

February 12, 1963.
Passed on File.

Senate File 165
By JUDICIARY 2 COMMITTEE.

Passed Senate, Date 2-27-63

Passed House, Date 4-25-63

Vote: Ayes 38 Nays 11

Vote: Ayes 103 Nays 0

*Per amendment
4/29, 47-0*

Approved.....

5-16-63

*Judiciary 1 3/17
Passed amended 3/25*

A BILL FOR

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
2 cited 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
3 force on and after July 4, 1963. The procedure herein prescribed
4 shall govern all proceedings in probate brought after the effec-
5 tive date of this Code. It shall also govern further procedure
6 in proceedings in probate then pending, except to the extent
7 that, in the opinion of the court, its application in particular
8 proceedings or parts thereof would not be feasible or would work
9 injustice, in which event the former procedure shall apply.

10 2. Rights not affected. No act done in any proceeding com-
11 menced before this Code takes effect and no accrued right shall
12 be impaired by its provisions. When a right has been acquired,
13 extinguished, or barred upon the expiration of a prescribed
14 period of time governed by the provision of any statute in force
15 before this Code takes effect, such provision shall remain in

16 force and be deemed a part of this Code with respect to such
17 right.

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

24 Comment: Adapted from sections 1 and 2 of the Model Probate
25 Code.

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 admin-
5 ister 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,
9 cost of monument, and federal and state estate taxes.

10 5. Child—includes an adopted child but does not include a
11 grandchild or other more remote descendants, nor, except as pro-
12 vided in sections two hundred twenty-one (221) and two hundred
13 twenty-two (222), an illegitimate child.

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

17 7. Conservator—a person appointed by the court to have the

18 custody and control of the property of a ward under the provi-
19 sions of this Code.

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

28 9. Court—the district court sitting in probate, and includes
29 any judge of the judicial district in which the estate administra-
30 tion is pending.

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

33 11. Devise—when used as a noun, includes testamentary disposi-
34 tion of property, both real and personal.

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

37 13. Devisee—includes legatee.

38 14. Distributee—a person entitled to any property of the
39 decedent under his will or under the statutes of intestate suc-
40 cession.

41 15. Estate—the real and personal property of a decedent, a
42 ward, or a trust, as from time to time changed in form by sale,
43 reinvestment or otherwise, and augmented by any accretions or
44 additions thereto and substitutions therefor, or diminished by
45 any decreases and distributions therefrom.

46 16. Executor—means any person appointed by the court to

47 administer the estate of a testate decedent.

48 17. Fiduciary—includes personal representative, executor,
49 administrator, guardian, conservator and trustee to whom letters
50 have been issued.

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

54 19. Guardian—the person appointed by the court to have the
55 custody of the person of the ward under the provisions of this
56 Code.

57 20. Guardian of the property—at the election of the person
58 appointed by the court to have the custody and care of the property
59 of a ward, the term "guardian of the property" may be used, which
60 term shall be synonymous with the term "conservator".

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

64 22. Incompetent—includes any person who has been adjudicated
65 to be incapable of managing his property, or caring for his own
66 person, or both.

67 23. Issue—for the purposes of intestate succession, includes
68 all lawful lineal descendants of a person, whether natural or
69 adopted, except those who are the lineal descendants of his living
70 descendants.

71 24. Legacy—a testamentary disposition of personal property.

72 25. Legatee—a person entitled to personal property under a
73 will.

74 26. Letters—includes letters testamentary, letters of admin-
75 istration, letters of guardianship, letters of conservator-

76 ship, and letters of trusteeship.

77 27. Minor—a person who is not of full age.

78 28. Person—includes natural persons and corporations.

79 29. Personal representative—includes executor and adminis-
80 trator.

81 30. Property—includes both real and personal property.

82 31. Surviving spouse—the surviving wife or husband, as the
83 case may be.

84 32. Temporary administrator—any person appointed by the
85 court to care for an estate pending the probating of a proposed
86 will, or to handle any special matter designed by the court.

87 33. Trustee—the person or persons appointed as trustee by
88 the instrument creating the trust, or the person or persons
89 appointed by the court to administer the trust.

90 34. Trusts—include only: testamentary trusts; express trusts
91 where jurisdiction is specifically conferred on the court by the
92 trust instrument; express trusts where the jurisdiction of the
93 court is invoked by the trustee, beneficiary or any interested
94 party for a limited purpose, or otherwise; and trusts which are
95 established by a judgment or a decree of court which results in
96 administration of the trust by the court, and the court entering
97 the judgment or decree establishing such trust orders the admin-
98 istration of the trust transferred to the probate court.

99 35. Will—includes codicil; it also includes a testamentary
100 instrument that merely appoints an executor, and a testamentary
101 instrument that merely revokes or revives another will.

1 Sec. 4. Gender and number. When used in this Code, unless
2 otherwise required by the context, the masculine gender includes
3 the feminine and the neuter; the singular number includes the

4 plural and the 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
2 shall have jurisdiction of:

3 1. Estates of decedents and absentees.

4 The probate and contest of wills; the appointment of personal
5 representatives; the granting of letters testamentary and of admin-
6 istration; the administration, settlement and distribution of
7 estates of decedents and absentees, whether such estates consist
8 of real or personal property or both.

9 2. Construction of wills and trust instruments.

10 The construction of wills and trust instruments during the ad-
11 ministration of the estate or trust, whether said construction be
12 incident 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,
16 settlement and closing of conservatorships and guardianships.

17 4. Trusts and trustees.

18 The appointment of trustees; the granting of letters of trus-
19 teeship; the administration of testamentary trusts; the adminis-
20 tration of express trusts where jurisdiction is specifically
21 conferred on the court by the trust instrument; the administra-
22 tion of express trusts where the administration of the court is
23 invoked by the trustee, beneficiary or any interested party; the
24 administration of trusts which are established by a decree of

25 court and result in the administration thereof by the court; and
26 the settlement and closing of all such trusts.

27 Comment: New. Patterned after section 6 of the Model Probate
28 Code. Closely follows §§604.3 and 604.4 and R.C.P. No. 264.

1 Sec. 11. Declaratory judgments—determination of heirship—
2 distribution. During the administration of an estate, the dis-
3 trict court sitting in probate shall have full, legal and equi-
4 table powers to make declaratory judgments in all matters involved
5 in the administration of the estate, including those pertaining
6 to the title of real estate, the determination of heirship, and
7 the distribution of the estate. It shall have full, legal and
8 equitable powers to enter final orders and decrees in all probate
9 matters to effectuate its jurisdiction and to carry out its or-
10 ders, judgments and decrees. The same presumption shall exist
11 as to the validity of such orders, judgments and decrees in pro-
12 bate as in other actions.

13 Comment: New. Codification of existing law. Adapted from
14 R.C.P. No. 264.

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

10 Comment: Adapted from §§604.3 and 604.4.

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

6 Comment: Adapted from §631.7.

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

5 Comment: Same as §631.6.

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

4 Comment: Same as §631.1.

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

8 Comment: New.

1 Sec. 17. Judge disqualified—procedure. Where the judge is
2 a party, or is connected by blood or affinity with a person in-
3 terested nearer than the fourth degree, or is personally inter-
4 ested in any probate matter, the same shall be heard before
5 another judge of the same district, or be transferred to the

6 court of another district, or a judge of another district shall
7 be procured to hold court for the hearing of such matter.

8 Comment: Adapted from §631.5.

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

8 Comment: New.

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

4 Comment: Same as §631.9.

1 Sec. 20. Referee—examination of accounts—fees. For the
2 auditing of the accounts of fiduciaries and for the performance
3 of such other ministerial duties as the court may direct, the
4 court may appoint a referee in probate whenever in the opinion of
5 the court it seems fit and proper to do so. The referee may be
6 the clerk. All fees received by any county officer serving in
7 the capacity of referee in probate shall become a part of the
8 fees of his office and shall be accounted for as such.

9 Comment: Revision of §638.1.

1 Sec. 21. Appraisers' fees and referees' fees fixed by rule.
2 The district court sitting en banc shall by rule fix the fees of
3 probate referees. It shall also by rule provide, insofar as
4 practicable, a uniform schedule of compensation for other ap-

5 praisers, brokers, and agents employed at estate expense.

6 Comment: New.

PART 2. CLERK OF PROBATE COURT

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

4 1. The appointment of personal representatives who are resi-
5 dents of the state, guardians and conservators for minors, the
6 fixing and determining of the amount of the bond, or waiving the
7 same when permitted by law or by will, and the approval of any
8 and all bonds given by fiduciaries in the discharge of their
9 duties

10 2. The examination and approval of all intermediate and
11 interlocutory accounts and reports of fiduciaries.

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

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

21 Comment: Adapted from §632.1.

1 Sec. 23. Clerk's actions reviewed. Any person aggrieved by
2 any order made or entered by the clerk under the powers conferred
3 in section twenty-two (22) may have the same reviewed in court
4 upon motion filed within six months or before the hearing on

5 the final report of the fiduciary, whichever is the earlier, and
6 upon such notice as the court may prescribe.

7 Comment: Adapted from §632.3.

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

5 Comment: Same as §632.4.

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

7 Comment: Adapted from §632.5.

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

5 Comment: Adapted from §632.6.

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

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

6 2. The name of each person as to whom application for conserv-
7 atorship or guardianship is made.

8 3. The names of all the heirs in intestate estates and the

9 surviving spouse of such deceased intestate, and their ages and
10 places of residence, so far as they can be ascertained.

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

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

16 *Comment: Adapted from §632.10.*

1 Sec. 28. Docketing trust proceedings. When a trust is
2 created by a will, the administration thereof shall be treated
3 as a separate proceeding, with a separate docket number, from
4 the date of the order of appointment or confirmation of the orig-
5 inal trustee, unless otherwise ordered by the court.

6 *Comment: New.*

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

9 *Comment: Adapted from §632.11.*

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

4 *Comment: Adapted from §632.12.*

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

3 Comment: Substitute for §632.13.

1 Sec. 32. Delinquent inventories and reports. On May 1 and
2 November 1 of each year, the clerk shall notify the fiduciary
3 and his attorney of any delinquent inventories or reports due
4 by law in any pending estate, trust, guardianship, or conserv-
5 atorship, and that unless such delinquent inventory or report
6 is filed within sixty days thereafter, the matter shall be
7 reported to the presiding judge. If the delinquent inventory
8 is not filed within the time so specified, the fiduciary will be
9 subject to removal under the provisions of section sixty-five
10 (65) of this Code.

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

16 Comment: Substituted for §632.14.

PART 3. PROCEDURE IN PROBATE

1 Sec. 33. Nature of proceedings in probate. Actions to set
2 aside or contest wills, for the involuntary appointment of
3 guardians and conservators, and for the establishment of con-
4 tested claims shall be triable in probate as law actions, and
5 all other matters triable in probate shall be tried by the pro-
6 bate court as a proceeding in equity.

7 Comment: New.

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

4 Comment: New.

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

6 Comment: Adapted from §638.35.

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

4 Comment: New.

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

4 Comment: New.

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

4 Comment: Similar to §631.2.

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

5 Comment: Adapted from §631.3.

1 Sec. 40. Notice. When the court fixes a time and place of
2 hearing, it may direct what notice shall be given, and no hear-
3 ing shall be had until proof of the giving or of the waiver of
4 such notice has been made. When the manner of service of notice
5 is not prescribed by the court or by this Code, such notice
6 shall be served in the same manner that is provided by the Rules

7 of Civil Procedure for the commencement of actions. In the case
8 of proceedings against unknown persons, notice may be given by
9 publication in accordance with the Rules of Civil Procedure. In
10 no event shall notice be given by publication, except under order
11 of court, nor shall notice be given at any time by posting.

12 Comment: Adapted from §631.4 and R.C.P. 369, with provisions
13 for posting eliminated.

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

14 Comment: Adapted from §632.15. See 47 Iowa Law Review,
15 pp. 29-103.

1 Sec. 42. Requests for notice. At any time after the issuance
2 of letters testamentary or of administration upon a decedent's
3 estate, any person interested in the estate may file with the
4 clerk a written request, in duplicate, for notice of the time and
5 place of all hearings in such estate for which notice is required
6 by law, by rule of court, or by an order in such estate. Such re-

7 quest for notice shall state the name and post-office address of
 8 such person and the name and post-office address of the attorney
 9 for the party requesting the notice. The clerk shall docket such
 10 request, and transmit the duplicate to the personal representa-
 11 tive of the estate of the decedent. Thereafter, the personal
 12 representative shall, unless otherwise ordered by the court,
 13 serve, by ordinary mail, upon such person, or his said attorney,
 14 a notice of each such hearing.

15 Comment: New.

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

8 Comment: New.

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

4 Comment: New.

1 Sec. 45. Notice of order may be served on attorney. When the

SENATE FILE 165

*Senate
conferred
4/29*

1 Amend Senate File 165, section 45, line 1, by striking
 2 "Notice of order may be served on attorney" and inserting in
 3 lieu thereof the following: "Notice of order shall be served on
 4 nduciary and his attorney."

Filed
 March 20, 1962. *sdptd
4/25*

SWISHER of Johnson.

6 Comment: Adapted from §638.15 and §638.16.

1 Sec. 46. Proof of publication. Proof of the publication of

2 all notices that are by this Code or by order of court required
3 to be published shall be made by an affidavit of the publisher
4 or of any employee having knowledge of the facts.

1 Sec. 47. Proof of service and taxation of costs. Proof of
2 service of any notice, required by this Code or by order of court,
3 including those by publication, shall be filed with the clerk.

4 The costs of serving any notice given by the fiduciary shall be
5 taxed by the clerk as part of the costs of administration in
6 said estate.

7 Comment: New.

1 Sec. 48. Certified copies affecting foreign real estate.

2 A certified copy of any proceedings, order, judgment, or deed,
3 affecting real estate in any county other than that in which
4 administration or conservatorship is originally granted, shall
5 be furnished to the clerk of the court of the county where such
6 real estate is situated, and shall by him be entered in the
7 Probate Record.

8 Comment: §631.8 reworded.

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

8 Comment: Same as §631.11.

1 Sec. 50. Certified copy filed. The clerk of the court
2 which orders such a transfer shall retain the original files and

3 papers, but shall make a certified copy thereof and of all
4 record entries pertaining to the proceedings. He shall at
5 once file the same in the office of the clerk of the court to
6 which the transfer has been made.

7 Comment: Same as §631.12.

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

5 Comment: Same as §631.13 (except for section number).

1 Sec. 52. Mistakes corrected. Mistakes in settlements may
2 be corrected at any time before the final discharge of any fidu-
3 ciary on such notice, if any, as the court may direct.

4 Comment: See §638.9.

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

11 Comment: New.

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
2 is qualified to serve as a fiduciary in this state except the
3 following:

4 1. One who is a mental retardate, mentally ill, a chronic
5 alcoholic, or a spendthrift.

6 2. Any other person whom the court determines to be unsuit-
7 able.

8 Comment: Adapted from §§633.27 and 633.28.

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

13 Comment: Taken from Model Probate Code, section 98. See
14 Minnesota statute section 525.501 (1941).

1 Sec. 66. Appointment of successor fiduciary. When any
2 fiduciary fails to qualify, dies, is removed by the court,
3 or resigns, and such resignation is accepted by the court, the

4 court may, and if he were the sole or last surviving fiduciary,
5 and the administration has not been completed, the court shall
6 appoint another fiduciary in his place.

7 Comment: Adapted from §633.29 of the Iowa Code and section
8 99 of the Model Probate Code.

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

8 Comment: Adapted from section 101 of the Model Probate
9 Code.

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

7 Comment: Adapted from section 100 of the Model Probate Code.

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

7 Comment: Adapted from §633.31.

1 Sec. 70. Property delivered—penalty. Upon the removal of

2 any fiduciary, he shall be required by order of the court to de-
3 liver to the person who may be entitled thereto all the property
4 in his hands or under his control belonging to the estate, and
5 if he fails or refuses to comply with any proper order of the
6 court, he may be committed to the jail of the county until he
7 does.

8 Comment: Same as §638.32.

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
2 there are two or more fiduciaries, they shall all concur in the
3 exercise of the powers conferred upon them, unless the instru-
4 ment creating the estate provides to the contrary. In the event
5 that the fiduciaries cannot concur upon the exercise of any
6 power, any one of the fiduciaries may apply to the court for di-
7 rections, and the court shall make such orders as it may deem to
8 be to the best interests of the estate.

9 Comment: New.

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

7 Comment: Adapted from §638.14.

1 Sec. 78. Third parties protected. A person who in good faith
2 pays or transfers to a fiduciary any money or other property
3 which the fiduciary as such is authorized to receive, is not re-

4 sponsible for the proper application thereof by the fiduciary;
5 and any right or title acquired from the fiduciary in considera-
6 tion of such payment or transfer is not invalid in consequence
7 of a misapplication by the fiduciary.

8 Comment: Adapted from section 2 of Uniform Fiduciaries Act.

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

5 Comment: Adapted from §638.22.

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

5 Comment: Adapted from §638.18.

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

3 Comment: Adapted from R.C.P. 2.

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

6 Comment: New.

1 Sec. 83. Continuation of business. Upon a showing of ad-
2 vantage to the estate, the court may authorize the fiduciary
3 to continue any business of the estate for the benefit thereof.
4 The order may be without notice, or after such notice as the

5 court may prescribe. The court may on its own motion, and upon
6 the application of any interested party shall, review such au-
7 thorization, and upon such review, may revoke or modify the same.

8 The order may provide:

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

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

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

20 4. *As to the period of time for which the business may be*
27 *conducted; and*

22 5. *Such other conditions, restrictions, regulations and re-*
23 *quirements as the court may order.*

24 *Comment: Adapted from section 131 of the Model Probate Code.*

1 *Sec. 84. Delegation of authority. Under order of court,*
2 *with or without notice, a fiduciary may engage, at estate ex-*
3 *pense, outside specialists, and he may delegate to them, or con-*
4 *sult with them for advice regarding the performance of aspects*
5 *of the estate management which require professional skills or*
6 *facilities which he does not possess, or does not possess in*
7 *sufficient degree, and he may employ, at estate expense, sub-*
8 *ordinates and agents to perform ministerial acts and carry on*

9 or complete details of estate business under the policies and
10 terms established by him.

11 Comment: New. See Vol. 46 Iowa Law Review, p. 127.

1 Sec. 85. Liability of fiduciary employing agents. The fiduci-
2 ary shall not be personally liable for the acts or omissions of
3 any such specialist, subordinate or agent, unless it can be
4 shown that said acts or omissions would have been a breach
5 of duty by the fiduciary had he done it himself, and,

6 1. The fiduciary directed or permitted the breach; or

7 2. He did not select or retain the said specialist, sub-
8 ordinate or agent with reasonable care; or

9 3. The fiduciary did not properly supervise the specialist,
10 subordinate or agent; or

11 4. The fiduciary approved, acquiesced or co-operated in the
12 neglect, omission, misconduct or default by the specialist,
13 subordinate or agent.

14 Comment: New.

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

10 Comment: New.

1 Sec. 87. Deposit of money in banks. A fiduciary may deposit

2 moneys and other assets belonging to the estate in any banking
3 institution authorized to do business in the state of Iowa.

4 Comment: New.

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

7 Comment: New.

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

PART 8. SPECIAL PROVISIONS RELATING TO PROPERTY

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

10 Comment: Adapted from section 170 of the Model Probate Code.

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

1 Sec. 95. Release of liens and mortgages. Any fiduciary qual-
2 ified under the laws of this state may, without prior order of
3 court, release, assign or discharge, in whole or in part any
4 mortgage, judgment or other lien held by the estate.

5 Comment: New. See §633.53.

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

5 Comment: Adapted from §638.21.

1 Sec. 97. Specific performance involuntary. When an estate
2 is under obligation to convey property, the court may, upon ap-
3 plication of any interested person, with or without notice as the
4 court may direct, require the fiduciary to execute such a convey-
5 ance.

6 Comment: Adapted from §638.21.

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

9 Comment: Adapted from §633.54.

1 Sec. 99. Federal stock authority to purchase. When the
2 court shall enter an order authorizing the fiduciary to execute
3 a mortgage to encumber any property of the estate to secure a
4 loan obtained from any association or corporation created, or
5 which may be created, by authority of the United States and as
6 an instrumentality of the United States, the court may authorize
7 the fiduciary to purchase stock in an association or corpora-
8 tion, when such a purchase of stock is necessary or required

9 as an incident to, or condition of, obtaining the loan, and to
10 mortgage the estate property for such purpose, as well as to
11 make payment for the stock so purchased from the proceeds of
12 the loan so obtained.

