# CHAPTER 633

## PROBATE CODE

Referred to in §10.1, 135.29, 135C.24, 141A.1, 144B.6, 217.13, 222.34, 231E.5, 231E.6, 231E.8, 231E.12, 232.3, 235B.2, 235B.3, 235B.18, 235E.1, 235E.2, 239B.13, 252B.6A, 455B.172, 558A.1, 565B.24, 602.6306, 602.8102(105), 633A.1107, 633A.3110, 635.1, 635.7, 635.8, 635.13, 815.11


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# DIVISION I

# INTRODUCTION AND DEFINITIONS

## PART 1

## INTRODUCTION

**633.1 Short title.**

This chapter shall be known and may be cited as the *"Iowa Probate Code"*.

[C66, 71, 73, 75, 77, 79, 81, §633.1]

**633.2 How probate code to take effect.**

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

2. *Rights not affected.* No act done in any proceeding commenced before this probate code takes effect and no accrued or vested right shall be impaired by its provisions. When a right has been acquired, extinguished, or barred upon the expiration of a prescribed period of time governed by the provision of any statute in force before this probate code takes effect, such provision shall remain in force and be deemed a part of this probate code with respect to such right.

[C66, 71, 73, 75, 77, 79, 81, §633.2]

2005 Acts, ch 38, §51

## PART 2

## DEFINITIONS AND USE OF TERMS

**633.3 Definitions and use of terms.**

When used in this probate code, unless otherwise required by the context, or another division of this probate code, the following words and phrases shall be construed as follows:

1. *Administrator* — any person appointed by the court to administer an intestate estate.
2. *Bequeath* — includes the word *"devise"* when used as a verb.

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

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

5. *Child* — includes an adopted child but does not include a grandchild or other more remote descendants, nor, except as provided in sections 633.221 and 633.222, a biological child.

6. *Clerk* — *"clerk of the district court"* in the county in which the matter is pending and includes the term *"clerk of the probate court"*.

7. *Conservator* — a person appointed by the court to have the custody and control of the property of a ward under the provisions of this probate code.

8. *Costs of administration* — includes court costs, fiduciary's fees, attorney fees, all appraisers' fees, premiums on corporate surety bonds, statutory allowance for support of surviving spouse and children, cost of continuation of abstracts of title, recording fees, transfer fees, transfer taxes, agents' fees allowed by order of court, interest expense, including but not limited to interest payable on extension of federal and state estate tax, and all other fees and expenses allowed by order of court in connection with the administration of the estate. Court costs shall include expenses of selling property.

9. *Court* — the Iowa district court sitting in probate and includes any Iowa district judge.

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

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

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

13. *Devisee* — includes legatee.

14. *Distributee* — a person entitled to any property of the decedent under the decedent's will or under the statutes of intestate succession.

15. *Estate* — the real and personal property of either a decedent or a ward, and may also refer to the real and personal property of a trust described in section 633.10.

16. *Executor* — means any person appointed by the court to administer the estate of a testate decedent.

17. *Fiduciary* — includes personal representative, executor, administrator, guardian, conservator, and the trustee of any trust described in section 633.10.

18. *Full age* — the state of legal majority attained through arriving at the age of eighteen years or through having married, even though such marriage is terminated by divorce.

19. *Functional limitations* — means the behavior or condition of a person which impairs the person's ability to care for the person's personal safety or to attend to or provide for necessities for the person.

20. *Guardian* — the person appointed by the court to have the custody of the person of the ward under the provisions of this probate code.

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

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

23. *Incompetent* — means the condition of any person who has been adjudicated by a court to meet at least one of the following conditions:

*a.* To have a decision-making capacity which is so impaired that the person is unable to care for the person's personal safety or to attend to or provide for necessities for the person such as food, shelter, clothing, or medical care, without which physical injury or illness may occur.

*b.* To have a decision-making capacity which is so impaired that the person is unable to make, communicate, or carry out important decisions concerning the person's financial affairs.

*c.* To have a decision-making capacity which is so impaired that both paragraphs *"a"* and *"b"* are applicable to the person.

24. *Issue* — for the purposes of intestate succession, includes all lawful lineal descendants

of a person, whether biological or adopted, except those who are the lineal descendants of the person's living descendants.

25. *Legacy* — a testamentary disposition of personal property.

26. *Legatee* — a person entitled to personal property under a will.

27. *Letters* — includes letters testamentary, letters of administration, letters of guardianship, letters of conservatorship, and letters of trusteeship.

28. *Minor* — a person who is not of full age.

29. *Person* — includes natural persons and corporations.

30. *Personal representative* — includes executor and administrator.

31. *Property* — includes both real and personal property.

32. *Surviving spouse* — the surviving wife or husband, as the case may be.

33. *Temporary administrator* — any person appointed by the court to care for an estate pending the probating of a proposed will, or to handle any special matter designated by the court.

34. *Trustee* — the person or persons serving as trustee of a trust described in section 633.10.

35. *Trusts* — includes only those trusts described in section 633.10.

36. *Will* — includes codicil; it also includes a testamentary instrument that merely appoints an executor, and a testamentary instrument that merely revokes or revives another will.

[C51, §1286; R60, §2318; C73, §2336; C97, §3280; C24, 27, 31, 35, 39, §**11860;** C46, 50, 54, 58, 62, §633.15; C66, 71, 73, 75, 77, 79, 81, §633.3]

94 Acts, ch 1046, §26; 97 Acts, ch 178, §1, 2; 2005 Acts, ch 38, §2 – 5, 51; 2006 Acts, ch 1010, §154; 2008 Acts, ch 1119, §14; 2011 Acts, ch 34, §138; 2012 Acts, ch 1021, §108

Referred to in §231E.3, 232.2, 249A.53, 450.1, 523A.102, 600A.2, 633.63, 633.89, 633.551, 633.701, 633A.3113

[T] Section not amended; editorial change applied

**633.4** Repealed by 2000 Acts, ch 1188, § 4.

**633.5 Nonestate property — insurance proceeds.**

A decedent's estate shall not include life insurance proceeds, unless the proceeds are payable to the decedent's estate.

94 Acts, ch 1153, §7

**633.6 through 633.9** Reserved.

## DIVISION II

## PROBATE COURT, CLERK OF PROBATE COURT, AND PROCEDURE IN PROBATE

### PART 1

### PROBATE COURT

**633.10 Jurisdiction.**

In addition to the jurisdiction granted the district court under the trust code, chapter 633A, or elsewhere, the district court sitting in probate shall have jurisdiction of:

1. *Estates of decedents and absentees.* The probate and contest of wills; the appointment of personal representatives; the granting of letters testamentary and of administration; the administration, settlement and distribution of estates of decedents and absentees, whether such estates consist of real or personal property or both.

2. *Construction of wills.* The construction of wills during the administration of the estate, whether said construction be incident to such administration, or as a separate proceeding.

3. *Conservatorships and guardianships.* The appointment of conservators and

guardians; the granting of letters of conservatorship and guardianship; the administration, settlement and closing of conservatorships and guardianships.

4. *Trusts and trustees.*

*a.* The ongoing administration and supervision, including but not limited to the appointment of trustees, the granting of letters of trusteeship, trust administration, and trust settlement and closing, of the following trusts:

(1) A trust that was in existence on July 1, 2005, and that is subject to continuous court supervision.

(2) A trust established by court decree that is subject to continuous court supervision.

*b.* A trust described in paragraph *"a"* shall be governed by this chapter and the provisions of chapter 633A which are not inconsistent with the provisions of this chapter.

*c.* A trust not described in paragraph *"a"* shall be governed exclusively by chapter 633A and shall be subject to the jurisdiction of the district court sitting in probate only as provided in section 633A.6101.

*d.* Upon joint application by all trustees administering a trust described in paragraph *"a"* and following notice to the beneficiaries pursuant to section 633.40, the court shall release the trust from further jurisdiction unless a beneficiary objects. The court whose decree created the trust may release the trust from continuous court supervision following notice to the beneficiary pursuant to section 633.40. If such judicial release occurs for a trust previously governed by this chapter, such trust shall be governed by chapter 633A and the district court sitting in probate only as provided in section 633A.6101.

5. *Actions for accounting.* An action for an accounting against a beneficiary of a transfer on death security registration, pursuant to chapter 633D.

[C73, §2312; C97, §225; C24, 27, 31, 35, 39, §**10763, 10764;** C46, 50, 54, 58, 62, §604.3, 604.4; C66, 71, 73, 75, 77, 79, 81, §633.10]

85 Acts, ch 154, §1; 91 Acts, ch 36, §1; 97 Acts, ch 178, §3; 99 Acts, ch 56, §2; 2005 Acts, ch 38, §6 – 8, 55; 2005 Acts, ch 179, §139; 2006 Acts, ch 1010, §155

Referred to in §633.3, 633.27, 633.751, 633A.1107, 633A.6101

[P] Applicability of probate code to trusts, see §633.751

[P] See also §633A.1107

**633.11 Declaratory judgments — determination of heirship — distribution.**

During the administration of an estate, the district court sitting in probate shall have full, legal and equitable powers to make declaratory judgments in all matters involved in the administration of the estate, including those pertaining to the title of real estate, the determination of heirship, and the distribution of the estate. It shall have full, legal and equitable powers to enter final orders and decrees in all probate matters to effectuate its jurisdiction and to carry out its orders, judgments and decrees.

[C66, 71, 73, 75, 77, 79, 81, §633.11]

**633.12 County of jurisdiction.**

The court of each county shall have original and exclusive jurisdiction to administer the estates of all persons who are residents of the county, or who were residents at the time of their death, and all nonresidents of the state who have property, or who die leaving property in the county subject to administration, or whose property is afterwards brought into the county; to appoint conservators for nonresidents having property in the county; and to appoint conservators and guardians of residents of the county.

[C73, §2312; C97, §225; C24, 27, 31, 35, 39, §**10763, 10764;** C46, 50, 54, 58, 62, §604.3, 604.4; C66, 71, 73, 75, 77, 79, 81, §633.12]

**633.13 Extent of jurisdiction.**

The court of the county in which a will is probated, or in which administration, conservatorship or guardianship is granted, shall have jurisdiction coextensive with the state in the settlement of the estate, and in the sale and distribution thereof.

A district judge or a district associate judge has statewide jurisdiction to enter orders in probate matters not requiring notice and hearing, although the judge is not a judge of or

present in the district in which the probate matter is pending. The orders shall be made in conformity with the rules of the district in which the probate matter is pending.

[R60, §2472; C73, §2319; C97, §3265; C24, 27, 31, 35, 39, §**11825;** C46, 50, 54, 58, 62, §631.7; C66, 71, 73, 75, 77, 79, 81, §633.13]

83 Acts, ch 186, §10119, 10201; 94 Acts, ch 1122, §2

**633.14 Concurrent jurisdiction.**

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

[C51, §1274; R60, §2306; C73, §2318; C97, §3264; C24, 27, 31, 35, 39, §**11824;** C46, 50, 54, 58, 62, §631.6; C66, 71, 73, 75, 77, 79, 81, §633.14]

**633.15 Probate court always open.** Repealed by 2003 Acts, ch 151, § 62.

**633.16 Control of probate records.**

The court shall have jurisdiction and supervision of the probate records of the clerk, and may direct the destruction of records it deems to be old, obsolete or unnecessary.

[C66, 71, 73, 75, 77, 79, 81, §633.16]

93 Acts, ch 70, §10

**633.17 Judge disqualified — procedure.**

When a judge is disqualified from acting in a probate matter, the matter shall be heard before another judge of the same district, or shall be transferred to the court of another district, or a judge of another district shall be procured to hold court for the hearing of the matter.

[C73, §2317; C97, §3263; C24, 27, 31, 35, 39, §**11823;** C46, 50, 54, 58, 62, §631.5; C66, 71, 73, 75, 77, 79, 81, §633.17]

83 Acts, ch 186, §10120, 10201

[P] Disqualification of judicial officer, see §602.1606

**633.18 Rules in probate.**

1. Actions and proceedings under this chapter are subject to rules prescribed by the supreme court under section 602.4201.

2. The judicial officers of a judicial district, excluding the magistrates, acting under section 602.1213 may prescribe rules for probate actions and proceedings within the district, but these rules must be consistent with this chapter, and are subject to the approval of the supreme court.

[C66, 71, 73, 75, 77, 79, 81, §633.18]

83 Acts, ch 186, §10121, 10201; 96 Acts, ch 1153, §7

[P] Rules adopted by the supreme court are published in the compilation "Iowa Court Rules"

**633.19 Process revoked.**

Any process or authority emanating from the court in probate matters may for good cause be revoked and a new one issued.

[C51, §1275; R60, §2307; C73, §2320; C97, §3266; C24, 27, 31, 35, 39, §**11827;** C46, 50, 54, 58, 62, §631.9; C66, 71, 73, 75, 77, 79, 81, §633.19]

**633.20 Referee — clerk — associate probate judge.**

1. The chief judge of the judicial district may appoint a referee in probate for the auditing of the accounts of fiduciaries and for the performance of other ministerial duties the chief judge prescribes. A person shall not be appointed as referee in a matter where the person is acting as a fiduciary or as the attorney.

2. The chief judge of the judicial district may appoint the clerk as referee in probate. In such cases, the fees received by the clerk for serving in the capacity of referee are fees of the office of the clerk of court and shall be deposited in the account established under section 602.8108.

3. A person appointed as an associate probate judge shall have jurisdiction to audit accounts of fiduciaries and to perform ministerial duties as a referee provided in this section and shall have additional jurisdiction to perform the judicial functions provided in section 633.20D.

[C73, §2412; C97, §3393; C24, 27, 31, 35, 39, §**12041;** C46, 50, 54, 58, 62, §638.1; C66, 71, 73, 75, 77, 79, 81, §633.20]

83 Acts, ch 186, §10122, 10201; 93 Acts, ch 70, §11; 94 Acts, ch 1074, §11; 99 Acts, ch 93, §11; 2000 Acts, ch 1057, §17; 2010 Acts, ch 1159, §13

**633.20A Part-time associate probate judge — appointment — removal — qualifications.**

The chief judge of a judicial district may appoint a part-time associate probate judge and may remove the part-time associate probate judge for cause following a hearing. The part-time associate probate judge shall be an attorney admitted to practice law in this state and shall be qualified for the position by training and experience.

