed. In the event of extraordinary services, however, the court  
10 may, upon petition and after hearing thereon, allow the conservator  
11 additional compensation. Such petition shall set out the extraordinary  
12 services rendered by the conservator. Compensation as conservator  
13 and a fee as attorney shall not be allowed to the same person. No  
14 compensation shall be allowed on the corpus of an estate received from  
15 a predecessor conservator.



1     **SEC. 619. Order for support and maintenance of ward.** A conservator shall not apply any portion of the estate of his ward for the support and maintenance of any person other than his ward, except upon order of the court after a hearing.

1     **SEC. 620. Dual conservatorship proceedings not required.** Sections six hundred fourteen (614) through six hundred nineteen (619) shall not be construed as requiring dual conservatorship proceedings of the property of the same person, but when a conservator is such, both as to moneys paid by the United States through the Veterans Administration and to other property of the ward, the accounts of the money received through the Veterans Administration shall be kept separate and apart from the accounts of other property.

1     **SEC. 621. Liberal construction.** Sections six hundred fourteen (614) through six hundred twenty (620) shall be construed liberally to secure the beneficial intent and purpose thereof, and shall apply only to beneficiaries of the Veterans Administration.

1     **SEC. 622.** In administering moneys paid by the Veterans Administration the conservator shall have the following powers and be subject to the following restrictions:

4     1. A bond executed by a recognized surety company equal to said assets and the annual income therefrom, plus the expected annual Veterans Administration benefit payments, shall be required to protect said funds.

8     2. Excess funds paid to the conservator may be invested in interest-bearing federally insured accounts, or in United States savings bonds, without approval of the court.

11    3. Moneys paid may be applied to the care, maintenance and support of the veteran and his legal dependents without prior approval of the court.

14    4. Moneys paid shall not be applied to the payment of obligations outlawed by the statute of limitations of any jurisdiction.

16    5. No money paid as a gratuity to a ward may be made the subject of a gift to third parties, except that the court may, on petition, authorize the application of said moneys to the assistance of a close relative after a finding that the veteran, if competent, would assist the relative to the extent of the order.

1     Sections 623 to 626, inclusive, reserved for future use.

#### PART 7. COMBINING PETITION FOR GUARDIAN AND CONSERVATOR

1     **SEC. 627. Combining petitions.** The petitions for the appointment of a guardian and a conservator may be combined and the cause tried in the same manner as a petition for the appointment of a conservator.

1     **SEC. 628. Same person as guardian and conservator.** The same person may be appointed to serve as both guardian and conservator.

1     Sections 629 to 633, inclusive, reserved for future use.

DIVISION XIV—ADMINISTRATION OF GUARDIANSHIPS  
AND CONSERVATORSHIPS

PART 1. APPOINTMENT AND QUALIFICATION OF GUARDIANS  
AND CONSERVATORS

1     **SEC. 634. Provisions applicable to all fiduciaries shall govern.** The  
2 provisions of this Code applicable to all fiduciaries shall govern the  
3 appointment, qualification, oath and bond of guardians and conserva-  
4 tors, except that a guardian shall not be required to give bond unless  
5 the court, for good cause, finds that the best interests of the ward  
6 require a bond. The court shall then fix the terms and conditions of  
7 such bond.

1     **SEC. 635. Combination of voluntary and standby petitions with in-**  
2 **voluntary petition for hearing.** If prior to the time of hearing on a  
3 petition for the appointment of a guardian or a conservator, a petition  
4 is filed under the provisions of sections five hundred fifty-seven (557),  
5 five hundred seventy-two (572) or five hundred ninety-one (591), the  
6 court may combine the hearing on such petitions and determine who  
7 shall be appointed guardian or conservator.

PART 2. RIGHTS AND TITLE OF WARD

1     **SEC. 636. Effect of appointment of guardian or conservator.** The  
2 appointment of a guardian or conservator shall not constitute an ad-  
3 judication that the ward is of unsound mind.

1     **SEC. 637. Powers of ward.** A ward for whom a conservator has  
2 been appointed shall not have the power to convey, encumber or dis-  
3 pose of property in any manner, other than by will if he possesses the  
4 requisite testamentary capacity.