13 Comment: Simplified version of §635.41.

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

6 Comment: Adapted from §635.43 and chapter 673.

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
3 appraisal of any or all of the property of an estate.

4 Comment: New.

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

8 Comment: New. Adapted from section 169 of the Model Probate
9 Code.

1 Sections 108 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

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

18 Comment: Adapted from §638.41. Amount increased to \$1000.00.

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

12 the Code of Iowa.

13 Comment: Adapted from §§682.31 and 682.34.

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

8 Comment: Adapted from §682.32.

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

7 Comment: Adapted from §682.33.

1 Sec. 112. Discovery of property. The court may require
2 any person suspected of having possession of any property,
3 including records and documents, of the decedent, ward, or
4 the estate, or of having had such property under his control,
5 to appear and submit to an examination under oath touching such
6 matters, and if on such examination it appears that he has the
7 wrongful possession of any such property, the court may order
8 the delivery thereof to the fiduciary. Such a person shall be
9 liable to the estate for all damages caused by his acts.

10 Comment: Based on §§635.14 and 638.19.

1 Sec. 113. Commitment. If, upon being served with an order

2 of the court requiring him to appear for interrogation, as pro-
3 vided in the preceding sections hereof, any person fails to appear
4 in accordance therewith, or if, having appeared, he refuses to
5 answer any question which the court thinks proper to be put to
6 him in the course of such examination, or if he fails to comply
7 with the order of the court requiring him to deliver the property
8 to the fiduciary, he may be committed to the jail of the county
9 until he does.

10 Comment: Adpated from §635.15.

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

11 Comments: Based on Section 126 of Model Probate Code, in
12 lieu of §635.17.

1 Sec. 115. Compromise of claims against an estate. When
2 a claim against an estate has been filed, or suit thereon is
3 pending, the creditor and the fiduciary may, if it appears
4 for the best interests of the estate, compromise the claim,
5 whether it is due or not due, absolute or contingent, liqui-
6 dated or unliquidated.

7 Comment: Adapted from section 147 of the Model Probate
8 Code in lieu of §635.17.

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

6 Comment: New. This is §128 of Model Probate Code.

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

12 Comment: Based on section 149 of Model Probate Code and
13 adapted from §635.72.

14 Cross reference: See section 423.

1 Sec. 118. Attorney appointed for persons not represented.
2 At or before the hearing in any proceedings under this Code,
3 where all the parties interested in the estate are required to
4 be notified thereof, the court, in its discretion, may appoint
5 some competent attorney to represent any interested person who
6 has been served with notice and who is otherwise unrepresented.

7 Comment: Adapted from §638.37.

1 Sec. 119. Order and authority thereunder. The order making
2 the appointment of such attorney must specify the names of the

3 parties, so far as known, for whom he is appointed, and he will
4 be authorized to represent such parties in all such proceedings
5 subsequent to his appointment.

6 Comment: Adapted from §638.38.

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

7 Comment: Adapted from §638.39.

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

6 Comment: Adapted from §638.40.

1 Sec. 122. Settlement contested. The acts of the fiduciary
2 without prior approval of court after notice, may be contested
3 by any interested person at or before the entry of the order
4 discharging the fiduciary.

5 Comment: Adapted from §638.10.

INVESTMENTS BY FIDUCIARIES

1 Sec. 123. Investments by fiduciaries. In acquiring, invest-
2 ing, reinvesting, exchanging, retaining, selling and managing
3 property for the benefit of another, a fiduciary shall exercise
4 the judgment and care under the circumstances then prevailing,
5 which men of prudence, discretion and intelligence exercise
6 in the management of their own affairs, not for the purpose of

7 speculation, but with regard to the permanent disposition of
8 their funds, considering the probable income, as well as the
9 probable safety, of their capital. Within the limitations of
10 the foregoing standard, a fiduciary is authorized to acquire
11 and retain every kind of property and every kind of investment,
12 specifically including, but not by way of limitation, bonds,
13 debentures, and other corporate obligations, and stocks and
14 shares, preferred or common, which men of prudence, discretion
15 and intelligence acquire or retain for their own account.

1 Sec. 124. Limitations. Nothing contained in this Code shall
2 be construed as authorizing any departure by a fiduciary from,
3 or his variation of, the express terms of limitations set forth
4 in any will, agreement, court order, or other instrument creat-
5 ing or defining the fiduciary's duties and powers, but the terms
6 "legal investment" or "authorized investment" or words of similar
7 import, as used in any such instrument, shall be taken to mean
8 any investment that is permitted by the terms of section one
9 hundred twenty-three (123) hereof.

1 Sec. 125. Powers of court to authorize investment. Nothing
2 contained in sections one hundred twenty-three (123) and one hun-
3 dred twenty-four (124) shall be construed as restricting the power
4 of the court, after such notice as the court may prescribe, to
5 permit a fiduciary to deviate from the terms of any will, agree-
6 ment, or other instrument relating to the acquisition, invest-
7 ment, reinvestment, exchange, retention, sale or management of
8 fiduciary property.

1 Sec. 126. Scope of application. The provisions of sections
2 one hundred twenty-three (123), one hundred twenty-four (124)

3 and one hundred twenty-five (125) shall govern all fiduciaries
4 acting under the jurisdiction of the court whether the wills,
5 agreements or other instruments under which they are acting now
6 exist, or are hereafter made.

7 Comment: The foregoing four sections 123, 124, 125 and
8 126 are adapted from the Model Prudent-Man Investment Act.

1 Sec. 127. Existing investments. Any fiduciary may, by and
2 with the consent of the court having jurisdiction over such fi-
3 duciary or under permission of the will or other instrument cre-
4 ating the estate, continue to hold any investment originally
5 received by him, and, also, any increase thereof. The fiduciary
6 may also make investments which he may deem necessary to protect
7 and safeguard investments already made.

8 Comment: Adapted from §632.25.

APPOINTMENT OF A NOMINEE BY BANKING INSTITUTIONS ACTING IN FIDUCIARY CAPACITY

1 Sec. 128. Investment may be held in name of nominee of bank
2 or trust company. Any state or national bank or trust company,
3 when acting with the consent of its cofiduciary, if any, may
4 cause any investment held in any such capacity to be registered
5 and held in the name of a nominee or nominees of such bank or
6 trust company. Such cofiduciary is hereby empowered to give
7 such consent unless it is specifically forbidden in the instru-
8 ment creating the fiduciary relationship. Such bank or trust
9 company shall be liable for the acts of any such nominee with
10 respect to any investment so registered.

11 Comment: See comment under section 129.

1 Sec. 129. Records of bank or trust company to show ownership.

2 The records of said bank or trust company shall at all times show
3 the ownership of any such investment, which investment shall be
4 in the possession and control of such bank or trust company and
5 be kept separate and apart from the assets of such bank or trust
6 company.

7 Comment: The substance of the above two sections is presently
8 incorporated in section 532.21 of the 1962 Code.

COMMON TRUST FUNDS

1 Sec. 130. Definitions.

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

6 2. "Fiduciary", for the purposes of sections one hundred
7 thirty (130) to one hundred thirty-three (133), inclusive, of
8 this Code, means acting in any of the following capacities,
9 namely: testamentary trustee appointed by any court, trustee
10 under any written agreement, declaration or instrument of
11 trust, executor, administrator, guardian, or conservator.

12 Comment: This section and the following three sections are
13 the Common Trust Funds Act adopted by the 59th G.A. in
14 Chapter 263 [Ch 533A of the Code].

1 Sec. 131. Establishment of common trust funds. Any bank
2 or trust company qualified to act as fiduciary in this state
3 may establish common trust funds for the purpose of furnishing
4 investments to itself as fiduciary, or to itself and others, as
5 cofiduciaries; and may, as such fiduciary or cofiduciary, invest
6 funds which it lawfully holds for investment in interests in

7 such common trust funds, if such investment is not prohibited
8 by the instrument, judgment, decree, or order creating such
9 fiduciary relationship, and if, in the case of cofiduciaries,
10 the bank or trust company procures the consent of its cofidu-
11 ciaries to such investment. If the instrument creating the
12 fiduciary relationship gives to the bank or trust company the
13 exclusive right to select investments, the consent of the co-
14 fiduciary shall not be required.

1 Sec. 132. Court accountings. Unless ordered by a court
2 of competent jurisdiction, the bank or trust company operating
3 such common trust funds is not required to render a court
4 accounting with regard to such funds; but it may, by applica-
5 tion to the court, secure approval of such an accounting on
6 such conditions as the court may establish.

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

1 Sec. 133. Uniformity of interpretation. Sections one
2 hundred thirty (130), one hundred thirty-one (131) and one
3 hundred thirty-two (132) shall be so interpreted and construed
4 as to effectuate their general purpose to make uniform the law
5 of those states which enact the common trust funds.

SIMPLIFICATION OF FIDUCIARY SECURITY TRANSFERS

1 Sec. 134. Registration in the name of a fiduciary. A cor-
2 poration or transfer agent registering a security in the name of
3 a person who is a fiduciary or who is described as a fiduciary
4 is not bound to inquire into the existence, extent, or correct
5 description of the fiduciary relationship, and thereafter
6 the corporation and its transfer agent may assume without
7 inquiry that the newly registered owner continues to be the
8 fiduciary until the corporation or transfer agent receives writ-
9 ten notice that the fiduciary is no longer acting as such with
10 respect to the particular security.

11 Comment: Sections 134 to 142 are adapted from the Uniform
12 Act for Simplification of Fiduciary Security Transfers.

1 Sec. 135. Assignment by a fiduciary. Except as otherwise
2 provided in this Code, a corporation or transfer agent
3 making a transfer of a security pursuant to an assignment
4 by a fiduciary:

5 1. May assume without inquiry that the assignment, even
6 though to the fiduciary himself or to his nominee, is within
7 his authority and capacity, and is not in breach of his
8 fiduciary duties;

9 2. May assume without inquiry that the fiduciary has com-
10 plied with any controlling instrument and with this Code,
11 including any law requiring the fiduciary to obtain court

12 approval of the transfer; and

13 3. Is not charged with notice of, and is not bound to
14 obtain or examine, any court record, or any recorded or unrecord-
15 ed document, relating to the fiduciary relationship or the
16 assignment, even though the record or document is in its
17 possession.

1 Sec. 136. Evidence of appointment or incumbency. A cor-
2 poration or transfer agent making a transfer pursuant to an
3 assignment by a fiduciary who is not the registered owner shall
4 obtain the following evidence of appointment or incumbency:

5 1. In the case of a fiduciary appointed or qualified by a
6 court, a certificate issued by or under the direction or super-
7 vision of that court or an officer thereof, and dated within
8 sixty days before the transfer; or

9 2. In any other case, a copy of a document showing the ap-
10 pointment or a certificate issued by or on behalf of a person
11 reasonably believed by the corporation or transfer agent to be
12 responsible, or, in the absence of such a document or certifi-
13 cate, other evidence reasonably deemed by the corporation or
14 transfer agent to be appropriate. Corporations and transfer
15 agents may adopt standards with respect to evidence of appoint-
16 ment or incumbency under this subsection two (2), provided such
17 standards are not manifestly unreasonable. Neither the corpora-
18 tion nor transfer agent is charged with notice of the contents of
19 any document obtained pursuant to this subsection two (2), ex-
20 cept to the extent that the contents relate directly to the ap-
21 pointment or incumbency.

1 Sec. 137. Adverse claims.

2 1. A person asserting a claim of beneficial interest adverse

3 to the transfer of a security pursuant to an assignment by a
4 fiduciary may give the corporation or transfer agent written
5 notice of the claim. The corporation or transfer agent is not
6 put on notice unless the written notice identifies the claimant,
7 the registered owner and the issue of which the security is a
8 part, provides an address for communications directed to the
9 claimant and is received before the transfer. Nothing in this
10 act relieves the corporation or transfer agent of any liability
11 for making or refusing to make the transfer after it is put
12 on notice, unless it proceeds in the manner authorized in sub-
13 section two (2).

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

1 Sec. 138. Nonliability of corporation and transfer agent.

2 A corporation or transfer agent incurs no liability to any
3 person by making a transfer or otherwise acting in a manner
4 authorized by sections one hundred thirty-four (134) through
5 one hundred thirty-seven (137).

1 Sec. 139. Nonliability of third persons.

2 1. No person who participates in the acquisition, dis-
3 position, assignment or transfer of a security by or to a
4 fiduciary, including a person who guarantees the signature of

5 the fiduciary, is liable for participation in any breach of
6 fiduciary duty by reason of failure to inquire whether the
7 transaction involves such a breach unless it is shown that
8 he acted with actual knowledge that the proceeds of the transac-
9 tion were being, or were to be, used wrongfully for the
10 individual benefit of the fiduciary, or that the transaction
11 was otherwise in breach of duty.

12 2. If a corporation or transfer agent makes a transfer
13 pursuant to an assignment by a fiduciary, a person who guaran-
14 teed the signature of the fiduciary is not liable on the
15 guarantee to any person to whom the corporation or transfer agent
16 by reason of sections one hundred thirty-four (134) through
17 one hundred thirty-seven (137) incurs no liability.

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

1 Sec. 140. Territorial application.

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

7 2. Sections one hundred thirty-four (134) through one
8 hundred thirty-nine (139) apply to the rights and duties of
9 a person other than the corporation and its transfer agents
10 with regard to acts and omissions in this state in connection
11 with the acquisition, disposition, assignment or transfer of
12 a security by or to a fiduciary, and of a person who guarantees
13 in this state the signature of a fiduciary in connection with
14 such a transaction.

1 Sec. 141. Tax obligations. Sections one hundred thirty-
2 four (134) through one hundred forty (140) do not affect any
3 obligation of a corporation or transfer agent with respect to
4 estate, inheritance, succession, or other taxes imposed by
5 the laws of this state.

1 Sec. 142. Uniformity of interpretation. Sections one
2 hundred thirty-four (134) through one hundred forty-one (141)
3 shall be so construed as to effectuate their general purpose
4 to make uniform the transfers of securities by fiduciaries.

1 Sections 143 to 147, inclusive, reserved for future use.

PART 5. POWERS OF FOREIGN FIDUCIARIES

1 Sec. 148. Mortgages and judgments. Judgments rendered
2 by any court in the state of Iowa and mortgages belonging to
3 an estate, trust, or to a person under conservatorship
4 may, without prior order of court, be released, discharged
5 or assigned, in whole or in part as to any particular property,
6 and deeds may be executed in performance of real estate con-
7 tracts entered into before the creation of the estate,
8 trust, or conservatorship, by any foreign fiduciary, receiver,
9 referee, assignee or commissioner, or by any other person
10 acting in a fiduciary capacity appointed by a court of record
11 of any foreign state or country, where a statement is filed by
12 said fiduciary that no fiduciary, receiver, referee, assignee,
13 or commissioner has been appointed and qualified in this state.
14 Such release, satisfaction, discharge, assignment or deed may
15 be made without any order of court in any manner or by any
16 instrument which would be valid and effective if made by a like
17 officer qualified under the law of this state.

18 Comment: Adapted from §633.53.

1 Sec. 149. Certificate of appointment and authority.
2 Before any instrument executed by such foreign fiduciary or
3 officer as authorized by section one hundred forty-eight
4 (148) shall be effective, a certificate executed by the
5 court or clerk making the appointment, with seal attached, if
6 such officer has a seal, shall be recorded. Such certificates
7 shall state the name of the court making such appointment, the
8 date of the appointment, and that such fiduciary or officer has
9 not been discharged at the time of the execution of said in-
10 strument.

11 Comment: §633.54 reworded.

1 Sec. 150. Filing of certificate. The certificate aforesaid
2 shall be filed for record:

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

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

9 Comment: Adapted from §633.55.

1 Sec. 151. Record. Such certificate shall be recorded by the
2 proper officer in the judgment records of the court in which
3 the same appears of record, or in the appropriate chattel or
4 real estate records, as the case may be.

5 Comment: Adapted from §633.56.

1 Sec. 152. Maintaining actions. When there is no adminis-
2 tration of an estate nor a petition therefor pending, in this

3 state, a foreign fiduciary may maintain actions and proceedings
4 in this state subject to the requirements and conditions imposed
5 upon nonresident suitors generally.

6 Comment: New. Adapted from section 257 of the Model
7 Probate Code.

1 Sec. 158. Filing of bond. At the time of commencing any
2 action or proceeding in any court of this state, the foreign
3 fiduciary shall file with the court an authenticated copy of
4 his appointment, and of his official bond, if he has given a
5 bond. If the court believes that the security furnished by him
6 in the domiciliary administration is insufficient to cover the
7 proceeds of the action or the proceeding, or for any other
8 reason or cause, it may at any time order the action or
9 proceeding stayed until sufficient security is furnished in the
10 action or proceeding.

11 Comment: New. Adapted from section 258 of Model Probate
12 Code.

1 Sections 154 to 158, inclusive, reserved for future use.

PART 6. LIABILITY OF FIDUCIARIES

1 Sec. 159. Self-dealing by fiduciary prohibited. No fiduciary
2 shall in any manner deal with himself, and shall derive no profit
3 other than his distributive share in the estate from the sale or
4 liquidation of any property belonging to the estate.

5 Comment: Codification of present case law governing
6 fiduciaries.

1 Sec. 160. Deposits by corporate fiduciaries. Section
2 one hundred fifty-nine (159) shall not be construed to prohibit
3 a corporate fiduciary from making a deposit of estate funds in

4 its own banking department.

5 Comment: New.

1 Sec. 161. Liability for property of estate. Every
2 fiduciary shall be liable for, and chargeable in his accounts
3 with, all of the estate that comes into his possession at
4 any time, including all the income therefrom; but he shall
5 not be accountable for any debts due to the estate or other
6 assets of the estate that remain uncollected without his fault.
7 He shall not be entitled to profit from the increase in value
8 of any asset of the estate, nor shall he be chargeable with
9 loss resulting, without his fault, from the decrease in value
10 or the destruction of any part of the estate, excepting, only
11 to the extent of his pro rata share in such gain or loss as one
12 of the distributees of the estate.

13 Comment: Adapted from section 172(a) of the Model Probate
14 Code in lieu of §§638.6 and 638.7.

1 Sec. 162. Liability for property not a part of estate.
2 Every fiduciary shall be chargeable in his accounts with
3 property not a part of the estate that comes into his hands
4 at any time, and shall be liable to the persons entitled
5 thereto, if:

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

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

10 Comment: Adapted from section 172(b) of the Model Probate
11 Code.

1 Sec. 163. Judgment—execution. If judgment is rendered

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

6 Comment: Adapted from §638.13.

1 Sec. 164. Breach of duty. Every fiduciary shall be liable
2 and chargeable in his accounts for neglect or unreasonable delay
3 in collecting the credits or other assets of the estate or in
4 selling, mortgaging or leasing the property of the estate; for
5 neglect in paying over money or delivering property of the estate
6 he shall have in his hands; for failure to account for or to
7 close the estate within the time provided by this Code; for any
8 loss to the estate arising from his embezzlement or commingling
9 of the assets of the estate with other property; for loss to the
10 estate through self-dealing; for any loss to the estate arising
11 from wrongful acts or omissions of his cofiduciaries which he
12 could have prevented by the exercise of ordinary care; and for
13 any other negligent or willful act or nonfeasance in his adminis-
14 tration of the estate by which loss to the estate arises.

15 Comment: Section 172(c) of the Model Probate Code.

1 Sec. 165. Examination of fiduciaries. The fiduciary may
2 be examined under oath by the court upon any matter relating to
3 his accounts.

4 Comment: Adapted from §638.5.

1 Sec. 166. Penalty. In fixing the fees of any fiduciary,
2 the court shall take into consideration any violation of this
3 Code by the fiduciary, and may diminish the fee of such fiduci-
4 ary to the extent the court may determine to be proper.

5 Comment: Adapted from §638.17.

1 Sections 167 to 171, inclusive, reserved for future use.

PART 7. OATH AND BOND OF FIDUCIARIES

1 Sec. 172. Oath. Every fiduciary, before entering upon the
2 duties of his office and within such time as the court or clerk
3 directs, shall subscribe an oath that he will faithfully dis-
4 charge the duties imposed upon him by law, according to the best
5 of his ability.