99 Acts, ch 93, §12; 2000 Acts, ch 1154, §38

**633.20B Appointment and resignation of full-time associate probate judges.**

1. Full-time associate probate judges shall be appointed by the district judges of the judicial election district from persons nominated by the county magistrate appointing commission. In the case of a full-time associate probate judge to be appointed to more than one county, the appointment shall be from persons nominated by the county magistrate appointing commissions acting jointly and in the case of a full-time associate probate judge to be appointed to more than one judicial election district of the same judicial district, the appointment shall be by a majority of the district judges in each judicial election district.

2. In November of any year in which an impending vacancy is created because a full-time associate probate judge is not retained in office pursuant to a judicial election, the county magistrate appointing commission shall publicize notice of the vacancy in at least two publications in the official county newspaper. The commission shall accept applications for consideration for nomination as full-time associate probate judge for a minimum of fifteen days prior to certifying nominations. The commission shall consider the applications and shall, by majority vote, certify to the chief judge of the judicial district not later than December 15 of that year the names of three applicants who are nominated by the commission for the vacancy. If there are three or fewer applicants, the commission shall certify all applicants who meet the statutory qualifications. Nominees shall be chosen solely on the basis of the qualifications of the applicants, and political affiliation shall not be considered.

3. Within thirty days after a county magistrate appointing commission receives notification of an actual or impending vacancy in the office of full-time associate probate judge, other than a vacancy referred to in subsection 2, the commission shall certify to the chief judge of the judicial district the names of three applicants who are nominated by the commission for the vacancy. The commission shall publicize notice of the vacancy in at least two publications in the official county newspaper. The commission shall accept applications for consideration for nomination as full-time associate probate judge for a minimum of fifteen days prior to certifying nominations. The commission shall consider the applications and shall, by majority vote, certify to the chief judge of the judicial district the names of three applicants who are nominated by the commission for the vacancy. If there are three or fewer applicants, the commission shall certify all applicants who meet the statutory qualifications. Nominees shall be chosen solely on the basis of the qualifications of the applicants, and political affiliation shall not be considered. As used in this subsection, a vacancy is created by the death, retirement, resignation, or removal of a full-time associate probate judge, or by an increase in the number of positions authorized.

4. Within fifteen days after the chief judge of a judicial district has received the list of nominees to fill a vacancy in the office of full-time associate probate judge, the district judges in the judicial election district shall, by majority vote, appoint one of those nominees to fill the vacancy.

5. A full-time associate probate judge who seeks to resign from the office of full-time associate probate judge shall notify in writing the chief judge of the judicial district as

to the full-time associate probate judge's intention to resign and the effective date of the resignation. The chief judge of the judicial district, upon receipt of the notice, shall notify the county magistrate appointing commission and the state court administrator of the actual or impending vacancy in the office of full-time associate probate judge due to resignation.

6. The supreme court may prescribe rules of procedure to be used by county magistrate appointing commissions when exercising the duties specified in this section.

99 Acts, ch 93, §13, 15; 99 Acts, ch 208, §62; 2003 Acts, ch 151, §51, 64
Referred to in §602.2301, 602.6113

**633.20C Full-time associate probate judges — term, retention, qualifications.**

1. Full-time associate probate judges shall serve terms and shall stand for retention in office within the judicial election districts of their residences as provided under sections 46.16 through 46.24.

2. A person does not qualify for appointment to the office of full-time associate probate judge unless the person is at the time of appointment a resident of the county in which the vacancy exists, licensed to practice law in Iowa, and will be able, measured by the person's age at the time of appointment, to complete the initial term of office prior to reaching age seventy-two. An applicant for full-time associate probate judge shall file a certified application form, to be provided by the supreme court, with the chairperson of the county magistrate appointing commission.

3. A full-time associate probate judge must be a resident of a county in which the office is held during the entire term of office. A full-time associate probate judge shall serve within the judicial district in which appointed, as directed by the chief judge, and is subject to reassignment under section 602.6108.

4. Full-time associate probate judges shall qualify for office as provided in chapter 63 for district judges.

99 Acts, ch 93, §14, 15

**633.20D Associate probate judge — jurisdiction — appeals.**

1. An associate probate judge shall have the same jurisdiction to conduct probate court proceedings, to issue no-contact or protective orders, injunctions, contempt orders for adults in probate court proceedings, and to issue orders, findings, and decisions as the judge of the probate court. However, the chief judge may limit the exercise of probate court jurisdiction by the associate probate judge.

2. The parties to a proceeding heard by an associate probate judge are entitled to appeal the order, finding, or decision of an associate probate judge, in the manner of an appeal from orders, findings, or decisions of district court judges. An appeal does not automatically stay the order, finding, or decision of an associate probate judge.

2010 Acts, ch 1159, §14
Referred to in §633.20

**633.21 Appraisers' fees and referees' fees fixed by rule.**

The district judges of each judicial district shall by rule fix the fees of probate referees, and also provide, insofar as practicable, a uniform schedule of compensation for inheritance tax appraisers, other appraisers, brokers, and agents employed at estate expense.

[C66, 71, 73, 75, 77, 79, 81, §633.21]
83 Acts, ch 186, §10123, 10201

## PART 2

## CLERK OF PROBATE COURT

**633.22 Probate powers of clerk.**

The clerk shall have and may exercise within the county all the powers and jurisdiction of the court and of the judge thereof, in the following matters:

1. The appointment of personal representatives who are residents of the state, guardians

and conservators for minors, the fixing and determining of the amount of the bond, or waiving the same when permitted by law or by will, and the approval of any and all bonds given by fiduciaries in the discharge of their duties.

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

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

4. The making of all necessary orders in relation to the personal effects of a deceased person, where no objection is filed, and perform all other acts within the clerk's jurisdiction, as provided in this probate code.

5. The approval, when notice has been waived by all persons interested, of petitions and reports, or joint petitions and reports, in respect to the sale, mortgage, pledge, lease or exchange of property pursuant to sections 633.386 to 633.400.

6. The entering of routine scheduling orders in probate matters as established by the chief judge in each judicial district.

[C51, §1276; R60, §2308; C73, §2315, 2321; C97, §250, 3267, 3268; S13, §3268; C24, 27, 31, 35, 39, §**11828, 11832, 11838;** C46, 50, 54, 58, 62, §631.10, 632.1, 632.7; C66, 71, 73, 75, 77, 79, 81, §633.22]

94 Acts, ch 1050, §1; 2005 Acts, ch 38, §51

Referred to in §633.23

**633.23 Clerk's actions reviewed.**

Any person aggrieved by any order made or entered by the clerk under the powers conferred in section 633.22, subsections 1 to 4, may have the same reviewed in court upon motion filed within six months or before the hearing on the final report of the fiduciary, whichever is the earlier, and upon such notice as provided in section 633.40.

[C97, §251; C24, 27, 31, 35, 39, §**11834;** C46, 50, 54, 58, 62, §632.3; C66, 71, 73, 75, 77, 79, 81, §633.23]

**633.24 Docketing and hearing.**

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

[C97, §251; C24, 27, 31, 35, 39, §**11835;** C46, 50, 54, 58, 62, §632.4; C66, 71, 73, 75, 77, 79, 81, §633.24]

**633.25 Validity of clerk's orders.**

The records, orders, and judgments made and entered by the clerk, as hereinbefore provided, and not reversed, set aside, or modified by the court, shall stand, and shall be of the same force, validity, and effect, and be entitled to the same faith and credit, as if they had been made by the court.

[C97, §252; C24, 27, 31, 35, 39, §**11836;** C46, 50, 54, 58, 62, §632.5; C66, 71, 73, 75, 77, 79, 81, §633.25]

**633.26 Clerk not to prepare reports.**

A clerk of the district court or employee of the clerk shall not act as attorney for a fiduciary, or make or assist in making, drafting, or filling out any report of any fiduciary or any other report to be filed in the clerk's office.

[C97, §252; C24, 27, 31, 35, 39, §**11837;** C46, 50, 54, 58, 62, §632.6; C66, 71, 73, 75, 77, 79, 81, §633.26]

90 Acts, ch 1233, §38

**633.27 Probate docket.**

The clerk shall keep a book to be known as the "Probate Docket", which shall show:

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

2. The name of each person as to whom application for conservatorship or guardianship is made.

3. The names of all the heirs in intestate estates and the surviving spouse of such deceased intestate, and their ages and places of residence, so far as they can be ascertained.

4. The title of each trust described in section 633.10 that has not been released by the court from continuous court supervision.

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

[C73, §2490; C97, §3411; C24, 27, 31, 35, 39, §**11841;** C46, 50, 54, 58, 62, §632.10; C66, 71, 73, 75, 77, 79, 81, §633.27]

2005 Acts, ch 38, §9

**633.27A Docketing guardianship and conservatorship proceedings.**

When a petition is filed for a conservatorship or guardianship, or a combined petition as provided in section 633.627, the administration thereof shall be treated as a separate proceeding, with a separate docket number, from the date of the filing of the petition. The clerk shall clearly indicate on the docket whether the proceedings are voluntary or involuntary and whether a guardianship, a conservatorship, or combined.

89 Acts, ch 178, §7

**633.28 Docketing trust proceedings.** Repealed by 2005 Acts, ch 38, § 50.

**633.29** Repealed by 99 Acts, ch 144, § 15.

**633.30** Repealed by 93 Acts, ch 70, § 15.

**633.31 Calendar — fees in probate.**

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

2. The clerk shall charge and collect the following fees in connection with probate matters, which shall be deposited in the account established under section 602.8108:

*a.* For services performed in short form probates pursuant to sections 450.22 and 450.44 ..... $ 15.00

*b.* For services performed in probate of will without administration ..... 15.00

*c.* For filing and indexing a transcript 50.00

*d.* For taking and approving a bond, or the sureties on a bond ..... 20.00

*e.* For entering a rule or order ..... 10.00

*f.* For certificate and seal ..... 10.00

*g.* For making a complete record where real estate is sold ..... per 100 words ..... .20

*h.* For making a transcript or copies of orders or records filed in the clerk's office ..... per 100 words ..... .50

*i.* For certifying change of title ..... 20.00

*j.* For issuing commission to appraisers ..... 2.00

*k.* For other services performed in the settlement of the estate of any decedent, minor, person with mental illness, or other persons laboring under legal disability, except where actions are brought by the administrator, guardian, trustee, or person acting in a representative capacity or against that person, or as may be otherwise provided herein,

where the value of the personal property and real estate of such a person falls within the following indicated amounts, the fee opposite such amount shall be charged.

(1) Up to $3,000.00 ..... 5.00
(2) 3,000.00 to 5,000.00 .....10.00
(3) 5,000.00 to 7,000.00 .....15.00
(4) 7,000.00 to 10,000.00 .....20.00
(5) 10,000.00 to 15,000.00 .....25.00
(6) 15,000.00 to 25,000.00 .....30.00
(7) For each additional $25,000.00 or major fraction thereof .....50.00

*l.* For services performed in small estate administration .....15.00

3. The fee set forth in subsection 2, paragraph *"k"*, shall not be charged on any property transferred to a testamentary trust from an estate that has been administered in this state and for which court costs have been assessed and paid.

[C97, §3269; C24, 27, 31, 35, 39, §**11844;** C46, 50, 54, 58, 62, §632.13; C66, 71, 73, 75, 77, 79, 81, §633.31]

83 Acts, ch 186, §10124, 10201; 88 Acts, ch 1258, §3; 89 Acts, ch 207, §2; 94 Acts, ch 1074, §12, 13; 96 Acts, ch 1129, §113; 99 Acts, ch 56, §3; 2004 Acts, ch 1120, §7; 2007 Acts, ch 180, §3; 2009 Acts, ch 179, §64, 72

**633.32 Delinquent inventories and reports.**

1. On June 1 and December 1 of each year, the clerk shall notify the fiduciary and the fiduciary's attorney of any delinquent inventories or reports due by law in any pending estate, trust, guardianship, or conservatorship, and that unless such delinquent inventory or report is filed within sixty days thereafter, the matter shall be reported to the presiding judge. If the delinquent inventory is not filed within the time so specified, the fiduciary will be subject to removal under the provisions of section 633.65 of this Code.

2. On August 1 and February 1 of each year, the clerk shall report to the presiding judge all delinquent inventories or reports in estates, trusts, guardianships, or conservatorships on which such notice has been given and no report or inventory has been filed in response to the notice.

3. The reports required by this section shall indicate thereon all cases in which the attorney, or the fiduciary or the fiduciary's surety, is deceased, or insolvent, or cannot be found, or has removed from this state, and where it is shown by said reports, or it otherwise appears that there are no known assets belonging to the estate, the judge may, on the judge's own motion, order said estate closed, and may, in the judge's discretion, waive costs, or, on reasonable notice to the fiduciary, tax costs against the fiduciary. Such order shall not operate to prevent the reopening of such estate.

[C97, §3269; C24, 27, 31, 35, 39, §**11845;** C46, 50, 54, 58, 62, §632.14; C66, 71, 73, 75, 77, 79, 81, §633.32]

2000 Acts, ch 1150, §1

## PART 3

## PROCEDURE IN PROBATE

**633.33 Nature of proceedings in probate.**

Actions to set aside or contest wills, for the involuntary appointment of guardians and conservators, and for the establishment of contested claims shall be triable in probate as law actions, and all other matters triable in probate shall be tried by the probate court as a proceeding in equity.

[C66, 71, 73, 75, 77, 79, 81, §633.33]

**633.34 Applicability of rules of civil procedure.**

All actions triable in probate shall be governed by the rules of civil procedure, except as provided otherwise in this probate code.