1     **SEC. 638. Presumption of fraud.** If a conservator be appointed,  
2 all contracts, transfers and gifts made by the ward after the filing of  
3 the petition shall be presumed to be a fraud against the rights and  
4 interest of the ward.

1     **SEC. 639. Title to ward's property.** The title to all property of  
2 the ward is in the ward and not the conservator subject, however, to  
3 the possession of the conservator and to the control of the court for  
4 the purposes of administration, sale or other disposition, under the  
5 provisions of the law.

1     **SEC. 640. Conservator's right to possession.** Every conservator  
2 shall have a right to, and shall take, possession of all of the real and  
3 personal property of the ward. He shall pay the taxes and collect  
4 the income therefrom until the conservatorship is terminated. He  
5 may maintain an action for the possession of the property, and to  
6 determine the title to the same.

## PART 3. DUTIES AND POWERS OF CONSERVATOR

1     **SEC. 641. General duties of conservator.** It is the duty of the  
2 conservator of the estate to protect and preserve it, to invest it pru-  
3 dently, to account for it as herein provided, and to perform all other  
4 duties required of him by law, and at the termination of the con-  
5 servatorship, to deliver the assets of the ward to the person entitled  
6 thereto.

1     **SEC. 642. Inventory of ward's property.** Within sixty days after  
2 the date of his appointment, or, within such further time as the court  
3 may allow, a conservator shall file in the conservatorship a verified in-  
4 ventory of all of the property of the ward that has come into his pos-  
5 session or of which he has knowledge. Whenever any property of  
6 the ward not mentioned in the inventory comes into the possession, or  
7 to the knowledge, of the conservator, he shall file in the conservator-  
8 ship a verified supplemental inventory within thirty days after the  
9 property comes into his possession, or becomes known to him; or he  
10 may include the property in his next accounting.

1     **SEC. 643. Disposal of will by conservator.** When an instrument  
2 purporting to be the will of the ward comes into the hands of a con-  
3 servator, the conservator shall immediately deliver it to the court.

1     **SEC. 644. Court order to preserve testamentary intent of ward.**  
2 Upon receiving an instrument purporting to be the will of a living  
3 ward under the provisions of section six hundred forty-three (643),  
4 the court may open said will and read it. The court with or without  
5 notice, as it may determine, may enter such orders in the conserva-  
6 torship as it deems advisable for the proper administration of the  
7 conservatorship in light of the expressed testamentary intent of the  
8 ward.

1     **SEC. 645. Court to deliver will to clerk.** An instrument purporting  
2 to be the will of a ward coming into the hands of the court under the  
3 provisions of either section six hundred forty-three (643), shall there-  
4 after be resealed by the court and be deposited with the clerk to be  
5 held by said clerk as provided in sections two hundred eighty-six  
6 (286) through two hundred eighty-nine (289).

1     **SEC. 646. Powers of the conservator without order of court.** The  
2 conservator shall have the full power, without prior order of court,  
3 with relation to the estate of his ward to:

- 4     1. Collect, receive, receipt for any principal or income, and to en-  
5 force, defend against, prosecute, compromise or settle any claim by  
6 or against the ward or the conservator; to adjust, arbitrate, compro-  
7 mise, sue on and defend claims in favor of, or against, the ward or the  
8 conservator.
- 9     2. Sell and transfer personal property of a perishable nature and  
10 personal property for which there is a regularly established market.
- 11     3. To vote at corporate meetings in person or by proxy.
- 12     4. To receive additional property from any source.

1     **SEC. 647. Powers of conservator subject to the approval of the**  
 2 **court. Conservators shall have the following powers subject to the**  
 3 **approval of the court after hearing on such notice, if any, as the court**  
 4 **may prescribe:**  
 5     1. To invest the funds belonging to the ward.  
 6     2. To execute leases.  
 7     3. To make payments to, or for the benefit of, his ward in any of  
 8 the following ways:  
 9     a. Directly to the ward;  
 10    b. Directly for the maintenance, welfare and education of the ward;  
 11    c. To the legal guardian of the person of the ward; or  
 12    d. To anyone who at the time shall have the custody and care of the  
 13 person of the ward.  
 14     4. To apply any portion of the income or of the estate of the ward  
 15 for the support of any person for whose support the ward is legally  
 16 liable.  
 17     5. To do any other thing that the court determines to be to the best  
 18 interests of the ward and his estate.