6 Comment: See comment following section 175.

1 Sec. 173. Bond. Except as herein otherwise provided, every
2 fiduciary shall execute and file with the clerk a bond with
3 sufficient surety or sureties, as hereinafter provided. It shall
4 be conditioned upon the faithful discharge of all the duties of
5 his office according to law, including his duty to account. It
6 shall be procured at the expense of the estate, if an approved
7 surety company bond is furnished.

8 Comment: See comment following section 175.

1 Sec. 174. Amount of bond. Except as herein otherwise pro-
2 vided, the court or the clerk shall fix the penalty of the bond
3 in an amount equal to the value of the personal property of the
4 estate, plus the estimated gross annual income of the estate
5 during the period of administration.

6 Comment: See comment following section 175.

1 Sec. 175. Approval by clerk. The bond shall not be deemed
2 sufficient until it has been examined and approved by the clerk
3 who shall endorse such approval thereon. In the event that the
4 bond is not approved, the fiduciary shall, within such time as
5 the court or the clerk directs, secure and file a bond with sat-

6 isfactory surety or sureties.

7 Comment: The preceding four sections replace §§631.10,
8 632.7, 633.32, 633.43, 668.5, 668.6, 668.7, and 672.9.
9 Sections 64.2 and 64.4 would continue to fix the particular
10 conditions of the bond. Sections 682.11 through 682.22 would
11 continue applicable to corporate sureties. Sections 682.4
12 through 682.9 would continue applicable to the manner of quali-
13 fication by the sureties.

1 Sec. 176. Will—waiver of bond. When, by the terms of the
2 will, the testator has directed or expressed the desire that no
3 bond shall be required, such direction or expression shall be
4 construed to be a waiver of the posting of a bond by the fiduci-
5 ary for all purposes, and no bond shall be required unless the
6 court for good cause finds it proper to require one: if no bond
7 is initially required, the court may nevertheless, for good cause,
8 at any subsequent time require that a bond be given.

9 Comment: Adapted from section 107 (a) of the Model Probate
10 Code.

1 Sec. 177. Waiver of bond by distributees. If the distribu-
2 tees, in writing waive the statutory requirement that a bond
3 shall be filed by the fiduciary with the clerk, and the court
4 finds that the interests of the creditors will not thereby be
5 prejudiced, no bond shall be required.

6 Comment: New.

1 Sec. 178. Guardians—bond. When the guardian appointed for
2 a person is not the conservator of the property of that person,
3 no bond shall be required of the guardian, unless the court for
4 good cause finds it proper to require one. If no bond is ini-

5 tially required, the court may, nevertheless, for good cause,
6 at any subsequent time, require that a bond be given.

7 *Comment: New.*

1 *Sec. 179. Waiver of bond by court. The court may, for good*
2 *cause shown, exempt any fiduciary from giving bond, provided the*
3 *court finds that the interests of creditors will not thereby be*
4 *prejudiced.*

5 *Comment: New.*

1 *Sec. 180. Reduction of bond by deposit. Personal property of*
2 *the estate may be deposited with a bank or trust company located*
3 *in the state of Iowa upon such terms as may be prescribed by*
4 *order of the court. The amount of the bond of the fiduciary*
5 *may be then reduced as the court may determine.*

6 *Comment: Adapted from Model Code section 107(c).*

1 *Sec. 181. Deposit in lieu of bond. The court may permit the*
2 *fiduciary to deposit cash or other prescribed securities of his*
3 *own in lieu of bond.*

4 *Comment: Adapted from §682.1.*

1 *Sec. 182. Letters. Upon the filing of an oath of office and*
2 *a bond, if any is required, the clerk shall issue letters*
3 *under the seal of the court, giving the fiduciary the powers*
4 *authorized by law.*

5 *Comment: §633.45 rewritten.*

1 *Sec. 183. Review by clerk when inventory is filed. At the*
2 *time the inventory of the estate is filed, the clerk shall*
3 *review the amount of bond, and report to the court as to any*
4 *apparent insufficiency thereof.*

5 *Comment: New.*

1 Sec. 184. Bond changed. The court may at any time require
2 a new bond, or increase or decrease the amount of the penalty
3 of the bond of any fiduciary, when good cause therefor appears.

4 Comment: Adapted from §633.44 and Model Probate Code section
5 115.

1 Sec. 185. Obligees of bond—joint and several liability.
2 The bond of the fiduciary shall run to the use of all persons
3 interested in the estate, and shall be for the security and
4 benefit of such persons. The sureties shall be jointly and
5 severally liable with the fiduciary, and with each other.

6 Comment: Section 109 of the Model Probate Code.

1 Sec. 186. Qualifications for sureties. Qualifications for
2 sureties on probate bonds shall be the same as those provided
3 by section six hundred eighty-two point four (682.4) or section
4 six hundred eighty-two point fourteen (682.14) of the Code of
5 Iowa, provided, however, that no attorney shall act as surety
6 on any such bond.

7 Comment: New.

1 Sec. 187. Authority for fiduciary and surety to enter into
2 agreement for deposit of property or joint control. It shall
3 be lawful for the fiduciary to agree with his surety for the
4 deposit of any or all moneys and other property of the estate
5 with a bank, safe deposit or trust company, authorized by law
6 to do business as such, or other depository approved by the
7 court, if such deposit is otherwise proper, in such manner as to
8 prevent the withdrawal of such moneys or other property
9 without the written consent of the surety, or on order of the
10 court made on such notice to the surety as the court may direct.

11 Comment: Adapted from Model Probate Code section 108 in

12 lieu of §682.47.

1 Sec. 188. Release of sureties before estate fully administered.

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

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

13 Comment: Adapted from Model Code section 116(a) and (c).

1 Sec. 189. Insolvency of fiduciary. If, at any time, a
2 fiduciary becomes insolvent after qualifying as such fiduciary,
3 and after the maturity of a debt owing by such fiduciary to the
4 estate, then the fiduciary and the sureties on his bond shall
5 be liable to the estate for the indebtedness owing by the fiduciary
6 to the estate. If the fiduciary is not solvent at any time after
7 his qualification and after the maturity of the debt, the sureties
8 on his bond shall not be liable to the estate for the indebted-
9 ness.

10 Comment: Codification of present Iowa case law.

1 Sec. 190. Suit on bond.

2 1. Execution of bond deemed as appearance. The execution
3 and filing of the bond by a fiduciary, any other provisions of
4 law notwithstanding, shall be deemed an appearance by the surety
5 in the proceeding for the administration of the estate including

6 all hearings with respect to the bond.

7 2. Summary enforcement in proceedings for administration.

8 Subject to the provisions of subsection three (3) hereof, the
9 court may, upon the breach of the obligation of the bond of a
10 fiduciary, after notice to the obligors on the bond and to such
11 other persons as the court directs, summarily determine the damages
12 as a part of the proceeding for the administration of the estate,
13 and by appropriate process enforce the collection thereof from
14 those liable on the bond. Such determination and enforcement
15 may be made by the court upon its own motion or upon application
16 of a successor fiduciary, or of any other interested person.

17 The court may hear the application at the time of settling the
18 accounts of the defaulting fiduciary or at such other time
19 as the court may direct. Damages shall be assessed on behalf of
20 all interested persons and may be paid over to the successor or
21 other nondefaulting fiduciary and distributed as other assets
22 held by the fiduciary in his official capacity.

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

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

33 5. Denial of liability by surety—intervention. If the
34 court has already determined the liability of the fiduciary,

35 the sureties shall not be permitted thereafter to deny such
36 liability in any action or hearing to determine their liability;
37 but the surety may intervene in any hearing to determine the
38 liability of the fiduciary.

39 Comment: Model Code section 118 adapted in lieu of §§635.79
40 and 635.80.

1 Sec. 191. Limitation of action on bond. No proceedings
2 upon the bond of a fiduciary shall be brought subsequent to two
3 years after the discharge of the fiduciary or six months after
4 the discovery of fraud, whichever is later.

5 Comment: Adapted from Model Probate Code section 119.

1 Sections 192 to 196, inclusive, reserved for future use.

PART 8. COMPENSATION OF FIDUCIARIES AND ATTORNEYS

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

7 For the first one thousand dollars, six percent;

8 For the overplus between one and five thousand dollars, four
9 percent;

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

11 Comment: Same as §638.23 except the words "personal represen-
12 tative" are used in lieu of "executors and administrators".

13 Cross reference: See sections 86 and 166.

1 Sec. 198. Attorney fee. There shall also be allowed and
2 taxed as part of the costs of administration of estates as an

3 attorney's fee for the personal representative's attorney, such
4 reasonable fee as may be determined by the court, for services
5 rendered, but not in excess of the schedule of fees herein pro-
6 vided for personal representatives.

7 Comment: Same as §638.24, except "personal representative's"
8 used for "administrator's or executor's".

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

7 Comment: Same as §638.25 except "litigated matters" added to
8 conform with present court decisions.

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

8 Comment: Same as §638.26 except "fiduciaries (other than
9 personal representatives)" have been used in lieu of "of
10 guardians, trustees, and receivers".

1 Sec. 201. Court officers as fiduciaries. Judges, referees
2 in probate, clerks and deputy clerks serving as fiduciaries
3 shall not be allowed any compensation for services as such fidu-
4 ciaries.

5 Comment: New.

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

15 Comment: Same as §638.27 except for the use of "fiduciary"
16 instead of "executors, administrators, guardians, trustees,
17 receivers".

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

7 Comment: Adapted from §638.28.

1 Sec. 204. Fees of deceased fiduciary. When a fiduciary dies,
2 his personal representative and his attorney shall be paid out of
3 the estate assets all fees to which they are entitled before the
4 assets are turned over to the successor fiduciary.

5 Comment: New.

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

DIVISION IV—INTESTATE SUCCESSION

PART I. RULES OF INHERITANCE

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

1 Sec. 211. Share of surviving spouse if decedent left issue.

2 If the decedent dies intestate leaving a surviving spouse and
3 leaving issue, the surviving spouse shall receive the following
4 share:

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

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

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

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

22 may be necessary to make the amount of fifteen thousand dollars.

23 Comment: Adapted from §§636.5, 636.1 and 635.7, with the
24 additional provision that the surviving spouse, where there is
25 issue, shall take the whole of the estate up to the amount
26 of \$15,000. See Jones' Estate, 239 Iowa 1364, 35 N.W.2d 36.

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

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

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

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

15 4. If the property received by the surviving spouse under sub-
16 sections one (1) and three (3) of this section is not equal in
17 value to the sum of fifteen thousand dollars, then so much addi-
18 tional of the nonexempt real and personal property of the decedent
19 remaining after payment of the debts and charges against the es-
20 tate, as may be necessary (even to the extent of the entire net
21 estate) to make the amount of fifteen thousand dollars.

22 5. So much additional of the remaining real and personal prop-
23 erty belonging to the decedent as is necessary to make the entire

24 share of the surviving spouse, including the property received
25 under subsections one (1), three (3) and four (4) of this sec-
26 tion, equal in value to the aforesaid sum of fifteen thousand
27 dollars plus one half of the net value of the estate over and
28 above the said sum of fifteen thousand dollars and the value of
29 the exempt personal property.

30 Comment: Adapted from §636.32.

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

12 Comment: Adapted from §636.33.

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

6 Comment: Adapted from §636.34.

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

5 appraisement.

6 Comment: Adapted from §636.35.

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

5 Comment: Adapted from §636.36.

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

4 Comment: Adapted from §636.37.

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

8 Comment: Adapted from §636.38.

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

7 1. In equal shares to the decedent's children, unless one or
8 more of them is dead, in which case the issue of such deceased
9 child shall inherit his or her share in accordance with the rules

10 herein prescribed, in the same manner as though said child had
11 outlived his parents.

12 Comment: Adapted from §636.31.

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

17 Comment: Adapted from §§636.32, 636.39 and 636.42.

18 3. If there is no person to take under either subsection one
19 (1) or two (2) of this section, the portion uninherited shall go
20 to such persons as would have been entitled to take if the par-
21 ents of the decedent had outlived the intestate and had died in
22 possession and ownership of the portion thus falling to their
23 share, and so on, through their ascending ancestors and their
24 heirs.

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

34 Comment: Adapted from §636.41.

35 5. If there is no person who qualifies under either subsec-
36 tion one (1); two (2), three (3) or four (4) of this section, the
37 intestate property shall escheat to the state of Iowa.

1 Sec. 220. Afterborn heirs—time of determining relationship.

2 Descendants and other heirs of an intestate, begotten before his
3 death but born thereafter, shall inherit as if they had been born
4 in the lifetime of the intestate and had survived him. With this
5 exception, the intestate succession shall be determined by the
6 relationship existing at the time of the death of the intestate.

7 Comment: Section 25 of the Model Probate Code.

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

4 Comment: Adapted from §636.45.

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

9 Comment: Adapted from §636.46.

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

6 A lawful adoption terminates all rights of inheritance from,
7 through and to the natural parents of the adopted person, pro-
8 vided, however, that nothing herein shall limit the right to in-
9 herit from, through or to the natural parent when the natural
10 parent was married to the adopting parent at the time of the

11 adoption.

12 Comment: New. In part codifies present case law in Iowa.

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
3 heir of such transferor were the latter to die at that time, and
4 the transferor dies intestate, then the property thus advanced
5 shall be counted toward the share of the transferee in the estate.
6 (which for this purpose only shall be increased by the value of
7 the advancement at the time the advancement was made). The trans-
8 feree shall have no liability to the estate for such part, if
9 any, of the advancement as may be in excess of his share in the
10 estate as thus determined. Every gratuitous inter vivos trans-
11 fer is presumed to be an absolute gift, and not an advancement.
12 Such presumption is rebuttable.

13 Comment: Adapted from section 29(a) of the Model Probate
14 Code in lieu of §636.44.

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

5 Comment: Adapted from section 29(b) of the Model Probate
6 Code in lieu of §636.44.

1 Sec. 226. Death of advancee before intestate. If an advan-
2 cee under section two hundred twenty-four (224) dies before the
3 intestate, leaving an heir who takes from the intestate, the
4 advancement shall be taken into account in the same manner as
5 if it had been made directly to such heir. If such heir is en-
6 titled to a lesser share in the estate than the advancee would
7 have been entitled to, had he survived the intestate, then

8 the heir shall be charged with only such proportion of the
9 advancement as the amount he would have inherited, had there
10 been no advancement, bears to the amount which the advancee
11 would have inherited, had there been no advancement.

12 Comment: Section 29(c) of the Model Probate Code, in lieu
13 of §636.44.

PART 2. PROCEDURE FOR OPENING ADMINISTRATION OF INTESTATE ESTATES

1 Sec. 227. Administration granted. Where there is no will,
2 administration shall be granted to any qualified person on the
3 petition of:

- 4 1. The surviving spouse;
- 5 2. The heirs of the decedent;
- 6 3. Creditors of the decedent;
- 7 4. Other persons showing good grounds therefor.

8 Comment: Adapted from §633.39.

1 Sec. 228. Time allowed. To file such petition, there shall
2 be allowed, 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
6 period allowed the preceding class if there is no member of such
7 preceding class. Any member of any class may file such petition
8 after the expiration of the period allowed to him if letters
9 have not been issued prior thereto.

10 Comment: §633.40 rewritten.

1 Sec. 229. Petition for administration of an intestate estate.

2 The petition for administration of an intestate estate shall
3 contain the 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
6 time of his death, a statement that he had property within the
7 county in which the petition is filed, or any other basis for
8 jurisdiction in such county.

9 3. The name and address of the surviving spouse, if any, and
10 the name and address of each heir so far as known to the peti-
11 tioner.

12 4. The estimated value of the property belonging to the dece-
13 dent that might be readily convertible into money.

14 Comment: New.

1 Sec. 230. Notice in intestate estates. In intestate matters,
2 the administrator shall, as soon as letters are issued, cause to
3 be published once each week for two consecutive weeks in a daily
4 or weekly newspaper of general circulation published in the coun-
5 ty in which the estate is pending, a notice of his appointment
6 which shall be in substantially the following form:

7 Notice of Appointment of Administrator

8 In the District Court of Iowa

9 in and for County.

10 In the Estate of Probate No.

11 Deceased.

12 You are hereby notified that all persons indebted to said
13 estate are requested to make immediate payment to the under-
14 signed, and creditors having claims against said estate shall
15 file them with the clerk of the above named district court,
16 as provided by law, duly authenticated, for allowance, and
17 unless so filed within six months from the second publication

18 of this notice (unless otherwise allowed or paid) such claim
19 shall thereafter be forever barred.

20 Dated this . . . day of, 19

21

22 Administrator of said estate

23

24 Address

25

26 Attorney for said administrator

27

28 Address

29 Date of second publication

30 day of, 19

31 (Date to be inserted by publisher)

32 Comment: Provides for notice to creditors in intestate
33 matters.

1 Sections 231 to 235, inclusive, reserved for future use.

DIVISION V—RIGHTS OF SURVIVING SPOUSE

PART 1. RIGHT TO TAKE AGAINST THE WILL

1 Sec. 236. Right of surviving spouse to elect to take
2 against will. When a married person dies testate as to any part
3 of his estate, the surviving spouse shall have the right to
4 elect to take against the will under the provisions of sections
5 two hundred thirty-seven (237) through two hundred forty-six
6 (246).

7 Comment: Affirmative statement of present law permitting
8 surviving spouse to elect to take against will.

1 Sec. 237. Presumption that surviving spouse elects to take

2 under will. In case the surviving spouse does not make an
3 election to take against the will and file it with the clerk of
4 court within six months after the will is admitted to probate.
5 such surviving spouse shall take under the provisions of the
6 will, provided, however, that if within such period of six
7 months an affidavit is filed setting forth that such surviving
8 spouse is incapable to make such election, the court shall
9 determine whether there shall be an election to take against
10 the will in accordance with section two hundred thirty-eight
11 (238): provided further, that the court on application may,
12 prior to the expiration of such period of six months, for cause
13 shown, enter an order extending the time for making such elec-
14 tion.

15 Comment: This is similar to §636.25 with the following
16 changes:

- 17 1. The six-month period runs from the date the probate
18 of the will instead of from the date of giving notice.
- 19 2. The words "surviving spouse" have been substituted for
20 the word "survivor".

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

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

- 9 2. All personal property that, at the time of death, was in

10 the hands of the decedent as the head of a family, exempt from
11 execution.

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

14 Comment: This defines the share of the surviving spouse who
15 elects to take against the will and is adapted from §§636.5,
16 636.1 and 635.7

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

10 Comment: Reworded for clarification of §636.7.

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

12 of section two hundred thirty-eight (238). In case of failure
13 to make such election, the right to occupy the homestead shall
14 be waived.

15 Comment: Adapted from §§636.27 and 636.28.

1 Sec. 241. Time for election to occupy homestead. In case
2 the surviving spouse does not make an election to occupy the
3 homestead and file it with the clerk within six months from
4 the date of the second publication of the notice to creditors,
5 it shall be conclusively presumed that such surviving spouse
6 waives the right to make such election. The court on applica-
7 tion may, prior to the expiration of such period of six months,
8 for cause shown, enter an order extending the time for making
9 such election.

10 Comment: New.

1 Sec. 242. Rights of election personal to surviving spouse.
2 The right of the surviving spouse to elect to take against the
3 will and the right of the surviving spouse to occupy the home-
4 stead are personal. They are not transferable, and cannot be
5 exercised for him subsequent to his death.

6 Comment: Adapted from section 37 of the Model Probate Code.

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

4 Comment: Adapted from section 36 of the Model Probate Code.

1 Sec. 244. Incompetent spouse—election by court. In case
2 an affidavit is filed that the surviving spouse is incapable
3 of making an election to take against the will, or to elect
4 to occupy the homestead, the court shall fix a time and place

5 of hearing on the matter, and cause a notice thereof to be
6 served upon said surviving spouse in such manner and for such
7 time as the court may direct. At the hearing, a guardian ad li-
8 tem shall be appointed to represent such spouse, and the court
9 shall enter such orders as it may deem to be for the best
10 interests of such person.