[C66, 71, 73, 75, 77, 79, 81, §633.34]

2005 Acts, ch 38, §51

**633.35 Reports and applications for orders.**

All petitions, reports, and applications for orders in probate must be in writing, verified, acknowledged or certified, and self-explanatory. If the petition, report, or application is certified, substantially the following language shall be used:

I certify under penalty of perjury and pursuant to the laws of the state of Iowa that the preceding is true and correct.

[C97, §3421; C24, 27, 31, 35, 39, §**12072;** C46, 50, 54, 58, 62, §638.35; C66, 71, 73, 75, 77, 79, 81, §633.35]

89 Acts, ch 35, §1

Referred to in §450.58

**633.36 Orders in probate.**

All orders and decrees of the court sitting in probate are final decrees as to the parties having notice and those who have appeared without notice.

[C66, 71, 73, 75, 77, 79, 81, §633.36]

**633.37 Orders without notice.**

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

[C66, 71, 73, 75, 77, 79, 81, §633.37]

**633.38 Time and place of hearing.**

Except as otherwise provided in this probate code, the hearing of any matter requiring notice shall be had at such time and place as the court may fix.

[C73, §2313; C97, §3261; C24, 27, 31, 35, 39, §**11820;** C46, 50, 54, 58, 62, §631.2; C66, 71, 73, 75, 77, 79, 81, §633.38]

2005 Acts, ch 38, §51

**633.39 Place of hearing — noncontest or agreement.**

In cases where no objection, resistance or appearance has been filed, or by agreement, such hearing may be had at any place within the judicial district.

[C97, §3261; C24, 27, 31, 35, 39, §**11821;** C46, 50, 54, 58, 62, §631.3; C66, 71, 73, 75, 77, 79, 81, §633.39]

**633.40 Notice in probate proceedings.**

1. *Court prescribing notice.* Except as otherwise provided in this probate code, the court shall fix the time and place of hearing of any matter requiring notice and shall prescribe a time for the hearing not less than twenty days after the date the notice is served unless the court finds there is good cause shown to shorten the time period to less than twenty days. The court shall also prescribe the manner of service of the notice of such hearing.

2. *Notice by publication.* In the case of proceedings against unknown persons or persons whose address or whereabouts are unknown, the court shall prescribe that notice may be served by publication within the time and in the manner provided by the rules of civil procedure.

3. *No notice by posting.* No notice shall be served at any time by posting.

4. *Notice otherwise provided.* In lieu of the foregoing the notice may direct each interested party to file the party's objections thereto in writing, if any, on or before a date certain, to be set out in the notice and to be not less than twenty days after the day the notice

is served upon the party and that unless the party does so file objections in writing that the party will be forever barred from making any objections thereto. Said notice shall be served upon each interested party personally in compliance with the rules of civil procedure, or upon those parties not under legal disability by ordinary United States mail. In the event objections thereto are timely filed, the court shall fix the time and place of the hearing for the judicial determination of the issues raised.

5. *Notice by mail.* When notice in probate proceedings is served upon an interested party by United States mail, the service is made and completed when the notice being served is enclosed in a sealed envelope with the proper postage thereon addressed to the interested party at the party's last known post office address and is deposited in a mail receptacle provided by the United States postal service.

[C73, §2314; C97, §3262; C24, 27, 31, 35, 39, §**11822;** C46, 50, 54, 58, 62, §631.4; C66, 71, 73, 75, 77, 79, 81, §633.40]

2005 Acts, ch 38, §51; 2009 Acts, ch 52, §2, 14

Referred to in §633.10, 633.23, 633.237, 633.374, 633.376, 633.389, 633.478, 633.554, 633.568, 633.677, 633.754, 633A.3114, 633A.3115, 635.8

[SP] 2009 amendment to subsection 1 applies to orders setting hearings entered on or after July 1, 2009; 2009 Acts, ch 52, §14

**633.41 Consular representatives — notice.**

Whenever in the course of the administration of any estate, it shall appear that any subject, citizen, or national of a foreign country is interested as an heir, devisee, legatee, or otherwise, and the address of such person is unknown to the personal representative, the personal representative shall give notice by mail to the consular representative of such country for Iowa of the pendency of such proceedings and of the particular interest of such foreign subject. If such consular representative shall not have filed the representative's designation and address with the clerk, then such notice shall be mailed to the chief diplomatic representative of such foreign country at Washington, D.C. Failure to give such notice shall in no event and in no manner affect title to property.

[C27, 31, 35, §11845-b1; C39, §**11845.1;** C46, 50, 54, 58, 62, §632.15; C66, 71, 73, 75, 77, 79, 81, §633.41]

**633.42 Requests for notice.**

At any time after the issuance of letters testamentary or of administration upon a decedent's estate, any person interested in the estate may file with the clerk a written request, in triplicate, for notice of the time and place of all hearings in such estate for which notice is required by law, by rule of court, or by an order in such estate. The request for notice shall state the name and post office address of such person and the name and post office address of the attorney, if any, for the party requesting the notice. The clerk shall docket the request, and transmit the duplicates to the personal representative of the estate of the decedent and to the personal representative's attorney of record, if any. Thereafter, the personal representative shall, unless otherwise ordered by the court, serve, by ordinary mail, upon such person, or the person's attorney, if any, a notice of each hearing.

[C66, 71, 73, 75, 77, 79, 81, §633.42]

93 Acts, ch 111, §1

Referred to in §633.43, 654.4A

**633.43 Notice and appearance.**

In any matter pending in the probate court, the attorney general may request notice of all hearings therein as provided by section 633.42, and may, with the approval of the court, intervene in behalf of the public interest. The court, on its own motion, in any such matter involving the public interest, may direct the fiduciary to give notice of the hearing to the attorney general.

[C66, 71, 73, 75, 77, 79, 81, §633.43]

**633.44 Waiver of service of notice.**

Any notice required under this probate code, or by order of court, may be waived in writing by the person, or the fiduciary, entitled to receive such notice.

[C66, 71, 73, 75, 77, 79, 81, §633.44]

2005 Acts, ch 38, §51

**633.45 Notice of order served on fiduciary and attorney.**

When the court makes an order affecting a fiduciary, it shall be served upon the fiduciary and the fiduciary's attorney of record in such manner as the court may prescribe.

[R60, §2474, 2475, 2476; C73, §2479, 2480, 2481; C97, §3403, 3404; S13, §3403; C24, 27, 31, 35, 39, §**12055, 12056;** C46, 50, 54, 58, 62, §638.15, 638.16; C66, 71, 73, 75, 77, 79, 81, §633.45]

**633.46 Proof of publication.**

Proof of the publication of all notices that are by this probate code or by order of court required to be published shall be made by an affidavit of the publisher or of any employee having knowledge of the facts.

[C66, 71, 73, 75, 77, 79, 81, §633.46]

2005 Acts, ch 38, §51

**633.47 Proof of service and payment of costs.**

Proof of service of any notice, required by this probate code or by order of court, including those by publication, shall be filed with the clerk. The costs of serving any notice given by the fiduciary shall be paid directly by the estate.

[C66, 71, 73, 75, 77, 79, 81, §633.47]

2003 Acts, ch 151, §52; 2005 Acts, ch 38, §51

**633.48 Certified copies affecting foreign real estate.**

A certified copy of any proceedings, order, judgment, or deed, affecting real estate in any county other than that in which administration or conservatorship is originally granted, shall be furnished to the clerk of the court of the county where such real estate is situated. Upon receipt of the certified copy, the clerk of court shall assign a probate case number to the certified copy and file the copy using the name of the probate proceeding in the county sending the copy. The file created by the county receiving a certified copy as provided in this section shall not be considered an active file for administrative purposes.

[C97, §3265; C24, 27, 31, 35, 39, §**11826;** C46, 50, 54, 58, 62, §631.8; C66, 71, 73, 75, 77, 79, 81, §633.48]

99 Acts, ch 144, §12

**633.49 Transfer to another county.**

In any proceeding in probate, the court may, upon written showing, supported by affidavit, and on such notice to interested parties as the court may prescribe, transfer such proceeding to any other county, when it is made to appear that such transfer will be in furtherance of justice. Thereupon, the matter shall be pending in such other county.

[C24, 27, 31, 35, 39, §**11829;** C46, 50, 54, 58, 62, §631.11; C66, 71, 73, 75, 77, 79, 81, §633.49]

**633.50 Certified copy of transferring court's records.**

The clerk of the court which orders such a transfer shall retain the original files and papers, but shall make a certified copy thereof and of all record entries pertaining to the proceedings. The clerk of court shall at once file the same in the office of the clerk of the court to which the transfer has been made.

[C24, 27, 31, 35, 39, §**11830;** C46, 50, 54, 58, 62, §631.12; C66, 71, 73, 75, 77, 79, 81, §633.50]

Referred to in §633.51

**633.51 Filing of certified copy by receiving court.**

The clerk of the court to which the proceedings are transferred shall file, within a new file of the clerk's county, the certified copy of the record entries referred to in section 633.50.

[C24, 27, 31, 35, 39, §**11831;** C46, 50, 54, 58, 62, §631.13; C66, 71, 73, 75, 77, 79, 81, §633.51]

99 Acts, ch 144, §13

**633.52 Mistakes corrected.**

Mistakes in settlements may be corrected at any time before the final discharge of any fiduciary on such notice, if any, as the court may direct.

[C51, §1432; R60, §2457; C73, §2474; C97, §3398; C24, 27, 31, 35, 39, §**12049;** C46, 50, 54, 58, 62, §638.9; C66, 71, 73, 75, 77, 79, 81, §633.52]

**633.53 Submission and retention of vouchers and receipts.**

In all accountings filed by fiduciaries, vouchers or receipts for all disbursements shall be filed or submitted by the fiduciary upon written request of any interested party, or upon order of court. After an order, or decree, has been entered approving such accounting, any vouchers or receipts which have been filed may be withdrawn under order of the court. Vouchers or receipts not filed, or which have been withdrawn, shall be preserved by the fiduciary until the accounting of such fiduciary becomes final.

[C66, 71, 73, 75, 77, 79, 81, §633.53]

**633.54 through 633.62** Reserved.

## DIVISION III

## GENERAL PROVISIONS RELATING TO FIDUCIARIES

## PART 1

## QUALIFICATION, APPOINTMENT, SUBSTITUTION, AND REMOVAL OF FIDUCIARIES

**633.63 Qualification of fiduciary — resident.**

1. Any natural person of full age, who is a resident of this state, is qualified to serve as a fiduciary, except any of the following:

*a.* A person who is incompetent.

*b.* Any other person whom the court determines to be unsuitable.

2. Banks and trust companies organized under the laws of the United States or state banks, when approved by the superintendent of banking under section 524.1001, and trust companies authorized to engage in trust business pursuant to section 524.1005, are authorized to act in a fiduciary capacity in Iowa.

3. A private nonprofit corporation organized under chapter 504, Code 1989, or current chapter 504 is qualified to act as a guardian, as defined in section 633.3, or a conservator, as defined in section 633.3, if the corporation does not possess a proprietary or legal interest in an organization which provides direct services to the individual.

4. The state or a local substitute decision maker as defined in section 231E.3 is authorized to act in a fiduciary capacity in this state in accordance with chapter 231E.

[C51, §1304, 1305; R60, §2336, 2337; C73, §2345, 2346; C97, §3288, 3289; C24, 27, 31, 35, 39, §**11871, 11872;** C46, 50, 54, 58, 62, §633.27, 633.28; C66, 71, 73, 75, 77, 79, 81, §633.63]

85 Acts, ch 31, §1; 86 Acts, ch 1131, §1; 89 Acts, ch 178, §8; 89 Acts, ch 257, §32; 96 Acts, ch 1129, §105; 98 Acts, ch 1118, §1; 2003 Acts, ch 108, §108; 2004 Acts, ch 1049, §191; 2004 Acts, ch 1175, §394; 2005 Acts, ch 175, §144, 145; 2010 Acts, ch 1137, §3

Referred to in §173.22A, 217.41, 231E.10, 256.88, 260C.32, 262.9, 303.7, 303.9, 501A.601, 524.107, 633.64, 633.65, 633.649, 635.1

**633.64 Qualification of fiduciary — nonresident.**

The court may, upon application, appoint the following nonresidents as fiduciaries:

1. *Natural persons.* A natural person who is a nonresident of this state and who is otherwise qualified under the provisions of section 633.63, provided a resident fiduciary is appointed to serve with such nonresident fiduciary; and provided further that the court, for good cause shown, may appoint such nonresident fiduciary to serve alone without the appointment of a resident fiduciary.

2. *Banks and trust companies.* Banks and trust companies organized under the laws of the United States or of another state and authorized to act in a fiduciary capacity in another state, if banks and trust companies of this state are permitted to act as fiduciary under similar conditions in the state where such bank or trust company is located.

[C66, 71, 73, 75, 77, 79, 81, §633.64]

Referred to in §524.107, 633.65, 633.649, 635.1

**633.65 Removal of fiduciary.**

When any fiduciary is, or becomes, disqualified under sections 633.63 and 633.64, has mismanaged the estate, failed to perform any duty imposed by law, or by any lawful order of court, or ceases to be a resident of the state, then the court may remove the fiduciary. The court may upon its own motion, and shall upon the filing of a verified petition by any person interested in the estate, including a surety on the fiduciary's bond, order the fiduciary to appear and show cause why the fiduciary should not be removed. Any such petition shall specify the grounds of complaint. The removal of a fiduciary after letters are duly issued to the fiduciary shall not invalidate the fiduciary's official acts performed prior to removal.

[C51, §1306, 1509, 1510; R60, §2338, 2561, 2562; C73, §2247, 2251, 2496 – 2500; C97, §3198, 3201, 3416 – 3418; S13, §3228-g; C24, 27, §12066 – 12068, 12600, 12604, 12643; C31, 35, §12066 – 12068, 12600, 12604, 12643, 12644-c12; C39, §**12066 – 12068, 12600, 12604, 12643, 12644.12;** C46, 50, 54, 58, 62, §638.29 – 638.31, 668.27, 668.31, 671.12, 672.12; C66, 71, 73, 75, 77, 79, 81, §633.65]

Referred to in §231E.7, 524.1007, 524.1008, 633.32, 633.649

**633.66 Appointment of successor fiduciary.**

When any fiduciary fails to qualify, dies, is removed by the court, or resigns, and such resignation is accepted by the court, the court may, and if the fiduciary were the sole or last surviving fiduciary, and the administration has not been completed, the court shall appoint another fiduciary in the former's place.