1     **SEC. 648. Appointment of attorney in compromise of personal in-**  
 2 **jury settlements. Notwithstanding the provisions of section six hun-**  
 3 **dred forty-six (646) of this Code, prior to authorizing a compromise of**  
 4 **a claim for damages on account of personal injuries to the ward, the**  
 5 **court may order an independent investigation by an attorney other**  
 6 **than by the attorney for the conservator. The cost of such investiga-**  
 7 **tion, including a reasonable attorney fee, shall be taxed as part of the**  
 8 **cost of the conservatorship.**

1     **SEC. 649. Powers of conservators—same as all fiduciaries. Except**  
 2 **as expressly modified herein, conservators shall have the powers re-**  
 3 **lating to all fiduciaries as set out in sections sixty-four (64) through**  
 4 **one hundred sixty-two (162).**

1     **SEC. 650. Breach of contracts. Under order of court, for good**  
 2 **cause shown, after such notice as the court may prescribe, a conserva-**  
 3 **tor shall have the power to breach contracts of the ward entered into**  
 4 **by the ward prior to the appointment of the conservator, thereby in-**  
 5 **curring such liability of the ward's estate for such breach as the ward**  
 6 **would have incurred for such breach if he had been competent.**

1     Cross reference: See section 638.

1     **SEC. 651. Tort liability of conservator. The fact that a person is**  
 2 **a conservator or a guardian shall not in itself make him personally**  
 3 **liable for damages for the acts of his ward.**

#### PART 4. TRANSFERRING, ENCUMBERING AND LEASING

##### PROPERTY BY CONSERVATOR

1     **SEC. 652. Procedure applicable to personal representatives shall**  
 2 **govern. Conservators shall have the power to sell, mortgage, ex-**

3 change, pledge and lease real and personal property belonging to the  
4 ward, including the homestead and exempt personal property, when  
5 it appears to be to the best interests of the ward, in the same manner  
6 and by the same procedure that is provided in this Code for sale, mort-  
7 gage, exchange, pledge and lease by personal representatives in ad-  
8 ministration of estates of decedents.

#### PART 5. CLAIMS

1 **SEC. 653. Claims against the ward, the conservatorship or the con-**  
2 **servator in that capacity.** Claims accruing before or after the ap-  
3 pointment of the conservator, and whether arising in contract or tort  
4 or otherwise, after being allowed or established as provided in sec-  
5 tions six hundred fifty-four (654) through six hundred fifty-six (656),  
6 shall be paid by the conservator from the assets of the conservator-  
7 ship.

1 **SEC. 654. Form and verification of claims—general requirements.**  
2 No claim shall be allowed against the estate of a ward upon applica-  
3 tion of the claimant unless it shall be in writing, filed in duplicate with  
4 the clerk, stating the claimant's name and address, and describing the  
5 nature and the amount thereof, if ascertainable. It shall be accom-  
6 panied by the affidavit of the claimant, or of someone for him, that the  
7 amount is justly due, or if not due, when it will or may become due,  
8 that no payments have been made thereon which are not credited,  
9 and that there are no offsets to the same, to the knowledge of the  
10 affiant, except as therein stated. The duplicate of said claim shall  
11 be mailed by the clerk to the conservator or his attorney of record;  
12 however, valid contract claims arising in the ordinary course of the  
13 conduct of the business or affairs of the ward by the conservator may  
14 be paid by the conservator without requiring affidavit or filing.

1 **SEC. 655. Requirements when claim founded on written instru-**  
2 **ment.** If a claim is founded upon a written instrument, the original  
3 of such instrument, or a copy thereof, with all endorsements, must be  
4 attached to the claim. The original instrument must be exhibited to  
5 the conservator or to the court, upon demand, unless it has been lost  
6 or destroyed, in which case, its loss or destruction must be stated in  
7 the claim.