11 Comment: Adapted from §636.36.

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

5 Comment: Adapted from §636.23.

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

8 Comment: Adapted from section 38 of the Model Probate Code.

PART 2. PROCEDURE FOR SETTING OFF SHARE

1 Sec. 247. Setting off share of surviving spouse when
2 electing to take against the will—time limit. The share of
3 the surviving spouse under section two hundred thirty-six
4 (236) may be set off by the mutual consent of all parties in
5 interest, or by referees appointed by the court. An applica-
6 tion to have it set off by referees shall be made in writing
7 within six months after the second publication of notice of

8 the probate of the will, or within one month after the elec-
9 tion to take against the will is filed with the clerk, which-
10 ever is the longer. The application must describe the land
11 in which the share is claimed, and pray for the appointment of
12 referees to set it off.

13 Comment: Adapted from §636.9.

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

7 Comment: Adapted from §636.10.

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

6 Comment: Adapted from §636.11.

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

7 Comment: Adapted from 636.12.

1 Sec. 251. Confirmation—new reference. The court may set
2 the report for hearing and prescribe the notice to be given
3 to interested parties. The court may confirm the report, or

4 may set it aside and refer the matter to the same or other refer-
5 ees, at its discretion.

6 Comment: Same as §636.13.

1 Sec. 252. Confirmation conclusive—possession. An order
2 confirming a report of the referees shall be binding and con-
3 clusive unless appealed from within thirty days, and the sur-
4 viving spouse may bring an action to obtain possession of the
5 land set apart to him.

6 Comment: Same as §636.14.

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

6 Comment: Same as §636.15.

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

7 Comment: This is an enlargement of §636.16 providing for
8 setting off the share of the surviving spouse.

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

5 Comment: Adapted from §636.17.

1 Sec. 256. Security to avoid sale. No sale shall be made

2 under section two hundred fifty-four (254) if anyone interested
3 gives security to the satisfaction of the court, conditioned to
4 pay the surviving spouse the appraised value of the share with
5 seven percent interest on the same, within such reasonable time
6 as the court may fix, not exceeding one year.

7 Comment: Adapted from §636.18. Interest changed from "eight
8 percent" to "seven percent".

1 Sec. 257. Security by surviving spouse. If no such arrange-
2 ment is made, the surviving spouse may keep the property by
3 giving like security to pay the claims of all others interested
4 upon like terms.

5 Comment: Same as §636.19.

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

7 Comment: Adapted from §636.20.

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

7 Comment: Adapted from §633.1.

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

6 Comment: Adapted from §635.51.

7 Cross reference: Section 176.

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

11 1. The amount by which such devises described in this section
12 exceeds such one fourth of the testator's estate shall be first
13 determined.

14 2. Each of such persons shall have the right to elect to
15 receive the portion of such excess to which he would have
16 been entitled had such excess been intestate property, pro-
17 vided, that in no event shall he receive in the aggregate under
18 the will and as the result of such election, an amount greater
19 than he would have received had the decedent died intestate.

20 3. Such election shall be made in writing by said person
21 and filed with the clerk within six months after the second pub-
22 lication of the notice of appointment of the personal representa-

23 tive, unless the time is extended by order of court, or unless
24 an affidavit is filed under the provisions of subsection four
25 (4) hereof.

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

38 5. Any portion of the excess determined under the provisions
39 of this section which is not distributed under an election pro-
40 vided in this section, shall be distributed under the will of
41 the decedent the same as if no election had been made under sub-
42 section two (2) by anyone.

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

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

50 8. In the event that there is more than one devise affected
51 by the election provided for in this section, any reduction

52 shall be made ratably in the absence of express testamentary
53 intent to the contrary.

54 Comment: New. In lieu of §633.3

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

9 Comment: Substantially section 11a, Model Probate Code.

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

7 Comment: Adapted from §633.2.

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

6 Comment: Adapted from section 56 of the Model Probate Code
7 as substitute for §633.4.

1 Sec. 270. Contractual or mutual wills. No will shall
2 be construed to be contractual or mutual, unless in such will
3 the testator shall expressly state his intent that such will

4 shall be so construed.

5 Comment: New.

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

4 Comment: New. Adapted from section 53 of the Model Probate
5 Code.

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

10 Comment: Adapted from section 23 of the Model Probate Code.

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

5 Comment: Adapted from §633.16.

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

6 Comment: New.

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

29 testator shall cause the devise or bequest to lapse.

30 Comment: This section is from the Uniform Testamentary Addi-
31 tions to Trust Act and is in lieu of the Model "Pour-Over"
32 Will Act.

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

4 Comment: Adapted from Uniform Testamentary Additions to
5 Act. Trust

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

5 Comment: Section 275 is the Model Uniform Testamentary Addi-
6 tions to Trust Act.

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

11 Comment: Based on section 189 of the Model Probate Code.

PART 2. EXECUTION AND REVOCATION

1 Sec. 279. Formal execution. All wills and codicils, except

2 as provided in section two hundred eighty-three (283), to be
3 valid, must be in writing, signed by the testator, or by some per-
4 son in his presence and by his express direction writing his name
5 thereto, and declared by the testator to be his will, and wit-
6 nessed, at his request, by two competent persons who signed as wit-
7 nesses in the presence of the testator and in the presence of
8 each other, provided, however, that the validity of the execution
9 of any will or instrument which was executed prior to the effec-
10 tive date of this Code shall be determined by the law in effect
11 immediately prior to the effective date of this Code.

12 Comment: §633.7 revised to conform with present Iowa practice.

1 Sec. 280. Competency of witnesses. Any person who is six-
2 teen years of age, or older, and who is competent to be a wit-
3 ness generally in this state, may act as an attesting witness
4 to a will.

5 Comment: Section 46(a) of Model Probate Code.

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

10 Comment: Adapted from section 46 of the Model Probate Code
11 and §633.9.

1 Sec. 282. Defect cured by codicil. If a codicil to a defec-

2 tively executed will is duly executed, and such will is clearly
3 identified in said codicil, the will and the codicil shall
4 be considered as one instrument and the execution of both shall
5 be deemed sufficient.

6 Comment: Adapted from §633.8.

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

8 Comment: Adapted from §633.49.

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

12 Comment: Same as §633.10, except last sentence added. Last
13 sentence taken from section 55, Model Probate Code.

PART 3. CUSTODY

1 Sec. 285. Custodian—filing—penalty. After being informed

2 of the death of the testator, the person having custody of
3 his will shall deliver it to the court having jurisdiction
4 of his estate. Every person who willfully refuses or fails
5 to deliver a will after being ordered by the court to do so shall
6 be guilty of contempt of court. He shall also be liable to any
7 person aggrieved for the damages which may be sustained by such
8 refusal or failure.

9 Comment: Adapted from section 63, Model Probate Code in
10 lieu of §633.17.

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

9 Comment: Adapted from section 59(a) of the Model Probate
10 Code in lieu of §633.11.

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

9 Comment: Adapted from section 59(b) of the Model Probate Code.

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

5 Comment: Adapted from section 59(c) of the Model Probate Code.

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

13 Comment: Adapted from section 59(d) of the Model Probate Code.

PART 4. PROCEDURE FOR PROBATE OF
WILLS

14 General Comment: The following sections, 290 through 304,
15 inclusive, provide a new procedure for the admission of wills
16 without notice.

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

- 5 1. To have the will admitted to probate;
- 6 2. For the appointment of the executor.

7 A petition for probate may be combined with a petition for ap-
8 pointment of the executor, and any person interested in either
9 the probate of a will or in the appointment of the executor.
10 may petition for both.

11 Comment: New.

1 Sec. 291. Contents of petition. A petition for probate of
2 a will 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
5 time of his death, then, that he had property within the county
6 in which the petition is filed, or any other basis for jurisdic-
7 tion in such county.

8 Comment: New.

1 Sec. 292. Petition for appointment of executor. A petition
2 for the appointment of an executor shall state the name and ad-
3 dress of the person nominated or proposed as executor, and that
4 such person is qualified to act as executor. If the person pro-
5 posed in said petition is not the person nominated in the will,
6 the petition shall state the reason why the person nominated
7 is not proposed as executor. Unless bond is waived in the
8 will, the petition shall state the estimated value of the prop-
9 erty belonging to the decedent which might be readily converti-
10 ble into money.

11 Comment: New.

1 Sec. 293. Hearing upon petition. Upon the filing of a
2 petition for probate, the court or the clerk may, in its or
3 his discretion, hear it forthwith, or at such time and place
4 as the court or clerk may direct, with or without requiring
5 notice.

6 Comment: New.

1 Sec. 294. Order of preference for appointment of executor.

2 Letters testamentary may be granted to one or more persons

3 found to be qualified. Preference for appointment shall be

4 in the following order:

5 1. The person designated in the will;

6 2. Any beneficiary named in the will, or a person nominated
7 by the beneficiaries;

8 3. Any creditor of the deceased, or a person nominated by
9 such creditor;

10 4. Such other person as the court may find to be qualified.

11 Comment. New.

1 Sec. 295. Nonresident executors of resident decedents. A

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

3 resident of this state, may, upon application, be appointed

4 executor after said will has been admitted to probate in this

5 state, provided a resident executor be appointed to serve with

6 the nonresident executor named in said will, except that the

7 court for good cause shown may appoint the nonresident executor

8 to serve alone without the appointment of a resident executor.

9 Comment: New.

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

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

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

4 be substantially in the following form executed and sworn to

5 after the death of the decedent:

6 In the District Court of Iowa

7 In and forCounty

8 In the Matter of the Estate of

Probate No.....

38 (SEAL) State of

39 Comment: New. Provides for the use of written testimony of
40 witnesses, and a form therefor. The form is adapted from that
41 in use in California. Use of this affidavit in contest of
42 wills prohibited by section 318.

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

12 Comment: This section preserves the right of use of deposi-
13 tions provided for in §633.21 where deemed advisable.

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

9 Comment: Adapted from §633.22.

1 Sec. 299. Order admitting or disallowing probate of will.
2 The court or the clerk shall enter an order either admitting

3 said will to probate, or disallowing probate because of insuf-
4 ficient proof thereof.

5 Comment: New. Necessary under new procedure.

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

6 Comment: New.

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

8 Comment: Same as §633.23.

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

9 Comment: Adapted from §633.34.

1 Sec. 303. Notice of appointment. On admission of a will
2 to probate, the executor shall, as soon as letters are issued,
3 cause to be published once each week for two consecutive weeks

4 in a daily or weekly newspaper of general circulation published
 5 in the county in which the estate is pending, a notice of ad-
 6 mission of the will to probate and of the appointment of the
 7 executor, in which shall be included a notice that any action
 8 to set aside the probate of said will must be brought within six
 9 months from the date of the second publication of said notice
 10 or thereafter be forever barred, and there shall also be in-
 11 cluded therein a notice to debtors to make payment, and to
 12 creditors having claims against said estate to file them with
 13 the clerk within six months from the second publication of said
 14 notice, or thereafter be forever barred.

15 Such notice shall be substantially in the following form:

16 Notice of Probate of Will, of Appointment of Executor, and
 17 to Creditors

18 In the District Court of Iowa

19 in and for..... County. Probate No.....

20 In the Estate of

21 Deceased

22 To all persons interested in the estate of.....deceased:

23 You are hereby notified that on the day of,
 24 19....., the last will and testament of, deceased,
 25 bearing date the day of, 19....., was admitted
 26 to probate in the above named court and that.....
 27 was appointed executor of said estate. Any action to set aside
 28 said will must be brought in the district court of said county
 29 within six months from the date of the second publication of
 30 this notice, or thereafter be forever barred.

31 Notice is further given that all persons indebted to said

32 estate are requested to make immediate payment to the under-
 33 signed, and creditors having claims against said estate shall
 34 file them with the clerk of the above named district court, as
 35 provided by law, duly authenticated, for allowance; and unless
 36 so filed within six months from the second publication of this
 37 notice (unless otherwise allowed or paid) such claim shall there-
 38 after be forever barred.

39 Dated this day of, 19.....

40

41 Executor of said estate

42

43 Address

44

45 Attorney for said executor

46

47 Address

48 Date of second publication

49 day of, 19

50 (date to be inserted by publisher)

51 Comment: Substitute for §633.46.

1 Sec. 304. Notice where no administration. On admission of
 2 a will to probate without administration of the estate, the
 3 clerk shall cause to be published, in the manner prescribed in
 4 the preceding section, a notice of the admission of the will to
 5 probate in which shall be included a notice that any action to
 6 set aside said will must be brought within six months from the
 7 date of the second publication of said notice or thereafter be
 8 barred.

9 Such notice shall be substantially in the following form:

10 Notice of Probate of Will

11 In the District Court of Iowa

12 in and for County.

13 In the Estate of Probate No.....

14 Deceased

15 To all persons interested in the estate of deceased:

16 You are hereby notified that on the day of.....

17 19....., the last will of , deceased, bearing

18 date the day of , 19....., was admitted to

19 probate in the above named court and there will be no present

20 administration of the estate. Any action to set aside said will

21 must be brought in the district court of said county within six

22 months from the date of the second publication of this notice

23 or thereafter be forever barred.

24 Dated this day of 19.....

25

26 Clerk of the district court

27

28 Attorney for said estate.

29 Date of second publication

30 day of , 19.....

31 (Above date to be inserted by publisher)

32 Comment: New. Provides for admission of will, without admin-
33 istration, as a muniment of title.

1 Sec. 305. Record in foreign county. Whenever it shall appear
2 that the testator died seized of real estate located in a county
3 of this state other than that in which probate is granted, a com-
4 plete transcript, properly authenticated, of the record entry

5 of the order of court admitting the will to probate, and, if a
6 copy of such will is not contained therein, a certified copy
7 of such will shall be attached thereto, and the same shall be
8 filed by the clerk in the office of the clerk of the district
9 court in such other county, who shall cause the same to be entered
10 in the probate docket, and said transcript shall be recorded
11 in full in the book kept for the recording of wills in such
12 county. When so recorded, such record may be read in evidence
13 in all courts without further proof.

14 Comment: Same as §633.25.

15 Cross reference: Sections 403 and 404.

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

6 Comment: Same as §633.26.

PART 5. ACTIONS TO SET ASIDE OR CONTEST OF WILLS

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

5 Comment: Adapted from section 72 of the Model Probate Code.

1 Sec. 308. Time within which petition must be filed. A peti-
2 tion to contest or set aside the probate of a will must be
3 filed in the court in which the will was admitted to probate
4 within six months from the date of second publication of notice
5 of admission of such will to probate and not thereafter.

6 Comment: Adapted from §614.1(3) and shortens period of
7 limitations to six months.

1 Sec. 309. Objections prior to admission of will to probate.
2 Nothing herein contained shall prevent any interested person from
3 filing objections to probate of a proposed will prior to probate
4 thereof. If such objections are filed prior to the admission
5 of the will to probate, the will shall not be admitted to pro-
6 bate pending trial and determination as to whether or not said
7 instrument is the last will of the decedent.

8 Comment: Designed to protect the same rights that a party
9 now has under the present Iowa law.

1 Sec. 310. Contest or objection shall be tried as a law action.
2 An action objecting to the probate of a proffered will, or to
3 set aside a will, is triable in the probate court as an action
4 at law, and the Rules of Civil Procedure governing law actions,
5 including demand for jury trial, shall be applicable thereto.

6 Comment: Codification of present Iowa law.

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

9 Comment: This section is entirely new.

1 Sec. 312. Election of defendants to join with contestants.
2 Any person named as a defendant in an action to contest or set
3 aside a will may, at time of appearance, or by leave of court

4 at any time thereafter, elect to join with the contestants.

5 Comment: New.

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

5 Comment: New.

1 Sec. 314. Allowance for defending will. When any person
2 is designated as executor in a will, or has been appointed
3 as executor, and defends or prosecutes any proceedings in good
4 faith and with just cause, whether successful or not, he shall
5 be allowed out of the estate his necessary expenses and dis-
6 bursements, including reasonable attorney fees in such proceed-
7 ings.

8 Comment: Adapted from section 104 of the Model Probate Code.

1 Sec. 315. Notice to devisees in other wills. If the ground
2 of objection is that another will of the decedent has been dis-
3 covered, each devisee named in such other will shall be joined
4 in the action.

5 Comment: Adapted from section 74(b) of the Model Probate Code.

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

7 Comment: New. Adapted from section 75(b) of the Model Probate
8 Code.

1 Sec. 317. Where will is filed after letters testamentary
2 have been granted. If, after a will has been admitted to pro-
3 bate, another instrument purporting to be the will of the dece-
4 dent, which has not been previously presented for probate, is
5 filed, the court shall determine whether or not the former grant
6 of letters should be revoked pending determination of which in-
7 strument constitutes the will of the decedent.

8 Comment: New. Adapted from section 75(b) of the Model Probate
9 Code.

1 Sec. 318. Presumptions. If the lack of the due execution of
2 a will constitutes a ground for objection, the burden of proof
3 of such due execution shall be on the proponent regardless of
4 whether or not the will has been theretofore admitted to probate
5 and proof of such execution shall not be made by affidavit as
6 provided in section two hundred ninety-six (296).

7 Comment: New.

1 Sec. 319. Declaratory judgment to determine last will. The
2 executor or any person named as a beneficiary in a will may bring
3 an action for a declaratory judgment to have such will declared
4 to be the last will of the decedent. In such action, all known
5 interested persons, including heirs of the decedent and persons
6 named as beneficiaries in said instrument and other known instru-
7 ments purporting to be wills of the decedent, shall be joined as
8 parties.

9 Comment: Adapted from R.C.P. 264.

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
2 the estate of a decedent from the filing of the petition for pro-
3 bate and admission or for administration until the order approv-
4 ing the final report and discharge of the last personal represen-
5 tative shall be considered as one proceeding for purposes of
6 jurisdiction. Such entire proceeding is a proceeding in rem.

7 Comment: Adapted from section 62 of the Model Probate Code.

1 Sec. 331. Limitation of administration. Probate of a will,
2 original administration of an intestate estate, or ancillary
3 administration of an estate, shall not be granted after five
4 years from the death of the decedent, whether he die within or
5 without this state, unless a petition therefor is filed prior
6 to the expiration of the five-year period.

7 Comment: §633.47 rewritten.

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
3 the decedent as head of a family would be exempt from execution,
4 after being inventoried and appraised, shall be set aside to the
5 surviving spouse, and be exempt in the hands of such surviving
6 spouse as in the hands of the decedent.

7 Comment: Adapted from §635.7.

1 Sec. 333. Proceeds of insurance. The avails of any life or
2 accident insurance, or other sum of money made payable by any
3 mutual aid or benevolent society upon the death or disability

4 of a member thereof, are not subject to the debts of the dece-
5 dent, except by contract or by express provision in the will,
6 and shall be disposed of like other property left by the dece-
7 dent.

8 Comment: Adapted from §635.8.

1 Sec. 334. Surviving spouse included as "heir". The words
2 "heirs" and "legal heirs", and other equivalent words used to
3 designate the beneficiaries in any life insurance policy or
4 certificate of membership in any mutual aid or benevolent asso-
5 ciation, where no contrary intention is expressed in such instru-
6 ment, shall be construed to include the surviving husband or
7 wife of the insured.

8 Comment: Same as §635.10.

1 Sec. 335. Share of survivor. The share of such survivor
2 in the proceeds of such policy or certificate made payable as
3 aforesaid shall be the same as that provided by law for the dis-
4 tribution of the personal property of intestates.

5 Comment: Same as §635.11.

WRONGFUL DEATH

1 Sec. 336. Damages for wrongful death. When a wrongful act
2 produces death, damages recovered therefor shall be disposed of
3 as personal property belonging to the estate of the deceased,
4 but if the deceased leaves a spouse, child, or parent, it shall
5 not be liable for the payment of debts of the estate except debts
6 and charges of the first, second, third and fifth classes.

7 Comment: Adapted from §635.9.

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

PART 2. TEMPORARY ADMINISTRATION

1 Sec. 342. Temporary administration. When, from any cause,

2 probate of a will or administration cannot be immediately
3 granted, a temporary administrator may be appointed to collect,
4 manage, preserve and dispose of the property of the deceased,
5 as the court may prescribe, and no appeal from such appoint-
6 ment shall prevent his proceeding in the discharge of his duties.

7 Comment: Adapted from §633.41.

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

11 Comment: Adapted from §633.42.

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
2 person by his will makes such a disposition of his property as
3 to prejudice the rights of creditors, the will may be sustained,
4 by giving security to the satisfaction of the court for the
5 payment of the debts and charges to the extent of the value of
6 the property devised.