[C51, §1303, 1307; R60, §2335, 2339; C73, §2347, 2348; C97, §3290, 3291; C24, 27, 31, 35, 39, §**11873, 11874;** C46, 50, 54, 58, 62, §633.29, 633.30; C66, 71, 73, 75, 77, 79, 81, §633.66]

Referred to in §633.649

**633.67 Powers of surviving cofiduciary.**

When the instrument creating the estate or trust requires two or more fiduciaries, and a vacancy occurs on account of the death, resignation, or removal of one of the fiduciaries, during the period of the vacancy thus created, the remaining fiduciary or fiduciaries shall have all the rights, titles and powers, whether discretionary or otherwise, of all the fiduciaries.

[C66, 71, 73, 75, 77, 79, 81, §633.67]

Referred to in §633.649

**633.68 Powers of successor fiduciary.**

When a successor fiduciary is appointed, the successor shall have all the rights, powers, titles and duties of the predecessor, except that the successor shall not exercise powers given in the instrument creating the powers that by its express terms are personal to the fiduciary therein designated.

[C66, 71, 73, 75, 77, 79, 81, §633.68]

Referred to in §633.649

**633.69 Substitution — effect.**

The substitution of a fiduciary shall occasion no delay in the administration of an estate. The periods herein specified within which acts are to be performed after the appointment of

a fiduciary shall, unless otherwise ordered by the court, be computed from the issuing of the letters to the first fiduciary.

[C51, §1308; R60, §2340; C73, §2349; C97, §3292; C24, 27, 31, 35, 39, §**11875;** C46, 50, 54, 58, 62, §633.31; C66, 71, 73, 75, 77, 79, 81, §633.69]

Referred to in §633.649

**633.70 Property delivered — penalty.**

Upon the removal of any fiduciary, the fiduciary shall be required by order of the court to deliver to the person who may be entitled thereto all the property in the fiduciary's hands or under the fiduciary's control belonging to the estate, and if the fiduciary fails or refuses to comply with any proper order of the court, the fiduciary may be committed to the jail of the county until the fiduciary does.

[C51, §1509; R60, §2561, 2563; C73, §2251, 2252, 2501, 2502; C97, §3201, 3419; C24, 27, 31, 35, 39, §**12069, 12601, 12602;** C46, 50, 54, 58, 62, §638.32, 668.28, 668.29; C66, 71, 73, 75, 77, 79, 81, §633.70]

Referred to in §633.649

[P] Removal of fiduciary under §633.65 constitutes effective turnover order; see R.Prob.P. 7.1

**633.71 Legal effect of appointment.**

By qualifying as fiduciary any person, resident or nonresident, submits to the jurisdiction of the court making the appointment of the fiduciary and, in addition, shall be deemed to agree that:

1. All property coming into the fiduciary's hands is subject to the jurisdiction of the court wherein are pending the proceedings in which the fiduciary is serving, and

2. The fiduciary is subject to all orders entered by the court in the proceedings in which the fiduciary is serving and that notices served upon the fiduciary with respect thereto in compliance with the procedure prescribed by the probate code shall have the same force and effect as if such service had been personally made upon the fiduciary within the state.

3. The fiduciary shall be subject to the jurisdiction of the courts of this state in all actions and proceedings against the fiduciary arising from or growing out of the fiduciary relationship and activities and that the service of process in such actions and proceedings may be made upon the fiduciary by serving the original notice upon the fiduciary outside this state and that such service shall have the same force and effect as though the service had been personally made upon the fiduciary within this state.

4. The clerk of the court in which is pending the proceedings in which the fiduciary is serving is the lawful attorney or resident agent of such nonresident fiduciary upon whom service of process may be made whether such process be an order of the court entered in the proceedings in which the fiduciary is serving or an original notice of an action arising from or growing out of the fiduciary relationship and activities of the nonresident fiduciary.

[C71, 73, 75, 77, 79, 81, §633.71]

2005 Acts, ch 38, §51

Referred to in §633.649

**633.72 Manner of service.**

1. Service of an original notice of an action or process upon a nonresident fiduciary as herein provided may be made upon such fiduciary either by:

*a.* Delivering four copies of said notice or of said process to the clerk of court wherein the proceedings in which such fiduciary is serving are pending; or

*b.* Mailing four copies of said original notice or of said process by certified mail addressed to said clerk of court by the clerk's official title.

2. Upon receipt of said copies, such clerk of court shall immediately acknowledge and accept service thereof on behalf of the nonresident fiduciary by writing thereon or attaching thereto written acknowledgment and acceptance of such service on behalf of such nonresident fiduciary, giving the date thereof.

3. The clerk of court shall forthwith:

*a.* File one copy in the action or proceedings to which it relates if pending in the court of which the clerk is clerk, or transmit such notice or process and acknowledgment and

acceptance of the service thereof by certified mail to the clerk of court in which the action or proceedings is pending.

*b.* Mail one copy of such original notice or process and a copy of the written acknowledgment and acceptance of service thereof by certified mail to the nonresident fiduciary at the last address of such fiduciary as shown by the records in the proceedings in which such fiduciary is serving.

*c.* Mail one copy of such original notice or process and a copy of the written acknowledgment and acceptance of service thereof by certified mail to the attorney of record for such fiduciary.

*d.* Retain a copy of such original notice or process for the clerk's files.

4. Said service upon the clerk of court as herein provided shall have the same force and effect as if served upon the nonresident fiduciary personally within the state of Iowa on the date stated in said acknowledgment and acceptance of such service by the clerk of court.

[C71, 73, 75, 77, 79, 81, §633.72]
Referred to in §633.649

**633.73 through 633.75** Reserved.

## PART 2

## POWERS APPLICABLE TO ALL FIDUCIARIES

**633.76 Two or more fiduciaries — exercise of powers.**

Where there are two or more fiduciaries, they shall all concur in the exercise of the powers conferred upon them, unless the instrument creating the estate provides to the contrary. In the event that the fiduciaries cannot concur upon the exercise of any power, any one of the fiduciaries may apply to the court for directions, and the court shall make such orders as it may deem to be to the best interests of the estate.

[C66, 71, 73, 75, 77, 79, 81, §633.76]
Referred to in §633.649

**633.76A Exception — voting of publicly traded securities.**

Where there are two or more fiduciaries, a fiduciary may delegate to another fiduciary the power to vote publicly traded securities, unless the instrument creating the estate provides to the contrary. The delegating fiduciary shall not be personally liable for the manner in which such securities are voted by the fiduciary to whom the power is delegated.

91 Acts, ch 36, §2
Referred to in §633.649

**633.77 Receipts by one fiduciary.**

One of the several fiduciaries may receive and receipt for any money, which receipt shall be given by the fiduciary in the fiduciary's own name only, and the fiduciary must individually account for all the money thus received and receipted for by the fiduciary, and this shall not charge any cofiduciary, except insofar as it can be shown to have come into the cofiduciary's hands.

[C51, §1442; R60, §2467; C73, §2478; C97, §3402; C24, 27, 31, 35, 39, §**12054;** C46, 50, 54, 58, 62, §638.14; C66, 71, 73, 75, 77, 79, 81, §633.77]
Referred to in §633.649

**633.78 Third parties protected.**

A person who in good faith pays or transfers to a fiduciary any money or other property which the fiduciary as such is authorized to receive, is not responsible for the proper application thereof by the fiduciary; and any right or title acquired from the fiduciary in consideration of such payment or transfer is not invalid in consequence of a misapplication by the fiduciary.

[C66, 71, 73, 75, 77, 79, 81, §633.78]
Referred to in §633.649

**633.79 Fiduciaries considered as one.**

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

[C51, §1437; R60, §2462; C73, §2489; C97, §3410; C24, 27, 31, 35, 39, §**12062;** C46, 50, 54, 58, 62, §638.22; C66, 71, 73, 75, 77, 79, 81, §633.79]

Referred to in §633.649

**633.80 Fiduciary of a fiduciary.**

A fiduciary has no authority to act in a matter wherein the fiduciary's decedent or ward was merely a fiduciary, except that the fiduciary shall file a report and accounting on behalf of the decedent or ward in said matter.

[C51, §1438; R60, §2463; C73, §2483; C97, §3406; C24, 27, 31, 35, 39, §**12058;** C46, 50, 54, 58, 62, §638.18; C66, 71, 73, 75, 77, 79, 81, §633.80]

Referred to in §633.649

**633.81 Suit by and against fiduciary.**

Any fiduciary may sue, be sued and defend in such capacity.

[R60, §1452; C73, §2275; C97, §3224; C24, 27, 31, 35, 39, §**12582;** C46, 50, 54, 58, 62, §668.10; C66, 71, 73, 75, 77, 79, 81, §633.81]

Referred to in §633.649

**633.82 Designation of attorney.**

The designation of the attorney employed by the fiduciary to assist in the administration of the estate shall be filed in the estate proceedings. The designation shall state the attorney's name, post office address, and telephone number. The designation shall clearly state the name of the attorney who is in charge of the case and the attorney's name shall not be listed by firm name only.

[C66, 71, 73, 75, 77, 79, 81, §633.82; 82 Acts, ch 1060, §1]

Referred to in §633.649

**633.83 Continuation of business.**

Upon a showing of advantage to the estate, the court may authorize the fiduciary to continue any business of the estate for the benefit thereof. The order may be without notice, or after such notice as the court may prescribe. The court may on its own motion, and upon the application of any interested party shall, review such authorization, and upon such review, may revoke or modify the same. The order may provide:

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

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

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

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

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

[C51, §1327; R60, §2359; C73, §2407; C97, §3337; C24, 27, 31, 35, 39, §**11956;** C46, 50, 54, 58, 62, §635.52; C66, 71, 73, 75, 77, 79, 81, §633.83]

Referred to in §633.649

**633.84 Delegation of authority.**

Under order of court, with or without notice, a fiduciary may engage, at estate expense, outside specialists, and may delegate to them, or consult with them for advice regarding the performance of aspects of the estate management which require professional skills or facilities which the fiduciary does not possess, or does not possess in sufficient degree, and the fiduciary may employ, at estate expense, subordinates and agents to perform ministerial acts

and carry on or complete details of estate business under the policies and terms established by the fiduciary.

[C66, 71, 73, 75, 77, 79, 81, §633.84]

Referred to in §633.86, 633.649

**633.85 Liability of fiduciary employing agents.**

The fiduciary shall not be personally liable for the acts or omissions of any such specialist, subordinate or agent, unless it can be shown that said acts or omissions would have been a breach of duty by the fiduciary had the fiduciary personally done it, and that,

1. The fiduciary directed or permitted the breach; or
2. The fiduciary did not select or retain the said specialist, subordinate or agent with reasonable care; or
3. The fiduciary did not properly supervise the specialist, subordinate or agent; or
4. The fiduciary approved, acquiesced or cooperated in the neglect, omission, misconduct or default by the specialist, subordinate or agent.

[C66, 71, 73, 75, 77, 79, 81, §633.85]

Referred to in §633.649

**633.86 Reduction of fees when agents are employed.**

The court shall, in fixing the fees of any fiduciary, consider the compensation allowed to any person employed by the fiduciary under the provisions of section 633.84. If the court determines that the services rendered by such person were services that would normally have been performed by the fiduciary, the compensation of the fiduciary may, in the court's discretion, be reduced by all or any part of the compensation allowed to any such person.

[C66, 71, 73, 75, 77, 79, 81, §633.86]

Referred to in §633.649

**633.87 Deposit of money in banks.**

A fiduciary may deposit moneys and other assets belonging to the estate in any banking institution authorized to do business in the state of Iowa.

[C66, 71, 73, 75, 77, 79, 81, §633.87]

Referred to in §633.649

**633.88 Law governing administration of estates of nonresidents.**

Except as otherwise provided in this probate code, all provisions of the law relating to the administration of domestic estates and to the fiduciaries appointed therein, shall apply to the administration of the estate of a nonresident, the appointment of the fiduciary therein, and the granting of letters.

[C66, 71, 73, 75, 77, 79, 81, §633.88]

2005 Acts, ch 38, §51

Referred to in §633.649

**633.89 Power of fiduciary or custodian to deposit securities.**

A fiduciary as defined in section 633.3, holding securities, and a bank as defined in section 524.103, which is holding securities as a managing agent or as a custodian, including a custodian for a fiduciary, may deposit securities in a clearing corporation, as defined in section 554.8102, which is located within or without the state of Iowa, if the clearing corporation is federally regulated. A depositing bank is subject to rules adopted by the superintendent of banking, with respect to state banks, and by the comptroller of the currency, with respect to national banking associations.

Certificates representing deposited securities of the same class of the same issuer may merge securities deposited by a fiduciary, or by a bank acting as a managing agent or custodian, with securities deposited by any other person and may be held in the name of the clearing corporation or its nominee. The records of a depositing fiduciary and a depositing bank acting as a managing agent or custodian at all times must identify the persons on whose behalf securities have been deposited. Title to deposited securities may be transferred by entry on the books of a clearing corporation without physical delivery of the securities.

On demand by the owner, a bank depositing securities in a clearing corporation as a

managing agent or as a custodian shall identify in writing the securities so deposited. On demand by any party to the accounting of a fiduciary, the fiduciary shall identify in writing the securities deposited in a clearing corporation for its account as fiduciary.

This section applies regardless of the date of the agreement, instrument, or court order under which the fiduciary or bank was appointed.