1 **SEC. 656. How claim entitled.** All claims filed against the estate  
2 of the ward shall be entitled in the name of the claimant against the  
3 conservator as such, naming the conservator, and in all further pro-  
4 ceedings thereon, this title shall be preserved.

1 **SEC. 657. Filing of claim required.** The filing of a claim in the  
2 conservatorship tolls the statute of limitations applicable to such  
3 claim.

1 **SEC. 658. Compelling payment of claims.** No claimant shall be en-  
2 titled to compel payment until his claim has been duly filed and allowed.

1     **SEC. 659. Allowance by conservator.** When a claim has been filed  
2 and has been admitted in writing by the conservator, it shall stand  
3 allowed, in the absence of fraud or collusion.

1     **SEC. 660. Execution and levy prohibited.** No execution shall issue  
2 upon, nor shall any levy be made against, any property of the estate  
3 of a ward under any judgment against the ward or a conservator, but  
4 the provisions of this section shall not be so construed as to prevent  
5 the enforcement of a mortgage, pledge or other lien upon property in  
6 an appropriate proceeding.

1     **SEC. 661. Claims of conservators.** If the conservator is a creditor  
2 of the ward, he shall file his claim as other creditors, and the court  
3 shall appoint some competent person as temporary conservator to rep-  
4 resent the ward at the hearing on the conservator's claim. The same  
5 procedure shall be followed in the case of coconservators where all  
6 such conservators are creditors of the ward; but if one of the cocon-  
7 servators is not a creditor of the ward, such disinterested conservator  
8 shall represent the ward at the hearing on any claim against the ward  
9 by a coconservator.

1     **SEC. 662. Claims not filed.** The conservator may pay any valid  
2 claim against the estate of the ward even though such claim has not  
3 been filed, but all such payments made by the conservator shall be at  
4 his own peril.

1     **SEC. 663. Waiver of statute of limitations by conservator.** It shall  
2 be within the discretion of the conservator to determine whether or  
3 not the applicable statute of limitation shall be invoked to bar a claim  
4 which he believes to be just, and his decision as to the invoking of  
5 such statute shall be final.

1     **SEC. 664. Liens not affected by failure to file claim.** Nothing in  
2 sections six hundred fifty-four (654) and six hundred fifty-eight (658)  
3 shall affect or prevent an action or proceeding to enforce any mort-  
4 gage, pledge or other lien upon the property of the ward.

1     **SEC. 665. Separate actions and claims.** Any action pending against  
2 the ward at the time the conservator is appointed shall also be con-  
3 sidered a claim filed in the conservatorship if notice of substitution  
4 is served on the conservator as defendant, and a duplicate of the proof  
5 of service of notice of such proceeding is filed in the conservatorship  
6 proceeding.

7     A separate action based on a debt or other liability of the ward may  
8 be commenced against the conservator as such in lieu of filing a  
9 claim in the conservatorship. Such an action shall be commenced by  
10 serving an original notice on the conservator and filing a duplicate  
11 of the proof of service of notice of such proceeding in the conserva-  
12 torship proceeding. Such an action shall also be considered a claim  
13 filed in the conservatorship. Such an action may be commenced only  
14 in a county where the venue would have been proper if there were

15 no conservatorship and the action had been commenced against the  
16 ward.

1 SEC. 666. Denial and contest of claims. The provisions of sections  
2 four hundred thirty-eight (438) through four hundred forty-eight  
3 (448) shall be applicable to the denial and contest of claims against  
4 conservatorships, but shall not be applicable to actions continued or  
5 commenced under section six hundred sixty-five (665) of this Code.

1 SEC. 667. Payment of claims in insolvent conservatorships. When  
2 it appears that the assets in a conservatorship are insufficient to pay  
3 in full all the claims against such conservatorship, the conservator  
4 shall report such matter to the court, and the court shall, upon hear-  
5 ing, with notice to all persons who have filed claims in the conservator-  
6 ship, make an order for the pro rata payment of claims giving claim-  
7 ants the same priority, if any, as they would have if the ward were  
8 not under conservatorship.