7 Comment: Adapted from §635.19.

1 Sec. 350. Title to decedent's estate—when property passes—
2 possession and control thereof—liability for administration

3 expenses, debts and family allowance. Except as otherwise pro-
4 vided in this Code, when a person dies, the title to his prop-
5 erty, real and personal, passes to the person to whom it is
6 devised by his last will, or, in the absence of such disposi-
7 tion, to the persons who succeed to his estate as provided in
8 this Code, but all of his property shall be subject to the pos-
9 session of the personal representative as provided in section
10 three hundred fifty-one (351) and to the control of the court
11 for the purposes of administration, sale, or other disposition
12 under the provisions of law, and such property, except home-
13 stead and other exempt property, shall be chargeable with the
14 payment of debts and charges against his estate. There shall
15 be no priority as between real and personal property, except as
16 provided in this Code or by the will of the decedent.

17 Comment: This statute is based on section 300 of the
18 California Probate Code. It codifies the present Iowa rule
19 with respect to title upon death in the case of real estate
20 and adopts the same rule with respect to personalty. See
21 21 Iowa L. Rev. 793 (1936).

1 Sec. 351. Possession of real and personal property. Every
2 personal representative shall take possession of all the
3 real and personal property of the decedent, except the home-
4 stead and other property exempt to the surviving spouse. The
5 personal representative may maintain an action for the posses-
6 sion of such property or to determine the title to said property.

7 Comment: New.

1 Sec. 352. Collection of rents and payment of taxes and
2 charges. Unless otherwise provided by the will, the personal
3 representative shall collect the income from such property,

4 pay the taxes and fixed charges thereon and apply the balance
5 of such income to general estate obligations. Unless other-
6 wise provided, any unexpected portion of such income shall be-
7 come a part of the general assets of such estate.

8 Comment: New.

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

9 Comment: New.

1 Sec. 354. Surrender of possession upon application by any
2 interested person. Upon application of any interested person
3 and after such notice to the personal representative and to such
4 other persons, if any, as the court may prescribe, and for good
5 cause shown, the court may enter an order authorizing said per-
6 sonal representative to surrender any of such property to the
7 person or persons who, under the will or under the rules of in-
8 testate succession, will ultimately be entitled to such property.
9 The court may require a bond or other security conditioned as
10 it may determine in connection with the delivery of such property.

11 Comment: New.

1 Sec. 355. Delivery of specific devise after nine months. Un-
2 less the court, for cause shown, determines that the possession
3 of the personal representative shall continue for a longer period,
4 the personal representative shall deliver all specifically devised

5 property to the devisees entitled thereto after the expiration of
6 nine months from the date of appointment of the personal represent-
7 ative. This section shall not preclude the court from directing
8 that such delivery be made before such period has expired, nor
9 shall the personal representative be prevented from sooner set-
10 tling the estate and delivering such property.

11 Comment: New.

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

PART 4. INVENTORY

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

- 7 1. Name, age and last residence of decedent.
- 8 2. Date of death.
- 9 3. Whether decedent died testate or intestate.
- 10 4. Name and post-office address of personal representative.
- 11 5. Name, age and post-office address of surviving spouse, if
12 any.
- 13 6. If testate, name, age, relationship and post-office
14 address of each beneficiary under will.
- 15 7. If testate, the name, age and address of each child, if
16 any, born to or adopted by decedent after execution of the will.
- 17 8. If intestate, name, age, relationship and post-office
18 address of each heir.
- 19 9. Inventory of all the real estate of the decedent in the

20 state of Iowa, giving value and accurate description of each
21 tract.

22 10. Any real property located outside of the state of Iowa
23 not otherwise reported.

24 11. Personal property regarded as exempt from execution.

25 12. All personal property.

26 13. All property whether subject to probate or not, not other-
27 wise listed which is subject to the Iowa inheritance tax as
28 provided in chapter four hundred fifty (450) of the Code of Iowa.

29 14. A statement as to whether or not there is any property not
30 therein inventoried which must be reported for federal estate tax
31 purposes.

32 Comment: §635.1 revised.

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

5 Comment: Adapted from §635.4.

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

6 Comment: Adapted from §635.2.

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

6 Comment: Based on section 121 of the Model Probate Code in
7 lieu of §635.3.

1 Sec. 365. Appraisalment. Property belonging to the estate
2 need not be appraised unless required for inheritance tax pur-
3 poses under the provisions of this Code, or by order of court.

4 Comment: Substitute for §§635.5 and 635.6.

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

7 Comment: Codification of present Iowa case law.

1 Sec. 367. Inventory and appraisalment as evidence. Inven-
2 tories and appraisements may be given in evidence in all pro-
3 ceedings, but shall not be conclusive, and other evidence may
4 be introduced to vary the effect thereof.

5 Comment: New. Section 123 of Model Probate Code.

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

12 Comment: New. Based on section 125 of Model Probate Code.
13 The only comparable provision in the Iowa law is contained
14 in §635.16.

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,
2 upon application, set off and order paid to the surviving spouse,
3 as part of the costs of administration, sufficient of the dece-
4 dent's property as it deems reasonable for the proper support
5 of the surviving spouse for the period of twelve months follow-
6 ing the death of the decedent. When said application is not
7 made by the personal representative, notice of hearing upon the
8 application shall be given to the personal representative. The
9 court shall take into consideration the station in life of the
10 surviving spouse and the assets and condition of the estate.
11 The allowance shall also include such additional amount as the
12 court deems reasonable for the proper support, during such pe-
13 riod, of dependents of the decedent who reside with the surviv-
14 ing spouse. Such allowance to the surviving spouse shall not
15 abate upon the death or remarriage of such spouse.

16 Comment: Adapted from §635.12.

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

5 Comment: New.

1 Sec. 376. Allowance to minor children who do not reside with

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

7 Comment: New.

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

6 Comment: New.

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
3 given to any personal representative under the terms of any will,
4 the statutory requirements with reference to procedure for such
5 purposes shall not apply.

6 Comment: New. Present Iowa case law.

1 Sec. 384. Equitable conversion and power of sale. A testa-
2 mentary direction to sell real property, and the exercise of a
3 testamentary power of sale of real property, shall constitute
4 an equitable conversion of real estate into personal property,
5 but shall not affect distribution of the estate under the pro-
6 visions of the will.

7 Comment: New.

1 Sec. 385. Conversion.

2 1. When realty treated as personalty. Real property acquired

3 by the personal representative by the completion of foreclosure
4 proceedings, or by the forfeiture of real estate contracts, after
5 the death of the decedent shall be deemed to be personal property
6 for the purpose of administration and distribution of the estate.

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

13 Comment: Based on section 127 of Model Probate Code.

1 Sec. 386. Sale, mortgage, pledge, lease or exchange of
2 property—purposes. Any real or personal property belonging to
3 the decedent, except exempt personal property and the homestead,
4 if set off, may be sold, mortgaged, pledged, leased or exchanged
5 for any of the following 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.

9 Comment: New. Adapted from §§635.21, 635.22 and 635.23.

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

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

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

10 the court may determine.

11 Comment: New, and adapted from §635.21.

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

11 Comment: New.

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

17 with the consent of the mortgagee, order the sale of the real
18 property subject to the mortgage, but such consent shall release
19 the estate should a deficiency later appear.

20 Comment: New.

1 Sec. 390. Leasing for term of not to exceed one year. The
2 personal representative may lease any property not specifically
3 devised for a period of not to exceed one year without order of
4 court and without notice.

5 Comment: New.

1 Sec. 391. Quieting adverse claims. Upon any petition to
2 sell or mortgage real property, the court shall have power to
3 investigate and determine all questions of conflicting and con-
4 troverted title, remove clouds from any title or interest in-
5 volved, and invest purchasers or mortgagees with a marketable
6 title to the property sold or mortgaged. When the petition to
7 sell or mortgage seeks such relief, notice shall be given as
8 provided by the Rules of Civil Procedure, and subsequent pro-
9 ceedings shall be in the manner of an equitable action, and
10 shall be governed by such Rules.

11 Comment: Adapted from section 162 of the Model Probate Code
12 and gives the court jurisdiction to try title to property
13 involved in estate proceedings in probate.

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

6 Comment: Adapted from §635.27.

1 Sec. 393. Purchase by holder of lien. At any sale of real

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

22 Comment: Section 156 of the Model Probate Code.

1 Sec. 394. Order to sell, mortgage, pledge, exchange or lease
2 to be refused if bond given. An order authorizing a personal
3 representative to sell, mortgage, pledge, exchange or lease
4 real or personal property for the payment of obligations of the
5 estate shall not be granted if any of the persons interested in
6 the estate shall execute and file in the court a bond in such
7 sum and with such sureties as the court may approve, conditioned

8 to pay all obligations of the estate to the extent that the
9 other property of the estate is insufficient therefor, within
10 such time as the court shall direct. An action may be main-
11 tained on such bond by the personal representative on behalf
12 of any person interested in the estate who is prejudiced by
13 breach of any obligation of the bond.

14 Comment: Based on section 153 of the Model Probate Code in
15 lieu of §§635.30, 635.31 and 635.32.

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

7 Comment: Codification of present Iowa case law.

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

15 proceeds shall be used. An order for sale, mortgage, pledge,
16 exchange or lease shall remain in force until terminated by the
17 court.

18 Comment: Adapted from section 163 of the Model Probate Code
19 to replace present §§635.26 through 635.29.

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

16 Comment: Adapted from §635.27.

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
4 do so, but no adjournment shall be to a time more than three
5 months from the date first fixed for the sale. Every adjournment
6 shall be announced publicly at the time and place at which ad-
7 journment is made.

8 Comment: Adapted from §635.27.

1 Sec. 399. Report and confirmation. Within thirty days after
2 making any sale, mortgage, exchange, or lease of real property,
3 the personal representative shall make a verified report of his
4 proceedings to the court. The court shall examine said report,
5 and if satisfied that the sale, mortgage, exchange, or lease has
6 been at the price and terms advantageous to the estate, and, in
7 all respects, made in conformity with law, and that it ought to
8 be confirmed, shall confirm the same and order the personal repre-
9 sentative to execute a deed, mortgage, lease or other proper
10 instruments to the persons entitled thereto; provided, however,
11 that in the event said real property has been sold at private
12 sale without an appraisal made for the purpose of such sale, or
13 if it has been appraised and has been sold at private sale for
14 less than the appraised value thereof, then, upon the filing of
15 such report, the court shall enter an order fixing a time and
16 place for hearing thereon, and shall prescribe a notice of such
17 hearing to be served upon all interested persons, any one of
18 whom, prior to the time fixed for such hearing, may file written
19 objections to the entry of an order approving said sale. If
20 not satisfied that the sale, mortgage, exchange, or lease has
21 been made in conformity with law and that it is to the best inter-
22 ests of the estate, the court may reject the sale, mortgage,
23 exchange, or lease, and require a re-execution of the order upon
24 such terms and conditions as it may direct.

25 Comment: See comment following next section.

1 Sec. 400. Execution of conveyance or other instrument. Upon
2 the confirmation of any sale, mortgage, exchange or lease in
3 accordance with the preceding section hereof, the personal repre-
4 sentative shall execute the deed, mortgage, lease or other instru-

5 ment according to the order of confirmation.

6 Comment: This procedure is new and is taken in part from
7 sections 166 and 167 of the Model Probate Code.

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

5 Comment: Adapted from §§635.35 and 635.36.

1 Sec. 402. Effect of conveyance—presumption. When so en-
2 dorsed, said instrument shall be presumptive evidence of the
3 validity thereof and of the regularity of all the proceedings
4 connected therewith.

5 Comment. Adapted from §635.37.

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

7 Comment: Adapted from §635.38.

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

9 Comment: Adapted from §635.39.

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
2 estate. All claims against a decedent's estate, other than costs
3 of administration, whether due or to become due, absolute or
4 contingent, liquidated or unliquidated, founded on contract or
5 otherwise, shall be forever barred against the estate, the per-
6 sonal representative, and the distributees of the estate, unless
7 filed with the clerk within six months after the date of the
8 second publication of the notice to creditors; provided, however,
9 that the personal representative may waive such limitation on
10 filing; and this provision shall not bar claimants entitled to
11 equitable relief due to peculiar circumstances.

12 Comment: Adapted from §635.68.

1 Sec. 411. Waiver of statute of limitations by personal repre-
2 sentative. It shall be within the discretion of the personal
3 representative to determine whether or not the applicable statute
4 of limitations shall be invoked to bar a claim which he believes
5 to be just, and his decision as to the invoking of such statute
6 shall be final, provided, however, that this section shall not
7 apply where the personal representative was appointed upon the
8 application of a creditor.

9 Comment: New.

1 Sec. 412. When claim not affected by statutes of limitation.
2 No claim shall be barred by the statute of limitation which was
3 not barred thereby at the time of the decedent's death, if the
4 claim shall be filed within six months after the date of the
5 second publication of the notice to creditors.

6 Comment: Adapted from §635.68.

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

6 Comment: Adapted from §633.47.

1 Sec. 414. Liens not affected by failure to file claim. Noth-
2 ing in sections four hundred ten (410), four hundred twelve (412)
3 and four hundred thirteen (413) shall affect or prevent any
4 action or proceeding to enforce any mortgage, pledge or other
5 lien upon property of the estate.

6 Comment: Statement of the present Iowa law.

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

9 A separate action based on a debt or other liability of the
10 decedent may be commenced against the personal representative
11 of the decedent in lieu of filing a claim in the estate. Such
12 an action shall be commenced by serving an original notice on
13 the personal representative and filing a duplicate of the proof
14 of service of notice of such proceeding in the probate proceed-
15 ings within the time provided for filing claims in section four

16 hundred ten (410), and such action shall also be considered a
17 claim filed against the estate. Such action may be commenced
18 only in a county wherein the venue would have been proper had
19 the decedent survived and the action been commenced against him.

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

22 In all cases where by the death of the party to be charged,
23 the bringing of the action against his estate shall have been
24 delayed beyond the period provided by the statute of limitations,
25 the action may be brought if the original notice is served on
26 the personal representative as defendant, and proof of service
27 of notice of such proceeding is filed in the probate proceedings
28 within the time provided for filing claims in section four hund-
29 red ten (410).

30 Comment: New draft to replace §§614.2 and 635.68.

1 Sec. 416. Compulsory counterclaims—Rules of Civil Procedure.

2 In an action commenced by or against the fiduciary under the
3 provisions of section four hundred fifteen (415), or in any
4 action pending by or against the decedent that survives under
5 the provisions of section four hundred fifteen (415), the Rules
6 of Civil Procedure as to compulsory counterclaims shall apply
7 in such action

8 Comment: New. Sec R.C.P. 29 and R.C.P. 30.

1 Sec. 417. Separate action in lieu of proceeding on claims.

2 The provisions of sections four hundred thirty-eight (438)
3 through four hundred forty-eight (448), inclusive, are not appli-
4 cable to actions continued or commenced under section four hund-
5 red fifteen (415) of this Code.

6 Comment: New.

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

15 Comment: Adapted from §§635.53 and 635.54.

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

8 Comment: Adapted from §635.53.

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

5 Comment: Adapted from §635.56.

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

7 Comment: Adapted from §635.70.

1 Sec. 422. Secured claims not yet due. When a creditor holds
2 any security for a claim not yet due, he may file his claim as
3 a claim not yet due with the right of withdrawing the claim if
4 the compromise offer is not satisfactory, and, after such with-
5 drawal, rely entirely on his security, or he may elect to rely
6 entirely on his security without the necessity of filing a claim.

7 Comment: This provision is new.

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

12 1. If the creditor shall exhaust his security before receiv-
13 ing payment, then upon the full amount of the claim allowed,
14 less the amount realized upon exhausting the security; or

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

19 *Comment: Adapted from section 139 of the Model Probate Code.*

20 See *Kraner v. Chambers*, 92 Iowa 681, 61 N.W. 873; and *In re*
21 *Estate of Butterfield*, 196 Iowa 633, 195 N.W. 188.

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

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

15 2. The court may order the personal representative to
16 make distribution of the estate but to retain in his hands
17 sufficient funds to pay the claim if and when the same becomes
18 absolute; but, for this purpose, the estate shall not be
19 kept open longer than two years after distribution of the remain-
20 der of the estate; and if such claim has not become absolute
21 within that time, distribution shall be made to the distributees
22 of the funds so retained, after paying any costs and expenses

23 accruing during such period, and such distributees shall be
24 liable to the creditor to the extent of the estate received by
25 them, if such contingent claim thereafter becomes absolute.
26 When distribution is so made to distributees, the court may
27 require such distributees to give bond for the satisfaction
28 of their liability to the contingent creditor, or

29 3. The court may order distribution of the estate as though
30 such contingent claim did not exist, but the distributees shall
31 be liable to the creditor to the extent of the estate received
32 by them, if the contingent claim thereafter becomes absolute;
33 and the court may require such distributees to give bond for
34 the performance of their liability to the contingent creditor, or

35 4. Such other method as the court may order.

36 Comment: Adapted from section 140 of the Model Probate Code
37 with addition of 4. See *Blanchard v. Conger*, 61 Iowa 153,
38 16 N.W. 59.

CLASSIFICATION, ALLOWANCE AND PAYMENT OF DEBTS AND CHARGES

1 Sec. 425. Classification of debts and charges. In any
2 estate in which the assets are, or appear to be, insufficient
3 to pay in full all debts and charges of the estate, the per-
4 sonal representative shall classify such debts and charges as
5 follows:

- 6 1. Court costs.
- 7 2. Other costs of administration.
- 8 3. Reasonable funeral and burial expenses.
- 9 4. All debts and taxes having preference under the laws of
10 the United States.
- 11 5. Reasonable and necessary medical and hospital expenses

12 of the last illness of the decedent, including compensation of
13 persons attending him at his last illness.

14 6. All taxes having preferences under the laws of this state.

15 7. All debts owing to employees for labor performed during
16 the ninety days next preceding the death of the decedent.

17 8. All other claims allowed.

18 Comment: Adapted from section 142 of Model Probate Code.

19 General approach the same as in §§635.65 through 635.69,
20 635.71. The following differences: supreme court has
21 allowed only reasonable funeral expenses although statute
22 now does not say "reasonable", thus provision reflects the
23 Iowa case law. As to medical expenses, they also, according
24 to the provision, must be reasonable and necessary, which
25 reflects common law. Medical expenses are now subordinated
26 from present second class position to fifth class, this due
27 to the federal statute which provides that United States
28 claims shall only be subordinate to administration, burial,
29 and allowance. Preference for labor claims (§635.67) re-
30 tained. See: *Re O'Donnell's Estate*, 253 Iowa 607, 113
31 N.W. 2d 246.

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 pro-
3 vided in the preceding section, without preference of any claim
4 over another of the same class. If the assets of the estate are
5 insufficient to pay in full all of the claims of a class, then
6 such claims shall be paid on a pro rata basis, without prefer-
7 ence between claims then due and those of the same class not due.

8 Comment: Adapted from §635.69.

1 Sec. 427. Payment of contingent claims by distributees—

2 contribution. If a contingent claim shall have been filed and
3 allowed against an estate and all the assets of the estate shall
4 have been distributed, and the claim shall thereafter become
5 absolute, the creditor shall have the right to recover thereon
6 against those distributees whose distributive shares have been
7 increased by reason of the fact that the amount of said claim
8 as finally determined was not paid prior to final distribution,
9 provided an action therefor shall be commenced within six months
10 after the claim becomes absolute. Such distributees shall be
11 jointly and severally liable, but no distributee shall be liable
12 for an amount exceeding the amount of the estate or fund so
13 distributed to him. If more than one distributee is liable to
14 the creditor, the creditor shall make parties to the action all
15 such distributees who can be reached by process. By its judg-
16 ment, the court shall determine the amount of the liability of
17 each of the distributees as between themselves, but if any be
18 insolvent or unable to pay his proportion, or beyond the reach
19 of process, the others, to the extent of their respective liabili-
20 ties, shall nevertheless be liable to the creditor for the whole
21 amount of his debt. If any person liable for the debt fails
22 to pay his just proportion to the creditors, he shall be liable
23 to indemnify all who, by reason of such failure on his part,
24 have paid more than their just proportion of the debt, the in-
25 demnity to be recovered in the same action or in separate actions.

26 Comment: Adapted from section 141 of Model Probate Code.

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

4 or collusion.