[C75, 77, 79, 81, §633.89]

96 Acts, ch 1138, §79, 84

Referred to in §524.1006, 633.649

**633.90 through 633.92** Reserved.

## PART 3

## SPECIAL PROVISIONS RELATING TO PROPERTY

**633.93 Limitation on actions affecting deeds.**

No action for recovery of any real estate sold by any fiduciary can be maintained by any person claiming under the deceased, the ward, or a beneficiary, unless brought within five years after the date of the recording of the conveyance.

[C66, 71, 73, 75, 77, 79, 81, §633.93]

Referred to in §633.649

**633.94 Platting.**

When it is for the best interests of the estate in order to dispose of real property, the court may, upon application by the fiduciary, or any other interested person, after notice and upon good cause shown, authorize the fiduciary, either alone or together with other owners, to plat any land belonging to the estate in accordance with the statutes in regard to platting. The court may authorize the fiduciary to execute any instruments which may be required of the titleholder or proprietor in connection with the platting of such land.

[C66, 71, 73, 75, 77, 79, 81, §633.94]

Referred to in §633.649

[P] See also chapter 354

**633.95 Release of liens and mortgages.**

Any fiduciary qualified under the laws of this state may, without prior order of court, release or discharge, in whole or in part any mortgage, judgment or other lien held by the estate.

[C51, §1337; R60, §2369; C73, §2383; C97, §3319; S13, §3307-a; C24, 27, 31, 35, 39, §**11897, 11929;** C46, 50, 54, 58, 62, §633.53, 635.18; C66, 71, 73, 75, 77, 79, 81, §633.95]

Referred to in §633.98, 633.649

[P] See §636.26

**633.96 Specific performance voluntary.**

When an estate is under such an obligation to convey property as might be enforced by suit for specific performance, the fiduciary may without prior order of court execute such conveyance.

[C51, §1435, 1436; R60, §2460, 2461; C73, §2487, 2488; C97, §3409; C24, 27, 31, 35, 39, §**12061;** C46, 50, 54, 58, 62, §638.21; C66, 71, 73, 75, 77, 79, 81, §633.96]

Referred to in §633.98, 633.649

**633.97 Specific performance involuntary.**

When an estate is under obligation to convey property, the court may, upon application of any interested person, with or without notice as the court may direct, require the fiduciary to execute such a conveyance.

[C51, §1435, 1436; R60, §2460, 2461; C73, §2487, 2488; C97, §3409; C24, 27, 31, 35, 39, §**12061;** C46, 50, 54, 58, 62, §638.21; C66, 71, 73, 75, 77, 79, 81, §633.97]

Referred to in §633.98, 633.649

**633.98 Certificate of appointment and authority.**

When any instrument executed in accordance with sections 633.95 to 633.97, inclusive, is to be recorded in a county other than the county in which the estate is pending, there shall also be recorded a certificate executed by the clerk of the court making the appointment, with seal affixed, showing the name of the court making the appointment, the date of the same, and that such fiduciary had not been discharged at the time of the execution of such instrument.

[C97, §3308; SS15, §3308; C24, 27, 31, 35, 39, §**11898;** C46, 50, 54, 58, 62, §633.54; C66, 71, 73, 75, 77, 79, 81, §633.98]

Referred to in §633.649

**633.99 Federal stock authority to purchase.**

When the court shall enter an order authorizing the fiduciary to execute a mortgage to encumber any property of the estate to secure a loan obtained from any association or corporation created, or which may be created, by authority of the United States and as an instrumentality of the United States, the court may authorize the fiduciary to purchase stock in an association or corporation, when such a purchase of stock is necessary or required as an incident to, or condition of, obtaining the loan, and to mortgage the estate property for such purpose, as well as to make payment for the stock so purchased from the proceeds of the loan so obtained.

[C35, §11951-g1; C39, §**11951.1;** C46, 50, 54, 58, 62, §635.41; C66, 71, 73, 75, 77, 79, 81, §633.99]

Referred to in §633.649

**633.100 Waiver of exemption.**

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

[C35, §11951-g3, 12644-g1, -g2, -g3, -g4, -g5; C39, §**11951.3, 12644.21 – 12644.25;** C46, 50, 54, 58, 62, §635.43, 673.1 – 673.5; C66, 71, 73, 75, 77, 79, 81, §633.100]

Referred to in §633.649

**633.101 Appraisal.**

At any time that the court may determine it to be to the best interests of the estate, it may order an appraisal of any or all of the property of an estate.

[C66, 71, 73, 75, 77, 79, 81, §633.101]

Referred to in §633.649

**633.102 Costs and expenses.**

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

[C66, 71, 73, 75, 77, 79, 81, §633.102]

Referred to in §633.649

**633.103** Repealed by 99 Acts, ch 124, § 32.

**633.104 through 633.107** Reserved.

## PART 4

## PROVISIONS RELATING TO ADMINISTRATION BY ALL FIDUCIARIES

### SUBPART A

### GENERAL PROVISIONS

**633.108 Small distributions to minors — payment.**

Whenever a minor becomes entitled under the terms of a will to a bequest or legacy, or to a share of the estate of an intestate, and the value of the bequest, legacy, or share does not exceed the sum of twenty-five thousand dollars, the personal representative may pay the bequest, legacy, or share to a custodian under any uniform transfers to minors Act. Receipt by the custodian, when presented to the court or filed with the report of distribution of the fiduciary, shall have the same force and effect as though the payment had been made to a duly appointed and qualified conservator for the minor.

[C39, §**12077.1;** C46, 50, 54, 58, 62, §638.41; C66, 71, 73, 75, 77, 79, 81, §633.108; 81 Acts, ch 193, §1; 82 Acts, ch 1052, §1]

95 Acts, ch 63, §3; 2000 Acts, ch 1150, §2; 2005 Acts, ch 38, §10

Referred to in §633.649

[P] See also chapter 565B, §633.574, 633.681, R.C.P. 1.1228

**633.109 Inability to distribute estate funds.**

Any fiduciary having in the fiduciary's possession or under the fiduciary's control any funds, moneys or securities due or to become due to any other person to whom payment or delivery cannot be made as shown by the report of the fiduciary on file, may, upon order of court, deposit such property with the clerk and take the receipt of the clerk for the same. Such receipt shall specifically state from whom said property was derived, the description thereof, and the name of the person entitled to the same. Thereafter, such funds shall be held and disposed of by the clerk in accordance with the provisions of chapter 636.

[C66, 71, 73, 75, 77, 79, 81, §633.109]

Referred to in §633.649

[P] See §636.31, 636.34

**633.110 Receipts taken.**

If such fiduciary shall otherwise discharge all the duties imposed by such appointment, the fiduciary may take the receipts of the clerk for such funds, moneys, or securities so deposited, which receipts shall specifically set forth from whom said funds, moneys, or securities were derived, the amount thereof, and the name of the person to whom due or to become due, if known.

[C66, 71, 73, 75, 77, 79, 81, §633.110]

Referred to in §633.649

[P] See §636.32

**633.111 Final discharge period.**

Such fiduciary may file such receipts with the final report, and if it shall be made to appear to the satisfaction of the court that the fiduciary has in all other respects complied with the law governing the appointment and duties, the court may approve such final report and enter the fiduciary's discharge.

[C66, 71, 73, 75, 77, 79, 81, §633.111]

Referred to in §633.649

[P] See §636.33

**633.112 Discovery of property.**

The court may require any person suspected of having possession of any property, including records and documents, of the decedent, ward, or the estate, or of having had such property under the person's control, to appear and submit to an examination under oath touching such

matters, and if on such examination it appears that the person has the wrongful possession of any such property, the court may order the delivery thereof to the fiduciary. Such a person shall be liable to the estate for all damages caused by the person's acts.

[C51, §1334, 1439; R60, §2366, 2464; C73, §2379, 2484; C97, §3315, 3407; C24, 27, 31, 35, 39, §**11925, 12059;** C46, 50, 54, 58, 62, §635.14, 638.19; C66, 71, 73, 75, 77, 79, 81, §633.112]

Referred to in §633.113, 633.649

[P] Similar provisions, §630.19, 680.10

**633.113 Commitment.**

If, upon being served with an order of the court requiring appearance for interrogation, as provided in section 633.112, any person fails to appear in accordance therewith, or if, having appeared, the person refuses to answer any question which the court thinks proper to be put to the person in the course of such examination, or if the person fails to comply with the order of the court requiring the delivery of the property to the fiduciary, the person may be committed to the jail of the county until the person does.

[C51, §1335; R60, §2367; C73, §2380; C97, §3316; C24, 27, 31, 35, 39, §**11926;** C46, 50, 54, 58, 62, §635.15; C66, 71, 73, 75, 77, 79, 81, §633.113]

2008 Acts, ch 1031, §68; 2008 Acts, ch 1032, §84

Referred to in §633.649

**633.114 Compromise of claims held by an estate.**

When it appears for the best interest of the estate, the fiduciary may, subject to approval of the court, effect a compromise with any debtor or other obligor, or extend, renew, or in any other manner, modify the terms of any obligation owing to the estate. If the fiduciary holds a mortgage, pledge, or other lien upon property of another person, the fiduciary may, in lieu of foreclosure, accept a conveyance or transfer of such encumbered assets from the owner thereof in satisfaction of the indebtedness secured by such lien, if it appears for the best interests of the estate, and if the court shall so order.

[C51, §1336; R60, §2368; C73, §2382; C97, §3318; C24, 27, 31, 35, 39, §**11928;** C46, 50, 54, 58, 62, §635.17; C66, 71, 73, 75, 77, 79, 81, §633.114]

Referred to in §633.649

**633.115 Compromise of claims against an estate.**

When a claim against an estate has been filed, or suit thereon is pending, the creditor and the fiduciary may, if it appears for the best interests of the estate, subject to approval of the court, compromise the claim, whether it is due or not due, absolute or contingent, liquidated or unliquidated.

[C51, §1336; R60, §2368; C73, §2382; C97, §3318; C24, 27, 31, 35, 39, §**11928;** C46, 50, 54, 58, 62, §635.17; C66, 71, 73, 75, 77, 79, 81, §633.115]

Referred to in §633.649

**633.116 Abandonment of property.**

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

[C66, 71, 73, 75, 77, 79, 81, §633.116]

Referred to in §633.649

**633.117 Encumbered assets.**

When any assets of the estate are encumbered by mortgage, pledge or other lien, the fiduciary may pay such encumbrance or any part thereof, renew or extend any obligation secured by the encumbrance, or may convey or transfer such assets to the creditor in satisfaction of the lien, in whole or in part, whether or not the holder of the encumbrance has filed a claim, or the fiduciary may purchase lands claimed or contracted for by the decedent, if it appears to be for the best interests of the estate and if the court shall so order.

The making of such payment shall not increase the share of the distributee entitled to such encumbered assets.

[C51, §1380; R60, §2412; C73, §2428; C97, §3354; C24, 27, 31, 35, 39, §**11977;** C46, 50, 54, 58, 62, §635.72; C66, 71, 73, 75, 77, 79, 81, §633.117]

Referred to in §633.649

[P] See also §633.423

**633.118 Attorney appointed for persons not represented.**

At or before the hearing in any proceedings under this probate code, where all the parties interested in the estate are required to be notified thereof, the court, in its discretion, may appoint some competent attorney to represent any interested person who has been served with notice and who is otherwise unrepresented. The appointment of an attorney under the provisions of this section, shall be in lieu of appointment of a guardian ad litem provided for in the rules of civil procedure.

[C97, §3423; C24, 27, 31, 35, 39, §**12074;** C46, 50, 54, 58, 62, §638.37; C66, 71, 73, 75, 77, 79, 81, §633.118]

2005 Acts, ch 38, §51

Referred to in §633.120, 633.121, 633.649

**633.119 Order and authority thereunder.**

The order making the appointment of such attorney must specify the names of the parties, so far as known, for whom the attorney is appointed, and the attorney will be authorized to represent such parties in all such proceedings subsequent to the appointment.

[C97, §3423; C24, 27, 31, 35, 39, §**12075;** C46, 50, 54, 58, 62, §638.38; C66, 71, 73, 75, 77, 79, 81, §633.119]

Referred to in §633.649

**633.120 Compensation.**

Any attorney so appointed under the authority of section 633.118 shall be paid for services out of the estate, as a part of the costs of administration, a fee to be fixed by the court, and upon distribution of the estate, the fee may be charged to the party represented by the attorney.

[C97, §3423; C24, 27, 31, 35, 39, §**12076;** C46, 50, 54, 58, 62, §638.39; C66, 71, 73, 75, 77, 79, 81, §633.120]

Referred to in §633.649

**633.121 Substitution — division of fee.**

The court may substitute another attorney for the one first appointed under the authority of section 633.118, in which case the fees must be divided in proportion to the services rendered.

[C97, §3423; C24, 27, 31, 35, 39, §**12077;** C46, 50, 54, 58, 62, §638.40; C66, 71, 73, 75, 77, 79, 81, §633.121]

Referred to in §633.649

**633.122 Settlement contested.**

The acts of the fiduciary without prior approval of court after notice, may be contested by any interested person at or before the entry of the order discharging the fiduciary.

[C51, §1431; R60, §2456; C73, §2475; C97, §3399; C24, 27, 31, 35, 39, §**12050;** C46, 50, 54, 58, 62, §638.10; C66, 71, 73, 75, 77, 79, 81, §633.122]

Referred to in §633.649

## SUBPART B

## INVESTMENTS BY FIDUCIARIES

**633.123 Prudent investments — fiduciaries.**

1. When investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing property for the benefit of another, a fiduciary shall consider all of the following circumstances along with the circumstances identified in section 633A.4302, if applicable:

*a.* The length of time the fiduciary will have control over the estate assets and the anticipated costs of complying with the provisions of this section.

*b.* The unique nature of all of the following:

(1) The duties of a personal representative or conservator.

(2) The assets, income, expenses, and distribution requirements of the estate.

(3) The needs and rights of the beneficiaries or the ward.

*c.* The express provisions of a will, codicil, or other controlling instrument.

2. The standards identified in this section shall be applied differently than similar standards for investment and management of trust property. Special consideration shall be given to the expected term of estates. Because some estates will have limited duration, there may be situations where an investment or a change in an investment is not warranted.