#### PART 6. GIFTS

1 SEC. 668. Conservator may make gifts. For good cause shown  
2 and under order of court, a conservator may make gifts on behalf of  
3 the ward out of the assets under a conservatorship to persons or re-  
4 ligious, educational, scientific, charitable, or other nonprofit organiza-  
5 tions to whom or to which such gifts were regularly made prior to the  
6 commencement of the conservatorship. The making of gifts out of  
7 such assets must not foreseeably impair the ability to provide ade-  
8 quately for the best interests of the ward.

#### PART 7. GUARDIAN'S REPORT

1 SEC. 669. Guardian's report. Immediately after the appointment  
2 of the guardian, he shall make a report to the court advising the court  
3 as to the physical condition and whereabouts of the ward. At such  
4 times thereafter as the court may order, a guardian shall present to  
5 the court and file in the guardianship proceedings a written report of  
6 the condition of the ward and of the guardian's exercise of authority  
7 and performance of his duties.

#### PART 8. CONSERVATOR'S REPORT

1 SEC. 670. Conservator shall report and account. A conservator  
2 shall present to the court and file in the conservatorship proceedings a  
3 written verified report and accounting of his administration;  
4 1. Annually within sixty days following the anniversary date of his  
5 appointment, unless the court otherwise orders on good cause shown.  
6 2. Upon filing his resignation and before his resignation is accepted  
7 by the court.  
8 3. Within thirty days following the date of his removal.  
9 4. Within sixty days following the date of the termination of the

10 conservatorship under the provisions of section six hundred seventy-  
 11 five (675), unless that time is extended by the court.  
 12 5. At such other times as the court may order.

1 **SEC. 671. Requirements of report and accounting.** The report and  
 2 accounting required by section six hundred seventy (670) shall ac-  
 3 count for all of the period since the close of the accounting contained  
 4 in the next previous report, and shall include the following information  
 5 as far as applicable:  
 6 1. The balance of funds on hand at the close of the last previous  
 7 accounting, and all amounts received from whatever source during  
 8 the period covered by the accounting.  
 9 2. All disbursements made during the period covered by the ac-  
 10 counting.  
 11 3. Any changes in the inventory of property of the ward in the  
 12 conservatorship.  
 13 4. The amount of the bond and the name of the surety on it.  
 14 5. The residence or physical location of the ward.  
 15 6. The general physical and mental condition of the ward.  
 16 7. Such other information as shall be necessary to show the condi-  
 17 tion of the affairs of the conservatorship.

#### PART 9. COSTS AND ACCOUNTS

1 **SEC. 672. Payment of court costs in conservatorships.** No order  
 2 shall be entered approving an annual report of a conservator until  
 3 the court costs which have been docketed have been paid or pro-  
 4 vided for.

1 **SEC. 673. Court costs in guardianships.** The ward or his estate  
 2 shall be charged with the court costs of a ward's guardianship, includ-  
 3 ing the guardian's fees and the fees of the attorney for the guardian.

1 **SEC. 674. Settlement of accounts.** The court shall settle each ac-  
 2 count filed by a conservator by allowing or disallowing it, either in  
 3 whole or in part, or by surcharging the account against the con-  
 4 servator.

#### PART 10. TERMINATION OF GUARDIANSHIPS AND CONSERVATORSHIPS

1 **SEC. 675. Cause for termination.** A guardianship shall cease, and  
 2 a conservatorship shall terminate, upon the occurrence of any of the  
 3 following circumstances:  
 4 1. If the ward is a minor, when he reaches full age.  
 5 2. The death of the ward.  
 6 3. A determination by the court that the ward is competent and  
 7 capable of managing his property and affairs, and that the continuance  
 8 of the guardianship or conservatorship would not be in his best in-  
 9 terests.  
 10 4. Upon determination by the court that the conservatorship or  
 11 guardianship is no longer necessary for any other reason.



1     **SEC. 676. Assets exhausted.** At any time that the assets of the  
2 ward's estate do not exceed the amount of the charges and claims  
3 against it, the court may direct the conservator to proceed to termi-  
4 nate the conservatorship.