5 Comment: Adapted from §635.57.

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

4 Comment: New.

1 Sec. 430. Execution and levies prohibited. No execution
2 shall issue upon, nor shall any levy be made against, any
3 property of the estate under any judgment against a decedent
4 or a personal representative, but the provisions of this section
5 shall not be construed to prevent the enforcement of mortgages,
6 pledges or liens upon property in an appropriate proceeding.

7 Comment: This is section 145 of Model Probate Code. Reflects
8 present Iowa law and replaces §635.63.

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

12 Comment: Adapted from §635.64.

1 Sec. 432. Allowance or disallowance of claim of personal
2 representative. The temporary administrator shall, after inves-
3 tigation, file a report with the court recommending the allow-

4 ance or disallowance of such claim. Unless the court allows
5 the claim, it shall then be disposed of as a contested claim
6 in accordance with the provisions of sections four hundred
7 thirty-nine (439) through four hundred forty-eight (448).

8 Comment: New.

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

16 Comment: Adapted from §§635.65, 635.69, 635.71 and section
17 148 of the Model Probate Code.

1 Sec. 434. Payment of debts and charges after expiration of
2 six months period. Upon the expiration of six months after the
3 date of the second publication of notice to creditors, the
4 personal representative shall proceed to pay the debts and
5 charges against the estate in accordance with the provisions
6 of this code. If it appears at any time that the estate is or
7 may be insolvent, that there are insufficient funds on hand.

8 or that there is other good and sufficient cause, the personal
9 representative may report that fact to the court and apply for
10 any order that he deems necessary in connection therewith.

11 Comment: Adapted from §§635.65, 635.69, 635.71 and section
12 148 of the Model Probate Code.

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

6 Comment: Statement of present Iowa case law.

1 Sec. 436. General order for abatement. Except as provided
2 in section two hundred eleven (211) hereof, shares of the dis-
3 tributees shall abate, for the payment of debts and charges,
4 federal and state estate taxes, legacies, the shares of children
5 born or adopted after the making of a will, or the share of the
6 surviving spouse who elects to take against the will, without
7 any preference or priority as between real and personal prop-
8 erty, in the following order:

- 9 1. Property not disposed of by the will;
- 10 2. Property devised to the residuary devisee, except property
11 devised to a surviving spouse who takes under the will;
- 12 3. Property disposed of by the will, but not specifically
13 devised and not devised to the residuary devisee, except property
14 devised to a surviving spouse who takes under the will;
- 15 4. Property specifically devised, except property devised
16 to a surviving spouse who takes under the will;
- 17 5. Property devised to a surviving spouse who takes under
18 the will.

19 A general devise charged on any specific property or fund shall,
20 for purposes of abatement, be deemed property specifically
21 devised to the extent of the value of the property on which it
22 is charged. Upon the failure or insufficiency of the property
23 on which it is charged, it shall be deemed property not speci-
24 ficially devised to the extent of such failure or insufficiency.

25 Comment: Based on section 184 of Model Probate Code with
26 codification of Iowa law that share of surviving spouse
27 abates last.

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

8 Comment: Statement of present Iowa law.

DENIAL AND CONTEST OF CLAIMS

1 Sec. 438. General denial of claims. Where a claim has
2 been filed, but not admitted in writing by the personal repre-
3 sentative before a request for hearing has been given as here-
4 inafter provided, the claim shall be considered as denied with-
5 out any pleading on behalf of the personal representative.

6 Comment: Adapted from §635.57.

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

6 in the claim.

7 Comment: New.

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

8 Comment: New.

1 Sec. 441. Proof of service. Proof of service of the notice
2 of disallowance shall be made by affidavit, shall show the
3 date and place of mailing, and shall be filed with the clerk.

4 Comment: New.

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

7 Comment: New.

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

8 clerk who shall mail the duplicate to the personal representa-
9 tive, or to his attorney of record.

10 Comment: New.

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

9 Comment: New.

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

8 Comment: New.

1 Sec. 446. Burden of proof. The burden of proving that a
2 claim is unpaid shall not be placed upon the party filing a
3 claim against the estate; but the personal representative may
4 on the trial of the cause, subject the claimant to an examination
5 on the question of payment or consideration, and the estate shall
6 not be concluded or bound thereby.

7 Comment: Adapted from §635.58.

1 Sec. 447. Trial and hearing. The trial of a claim and the

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

10 Comment: New.

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

8 Comment: New.

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

7 Comment: New. See *Kintzinger v. Millin*, 254 Iowa
8 117 NW 2d 68.

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

2 may at any time file an interlocutory accounting to the court
3 showing the condition of the estate, its debts and property,
4 the amount of money received, and the disposition made of any
5 of the assets of the estate.

6 The court may on application of any interested party, or on
7 its own motion, order such an accounting at any time. Such an
8 accounting shall embrace all matters directed by the court. The
9 court may order such further accountings from time to time as
10 it may determine to be to the best interests of the estate.

11 Comment: Restatement of §§638.2 and 638.3 and part of §638.22.

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

3 Comment: New.

1 Sec. 471. Right of retainer. When a distributee of an estate
2 is indebted to the estate, or if a distributee takes as an heir
3 of a deceased devisee indebted to the estate, the amount of such
4 indebtedness, if due, or the present worth of the indebtedness,
5 if not due, shall be treated as an offset and retained by the
6 personal representative out of any testate or intestate property,
7 real or personal, of the estate to which such distributee is en-
8 titled. The right of setoff and retainer shall be prior and
9 superior to the rights of judgment creditors, heirs or assigns
10 of such distributee and shall not be barred by the statute of
11 limitations, nor by a discharge in bankruptcy.

12 Comment: Adapted from section 187 of the Model Probate Code.

1 Sec. 472. Proceeds distributed in kind. Property not other-
2 wise disposed of by the personal representative may be distributed
3 in kind.

4 Comment: Adapted from §636.3.

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

5 Comment: Adapted from §638.4.

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

12 Comment: See comment under section 475.

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

10 Comment: Sections 474 and 475 are adapted from present

11 §§682.35 and 682.36.

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

8 Comment: Adapted from §633.20.

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

3 1. An accurate description of all the real estate of which
4 the decedent died seized, stating the nature and extent of his
5 interest therein, which has not been sold and conveyed by the
6 personal representative.

7 2. Whether the deceased died testate or intestate.

8 3. The name and place of residence of the surviving spouse,
9 or that none survived the deceased.

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

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

16 6. Whether any legacy or devise remains a charge on the real
17 estate, and, if so, the nature and amount thereof.

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

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

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

24 10. A statement as to whether or not all statutory require-
25 ments pertaining to taxes have been complied with.

26 Comment: Adapted from §638.34. No. 4 has been confined to
27 intestate estates; No. 5 is confined to testate estate; 7, 9
28 and 10 are new; and a requirement has been added to include
29 the name and residence of after-born children.

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

9 Comment: Adapted from §638.36.

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

7 Comment: Adapted from §638.12.

1 Sec. 480. Change of title certificate with administration.
2 After the entry of the order approving the final report, the
3 clerk shall issue a certificate under the provisions of chapter
4 five hundred fifty-eight (558) of the Code of Iowa relative to

5 each parcel of real estate described in the final report of the
6 personal representative which has not been sold by the personal
7 representative, and deliver such certificate to the county
8 auditor of the county in which such real estate is situated.

9 Comment: New. Codifies procedure used in most counties in
10 connection with change of title authorized under §558.66.

1 Sec. 481. Change of title certificate without administration.

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

9 Comment: New.

1 Sections 482 and 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
3 of a personal representative on having waived such notice, shall,
4 after the entry of the final order approving the same and dis-
5 charging the said personal representative, have any right to
6 contest, in any proceeding, other than by appeal, the correct-
7 ness or the legality of the inventory, the accounting, distri-
8 bution, or other acts of the personal representative, or the list
9 of heirs set forth in the final report of the personal repre-
10 sentative, provided, however, that nothing contained in this
11 section shall prohibit any action against the personal representa-
12 tive and his bondsman under the provisions of section one hundred

13 ninety (190) on account of any fraud committed by the personal
14 representative.

15 Comment: New. Enlarges upon §638.36.

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

15 Comment: New.

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

12 be asserted in the reopened administration.

13 Comment: Adapted from section 194 of the Model Probate Code
14 and is a substitute for §638.9.

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
2 nonresident of this state, not probated in any other state or
3 county, may be admitted to probate in any county of this state
4 where either real or personal property of the deceased nonresi-
5 dent is located.

6 Comment: New.

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

9 Comment: Same as §633.33, except phrase pertaining to notice
10 omitted.

1 Sec. 497. Foreign wills as a muniment of title. After the
2 expiration of the five-year period provided in section three hun-
3 dred thirty-one (831), an exemplified copy of a will which has not
4 been denied probate in Iowa, and of the order admitting it to
5 probate in a foreign state or country, may be recorded in the
6 office of the county recorder of any county where real estate

7 owned by the testator is located. The record of such a will and
8 of the order admitting the will to probate shall operate to dis-
9 pose of said property as though said will had been admitted to
10 probate in this state. Nothing contained in this section shall
11 operate to defeat the rights, acquired prior to such record, of
12 purchasers for value whose rights are shown of record.

13 Comment: New.

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

5 Comment: Same as §633.34.

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

10 Comment: New.

PART 2. ANCILLARY ADMINISTRATION

1 Sec. 500. Appointment of foreign administrator. If adminis-
2 tration of the estate of a deceased intestate nonresident has
3 been granted in accordance with the law of the state where he
4 resided, the duly qualified administrator of the estate of the
5 nonresident may upon application be appointed administrator in
6 this state, unless another has already been appointed and pro-

7 vided that a resident administrator be appointed to serve with
8 the nonresident administrator; provided further, however, that
9 for good cause shown, the court may appoint the nonresident ad-
10 ministrator to act alone without the appointment of a resident
11 administrator.

12 Comment: §633.50 rewritten.

1 Sec. 501. Application for appointment of foreign administra-
2 tor. The application for any such appointment under section
3 five hundred (500) shall contain the name and address of the
4 foreign administrator and of the resident administrator, if any,
5 to be appointed, and shall be accompanied by a certificate of
6 the clerk of the court of original jurisdiction certifying that
7 such estate is under administration, and a certification of the
8 original letters or other authority authorizing the nonresident
9 administrator to act in that estate.

10 Comment: New.

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

9 Comment: New.

1 Sec. 503. Application for appointment of foreign executor or
2 trustee. The application for appointment of a nonresident exec-
3 utor or trustee shall include the name and address of the non-

4 resident executor or trustee, and the name and address of the
5 resident executor or trustee, if any, to be appointed. It shall
6 be accompanied by a certificate of the clerk of the foreign
7 court granting the original letters or other authority confer-
8 ring the power upon the nonresident executor or trustee to
9 act as such. The application shall also state the cause for
10 the appointment of the nonresident executor or trustee to act
11 as the sole executor or trustee, if such appointment is desired.
12 When the will has not been admitted to probate in any other
13 state, the application shall include the name and address of the
14 executor or trustee, if any, named in the will of the nonresident,
15 and of the resident executor or trustee to be appointed.

16 Comment: New.

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

8 Comment: Adapted from §633.52.

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

DIVISION IX—ESTATES OF ABSENTEES

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

5 1. Whether the absentee was a resident or a nonresident of

6 this state, and his address at his last known domicile; that he
7 has, without known cause, absented himself from his usual
8 place of residence, and concealed his whereabouts from his
9 family, for a period of five years.

10 2. That the said absentee has property in this state (de-
11 scribing it with reasonable certainty), all or part of which is
12 situated in the county in which the petition is filed.

13 3. The names of the persons, so far as known to the peti-
14 tioner, who would be entitled to share in the estate of the
15 absentee if he were dead.

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

19 5. Facts showing that the petitioner is a party who would
20 be entitled to administer the estate of the said absentee in
21 case the absentee were known to be dead.

22 Comment: Revision of §634.1 to include the estates of non-
23 resident absentees. Seven-year absence period is changed to
24 five.

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

5 Comment: Adapted from §634.2.

1 Sec. 512. Service. Said notice shall in all cases be served:

2 1. By publication in the county in which the petition is
3 filed, once each week for three consecutive weeks, in a news-
4 paper designated by the court; and

5 2. Upon all the alleged distributees of the estate of said
6 absentee by ordinary mail addressed to them at their last known
7 address.

8 Comment: Subsection 1 is the same as in §634.3, except that
9 it substitutes 3 weeks for 8 weeks. Subsection 2 is the same
10 except that it substitutes "all the alleged distributees" for
11 "all the known or alleged beneficiaries".

1 Sec. 513. Proof of service—filing. Proof of the publication
2 and service of such notice shall be filed with the clerk afore-
3 said on or before the day set for hearing.

4 Comment: Adapted from §634.4.

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

12 Comment: Adapted from §634.5 with the new provision that such
13 an order shall establish his death as a matter of law.

1 Sec. 515. Administration. Upon the entry of such further
2 order under section five hundred fourteen (514), administration
3 of the estate of such absentee, whether testate or intestate,
4 shall proceed as provided herein for the administration of the

5 estates of other decedents, notwithstanding the provisions of
6 section three hundred thirty (330).

7 Comment: Substituted for §631.6, 634.7, 634.8, 634.9, and
8 634.10.

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

11 Comment: Adapted from §634.11.

1 Sec. 517. Missing soldiers or sailors—presumption of death.

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

11 2. An official written report or record, or a duly certified
12 copy thereof, that a person is missing, missing in action, in-
13 terned in a neutral country, or beleaguered, besieged, or captured

14 by an enemy, or is dead, or is alive, made by any officer or
15 employee of the United States authorized by the act referred to
16 in subsection one (1) of this section, or by any other law of
17 the United States, to make such a report or record, shall be
18 received in any court, office or other place in this state as
19 evidence that such person is missing, missing in action, interned
20 in a neutral country, or beleaguered, besieged, or captured by
21 an enemy, or is dead, or is alive, as the case may be.

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

33 Comment: Same as §634.12.

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

DIVISION X—UNIFORM SIMULTANEOUS DEATH ACT

2 Comment: Sections 523 through 528 are adapted from §§637.1,
3 637.2, 637.4 and 637.4.

1 Sec. 523. No sufficient evidence of survivorship. Where the
2 title to property or the devolution thereof depends upon priority
3 of death, and there is no sufficient evidence that the persons
4 have died otherwise than simultaneously, the property of each

5 person shall be disposed of as if he had survived, except as pro-
6 vided otherwise in sections five hundred twenty-four (524) to
7 five hundred twenty-seven (527) inclusive.

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

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

8 Comment: Adapted from §637.3.

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

1 Sec. 527. Limitation of application. Sections five hundred
2 twenty-three (523) and five hundred twenty-four (524) shall not

3 apply in the case of wills, living trusts, deeds, or contracts of
4 insurance wherein provision has been made for distribution of prop-
5 erty different from the provisions of said sections.

6 Comment: Adapted from §637.6.

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

6 Comment: Adapted from §637.7.

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

DIVISION XI—FELONIOUS DEATH

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

6 Comment: Same as §636.47.

1 Sec. 536. Insurance beneficiary feloniously causing death.
2 No beneficiary of any policy of insurance or certificate of mem-
3 bership issued by any benevolent association or organization,
4 payable upon the death or disability of any person, who feloni-
5 ously takes or causes or procures to be taken the life upon which
6 such policy or certificate is issued, or who feloniously causes
7 or procures a disability of such person, shall take the proceeds
8 of such policy or certificate.

9 Comment: Same as §636.48.

1 Sec. 537. Distribution to other heirs or insured. In every

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

9 Comment: Adapted from §636.49.

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
2 to believe that any property of the estate of a decedent within
3 the county should by law escheat, he must forthwith inform the at-
4 torney general of the state of Iowa thereof, and appoint some
5 suitable person as personal representative to take charge of such
6 property, unless a personal representative has already been ap-
7 pointed.

8 Comment: Adapted from §636.51 with notice to the attorney
9 general instead of the comptroller.

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

7 Comment: Adapted from §636.52.

1 Sec. 545. Sale—proceeds. If within six months from the
2 giving of such notice, no claimant thereof appears, such prop-
3 erty may be sold and the proceeds paid over by the personal

4 representative to the state comptroller for the benefit of the
5 school fund.

6 Comment: Adapted from §636.53.

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

5 Comment: Same as §636.54.

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
2 may file with the clerk a verified petition for the appointment
3 of a guardian. The petition shall state the following informa-
4 tion so far as known to the petitioner.

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

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

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

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

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

16 Comment: Adapted from new Oregon Act on Guardianships.

1 Sec. 553. No notice required—minor. No notice of the filing

2 of such petition need be given when the proposed ward is a minor
3 and such petition is filed by the person having custody of the
4 proposed ward

5 Comment: New.

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

6 Comment: New.

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

6 Comment: New.

1 Sec. 556. *Appointment of guardian.* If the allegations of the
2 petition as to the status of the proposed ward and the necessity
3 for the appointment of a guardian are proved, the court may ap-
4 point a guardian.

5 Comment: Adapted from part of §670.2.

1 Sec. 557. *Appointment of guardian on voluntary petition.*

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

8 Comment: Adapted from §§668.4 and 670.5.

9 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
3 notice, and subject to such conditions, as the court shall
4 prescribe.

5 Comment: Adapted from §670.8.

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

11 Comment: Adapted from §§668.1, 668.2 and 668.4. Creates a
12 testamentary guardianship, now nonexistent in Iowa. See
13 Re: Guardianship of Johnson, 87 Iowa 130, 54 N.W. 69.

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

7 Comment: New.

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

Part 2. OPENING CONSERVATORSHIPS.

1 Sec. 566. Petition for appointment of conservator. Any per-
2 son may file with the clerk a verified petition for the appoint-
3 ment of a conservator. The petition shall state the following
4 information, so far as known to the petitioner:

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

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

9 3. The name and post-office address of the proposed con-
10 servator, and that such person is qualified to serve in that
11 capacity.

12 4. A general description of the property of the proposed
13 ward within this state and of the right to receive property, to-
14 gether with the probable present value of such property and
15 rights. If any money is payable, or to become payable, to the
16 proposed ward by the United States through the Veterans Adminis-
17 tration, the petition shall so state.

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

20 6. That the proposed ward resides in the state of Iowa, is
21 a nonresident, or that his residence is unknown, and that his
22 best interests require the appointment of a conservator in the
23 state of Iowa.

24 Comment: Adapted from new Oregon Act on Guardianships.

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

4 proposed ward.

5 Comment: New.

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

6 Comment: New.

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

7 Comment: New.

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

5 Comment: Adapted from a portion of §670.2.

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

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

11 Comment: This section is similar to section 574 of the
12 Probate Code.

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

10 Comment: Adapted from §§668.4 and 670.5. Last sentence is
11 new.

12 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
3 notice, and subject to such conditions, as the court shall pre-
4 scribe.

5 Comment: Adapted from §670.8.

1 Sec. 574. Procedure in lieu of conservatorship. If no con-
2 servator has been appointed, money due a minor or other property
3 to which a minor is entitled, not exceeding in the aggregate
4 the sum of one thousand dollars in value, may be paid or deliv-
5 ered to a parent of the minor who is entitled to the custody
6 of such minor, upon written statement verified by the oath of
7 such parent, that all money or property of such minor does not
8 exceed in the aggregate the sum of one thousand dollars; and

9 the written receipt of such parent shall constitute an acquit-
10 tance of the person making such payment of money or delivery
11 of such property.

12 Comment: Adapted from §668.3, amount changed to \$1,000.

13 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 absen-
2 tee. When a person owns property located in the state of Iowa,
3 his whereabouts are unknown, and no provision for the care, con-
4 trol and supervision of such property has been made, with the
5 result that such property is likely to be lost or damaged, or
6 that the dependents of such owner are likely to be deprived of
7 means of support because of such absence, it shall be proper for
8 any person to file with the clerk a petition for the appointment
9 of a conservator of such property of the absentee. The petition
10 shall state the following information, so far as known to the
11 petitioner:

12 1. The name, age and last known post-office address of the
13 proposed ward.

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

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

17 4. A general description of the property of the absentee
18 within this state and of his right to receive property; also,
19 the probable present value of such property and right. If any
20 money is payable, or to become payable to the absentee by the
21 United States through the veterans administration, the petition
22 shall so state.

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

28 Comment: New.

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

7 Comment: New. Replaces §671.2.

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

7 Comment: Replaces §671.3.

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

4 Comment: New.

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

6 conservator.