2007 Acts, ch 134, §7, 28

Referred to in §633.649

**633.123A Investments in investment companies and investment trusts.**

1. *a.* Notwithstanding any other provision of law, a bank or trust company acting as a fiduciary, in addition to other investments authorized by law for the investment of funds by a fiduciary or by the instrument governing the fiduciary and in the exercise of its investment discretion or at the direction of another person authorized to direct investment of funds held by the fiduciary, may invest and reinvest such funds in the securities of an open-end or closed-end management investment company or investment trust registered under the federal Investment Company Act of 1940, 15 U.S.C. § 80a-1 et seq. Investment and reinvestment under this section is allowed as long as the portfolio of such investment company or investment trust consists substantially of investments not otherwise prohibited by chapter 633A, subchapter IV, part 3, or by the governing instrument.

*b.* Investment and reinvestment under this section is not precluded merely because the bank or trust company or an affiliate of the bank or trust company provides the services of an investment advisor, custodian, transfer agent, registrar, sponsor, distributor, or manager to the investment company or investment trust and receives a reasonable fee for the services.

2. This section is applicable to all fiduciaries whether the will, agreement, or other instrument under which they are acting now exists on or before July 1, 1996.

96 Acts, ch 1008, §3; 99 Acts, ch 125, §105, 109; 2005 Acts, ch 38, §55; 2013 Acts, ch 30, §261

Referred to in §412.4, 633.649

[T] Code editor directive applied

## SUBPART C

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

**633.124 Investment may be held in name of nominee of bank or trust company.**

Any state or national bank or trust company, when acting with the consent of its cofiduciary, if any, may cause any investment held in any such capacity to be registered and held in the name of a nominee or nominees of such bank or trust company. Such cofiduciary is hereby empowered to give such consent unless it is specifically forbidden in the instrument creating the fiduciary relationship. Such bank or trust company shall be liable for the acts of any such nominee with respect to any investment so registered.

[C66, 71, 73, 75, 77, 79, 81, §633.124]

Referred to in §633.649

**633.125 Records of bank or trust company to show ownership.**

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

[C66, 71, 73, 75, 77, 79, 81, §633.125]

Referred to in §633.649

## SUBPART D

## COMMON TRUST FUNDS

**633.126 Definitions.**

1. *"Common trust fund"* means a fund maintained by a bank or trust company exclusively for the collective investment and reinvestment of moneys contributed thereto by that bank or trust company, or by another bank or trust company at least eighty percent of the voting stock of which is owned or controlled by a bank holding company which owns or controls at least eighty percent of the voting stock of the bank or trust company maintaining the common trust fund, in its capacity as a fiduciary or cofiduciary.

2. *"Fiduciary"*, for the purposes of this section and sections 633.127 to 633.129, means acting in any of the following capacities, namely: testamentary trustee appointed by any court, trustee under any written agreement, declaration or instrument of trust, executor, administrator, guardian, or conservator, custodian under chapter 565B, or other capacity permitted under any state or federal law or regulation governing collective investment funds maintained by a bank or trust company.

[C62, §533A.1 – 533A.5; C66, 71, 73, 75, 77, 79, 81, §633.126]

92 Acts, ch 1012, §2

Referred to in §633.129, 633.649

**633.127 Establishment of common trust funds.**

Any bank or trust company qualified to act as fiduciary in this state may establish common trust funds, or may utilize one or more common trust funds previously established by it, for the purpose of furnishing investments to itself as fiduciary, or to itself and others, as cofiduciaries, or to another bank or trust company as fiduciary or cofiduciary; and may, as a fiduciary or cofiduciary, invest funds which it lawfully holds for investment in interests in common trust funds maintained by it or by another bank or trust company at least eighty percent of the voting stock of which is owned or controlled by a bank holding company which owns or controls at least eighty percent of the common stock of the bank or trust company investing such funds, if such investment is not prohibited by the instrument, judgment, decree, or order creating such fiduciary relationship, and if, in the case of cofiduciaries, the bank or trust company procures the consent of its cofiduciaries to such investment. If the instrument creating the fiduciary relationship gives to the bank or trust company the exclusive right to select investments, the consent of the cofiduciary shall not be required.

[C58, §532.21; C62, §532.21, 533A.1 – 533A.5; C66, 71, 73, 75, 77, 79, 81, §633.127]

Referred to in §633.126, 633.129, 633.649

**633.128 Court accountings.**

1. Unless ordered by a court of competent jurisdiction, the bank or trust company operating such common trust funds is not required to render a court accounting with regard to such funds; but it may, by application to the court, secure approval of such an accounting on such conditions as the court may establish.

2. When an accounting of a common trust fund is presented to a court for approval, the court shall assign a time and place for hearing, and order notice thereof by all of the following:

*a.* Publication once each week for three consecutive weeks in a newspaper of general circulation, published in the county in which the bank or trust company operating the common trust fund is located, the first publication to be not less than twenty days prior to the date of hearing.

*b.* Sending by ordinary mail not less than fourteen days prior to the date of hearing, a copy of the notice prescribed to all beneficiaries of the trust participating in the common trust fund whose names are known to the bank or trust company from the records kept by it in the regular course of business in the administration of said trusts, directed to them at the addresses shown by such records.

*c.* Such further notice, if any, as the court may order.

[C58, §532.21; C62, §532.21, 533A.1 – 533A.5; C66, 71, 73, 75, 77, 79, 81, §633.128]
2013 Acts, ch 90, §176
Referred to in §633.126, 633.129, 633.649
[T] Section amended

**633.129 Uniformity of interpretation.**

Sections 633.126 to 633.128 shall be so interpreted and construed as to effectuate their general purpose to make uniform the law of those states which enact the common trust funds.

[C62, §533A.4; C66, 71, 73, 75, 77, 79, 81, §633.129]
Referred to in §633.126, 633.649

SUBPART E

SIMPLIFICATION OF FIDUCIARY
SECURITY TRANSFERS

**633.130 through 633.138** Repealed by 96 Acts, ch 1138, § 82, 84.

**633.139 through 633.143** Reserved.

PART 5

POWERS OF FOREIGN FIDUCIARIES

**633.144 Mortgages and judgments.**

Judgments rendered by any court in the state of Iowa and mortgages belonging to an estate, trust, or to a person under conservatorship may, without prior order of court, be released, discharged or assigned, in whole or in part as to any particular property, and deeds may be executed in performance of real estate contracts entered into before the creation of the estate, trust, or conservatorship, by any foreign fiduciary, receiver, referee, assignee or commissioner, or by any other person acting in a fiduciary capacity appointed by a court of record of any foreign state or country, where a statement is filed by said fiduciary that no fiduciary, receiver, referee, assignee, or commissioner has been appointed and qualified in this state. Such release, satisfaction, discharge, assignment or deed may be made without any order of court in any manner or by any instrument which would be valid and effective if made by a like officer qualified under the law of this state.

[S13, §3307-a; C24, 27, 31, 35, 39, §**11897;** C46, 50, 54, 58, 62, §633.53; C66, 71, 73, 75, 77, 79, 81, §633.144]
Referred to in §633.145, 633.649

**633.145 Certificate of appointment and authority.**

Before any instrument executed by such foreign fiduciary or officer as authorized by section 633.144 shall be effective, a certificate executed by the court or clerk making the appointment, with seal attached, if such officer has a seal, shall be recorded. Such certificates shall state the name of the court making such appointment, the date of the appointment, and that such fiduciary or officer has not been discharged at the time of the execution of said instrument.

[C97, §3308; SS15, §3308; C24, 27, 31, 35, 39, §**11898;** C46, 50, 54, 58, 62, §633.54; C66, 71, 73, 75, 77, 79, 81, §633.145]
Referred to in §633.649

**633.146 Filing of certificate.**

The certificate aforesaid shall be filed for record:

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

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

[C97, §3308; SS15, §3308; C24, 27, 31, 35, 39, §**11899;** C46, 50, 54, 58, 62, §633.55; C66, 71, 73, 75, 77, 79, 81, §633.146]

Referred to in §633.649

**633.147 Record.**

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

[C97, §3308; SS15, §3308; C24, 27, 31, 35, 39, §**11900;** C46, 50, 54, 58, 62, §633.56; C66, 71, 73, 75, 77, 79, 81, §633.147]

Referred to in §633.649

**633.148 Maintaining actions.**

When there is no administration of an estate nor a petition therefor pending, in this state, a foreign fiduciary may maintain actions and proceedings in this state subject to the requirements and conditions imposed upon nonresident suitors generally.

[C66, 71, 73, 75, 77, 79, 81, §633.148]

Referred to in §633.649

**633.149 Filing of bond.**

At the time of commencing any action or proceeding in any court of this state, the foreign fiduciary shall file with the court an authenticated copy of the fiduciary's appointment, and of the fiduciary's official bond, if the fiduciary has given a bond. If the court believes that the security furnished by the fiduciary in the domiciliary administration is insufficient to cover the proceeds of the action or the proceeding, or for any other reason or cause, it may at any time order the action or proceeding stayed until sufficient security is furnished in the action or proceeding.

[C66, 71, 73, 75, 77, 79, 81, §633.149]

Referred to in §633.649

**633.150 through 633.154** Reserved.

## PART 6

## LIABILITY OF FIDUCIARIES

**633.155 Self-dealing by fiduciary prohibited.**

No fiduciary shall in any manner engage in self-dealing, except on order of court after notice to all interested persons, and shall derive no profit other than the fiduciary's distributive share in the estate from the sale or liquidation of any property belonging to the estate. Every application of a fiduciary seeking an order under the provisions of this section shall specify in detail the reasons for such application and the facts justifying the requested order. The notice shall have a copy of the application attached, or, if published, it shall contain a detailed statement of the reasons and facts justifying the requested order.

[C51, §1427; R60, §2452; C73, §2473; C97, §3397; C24, 27, 31, 35, 39, §**12048;** C46, 50, 54, 58, 62, §638.8; C66, 71, 73, 75, 77, 79, 81, §633.155]

Referred to in §633.156, 633.649

**633.156 Deposits by corporate fiduciaries.**

Section 633.155 shall not be construed to prohibit a corporate fiduciary from making a deposit of estate funds in its own banking department or in the banking department of an affiliated bank. For purposes of this section, "*affiliated bank*" means any bank that controls,

directly or indirectly, the fiduciary or is controlled, directly or indirectly, by an entity which also controls, directly or indirectly, the fiduciary.

[C66, 71, 73, 75, 77, 79, 81, §633.156]

95 Acts, ch 164, §1

Referred to in §633.649

**633.157 Liability for property of estate.**

Every fiduciary shall be liable for, and chargeable in the fiduciary's accounts with, all of the estate that comes into the fiduciary's possession at any time, including all the income therefrom; but the fiduciary shall not be accountable for any debts due to the estate or other assets of the estate that remain uncollected without the fiduciary's fault. The fiduciary shall not be entitled to profit from the increase in value of any asset of the estate, nor shall the fiduciary be chargeable with loss resulting, without the fiduciary's fault, from the decrease in value or the destruction of any part of the estate, excepting, only to the extent of the fiduciary's pro rata share in such gain or loss as one of the distributees of the estate.

[C51, §1425, 1427; R60, §2450, 2452; C73, §2471, 2473; C97, §3395, 3397; C24, 27, 31, 35, 39, §**12046, 12048;** C46, 50, 54, 58, 62, §638.6, 638.8; C66, 71, 73, 75, 77, 79, 81, §633.157]

Referred to in §633.649

**633.158 Liability for property not a part of estate.**

Every fiduciary shall be chargeable in the fiduciary's accounts with property not a part of the estate that comes into the fiduciary's hands at any time, and shall be liable to the persons entitled thereto, if:

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

2. The fiduciary has commingled such property with the assets of the estate.

[C66, 71, 73, 75, 77, 79, 81, §633.158]

Referred to in §633.649

**633.159 Judgment — execution.**

If judgment is rendered against a fiduciary for costs in any action prosecuted or defended by the fiduciary in that capacity, execution shall be awarded against the fiduciary as for the fiduciary's own debt, if it appears to the court that such action was prosecuted or defended without reasonable cause.

[C51, §1433; R60, §2458; C73, §2477; C97, §3401; C24, 27, 31, 35, 39, §**12053;** C46, 50, 54, 58, 62, §638.13; C66, 71, 73, 75, 77, 79, 81, §633.159]

Referred to in §633.649

**633.160 Breach of duty.**

Every fiduciary shall be liable and chargeable in the fiduciary's accounts for neglect or unreasonable delay in collecting the credits or other assets of the estate or in selling, mortgaging or leasing the property of the estate; for neglect in paying over money or delivering property of the estate the fiduciary shall have in the fiduciary's hands; for failure to account for or to close the estate within the time provided by this probate code; for any loss to the estate arising from the fiduciary's embezzlement or commingling of the assets of the estate with other property; for loss to the estate through self-dealing; for any loss to the estate arising from wrongful acts or omissions of any cofiduciaries which the fiduciary could have prevented by the exercise of ordinary care; and for any other negligent or willful act or nonfeasance in the fiduciary's administration of the estate by which loss to the estate arises.

[C51, §1428; R60, §2453; C73, §2482; C97, §3405; C24, 27, 31, 35, 39, §**12057;** C46, 50, 54, 58, 62, §638.17; C66, 71, 73, 75, 77, 79, 81, §633.160]

2005 Acts, ch 38, §51

Referred to in §633.649

**633.161 Examination of fiduciaries.**

The fiduciary may be examined under oath by the court upon any matter relating to the fiduciary's accounts.

[C51, §1424; R60, §2449; C73, §2470; C97, §3395; C24, 27, 31, 35, 39, §**12045;** C46, 50, 54, 58, 62, §638.5; C66, 71, 73, 75, 77, 79, 81, §633.161]

Referred to in §633.649

**633.162 Penalty.**

In fixing the fees of any fiduciary, the court shall take into consideration any violation of this probate code by the fiduciary, and may diminish the fee of such fiduciary to the extent the court may determine to be proper.