1     **SEC. 677. Accounting to ward—notice of hearing.** Upon the termi-  
2 nation of a conservatorship, the conservator shall pay the costs of  
3 administration, and render a full and complete accounting to the ward  
4 or his personal representative and the court. Notice of hearing on  
5 the final report of a conservator shall be served on the ward or his  
6 personal representative in accordance with the Rules of Civil Proce-  
7 dure, unless such notice is waived. The court may direct notice of  
8 hearing on the final report to be given to such other persons, at such  
9 time and in such manner as the court may prescribe.

1     **SEC. 678. Delivery of assets.** Upon the termination of a conserva-  
2 torship, all assets of the conservatorship shall be delivered, under  
3 direction of the court, to the person or persons entitled to them.

1     **SEC. 679. Petition to terminate.** At any time, not less than six  
2 months after the appointment of a guardian or conservator, the per-  
3 son under guardianship or conservatorship may apply to the court by  
4 petition, alleging that he is no longer a proper subject thereof, and  
5 asking that the guardianship or conservatorship be terminated.

1     **SEC. 680. Limit on application to terminate.** If any petition for  
2 terminating such guardianship or conservatorship shall be denied, no  
3 other petition shall be filed therefor until at least six months shall  
4 have elapsed since the denial of the former one.

1     **SEC. 681. Assets of minor ward exhausted.** Whenever the assets  
2 of a minor ward's conservatorship are exhausted or consist of personal  
3 property only of an aggregate value not in excess of one thousand  
4 dollars, the court, upon application or upon its own motion, may termi-  
5 nate the conservatorship and direct the conservator to deliver such  
6 property to the parent or other person having the custody of the  
7 minor ward, for the use of such ward, after payment of allowed claims  
8 and expenses of administration. Such delivery shall have the same  
9 force and effect as if delivery had been made to the ward after he  
10 attains his majority.

1     **SEC. 682. Discharge of conservator and release of bond.** Upon set-  
2 tlement of the final accounting of a conservator, and upon determining  
3 that the property of the ward has been delivered to the person or per-  
4 sons lawfully entitled thereto, the court shall discharge the conserva-  
5 tor and exonerate the surety on his bond.

1     Sections 683 to 698, inclusive, reserved for future use.

## DIVISION XV—TRUSTS

1     **SEC. 699. Powers of trustees.** Unless it is otherwise provided by  
2 the will creating a testamentary trust, the instrument creating an  
3 express trust, or by an order or decree duly entered by a court of  
4 competent jurisdiction, a trustee shall have all the general powers of  
5 a fiduciary, including, but not limited to, the following powers:

6     1. To collect, receive and receipt for any principal or income, be-  
7 longing to the trust estate, and to enforce, sue upon, defend against,  
8 prosecute, abandon, adjust, compromise, arbitrate or settle, any claim  
9 by or against the trust.

10    2. To acquire, manage, invest, reinvest, exchange and retain any or  
11 all property, real or personal, at any time, forming a part of the trust  
12 estate, as the court may direct; to grant options on, contract to sell, to  
13 sell, convey and transfer or lease any or all property, real or personal,  
14 at any time forming a part of the trust estate in the same manner and  
15 by the same procedure that is provided in this Code for sale, mortgage,  
16 exchange, pledge, and lease by personal representatives in adminis-  
17 tration of estates of decedents.

18    3. To vote in person, or to execute proxies to vote, corporate shares  
19 belonging to the trust at all regular and special meetings of share-  
20 holders.

21    4. To borrow money for the benefit of the trust estate, and to secure  
22 loans by pledge or mortgage of trust property, upon good cause shown  
23 and subject to the approval and direction of the court.

24    5. To execute leases for a customary period for the type of real es-  
25 tate involved, not to extend beyond the termination date of the trust  
26 without the specific approval and direction of the court, provided that  
27 in any event, leases may be made for as long as one year.

28    6. To make payments to, or for the benefit of, any beneficiary in any  
29 of the following ways:

30     a. Directly to the beneficiary;

31     b. Directly for the maintenance, welfare, and education of the bene-  
32 ficiary;

33     c. To the guardian or conservator of the beneficiary; or

34     d. To anyone who at the time shall have the custody and care of the  
35 person of the beneficiary.

36 A trustee shall not be obliged to see to the application of the funds so  
37 paid, but the receipt of the person to whom the funds were paid shall  
38 constitute a full acquittance of the trustee.