7 *Comment: Adapted from §§671.5, 671.6 and 671.8.*

1 Sec. 585. Appointment of temporary conservator. A temporary
2 conservator may be appointed, but only after a hearing on such
3 notice, and subject to such conditions as the court shall pre-
4 scribe.

5 *Comment: New.*

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 conserva-
4 tor of his property upon the express condition that such petition
5 shall be acted upon by the court only upon the occurrence of an
6 event specified or the existence of a described condition of the
7 mental or physical health of the petitioner, the occurrence of
8 which event, or the existence of which condition, shall be estab-
9 lished in the manner directed in said petition.

10 *Comment: New.*

11 *Cross reference: See section 635.*

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

7 *Comment: New.*

1 Sec. 593. Deposit of petition. Such petition may be deposit-
2 ed with the clerk of the county in which the party resides, or

3 with any person, firm, bank or trust company selected by the peti-
4 tioner.

5 Comment: New.

1 Sec. 594. Revocation of petition. Such petition may be re-
2 voked by the petitioner at any time before appointment of a con-
3 servator by the court, provided that the petitioner is of sound
4 mind. Revocation shall be accomplished by the destruction of
5 the petition by the petitioner, or by the execution of an ac-
6 knowledged instrument of revocation. If the petition has been
7 deposited with the clerk, the revocation may likewise be deposit-
8 ed there.

9 Comment: New.

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

12 Comment: New.

1 Sec. 596. Time of appointment of conservator. At the time
2 such petition is filed, the court, without any notice, may
3 appoint the conservator nominated in such petition or may set
4 the petition for hearing on such notice as the court may pre-
5 scribe.

6 Comment: New.

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

5 Comment: New.

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

PART 5. FOREIGN CONSERVATORS

1 Sec. 603. Appointment of foreign conservators. When there
2 is no conservatorship, nor any application therefor pending,
3 in this state, the duly qualified foreign conservator or guard-
4 ian of a nonresident ward may, upon application, be appointed
5 conservator of the property of such person in this state; pro-
6 vided that a resident conservator is appointed to serve with
7 the foreign conservator; and provided further, that, for
8 good cause shown, the court may appoint the foreign conservator
9 to act alone without the appointment of a resident conservator.

10 Comment: New.

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

11 Comment: New.

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

6 Comment: Adapted from §669.4.

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
3 property is situated, a certified copy of his official bond, duly
4 authenticated by the court granting his letters, and shall also
5 execute a receipt for the property received by him.

6 Comment: Adapted from §669.5.

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

5 Comment: Adapted from §669.6.

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

6 Comment: Adapted from §669.7.

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' con-

2 servatorships. Whenever moneys are paid or are payable pursuant
3 to any law of the United States through the Veterans Administra-
4 tion to a conservator or a guardian, the provisions of sections
5 six hundred fifteen (615) through six hundred twenty-one (621)
6 shall apply to the administration of said moneys. However, such
7 provisions shall be construed to be supplementary to the other
8 provisions for conservators, and shall not be exclusive of such
9 provisions.

10 Comment: Adapted from §672.2.

1 Sec. 615. Administrator of veterans affairs—party in inter-
2 est. The administrator of veterans affairs of the United States,
3 his successor, or the designee of either, shall be a party in
4 interest in any proceeding for the appointment or removal of
5 a conservator, or for the termination of the conservatorship,
6 and in any suit or other proceeding, including reports and ac-
7 countings, affecting in any manner the administration of those
8 assets that were derived in whole or in part from benefits paid
9 by the veterans administration. Not less than fifteen days
10 prior to the time set for a hearing in any such matters, notice,
11 in writing, of the time and place thereof shall be given by
12 mail to the office of the veterans administration having juris-
13 diction over the area in which such matter is pending.

14 Comment: New. Replaces §§670.11 and 670.14.

1 Sec. 616. Ward rated incompetent by veterans administration.
2 Upon the trial of an issue arising upon a prayer for the appoint-
3 ment of either a temporary or a permanent conservator, a certifi-
4 cate of the administrator of veterans administration, or his
5 representative, setting forth the fact that the defendant ward

6 has been rated incompetent by the veterans administration upon
7 examination in accordance with the laws and regulations govern-
8 ing the veterans administration; and that the appointment of
9 a conservator is a condition precedent to the payment of any
10 moneys due such person by the veterans administration, shall
11 be prima facie evidence of the necessity for such appointment,
12 and the court may appoint a conservator for the property of
13 such person.

14 Comment: Adapted from §672.7.

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

16 Comment: Adapted from §672.10.

1 Sec. 618. Compensation in conservatorships involving veterans
2 administration. In conservatorships involving the veterans
3 administration, compensation payable to conservators for

4 ordinary services shall not exceed five per cent of the income
5 of the ward during any accounting year, provided, however,
6 that the court may grant compensation to such conservator in
7 a sum not to exceed twenty-five dollars where five per cent
8 of the income of the ward during the accounting year will not
9 adequately compensate the conservator for services performed.
10 In the event of extraordinary services, however, the court may,
11 upon petition and after hearing thereon, allow the conservator
12 additional compensation. Such petition shall set out the
13 extraordinary services rendered by the conservator. Compensa-
14 tion as conservator and a fee as attorney shall not be allowed
15 to the same person. No compensation shall be allowed on the
16 corpus of an estate received from a predecessor conservator.

17 Comment: Adapted from §672.13.

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

5 Comment: Adapted from §672.15.

1 Sec. 620. Dual conservatorship proceedings not required.
2 Sections six hundred fourteen (614) through six hundred nine-
3 teen (619) shall not be construed as requiring dual conserva-
4 torship proceedings of the property of the same person, but
5 when a conservator is such, both as to moneys paid by the
6 United States through the veterans administration and to other
7 property of the ward, the accounts of the money received
8 through the veterans administration shall be kept separate and
9 apart from the accounts of other property.

10 Comment: Adapted from §672.20.

1 Sec. 621. Liberal construction. Sections six hundred four-
2 teen (614) through six hundred twenty (620) shall be construed
3 liberally to secure the beneficial intent and purpose thereof.
4 and shall apply only to beneficiaries of the veterans adminis-
5 tration.

6 Comment: Adapted from §672.16.

1 Sections 622 to 626, inclusive, reserved for future use.

PART 7. COMBINING PETITION FOR GUARDIAN AND CONSERVATOR

1 Sec. 627. Combining petitions. The petitions for the ap-
2 pointment of a guardian and a conservator may be combined and
3 the cause tried in the same manner as a petition for the ap-
4 pointment of a conservator.

5 Comment: New.

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

3 Comment: Codifies present Iowa law.

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

DIVISION XIV—ADMINISTRATION OF GUARDIAN- SHIPS AND CONSERVATORSHIPS

PART 1. APPOINTMENT AND QUALIFICATION OF GUARDIANS AND CONSERVATORS

1 Sec. 634. Provisions applicable to all fiduciaries shall
2 govern. The provisions of this Code applicable to all fiduci-
3 aries shall govern the appointment, qualification, oath and
4 bond of guardians and conservators, except that a guardian
5 shall not be required to give bond unless the court, for good

6 cause, finds that the best interests of the ward require a
7 bond. The court shall then fix the terms and conditions of
8 such bond.

9 Comment: New.

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

9 Comment: See *Neidermyer vs. Neidermyer*, 237 Iowa 685,
10 22 N.W.2d 346.

PART 2. RIGHTS AND TITLE OF WARD

1 Sec. 636. Effect of appointment of guardian or conservator.
2 The appointment of a guardian or conservator shall not constitute
3 an adjudication that the ward is of unsound mind.

4 Comment: New.

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
3 dispose of property in any manner, other than by will.

4 Comment: New.

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

5 Comment: Adapted from §670.10.

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

6 Comment: Codifies present Iowa law.

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

7 Comment: New.

PART 3. DUTIES AND POWERS OF CONSERVATOR

1 Sec. 641. General duties of conservator. It is the duty of
2 the conservator of the estate to protect and preserve it, to in-
3 vest is prudently, to account for it as herein provided, and to
4 perform all other duties required of him by law, and at the termi-
5 nation of the conservatorship, to deliver to the assets of the ward
6 to the person entitled thereto.

7 Comment: Adapted from section 219(b) of the Model Probate
8 Code.

1 Sec. 642. Inventory of ward's property. Within sixty days
2 after the date of his appointment, or, within such further time
3 as the court may allow, a conservator shall file in the conserva-
4 torship a verified inventory of all of the property of the ward
5 that has come into his possession or of which he has knowledge.
6 Whenever any property of the ward not mentioned in the inventory
7 comes into the possession, or to the knowledge, of the conserva-

8 tor, he shall file in the conservatorship a verified supplemental
9 inventory within thirty days after the property comes into his
10 possession, or becomes known to him; or he may include the prop-
11 erty in his next accounting.

12 Comment: New. Replaces §668.8.

1 Sec. 643. Disposal of will by conservator. When an instru-
2 ment purporting to be the will of the ward comes into the hands
3 of a conservator, the conservator shall immediately deliver it
4 to the court.

5 Comment: New.

1 Sec. 644. Will deposited with clerk by ward. If the ward
2 has deposited with the clerk an instrument purporting to be
3 his will, as provided in sections two hundred eighty-six (286)
4 through two hundred eighty-nine (289), the clerk shall deliver
5 said will to the court at the time of the appointment of the
6 conservator.

7 Comment: New.

1 Sec. 645. Court order to preserve testamentary intent of
2 ward. Upon receiving an instrument purporting to be the will
3 of a living ward under the provisions of section six hundred
4 forty-three (643) or six hundred forty-four (644), the court
5 shall open said will and read it. The court with or without
6 notice, as it may determine, may enter such orders in the
7 conservatorship as it deems advisable for the proper adminis-
8 tration of the conservatorship in light of the expressed testa-
9 mentary intent of the ward.

10 Comment: New.

1 Sec. 646. Court to deliver will to clerk. An instrument
2 purporting to be the will of a ward coming into the hands of

3 the court under the provisions of either section six hundred
4 forty-three (643) or section six hundred forty-four (644),
5 shall thereafter be resealed by the court and be deposited
6 with the clerk to be held by said clerk as provided in sections
7 two hundred eighty-six (286) through two hundred eighty-nine
8 (289).

9 *Comment: New.*

1 *Sec. 647. Powers of the conservator without order of court.*

2 The conservator shall have the full power, without prior order
3 of court, with relation to the estate of his ward to:

4 1. Collect, receive, receipt for any principal or income,
5 and to enforce, defend against, prosecute, compromise or settle
6 any claim by or against the ward or the conservator; to adjust,
7 arbitrate, compromise, sue on and defend claims in favor of, or
8 against, the ward or the conservator.

9 2. Sell and transfer personal property of a perishable na-
10 ture and personal property for which there is a regularly estab-
11 lished market.

12 3. To vote at corporate meetings in person or by proxy.

13 4. To receive additional property from any source.

14 *Comment: New.*

1 *Sec. 648. Powers of conservator subject to the approval of*
2 *the court. Conservators shall have the following powers subject*
3 *to the approval of the court after hearing on such notice, if*
4 *any, as the court 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

8 any of the following ways:

9 a. Directly to the ward;

10 b. Directly for the maintenance, welfare and education of
11 the ward;

12 c. To the legal guardian of the person of the ward; or

13 d. To anyone who at the time shall have the custody and care
14 of the person of the ward.

15 4. To apply any portion of the income or of the estate of
16 the ward for the support of any person for whose support the
17 ward is legally liable.

18 5. To do any other thing that the court determines to be
19 to the best interests of the ward and his estate.

20 Comment: New.

1 Sec. 649. Appointment of attorney in compromise of personal
2 injury settlements. Notwithstanding the provisions of section
3 six hundred forty-seven (647) of this Code, prior to authoriz-
4 ing a compromise of a claim for damages on account of personal
5 injuries to the ward, the court may order an independent
6 investigation by an attorney other than by the attorney for
7 the conservator. The cost of such investigation, including
8 a reasonable attorney fee, shall be taxed as part of the cost
9 of the conservatorship.

10 Comment: New.

1 Sec. 650. Powers of conservators—same as all fiduciaries.
2 Except as expressly modified herein, conservators shall have
3 the powers relating to all fiduciaries as set out in sections
4 sixty-four (64) through one hundred sixty-six (166).

5 Comment: New.

1 Sec. 651. Breach of contracts. Under order of court, for
2 good cause shown, after such notice as the court may prescribe,
3 a conservator shall have the power to breach contracts of the
4 ward entered into by the ward prior to the appointment of the
5 conservator, thereby incurring such liability of the ward's
6 estate for such breach as the ward would have incurred for such
7 breach if he had been competent.

8 Comment: New.

9 Cross reference: See section 638.

1 Sec. 652. Tort liability of conservator. The fact that a
2 person is a conservator or a guardian shall not in itself make
3 him personally liable for damages for the acts of his ward.

4 Comment: New.

PART 4. TRANSFERRING, ENCUMBERING AND LEASING PROPERTY BY CONSERVATOR

1 Sec. 653. Procedure applicable to personal representatives
2 shall govern. Conservators shall have the power to sell, mort-
3 gage, exchange, pledge and lease real and personal property
4 belonging to the ward, including the homestead and exempt per-
5 sonal property, when it appears to be to the best interests
6 of the ward, in the same manner and by the same procedure that
7 is provided in this Code for sale, mortgage, exchange, pledge
8 and lease by personal representatives in administration of
9 estates of decedents.

10 Comment: New.

PART 5. CLAIMS

1 Sec. 654. Claims against the ward, the conservatorship or
2 the conservator in that capacity. Claims accruing before or

3 after the appointment of the conservator, and whether arising
4 in contract or tort or otherwise, after being allowed or
5 established as provided in sections six hundred fifty-five (655)
6 through six hundred fifty-seven (657), shall be paid by the
7 conservator from the assets of the conservatorship.

8 Comment: New.

1 Sec. 655. Form and verification of claims—general require-
2 ments. No claim shall be allowed against the estate of a ward
3 upon application of the claimant unless it shall be in writing,
4 filed in duplicate with the clerk, stating the claimant's name
5 and address, and describing the nature and the amount thereof,
6 if ascertainable. It shall be accompanied by the affidavit
7 of the claimant, or of someone for him, that the amount is
8 justly due, or if not due, when it will or may become due,
9 that no payments have been made thereon which are not credited,
10 and that there are no offsets to the same, to the knowledge of
11 the affiant, except as therein stated. The duplicate of said
12 claim shall be mailed by the clerk to the conservator or his
13 attorney of record; however, valid contract claims arising in
14 the ordinary course of the conduct of the business or affairs
15 of the ward by the conservator may be paid by the conservator
16 without requiring affidavit or filing.

17 Comment: Adapted from 635.53 and 635.54.

1 Sec. 656. Requirements when claim founded on written instru-
2 ment. If a claim is founded upon a written instrument, the
3 original of such instrument, or a copy thereof, with all en-
4 dorsements, must be attached to the claim. The original instru-
5 ment must be exhibited to the conservator or to the court, upon

6 demand, unless it has been lost or destroyed, in which case,
7 its loss or destruction must be stated in the claim.

8 Comment: Adapted from §635.53.

1 Sec. 657. How claim entitled. All claims filed against
2 the estate of the ward shall be entitled in the name of the
3 claimant against the conservator as such, naming the conserva-
4 tor, and in all further proceedings thereon, this title shall
5 be preserved.

6 Comment: Adapted from §635.56.

1 Sec. 658. Filing of claim required. The filing of a claim
2 in the conservatorship tolls the statute of limitations applica-
3 ble to such claim.

4 Comment: New.

1 Sec. 659. Compelling payment of claims. No claimant shall
2 be entitled to compel payment until his claim has been duly
3 filed and allowed.

4 Comment: New.

1 Sec. 660. Allowance by conservator. When a claim has been
2 filed and has been admitted in writing by the conservator, it
3 shall stand allowed, in the absence of fraud or collusion.

4 Comment: New.

1 Sec. 661. Execution and levy prohibited. No execution shall
2 issue upon, nor shall any levy be made against, any property of
3 the estate of a ward under any judgment against the ward or a
4 conservator, but the provisions of this section shall not be
5 so construed as to prevent the enforcement of a mortgage, pledge
6 or other lien upon property in an appropriate proceeding.

7: Comment: New.

1 Sec. 662. Claims of conservators. If the conservator is a
2 creditor of the ward, he shall file his claim as other creditors,
3 and the court shall appoint some competent person as temporary
4 conservator to represent the ward at the hearing on the con-
5 servator's claim. The same procedure shall be followed in the
6 case of coconservators where all such conservators are creditors
7 of the ward; but if one of the coconservators is not a creditor
8 of the ward, such disinterested conservator shall represent the
9 ward at the hearing on any claim against the ward by a cocon-
10 servator.

11 Comment: Adapted from §635.64.

1 Sec. 663. Claims not filed. The conservator may pay any
2 valid claim against the estate of the ward even though such claim
3 has not been filed, but all such payments made by the conservator
4 shall be at his own peril.

5 Comment: Statement of present Iowa case law.

1 Sec. 664. Waiver of statute of limitations by conservator.
2 It shall be within the discretion of the conservator to deter-
3 mine whether or not the applicable statute of limitation shall
4 be invoked to bar a claim which he believes to be just, and his
5 decision as to the invoking of such statute shall be final.

6 Comment: New.

1 Sec. 665. Liens not affected by failure to file claim.
2 Nothing in sections six hundred fifty-five (655) and six hundred
3 fifty-nine (659) shall affect or prevent an action or proceeding
4 to enforce any mortgage, pledge or other lien upon the property
5 of the ward.

6 Comment: Statement of present Iowa law.

1 Sec. 666. Separate actions and claims. Any action pending
2 against the ward at the time the conservator is appointed
3 shall also be considered a claim filed in the conservatorship
4 if notice of substitution is served on the conservator as defend-
5 ant, and a duplicate of the proof of service of notice of such
6 proceeding is filed in the conservatorship proceeding.

7 A separate action based on a debt or other liability of the
8 ward may be commenced against the conservator as such in lieu
9 of filing a claim in the conservatorship. Such an action shall
10 be commenced by serving an original notice on the conservator
11 and filing a duplicate of the proof of service of notice of
12 such proceeding in the conservatorship proceeding. Such an
13 action shall also be considered a claim filed in the conservator-
14 ship. Such an action may be commenced only in a county where
15 the venue would have been proper if there were no conservator-
16 ship and the action had been commenced against the ward.

17 Comment: New.

1 Sec. 667. Denial and contest of claims. The provisions
2 of sections four hundred thirty-eight (438) through four hundred
3 forty-eight (448) shall be applicable to the denial and contest
4 of claims against conservatorships, but shall not be applicable
5 to actions continued or commenced under section six hundred
6 sixty-six (666) of this Code.

7 Comment: New.

1 Sec. 668. Payment of claims in insolvent conservatorships.
2 When it appears that the assets in a conservatorship are insuf-
3 ficient to pay in full all the claims against such conservator-
4 ship, the conservator shall report such matter to the court,
5 and the court shall, upon hearing, with notice to all persons

6 who have filed claims in the conservatorship; make an order for
7 the pro rata payment of claims giving claimants the same prior-
8 ity, if any, as they would have if the ward were not under con-
9 servatorship.

10 Comment: New.

PART 6. GIFTS

1 Sec. 669. Conservator may make gifts. For good cause shown
2 and under order of court, a conservator may make gifts on be-
3 half of the ward out of the assets under a conservatorship to
4 persons or religious, educational, scientific, charitable, or
5 other nonprofit organizations to whom or to which such gifts
6 were regularly made prior to the commencement of the conserva-
7 torship. The making of gifts out of such assets must not fore-
8 seeably impair the ability to provide adequately for the best
9 interests of the ward.

10 Comment: New. See *In re Guardianship of Brice*, 233 Iowa
11 183, 8 N.W.2d 576 (1943).

PART 7. GUARDIAN'S REPORT

1 Sec. 670. Guardian's report. Immediately after the appoint-
2 ment of the guardian, he shall make a report to the court advising
3 the court as to the physical condition and whereabouts of the
4 ward. At such times thereafter as the court may order, a guard-
5 ian shall present to the court and file in the guardianship pro-
6 ceedings a written report of the condition of the ward and of the
7 guardian's exercise of authority and performance of his duties.