[C66, 71, 73, 75, 77, 79, 81, §633.162]

2005 Acts, ch 38, §51

Referred to in §633.649

**633.163 through 633.167** Reserved.

PART 7

OATH AND BOND OF FIDUCIARIES

**633.168 Oath — certification.**

Every fiduciary, before entering upon the duties of the fiduciary's office, shall subscribe an oath or certify under penalties of perjury that the fiduciary will faithfully discharge the duties imposed by law, according to the best of the fiduciary's ability.

[C51, §1276, 1316, 1317, 1496; R60, §2308, 2348, 2349, 2548; C73, §2246, 2321, 2362, 2363; C97, §3197, 3267, 3268, 3301; S13, §3268; C24, 27, 31, 35, 39, §**11828, 11838, 11887, 12577, 12579;** C46, 50, 54, 58, 62, §631.10, 632.7, 633.43, 668.5, 668.7; C66, 71, 73, 75, 77, 79, 81, §633.168]

2007 Acts, ch 134, §8, 28

**633.169 Bond.**

Except as herein otherwise provided, every fiduciary shall execute and file with the clerk a bond with sufficient surety or sureties, as hereinafter provided. It shall be conditioned upon the faithful discharge of all the duties of the fiduciary's office according to law, including the duty to account. It shall be procured at the expense of the estate, if an approved surety company bond is furnished.

[C51, §1276, 1316, 1317; R60, §2308, 2348, 2349; C73, §2321, 2350, 2362, 2363; C97, §3267, 3268, 3293, 3301; S13, §3268; C24, 27, 31, 35, 39, §**11828, 11838, 11876, 11887;** C46, 50, 54, 58, 62, §631.10, 632.7, 633.32, 633.43; C66, 71, 73, 75, 77, 79, 81, §633.169]

**633.170 Amount of bond.**

1. *How determined.* Except as herein otherwise provided, the court or the clerk shall fix the penalty of the bond in an amount equal to the value of the personal property of the estate, plus the estimated gross annual income of the estate during the period of administration.

2. *Bonds fixed by clerk.* Unless a bond is waived by will under the authority of section 633.172, or by other instrument creating the estate, or in accordance with section 633.173, or by prior order of court, the clerk shall fix the bond in the amount provided by subsection 1 of this section. The clerk shall not thereafter increase or decrease a bond.

[C51, §1276, 1316, 1317; R60, §2308, 2348, 2349; C73, §2321, 2350, 2362, 2363; C97, §3267, 3268, 3293, 3301; S13, §3268; C24, 27, 31, 35, 39, §**11828, 11838, 11876, 11887, 12578;** C46, 50, 54, 58, 62, §631.10, 632.7, 633.32, 633.43, 668.6; C66, 71, 73, 75, 77, 79, 81, §633.170]

**633.171 Approval by clerk.**

The bond shall not be deemed sufficient until it has been examined and approved by the clerk who shall endorse such approval thereon. In the event that the bond is not approved,

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

[C51, §1276, 1316, 1317; R60, §2308, 2348, 2349; C73, §2321, 2350, 2362, 2363; C97, §3267, 3268, 3293, 3301; S13, §3268; C24, 27, 31, 35, 39, §**11828, 11838, 11876, 11887;** C46, 50, 54, 58, 62, §631.10, 632.7, 633.32, 633.43; C66, 71, 73, 75, 77, 79, 81, §633.171]

**633.172 Will — waiver of bond.**

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

2. Unless otherwise required by the instrument creating the relationship, or by order of court, bank and trust companies shall not be required to provide any bond.

[C51, §1276, 1316, 1317; R60, §2308, 2348, 2349; C73, §2321, 2350, 2362, 2363; C97, §3267, 3268, 3293, 3301; S13, §3268; C24, 27, 31, 35, 39, §**11828, 11838, 11876, 11887;** C46, 50, 54, 58, 62, §631.10, 632.7, 633.32, 633.43; C66, 71, 73, 75, 77, 79, 81, §633.172]

86 Acts, ch 1131, §2

Referred to in §633.170, 633.175

**633.173 Waiver of bond by distributees.**

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

[C51, §1276, 1316, 1317; R60, §2308, 2348, 2349; C73, §2321, 2350, 2362, 2363; C97, §3267, 3268, 3293, 3301; S13, §3268; C24, 27, 31, 35, 39, §**11828, 11838, 11876, 11887;** C46, 50, 54, 58, 62, §631.10, 632.7, 633.32, 633.43; C66, 71, 73, 75, 77, 79, 81, §633.173]

Referred to in §633.170

[P] Attorneys acting as fiduciaries, see Iowa Ct.R. 39.13

**633.174 Guardians — bond.**

When the guardian appointed for a person is not the conservator of the property of that person, no bond shall be required of the guardian, unless the court for good cause finds it proper to require one. If no bond is initially required, the court may, nevertheless, for good cause, at any subsequent time, require that a bond be given.

[C51, §1276, 1316, 1317, 1496; R60, §2308, 2348, 2349, 2548; C73, §2246, 2321, 2350, 2362, 2363; C97, §3197, 3267, 3268, 3293, 3301; S13, §3268; C24, 27, §11828, 11838, 11876, 11887, 12579; C31, 35, §11828, 11838, 11876, 11887, 12579, 12644-c10; C39, §**11828, 11838, 11876, 11887, 12579, 12644.10;** C46, 50, 54, 58, 62, §631.10, 632.7, 633.32, 633.43, 668.7, 672.9; C66, 71, 73, 75, 77, 79, 81, §633.174]

**633.175 Waiver of bond by court.**

The court, for good cause shown, may exempt any fiduciary from giving bond, if the court finds that the interests of creditors and distributees will not thereby be prejudiced. However, the court, except as provided in section 633.172, subsection 2, shall not exempt a conservator from giving bond in a conservatorship with total assets of more than twenty-five thousand dollars, excluding real property, unless it is a voluntary conservatorship in which the petitioner is eighteen years of age or older and has waived bond in the petition.

[C51, §1276, 1316, 1317, 1496; R60, §2308, 2348, 2349, 2548; C73, §2246, 2321, 2350, 2362, 2363; C97, §3197, 3267, 3268, 3293, 3301; S13, §3268; C24, 27, 31, 35, 39, §**11828, 11838, 11876, 11887, 12577;** C46, 50, 54, 58, 62, §631.10, 632.7, 633.32, 633.43, 668.5; C66, 71, 73, 75, 77, 79, 81, §633.175]

91 Acts, ch 36, §5; 92 Acts, ch 1012, §3; 2008 Acts, ch 1119, §15, 39

[P] Administering moneys paid by United States department of veterans affairs, see §633.622

[P] Attorneys acting as fiduciaries, see Iowa Ct.R. 39.13

**633.176 Reduction of bond by deposit.**

Personal property of the estate may be deposited with a bank or trust company located in the state of Iowa upon such terms as may be prescribed by order of the court. The amount of the bond of the fiduciary may be then reduced as the court may determine.

[C51, §1276, 1316, 1317; R60, §2308, 2348, 2349; C73, §2321, 2350, 2362, 2363; C97, §3267, 3268, 3293, 3301; S13, §3268; C24, 27, 31, 35, 39, §**11828, 11838, 11876, 11887;** C46, 50, 54, 58, 62, §631.10, 632.7, 633.32, 633.43; C66, 71, 73, 75, 77, 79, 81, §633.176]

**633.177 Deposit in lieu of bond.**

The court may permit the fiduciary to deposit cash or other prescribed securities of the fiduciary's own in lieu of bond.

[C51, §1276, 1316, 1317; R60, §2308, 2348, 2349; C73, §2321, 2350, 2362, 2363; C97, §3267, 3268, 3293, 3301; S13, §3268; C24, 27, 31, 35, 39, §**11828, 11838, 11876, 11887;** C46, 50, 54, 58, 62, §631.10, 632.7, 633.32, 633.43; C66, 71, 73, 75, 77, 79, 81, §633.177]

**633.178 Letters.**

Upon the filing of an oath of office or certification and a bond, if any is required, the clerk shall issue letters under the seal of the court, giving the fiduciary the powers authorized by law.

[C51, §1319; R60, §2351; C73, §2365; C97, §3303; C24, 27, 31, 35, 39, §**11889;** C46, 50, 54, 58, 62, §633.45; C66, 71, 73, 75, 77, 79, 81, §633.178]

2007 Acts, ch 134, §9, 28

**633.179 Review by clerk when inventory is filed.**

At the time the inventory of the estate is filed, the clerk shall review the amount of bond, and report to the court as to any apparent insufficiency thereof.

[C66, 71, 73, 75, 77, 79, 81, §633.179]

**633.180 Bond changed.**

The court may at any time require a new bond, or increase or decrease the amount of the penalty of the bond of any fiduciary, when good cause therefor appears.

[C51, §1510; R60, §2562; C73, §2247; C97, §3198; C24, 27, §12604; C31, 35, §12604, 12644-c9; C39, §**12604, 12644.09;** C46, 50, 54, 58, 62, §668.31, 672.9; C66, 71, 73, 75, 77, 79, 81, §633.180]

**633.181 Obligees of bond — joint and several liability.**

The bond of the fiduciary shall run to the use of all persons interested in the estate, and shall be for the security and benefit of such persons. The sureties shall be jointly and severally liable with the fiduciary, and with each other.

[C66, 71, 73, 75, 77, 79, 81, §633.181]

**633.182 Qualifications for sureties.**

Qualifications for sureties on probate bonds shall be the same as those provided by section 636.4 or section 636.14, provided, however, that no attorney shall act as surety on any such bond.

[C66, 71, 73, 75, 77, 79, 81, §633.182]

**633.183 Authority for fiduciary and surety to enter into agreement for deposit of property or joint control.**

It shall be lawful for the fiduciary to agree with the fiduciary's surety for the deposit of any or all moneys and other property of the estate with a bank, safe deposit or trust company, authorized by law to do business as such, or other depository approved by the court, if such deposit is otherwise proper, in such manner as to prevent the withdrawal of such moneys or other property without the written consent of the surety, or on order of the court made on such notice to the surety as the court may direct.

[C66, 71, 73, 75, 77, 79, 81, §633.183]

[P] See also §636.47

**633.184 Release of sureties before estate fully administered.**

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

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

[C51, §1318; R60, §2350; C73, §2364; C97, §3302; C24, 27, 31, 35, 39, §**11888;** C46, 50, 54, 58, 62, §633.44; C66, 71, 73, 75, 77, 79, 81, §633.184]

**633.185 Insolvency of fiduciary.**

If, at any time, a fiduciary becomes insolvent after qualifying as such fiduciary, and after the maturity of a debt owing by such fiduciary to the estate, then the fiduciary and the sureties on the bond shall be liable to the estate for the indebtedness owing by the fiduciary to the estate. If the fiduciary is not solvent at any time after qualification and after the maturity of the debt, the sureties on the bond shall not be liable to the estate for the indebtedness.

[C66, 71, 73, 75, 77, 79, 81, §633.185]

**633.186 Suit on bond.**

1. *Execution of bond deemed as appearance.* The execution and filing of the bond by a fiduciary, any other provisions of law notwithstanding, shall be deemed an appearance by the surety in the proceeding for the administration of the estate including all hearings with respect to the bond.

2. *Summary enforcement in proceedings for administration.* Subject to the provisions of subsection 3 hereof, the court may, upon the breach of the obligation of the bond of a fiduciary, after notice to the obligors on the bond and to such other persons as the court directs, summarily determine the damages as a part of the proceeding for the administration of the estate, and by appropriate process enforce the collection thereof from those liable on the bond. Such determination and enforcement may be made by the court upon its own motion or upon application of a successor fiduciary, or of any other interested person. The court may hear the application at the time of settling the accounts of the defaulting fiduciary or at such other time as the court may direct. Damages shall be assessed on behalf of all interested persons and may be paid over to the successor or other nondefaulting fiduciary and distributed as other assets held by the fiduciary in the fiduciary's official capacity.

3. *Enforcement by separate suit.* If the estate is already distributed, or if, for any reason, the procedure to recover on the bond provided in subsection 2 hereof, is inadequate, any interested person may bring a separate suit in a court of competent jurisdiction on the person's own behalf for damages suffered by the person by reason of the default of the fiduciary.

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

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

[C51, §1387, 1389, 1509; R60, §2419, 2421, 2561; C73, §2251, 2435; C97, §3201, 3361; C24, 27, 31, 35, 39, §**11984, 11985, 12603;** C46, 50, 54, 58, 62, §635.79, 635.80, 668.30; C66, 71, 73, 75, 77, 79, 81, §633.186]

Referred to in §633.487

[P] See §636.20

**633.187 Limitation of action on bond.**

No proceedings upon the bond of a fiduciary shall be brought subsequent to two years after the discharge of the fiduciary or six months after the discovery of fraud, whichever is later.

[C66, 71, 73, 75, 77, 79, 81, §633.187]

**633.188 through 633.196** Reserved.

## PART 8

## COMPENSATION OF FIDUCIARIES AND ATTORNEYS

Referred to in §231E.4, 231E.5

**633.197 Compensation.**

1. Personal representatives shall be allowed such reasonable fees as may be determined by the court for services rendered, but not in excess of the following commissions upon the gross assets of the estate listed in the probate inventory, which shall be received as full compensation for all ordinary services:

*a.* For the first one thousand dollars, six percent.

*b.* For the overplus between one and five thousand dollars, four percent.

*c.* For all sums over five thousand dollars, two percent.

2. For purposes of this section, the gross assets of the estate shall not include life insurance proceeds, unless payable to the decedent's estate.

[C51, §1429; R60, §2454; C73, §2494; C97, §3415; C24, 27, 31, 35, 39, §**12063;** C46, 50, 54, 58, 62, §638.23; C66, 71, 73, 75, 77, 79, 81, §633.197]

94 Acts, ch 1153, §8; 2005 Acts, ch 38, §11; 2013 Acts, ch 30, §190

[P] See also §633.86 and 633.162

[T] Section amended

**633.198 Attorney fee.**

There shall also be allowed and taxed as part of the costs of administration of estates as an attorney fee for the personal representative's attorney, such reasonable fee as may be determined by the court, for services rendered, but not in excess of the schedule of fees herein provided for personal representatives.