39    7. To make any required division or distribution in whole or in part  
40 in money, securities, or other property, and in undivided interests  
41 therein, and to continue to hold any remaining undivided interest in  
42 trust.

43    8. To receive additional property from any source.

1     **SEC. 700. Intermediate report of trustees.** Unless specifically re-  
2 lieved from so doing, by the instrument creating the trust, or by  
3 order of the court, the trustee shall make a written report, under oath,  
4 to the court, once each year, and oftener, if required by the court.  
5 Such report shall state:

6     1. The period covered by the report.

7 2. All changes in beneficiaries since the last previous report.

8 3. All changes in investments since the last previous report, and  
9 a list of all assets on hand.

10 4. A detailed accounting for all cash receipts and disbursements,  
11 and for all property of the trust, unless such accounting shall be  
12 waived in writing by all beneficiaries.

1 SEC. 701. **Final report of trustees.** Upon the partial or total ter-  
2 mination of a trust, or upon the transfer of the trusteeship due to  
3 resignation, removal, dissolution, or other disqualification of the  
4 trustee of any trust pending in court, the trustee shall make a final  
5 report, under oath, to the court, showing for the period since the filing  
6 of the last report the facts required for an intermediate report, and,  
7 in addition thereto, the following:

8 1. The name and last known address of each beneficiary.

9 2. A statement as to those beneficiaries who are known to be minors  
10 or under any other legal disability.

11 3. The amount distributed or to be distributed to each beneficiary.

1 SEC. 702. **Notice of application for discharge.** Unless notice is  
2 waived in writing, no final report of a trustee of a trust pending in  
3 court shall be approved, and no such trustee shall be discharged from  
4 further duty or responsibility upon final settlement, until notice of his  
5 application for discharge shall have been served upon all persons in-  
6 terested as required for the commencement of a civil action, unless a  
7 different service be ordered by the court by an order made either be-  
8 fore or after the filing of the final report of the trustee.

1 SEC. 703. **Discharge.** Upon final settlement of a trust, an order  
2 shall be entered discharging the trustee from further duties and re-  
3 sponsibilities. The order approving the final report shall constitute a  
4 waiver of the omission from the final report of any of the recitals  
5 required in section seven hundred one (701).

1 SEC. 704. The following chapters of the 1962 Code of Iowa are  
2 hereby repealed:

3 Chapter five hundred thirty-three A (533A);

4 Chapter six hundred thirty-one (631);

5 Chapter six hundred thirty-two (632);

6 Chapter six hundred thirty-three (633);

7 Chapter six hundred thirty-four (634);

8 Chapter six hundred thirty-five (635);

9 Chapter six hundred thirty-six (636);

10 Chapter six hundred thirty-seven (637);

11 Chapter six hundred thirty-eight (638);

12 Chapter six hundred sixty-eight (668);

13 Chapter six hundred sixty-nine (669);

14 Chapter six hundred seventy (670);

15 Chapter six hundred seventy-one (671);

16 Chapter six hundred seventy-two (672); and

17 Chapter six hundred seventy-three (673).

1 SEC. 705. The following sections of the 1962 Code of Iowa are  
2 hereby repealed:

- 3 Section five hundred thirty-two point twenty-one (532.21);  
4 Section six hundred four point four (604.4);  
5 Section six hundred eighty-two point thirty-five (682.35);  
6 Section six hundred eighty-two point thirty-six (682.36).

1 SEC. 706. Section six hundred four point three (604.3), Code 1962,  
2 is hereby repealed and the following enacted in lieu thereof:

3 "The district court of each county shall have general, original and  
4 exclusive jurisdiction of all probate matters as provided in the pro-  
5 bate code."

1 SEC. 707. Section six hundred fourteen point one (614.1), Code  
2 1962, is hereby amended by striking from subsection three (3) all  
3 following the words "two years" in line four (4).

1 SEC. 708. Section six hundred eighty-two point four (682.4), Code  
2 1962, is hereby repealed and the following enacted in lieu thereof:

3 "Qualifications of sureties. Each personal surety shall execute  
4 and file with the clerk an affidavit that he owns real estate subject to  
5 execution, other than real estate held in joint tenancy, equal to double  
6 the amount of the bond, and shall include in such affidavit the total  
7 amount of his obligations as surety on other official or statutory bonds.  
8 Where there are two or more sureties in the same bond, they must in  
9 the aggregate have the qualification prescribed in this section."