8 Comment: This section is taken from section 25 of the new
9 Oregon Act.

PART 8. CONSERVATOR'S REPORT

1 Sec. 671. Conservator shall report and account. A conserva-

2 tor shall present to the court and file in the conservatorship
3 proceedings a written verified report and accounting of his ad-
4 ministration:

5 1. Annually within sixty days following the anniversary date
6 of his appointment, unless the court otherwise orders on good
7 cause shown.

8 2. Upon filing his resignation and before his resignation
9 is accepted by the court.

10 3. Within thirty days following the date of his removal.

11 4. Within sixty days following the date of the termination
12 of the conservatorship under the provisions of section six hun-
13 dred seventy-six (676), unless that time is extended by the court.

14 5. At such other times as the court may order.

15 Comment: New. See comment under section 672.

1 Sec. 672. Requirements of report and accounting. The report
2 and accounting required by section six hundred seventy-one (671)
3 shall account for all of the period since the close of the ac-
4 counting contained in the next previous report, and shall include
5 the following information as far as applicable:

6 1. The balance of funds on hand at the close of the last
7 previous accounting, and all amounts received from whatever
8 source during the period covered by the accounting.

9 2. All disbursements made during the period covered by the
10 accounting.

11 3. Any changes in the inventory of property of the ward in
12 the 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
17 condition of the affairs of the conservatorship.

18 Comment: New. This section and section 671 replace §668.24.

PART 9. COSTS AND ACCOUNTS

1 Sec. 673. Payment of court costs in conservatorships. No
2 order shall be entered approving an annual report of a conserva-
3 tor until the court costs which have been docketed have been paid
4 or provided for.

5 Comment: New.

1 Sec. 674. Court costs in guardianships. The ward or his
2 estate shall be charged with the court costs of a ward's guardian-
3 ship, including the guardian's fees and the fees of the attorney
4 for the guardian.

5 Comment: Codifies present Iowa law.

1 Sec. 675. Settlement of accounts. The court shall settle
2 each account filed by a conservator by allowing or disallowing
3 it, either in whole or in part, or by surcharging the account
4 against the conservator.

5 Comment: New.

PART 10. TERMINATION OF GUARDIANSHIPS AND CONSERVATORSHIPS

1 Sec. 676. Cause for termination. A guardianship shall cease,
2 and a conservatorship shall terminate, upon the occurrence of
3 any of the 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
7 and capable of managing his property and affairs, and that the
8 continuance of the guardianship or conservatorship would not

9 be in his best interests.

10 4. Upon determination by the court that the conservatorship
11 or guardianship is no longer necessary for any other reason.

12 Comment: New.

1 Sec. 677. Assets exhausted. At any time that the assets
2 of of the ward's estate do not exceed the amount of the charges
3 and claims against it, the court may direct the conservator
4 to proceed to terminate the conservatorship.

5 Comment: New. Formerly included within §668.33.

1 Sec. 678. Accounting to ward—notice of hearing. Upon the
2 termination of a conservatorship, the conservator shall pay
3 the costs of administration, and render a full and complete
4 accounting to the ward or his personal representative and the
5 court. Notice of hearing on the final report of a conservator
6 shall be served on the ward or his personal representative in
7 accordance with the Rules of Civil Procedure, unless such notice
8 is waived. The court may direct notice of hearing on the final
9 report to be given to such other persons, at such time and in
10 such manner as the court may prescribe.

11 Comment: New.

1 Sec. 679. Delivery of assets. Upon the termination of a con-
2 servatorship, all assets of the conservatorship shall be deliv-
3 ered, under direction of the court, to the person or persons enti-
4 tled to them.

5 Comment: New.

1 Sec. 680. Petition to terminate. At any time, not less than
2 six months after the appointment of a guardian or conservator,
3 the person under guardianship or conservatorship may apply to the
4 court by petition, alleging that he is no longer a proper sub-

5 ject thereof, and asking that the guardianship or conservatorship
6 be terminated.

7 Comment: Adapted from §670.11.

1 Sec. 681. Limit on application to terminate. If any petition
2 for terminating such guardianship or conservatorship shall be
3 denied, no other petition shall be filed therefor until at least
4 six months shall have elapsed since the denial of the former one.

5 Comment: Adapted from §670.15. Period increased from 4 to
6 6 months.

1 Sec. 682. Assets of minor ward exhausted. Whenever the
2 assets of a minor ward's conservatorship are exhausted or con-
3 sist of personal property only of an aggregate value not in
4 excess of one thousand dollars, the court, upon application
5 or upon its own motion, may terminate the conservatorship and
6 direct the conservator to deliver such property to the parent
7 or other person having the custody of the minor ward, for the
8 use of such ward, after payment of allowed claims and expenses
9 of administration. Such delivery shall have the same force and
10 effect as if delivery had been made to the ward after he attains
11 his majority.

12 Comment: Adapted from §668.33. \$500.00 increased to \$1000.00.

1 Sec. 683. Discharge of conservator and release of bond.
2 Upon settlement of the final accounting of a conservator, and
3 upon determining that the property of the ward has been delivered
4 to the person or persons lawfully entitled thereto, the court
5 shall discharge the conservator and exonerate the surety on his
6 bond.

7 Comment: New.

1 Sections 684 to .698, inclusive, reserved for future use.

DIVISION XV—TRUSTS

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

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

11 2. To acquire, manage, invest, reinvest, exchange, retain,
12 grant options on, contract to sell, and to sell at public auc-
13 tion or private sale; also, to convey any or all property, real
14 or personal, at any time, forming a part of the trust estate,
15 in such manner and upon such terms and conditions as shall be
16 deemed by such trustee to be for the best interests of the trust.

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

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

24 5. To execute leases for a customary period for the type of
25 real estate involved, not to extend beyond the termination date
26 of the trust without the specific approval and direction of the

27 court, provided that in any event, leases may be made for as
28 long as one year.

29 6. To make payments to, or for the benefit of, any benefi-
30 ciary in any of the following ways:

31 a. Directly to the beneficiary;

32 b. Directly for the maintenance, welfare, and education of
33 the beneficiary;

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

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

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

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

44 8. To receive additional property from any source.

45 Comment: New.

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

6 1. The period covered by the report.

7 2. All changes in beneficiaries since the last previous re-
8 port.

9 3. All changes in investments since the last previous report,

10 and a list of all assets on hand.

11 4. A detailed accounting for all cash receipts and disburse-
12 ments, and for all property of the trust, unless such account-
13 ing shall be waived in writing by all beneficiaries.

14 Comment: Adapted from §682.28.

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

- 9 1. The name and last known address of such beneficiary.
- 10 2. A statement as to those beneficiaries who are known to
11 be minors or under any other legal disability.
- 12 3. The amount distributed or to be distributed to each bene-
13 ficiary.

14 Comment: New.

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

10 Comment: New.

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

7 Comment: New. This is essentially section 479 adapted
8 to final reports of trustees.

1 Sec. 704. The following chapters of the 1962 Code of Iowa
2 are 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
2 are 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);
7 Section six hundred eighty-two point forty-eight (682.48);
8 Section six hundred eighty-two point forty-nine (682.49);
9 Section six hundred eighty-two point fifty (682.50);
10 Section six hundred eighty-two point fifty-one (682.51);
11 Section six hundred eighty-two point fifty-two (682.52);
12 Section six hundred eighty-two point fifty-three (682.53);
13 Section six hundred eighty-two point fifty-four (682.54);
14 Section six hundred eighty-two point fifty-five (682.55);
15 Section six hundred eighty-two point fifty-six (682.56);
16 Section six hundred eighty-two point fifty-seven (682.57);
17 Section six hundred eighty-two point fifty-eight (682.58); and
18 Section six hundred eighty-two point fifty-nine (682.59).

1 Sec. 706. Section six hundred four point three (604.3), Code
2 1962, is hereby repealed and the following enacted in lieu there-
3 of:

4 "The district court of each county shall have general, orig-
5 inal and exclusive jurisdiction of all probate matters as
6 provided in the probate Code."

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

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

4 "Qualifications of sureties. Each personal surety shall

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

12 Comment: Adapted from section 111 of the Model Probate Code
13 and §682.4.

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
3 subsection fifteen (15) after the word "shall" the words "be
4 construed as 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)
3 after the word "fiduciary" the words "not governed by the probate
4 Code".

5 Said section is further amended by striking from line four
6 (4) the words "the will or other".

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

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

1 Sec. 712. Section six hundred eighty-two point thirty-two
2 (682.32), Code 1962, is amended by striking from lines one (1)

3 and two (2) the words "administrator, guardian, trustee, or
4 referee" and inserting 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)
3 and two (2) the words "administrator, guardian, trustee, or
4 referee" and 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)
3 the word "administrators" and inserting in lieu thereof the
4 words "personal representatives under the probate Code".

1 Sec. 715. Chapter six hundred eighty-two (682). Code 1962,
2 is amended by adding thereto a new section as follows:

3 "Powers and duties of trustees not subject to court adminis-
4 tration. Trustees of express trusts not being administered
5 in the probate court, shall have all the powers and shall be
6 subject to all the duties and liabilities as provided in the
7 Probate Code, except the duty of reporting to or *obtaining*
8 approval of the court".

9 Comment: New.

1 Sec. 716. Section two hundred forty-one A point eleven
2 (241A.11). Code 1962, is amended by striking from subsection
3 two (2) all after the word "dollars" in line three (3).

1 Sec. 717. Section two hundred forty-nine point eighteen
2 (249.18). Code 1962, is amended by striking from subsection
3 two (2) all after the word "dollars" in line five (5).

1 Sec. 718. The explanatory material, tables, index, notes
2 and historical references incorporated in this Bill shall not
3 be considered as any part of the enactment hereof and shall
4 not be included in the enrolled Act nor shall this section

5 be included in said enrollment.

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8 "January 1, 1964".
4 Add in line 11 after the word "accrued" the words "or vested".
5 Sec. 3. Add at the end of line 64 the words "by a court".
6 Sec. 11. Strike all beginning with the words "The same" in
7 line 10 and ending with the words "other actions." in line 12.
8 Sec. 20. Add a new sentence after the word "clerk" in line
9 8 as follows: "No person shall be appointed as referee in any
10 matter where he is acting as a fiduciary or as the attorney."
11 Sec. 45. Strike from line 2 the word "may" and insert in lieu
12 thereof the word "shall".
13 Strike from line 3 the word "or" and insert in lieu thereof
14 the word "and".
15 Strike from lines 4 and 5 the words "Such service shall be
16 as effectual as if personally made on the fiduciary."
17 Sec. 64. Insert in line 1 after the word "age" the following
18 "and any corporation authorized to act in a fiduciary capacity".
19 Sec. 85. Insert after the word "and" and before the last comma
20 in line 5 the word "that".
21 Sec. 114. Insert in line 2 after the word "may" the words
22 ", subject to approval of the court".
23 Sec. 115. Insert in line 4 after the word "estate" the words
24 ", subject to approval of the court".
25 Sec. 123. Strike all of this section.
26 Sec. 124. Strike all of this section.
27 Sec. 125. Strike all of this section.
28 Sec. 126. Strike all of this section.
29 Sec. 169. Insert in line 2 after the word "himself," the
30 words "except on order of court after notice to all interested
31 persons".
32 Sec. 179. Insert in line 3 after the word "creditors" the
33 words "and distributees".
34 Sec. 201. Strike from lines 1 and 2 the words "referees in
35 probate".
36 Sec. 204. Strike all of lines 2, 3 and 4 and insert in lieu
37 thereof the following:
38 "all fees to which his personal representative and his attorney
39 are entitled shall be a charge against the estate assets until
40 paid."
41 Sec. 223. Strike all of lines 6 through 11, inclusive. *del 2/27*
42 Sec. 237. Strike after the word "will." in line 2 and all of
43 lines 3 and 4 and insert in lieu thereof the following:

48 will, it shall be the duty of the executor to cause to be served
49 a written notice upon the surviving spouse in the manner required
50 for service of an original notice, advising the surviving spouse
51 that the will of such decedent has been admitted to probate,
52 stating the name of the court where the will was admitted,
53 and the date when the will was admitted to probate, and notifying
54 such spouse that unless within four months after the completed
55 service of such notice, he files an election in writing with the
56 clerk of such court refusing to take under the provisions of such
57 will."

58 Add at the end of line 14 the following: "The qualification
59 of the surviving spouse as executor of a will shall constitute
60 a presumption that such spouse takes under the will."

61 Sec. 242. Insert at the end thereof the following:

62 "If the surviving spouse dies prior to filing an election
63 to take against the will, it shall be conclusively presumed
64 that the surviving spouse takes under the provisions of this
65 will."

66 Sec. 272. Add in line 8 after the word "payment" the words
67 "of its proportionate share".

68 Sec. 293. Strike all after the word "petition." in line 1
69 and insert the following:

70 "Upon the filing of a petition for probate of a will, the
71 date for proving it shall be fixed by the court or the clerk,
72 and the clerk shall give notice addressed TO ALL WHOM IT MAY
73 CONCERN, signed by him, of such time fixed, by one publication
74 in a daily or weekly newspaper published in the county where the
75 will is filed, the publication to be at least seven days prior
76 to the time fixed for such hearing."

77 Sec. 308. Strike all beginning with the words "in which"
78 in line 7 to and including the word "and" in line 10 and insert
79 in lieu thereof a period.

80 Strike from line 10 the word "also".

81 Insert at the beginning of line 17 the word "Notice".

82 Strike all beginning with the words "Any action" in line 27
83 to and including all of line 30.

84 Strike from line 31 the word "thereof"

85 Sec. 304. Strike all after the word "probate" in line 5 and
86 all of lines 6, 7 and 8.
87 Strike all of line 10 and insert in lieu thereof the words
88 "Notice of Proof of Will without Administration".
89 Strike all beginning with the words "Any action" in line 20
90 and ending with the words "forever barred." in line 23.
91 Sec. 306 Strike from line 4 the words "six months" and
92 insert in lieu thereof the words "one year".
93 Sec. 318. Strike from line 1 the word "Presumptions" and
94 insert in lieu thereof the words "Proof of execution".
95 Strike all beginning with the words "the burden" in line 2
96 and ending with the word "and" in line 5.
97 Sec. 331. Add at the end thereof the following: "Provided,
98 however, that the limitation herein provided shall not apply

102
103 Sec. 336. Strike from lines 5 and 6 the words "except
104 debts and charges of the first, second, third and fifth classes".
105 Sec. 351. Strike all after the word "property." in line 1
106 and insert in lieu thereof the following:
107 "If there is no distributee of the real estate present and
108 competent to take possession, or if there is a lease of such
109 real estate outstanding, or if the distributees present and
110 competent consent thereto, the personal representative shall
111 take possession of such real estate, except the homestead and
112 other property exempt to the surviving spouse. Every personal
113 representative shall take possession of all the personal property
114 of the decedent, except the property exempt to the surviving
115 spouse. The personal representative may maintain an action for
116 the possession of such real and personal property or to determine
117 the title to any property of the decedent."
118 Sec. 390. Strike all beginning with the word "The" in line 1
119 and ending with the word "notice." in line 4 and inserting in
120 lieu thereof the following:
121 "The personal representative may under order of court lease
122 any property not specifically devised for a period of not to
123 exceed one year."
124 Sec. 411. Strike all of this section and insert the following:
125 "Pleading statute of limitations. It shall be within the dis-
126 cretion of the personal representative to determine whether or
127 not the applicable statute of limitations shall be pleaded
128 to bar a claim which he believes to be just, provided, however,
129 that this section shall not apply where the personal representa-
130 tive was appointed upon the application of a creditor."
131 Sec. 557. Strike from line 2 the words "or the clerk".
132 Strike from lines 5 and 6 the words "or the clerk".
133 Sec. 637. Add at the end thereof after the word "will" the
134 words "if he possesses the requisite testamentary capacity".
135 Sec. 644. Strike all of this section.
136 Sec. 645. Strike from line 4 the following "or six hundred
137 forty-four (644)".
138 Strike from line 5 the word "shall" and insert in lieu thereof
139 the word "may".
140 Sec. 646. Strike from line 4 the following: "or section
141 six hundred forty-four (644)".
142 Sec. 699. Strike all of lines 11 to 16, inclusive and insert
143 in lieu thereof the following:
144 2. To acquire, manage, invest, reinvest, exchange and retain
145 and or all property, real or personal, at any time, forming
146 a part of the trust estate, as the court may direct; to grant
147 options on, contract to sell, to sell, convey and transfer or
148 lease any or all property, real or personal, at any time forming
149 a part of the trust estate in the same manner and by the same
150 procedure that is provided in this Code for sale, mortgage,
151 exchange, pledge, and lease by personal representatives in admin-
152 istration of estates of decedents.

Filed
February 25, 1968.

*Adopted
amended
2/26*
By SHAFF and LONG.

SENATE FILE 165

1 Amend section 242 of Senate File 165 by striking the
2 word "this" in the last line thereof and inserting in lieu
3 thereof the word "the".

Filed
April 24, 1968.

*Adopted 4/25
Senate
concurrent
4/29*
CARSTENSEN of Clinton.

SENATE FILE 165

- 1 Amend Senate File 165 as follows:
- 2 By striking from section four hundred thirty
- 3 nine (439), line three (3), the word "may" and
- 4 by inserting in lieu thereof the word "shall".

Filed *admitted*
February 20, 1963.

By DYKHOUSE.

- 1 Amend the Shaff and Long Amendment filed February 25, 1963,
- 2 found on page 365 of the Journal by striking following
- 3 the ":", in line 58 and striking lines 59 and 60, and in
- 4 lieu thereof add the following:
- 5 "If such surviving spouse shall be the executor
- 6 of the will and fails, within six months after
- 7 the will is admitted to probate, to file with
- 8 the clerk of the court an election to refuse to
- 9 take under the provisions of the will of the
- 10 deceased, it shall be conclusively presumed that
- 11 such survivor consents to the provisions of the
- 12 will and elects to take thereunder."

Filed and adopted
February 26, 1963.

By SHAFF.

SENATE FILE 165

- 1 Senate File 165 is amended by adding as section 622 the
- 2 following:
- 3 "Sec. 622. In administering moneys paid by the veterans
- 4 administration the conservator shall have the following powers
- 5 and be subject to the following restrictions:
- 6 1. A bond executed by a recognized surety company equal to
- 7 said assets and the annual income therefrom, plus the expected
- 8 annual veterans administration benefit payments, shall be re-
- 9 quired to protect said funds.
- 10 2. Excess funds paid to the conservator may be invested in
- 11 interest bearing federally insured accounts, or in United
- 12 States savings bonds, without approval of the court.
- 13 3. Money paid may be applied to the care, maintenance and
- 14 support of the veteran and his legal dependents without prior
- 15 approval of the court.
- 16 4. Moneys paid shall not be applied to the payment of obli-
- 17 gations outlawed by the statute of limitations of any jurisdic-
- 18 tion.
- 19 5. No money paid as a gratuity to a ward may be made the sub-
- 20 ject of a gift to third parties, except that the court may, on
- 21 petition, authorize the application of said moneys to the
- 22 assistance of a close relative after a finding that the veteran,
- 23 if competent, would assist the relative to the extent of the or-
- 24 der."
- 25 Further amend said Senate File 165 by striking from the
- 26 note following Sec. 621 the number "622" and inserting in lieu
- 27 thereof the number "623".

Filed
March 25, 1963.

admitted *Senate*
4/25 *conservator*
COMMITTEE ON JUDICIARY 1.
JOHN MOWRY, Chairman.

SENATE FILE 165

- 1 Amend section 124 of Senate File 163 by striking 110.0
- 2 line two (2) thereof the word "Any" and inserting in lieu
- 3 thereof the words, "If court approval is first obtained, any".

Filed
April 23, 1963

admitted
4/25
MOWRY of Marshall. *Senate*
conservator
4/27

SENATE FILE 165

- 1 Amend Senate File 165 as follows:
- 2 Amend section seven hundred five (705) by
- 3 striking therefrom lines seven (7) through eighteen (18)
- 4 inclusive.

Filed
April 23, 1963.

admitted *Senate*
4/25 *conservator*
CARSTENSEN of Clinton

SENATE FILE 165

- 1 Amend Senate File 165 by striking from line 3 of section
- 2 457 the word "on" and inserting in lieu thereof the word "or".

Filed

March 25, 1963.

adopted
4/25

Senate
concurred
4/27

SWISMER of Johnson.