1 SEC. 709. Section six hundred eighty-two point twenty-three  
2 (682.23), Code 1962, is amended by inserting in line two (2) of sub-  
3 section fifteen (15) after the word "shall" the words "be construed as  
4 modifying the probate code nor".

1 SEC. 710. Section six hundred eighty-two point twenty-five  
2 (682.25), Code 1962, is amended by inserting in line two (2) after  
3 the word "fiduciary" the words "not governed by the probate code".  
4 Said section is further amended by striking from line four (4) the  
5 words "the will or other".

1 SEC. 711. Section six hundred eighty-two point thirty-one (682.31),  
2 Code 1962, is amended by striking from lines one (1) and two (2) the  
3 words "whenever any administrator, guardian, trustee, or referee" and  
4 inserting in lieu thereof the words "Whenever any fiduciary not gov-  
5 erned by the probate code".

6 Said section is further amended by striking from line eight (8) the  
7 words "administrator, guardian, trustee, or referee" and inserting in  
8 lieu thereof the word "fiduciary".

1 SEC. 712. Section six hundred eighty-two point thirty-two (682.32),  
2 Code 1962, is amended by striking from lines one (1) and two (2)  
3 the words "administrator, guardian, trustee, or referee" and insert-  
4 ing in lieu thereof the word "fiduciary".

1 SEC. 713. Section six hundred eighty-two point thirty-three  
2 (682.33), Code 1962, is amended by striking from lines one (1) and  
3 two (2) the words "administrator, guardian, trustee, or referee" and  
4 inserting in lieu thereof the word "fiduciary".

1 SEC. 714. Section six hundred eighty-two point thirty-four  
2 (682.34), Code 1962, is amended by striking from line five (5) the  
3 word "administrators" and inserting in lieu thereof the words "per-  
4 sonal representatives under the probate code".

1 SEC. 715. Chapter six hundred eighty-two (682), Code 1962, is  
2 amended by adding thereto a new section as follows:  
3 "Powers and duties of trustees not subject to court administration.  
4 Trustees of express trusts not being administered in the probate court,  
5 shall have all the powers and shall be subject to all the duties and lia-  
6 bilities as provided in the probate code, except the duty of reporting  
7 to or obtaining approval of the court."

1 SEC. 716. Section two hundred forty-one A point eleven (241A.11),  
2 Code 1962, is amended by striking from subsection two (2) all after  
3 the word "dollars" in line three (3).

1 SEC. 717. Section two hundred forty-nine point eighteen (249.18),  
2 Code 1962, is amended by striking from subsection two (2) all after  
3 the word "dollars" in line five (5).

Approved May 16, 1963.

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## CHAPTER 327

### FALSE USE OF CREDIT CARDS

#### H. F. 257

AN ACT making it a misdemeanor to obtain or attempt to obtain goods, property or service by false or fraudulent use of credit cards or other false or fraudulent means, and providing penalties therefor.

*Be It Enacted by the General Assembly of the State of Iowa:*

1 SECTION 1. It shall be unlawful for any person knowingly to obtain  
2 or attempt to obtain credit, or to purchase or attempt to purchase any  
3 goods, property or service, by the use of any false, fictitious, counter-  
4 feit or expired credit card, telephone number, credit number or other  
5 credit device, or by the use of any credit card, telephone number,  
6 credit number or other credit device of another without the authority  
7 of the person to whom such card, number or device was issued, or by  
8 the use of any credit card, telephone number, credit number or other  
9 credit device in any case where such card, number or device has been  
10 revoked and notice of revocation has been given to the person to whom  
11 issued.

1 SEC. 2. It shall be unlawful for any person to obtain or attempt to  
2 obtain, by the use of any fraudulent scheme, device, means or method,  
3 telephone or telegraph service or the transmission of a message, signal  
4 or other communication by telephone or telegraph, or over telephone  
5 or telegraph facilities with intent to avoid payment of charges there-  
6 for.