[C24, 27, 31, 35, 39, §**12064;** C46, 50, 54, 58, 62, §638.24; C66, 71, 73, 75, 77, 79, 81, §633.198]

**633.199 Expenses and extraordinary services.**

Such further allowances as are just and reasonable may be made by the court to personal representatives and their attorneys for actual necessary and extraordinary expenses and services. Necessary and extraordinary services shall be construed to include but not be limited to services in connection with real estate, tax issues, disputed matters, nonprobate assets, reopening the estate, location of unknown and lost heirs and beneficiaries, and management and disposition of unusual assets. Relevant factors to be considered in determining the value of such services shall include but not be limited to the following:

1. Time necessarily spent by the personal representatives and their attorneys.
2. Nature of the matters or issues and the extent of the services provided.
3. Complexity of the issues and the importance of the issues to the estate.
4. Responsibilities assumed.
5. Resolution.
6. Experience and expertise of the personal representatives and their attorneys.

[C51, §1430; R60, §2455; C73, §2495; C97, §3415; C24, 27, 31, 35, 39, §**12065;** C46, 50, 54, 58, 62, §638.25; C66, 71, 73, 75, 77, 79, 81, §633.199]

2007 Acts, ch 134, §10, 28

**633.200 Compensation of other fiduciaries and their attorneys.**

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

[C51, §1515; R60, §2567; C73, §2256; C97, §3205; C24, 27, §12599; C31, 35, §12065-d1, 12599; C39, §**12065.1, 12599;** C46, 50, 54, 58, 62, §638.26, 668.26; C66, 71, 73, 75, 77, 79, 81, §633.200]

**633.201 Court officers as fiduciaries.**

Judges, clerks, and deputy clerks serving as fiduciaries shall not be allowed any compensation for services as such fiduciaries. A judge, clerk, or deputy clerk serving as a fiduciary may be compensated for fiduciary services if the services are for a family member's estate, trust, guardianship, or conservatorship. For purposes of this section, "*family member*" means a spouse, child, grandchild, parent, grandparent, sibling, niece, nephew, cousin, or other relative or individual with significant personal ties to the fiduciary.

[C66, 71, 73, 75, 77, 79, 81, §633.201]

2007 Acts, ch 86, §9

**633.202 Affidavit relative to compensation.**

In no case shall the compensation of fiduciaries and their attorneys be allowed or paid until there shall have been filed with the clerk of the district court in which administration of the estate is pending an affidavit of the fiduciary, or attorney, as the case may be, stating that there is no contract, agreement, or arrangement, either oral or written, express or implied, contemplating any division of compensation for such services, or participation therein, directly or indirectly, by any other person, firm, or corporation with such fiduciary or attorney, unless it be with a regular and bona fide law partner, or with one jointly serving with them in the same capacity in relation to the estate in which such compensation is allowed, in which event the affidavit shall show such fact.

[C31, 35, §12065-d2; C39, §**12065.2;** C46, 50, 54, 58, 62, §638.27; C66, 71, 73, 75, 77, 79, 81, §633.202]

Referred to in §633.203

**633.203 Affidavit for corporate fiduciary.**

In any case where a corporation is acting as a fiduciary under and by virtue of the provisions of chapter 524, division X, the affidavit required by section 633.202 shall be executed and made by an officer of such corporation.

[C31, 35, §12065-d3; C39, §**12065.3;** C46, 50, 54, 58, 62, §638.28; C66, 71, 73, 75, 77, 79, 81, §633.203]

**633.204 Fees of deceased fiduciary.**

When a fiduciary dies, all fees to which the fiduciary's personal representative and the fiduciary's attorney are entitled shall be a charge against the estate assets until paid.

[C66, 71, 73, 75, 77, 79, 81, §633.204]

**633.205 through 633.209** Reserved.

## DIVISION IV

## INTESTATE SUCCESSION

## PART 1

## RULES OF INHERITANCE

**633.210 Rules of descent.**

The estate of a person dying intestate shall descend as provided in sections 633.211 to 633.226.

[C51, §1390; R60, §2422; C73, §2436; C97, §3362; C24, 27, 31, 35, 39, §**11986;** C46, 50, 54, 58, 62, §636.1; C66, 71, 73, 75, 77, 79, 81, §633.210]

Referred to in §910.3B

**633.211 Share of surviving spouse if decedent left no issue or left issue all of whom are issue of surviving spouse.**

If the decedent dies intestate leaving a surviving spouse and leaving no issue or leaving issue all of whom are the issue of the surviving spouse, the surviving spouse shall receive the following share:

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

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

3. All other personal property of the decedent which is not necessary for the payment of debts and charges.

[C51, §1329, 1390, 1394, 1421; R60, §2361, 2422, 2477, 2479; C73, §2371, 2436, 2440; C97, §3312, 3362, 3366; C24, 27, 31, 35, 39, §**11918, 11986, 11990, 11991;** C46, 50, 54, 58, 62, §635.7, 636.1, 636.5, 636.6; C66, 71, 73, 75, 77, 79, 81, §633.211]

85 Acts, ch 19, §1

Referred to in §633.210, 633.218, 633.246, 633.267, 633.272, 633.436, 633A.3106

**633.212 Share of surviving spouse if decedent left issue some of whom are not issue of surviving spouse.**

If the decedent dies intestate leaving a surviving spouse and leaving issue some of whom are not the issue of the surviving spouse, the surviving spouse shall receive the following share:

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

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

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

4. If the property received by the surviving spouse under subsections 1, 2 and 3 of this section is not equal in value to the sum of fifty thousand dollars, then so much additional of any remaining homestead interest and of the remaining real and personal property of the decedent that is subject to payment of debts and charges against the decedent's estate, after payment of the debts and charges, even to the extent of the whole of the net estate, as necessary to make the amount of fifty thousand dollars.

[C51, §1410; R60, §2495; C73, §2455; C97, §3379; S13, §3379, 3381-a; C24, 27, 31, 35, 39, §**12017;** C46, 50, 54, 58, 62, §636.32; C66, 71, 73, 75, 77, 79, 81, §633.212]

85 Acts, ch 19, §2

Referred to in §633.210, 633.218, 633.246, 633.267, 633.272, 633.436, 633A.3106

**633.213 Appraisal.**

Prior to the settlement of every intestate estate in which there is a surviving spouse, and in which appraisal has not been waived by the surviving spouse and all the heirs of the decedent, the court, upon application of the personal representative, the surviving spouse, or any of the heirs of the decedent, shall appoint three competent disinterested appraisers to appraise the estate and to make their report to the court, at the time as the court may direct by order, unless the court, after notice, finds further appraisal unnecessary. In the appraisement, the homestead, if any, shall be appraised separately.

[C24, 27, 31, 35, 39, §**12018;** C46, 50, 54, 58, 62, §636.33; C66, 71, 73, 75, 77, 79, 81, §633.213]
84 Acts, ch 1067, §47
Referred to in §633.210, 633.214

**633.214 Procedure determined by court.**

At the time it appoints the appraisers provided for by section 633.213 the court shall prescribe the kind of notice and the method of service thereof, whether by publication or otherwise.

[C24, 27, 31, 35, 39, §**12019;** C46, 50, 54, 58, 62, §636.34; C66, 71, 73, 75, 77, 79, 81, §633.214]
Referred to in §633.210

**633.215 Notice.**

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

[C24, 27, 31, 35, 39, §**12020;** C46, 50, 54, 58, 62, §636.35; C66, 71, 73, 75, 77, 79, 81, §633.215]
Referred to in §633.210

**633.216 Objections.**

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

[C24, 27, 31, 35, 39, §**12021;** C46, 50, 54, 58, 62, §636.36; C66, 71, 73, 75, 77, 79, 81, §633.216]
Referred to in §633.210

**633.217 Trial.**

Such objections, if any, shall be tried to the court as in equity, and the court shall enter a final order in the matter.

[C24, 27, 31, 35, 39, §**12022;** C46, 50, 54, 58, 62, §636.37; C66, 71, 73, 75, 77, 79, 81, §633.217]
Referred to in §633.210

**633.218 Right of spouse to select property.**

After such proceedings, and after payment of debts and charges, the surviving spouse shall have the right to select from the property so appraised, at its appraised value thus fixed, property equal in value to the amount to which the spouse is entitled under section 633.211 or 633.212 which selection shall be in writing filed with the clerk of court.

[C24, 27, 31, 35, 39, §**12023;** C46, 50, 54, 58, 62, §636.38; C66, 71, 73, 75, 77, 79, 81, §633.218]
Referred to in §633.210

**633.219 Share of others than surviving spouse.**

The part of the intestate estate not passing to the surviving spouse, or if there is no surviving spouse, the entire net estate passes as follows:

1. To the issue of the decedent per stirpes.

2. If there is no surviving issue, to the parents of the decedent equally; and if either parent is dead, the portion that would have gone to such deceased parent shall go to the survivor.

3. If there is no person to take under either subsection 1 or 2 of this section, the estate shall be divided and set aside into two equal shares. One share shall be distributed to the issue of the decedent's mother per stirpes and one share shall be distributed to the issue of the decedent's father per stirpes. If there are no surviving issue of one deceased parent, the entire estate passes to the issue of the other deceased parent in accordance with this subsection.

4. If there is no person to take under subsection 1, 2, or 3 of this section, and the decedent is survived by one or more grandparents or issue of grandparents, half the estate passes to the paternal grandparents, if both survive, or to the surviving paternal grandparent if only one survives. If neither paternal grandparent survives, this half share shall be further divided into two equal subshares. One subshare shall be distributed to the issue of the decedent's paternal grandmother per stirpes and one subshare shall be distributed to the issue of the decedent's paternal grandfather per stirpes. If there are no surviving issue of one deceased paternal grandparent, the entire half share passes to the issue of the other deceased paternal grandparent and their issue in the same manner. The other half of the decedent's estate passes to the maternal grandparents and their issue in the same manner. If there are no surviving grandparents or issue of grandparents on either the paternal or maternal side, the entire estate passes to the decedent's surviving grandparents or their issue on the other side in accordance with this subsection.

5. If there is no person to take under subsection 1, 2, 3, or 4 of this section, and the decedent is survived by one or more great-grandparents or issue of great-grandparents, the estate passes equally to each set of great-grandparents, or to their issue, if any survive, per stirpes.

6. If there is no person to take under subsection 1, 2, 3, 4, or 5 of this section, the portion uninherited shall go to the issue of the deceased spouse of the intestate, per stirpes. If the intestate has had more than one spouse who died in lawful wedlock, it shall be equally divided between the issue, per stirpes, of those deceased spouses.

7. If there is no person who qualifies under either subsection 1, 2, 3, 4, 5, or 6 of this section, the intestate property shall escheat to the state of Iowa.

[C51, §1408 – 1411, 1413, 1414; R60, §2436, 2437, 2439, 2440, 2495 – 2497; C73, §2453 – 2458, 2460; C97, §3378 – 3382, 3387; S13, §3379, 3381-a, -b, -c; C24, 27, 31, 35, 39, §**12016, 12017, 12024 – 12028, 12035;** C46, 50, 54, 58, 62, §636.31, 636.32, 636.39 – 636.43, 636.50; C66, 71, 73, 75, 77, 79, 81, §633.219]

93 Acts, ch 111, §2; 95 Acts, ch 63, §4; 2000 Acts, ch 1012, §1

Referred to in §633.210, 633.267, 633.304, 633.305, 633A.3106, 633A.3110

**633.220 Afterborn heirs — time of determining relationship.**

Heirs of an intestate, begotten before the intestate's death but born thereafter, shall inherit as if they had been born in the lifetime of the intestate and had survived the intestate. With this exception, the intestate succession shall be determined by the relationships existing at the time of the death of the intestate.

[C51, §1284, 1285; R60, §2316, 2317; C73, §2334, 2335; C97, §3279; S13, §3279; C24, 27, 31, 35, 39, §**11858;** C46, 50, 54, 58, 62, §633.13; C66, 71, 73, 75, 77, 79, 81, §633.220]

Referred to in §633.210

**633.220A Posthumous child.**

1. For the purposes of rules relating to intestate succession, a child of an intestate conceived and born after the intestate's death or born as the result of the implantation of an embryo after the death of the intestate is deemed a child of the intestate as if the child had been born during the lifetime of the intestate and had survived the intestate, if all of the following conditions are met:

*a.* A genetic parent-child relationship between the child and the intestate is established.

*b.* The intestate, in a signed writing, authorized the intestate's surviving spouse to use the deceased parent's genetic material to initiate the posthumous procedure that resulted in the child's birth.

*c.* The child is born within two years of the death of the intestate.

2. Any heir of the intestate whose interest in the intestate's estate would be reduced by the birth of a child born as provided in subsection 1 shall have one year from the birth of the child within which to bring an action challenging the child's right to inherit under this chapter.

3. For the purposes of this section, *"genetic material"* means sperm, eggs, or embryos.

2011 Acts, ch 18, §2

Referred to in §633.210

**633.221 Biological child — inherit from mother.**

Unless the child has been adopted, a biological child shall inherit from the child's biological mother, and she from the child.

[C51, §1415; R60, §2441; C73, §2465; C97, §3384; C24, 27, 31, 35, 39, §**12030;** C46, 50, 54, 58, 62, §636.45; C66, 71, 73, 75, 77, 79, 81, §633.221]

94 Acts, ch 1046, §27

Referred to in §633.3, 633.210

**633.222 Biological child — inherit from father.**

Unless the child has been adopted, a biological child inherits from the child's biological father if the evidence proving paternity is available during the father's lifetime, or if the child has been recognized by the father as his child; but the recognition must have been general and notorious, or in writing. Under such circumstances, if the recognition has been mutual, and the child has not been adopted, the father may inherit from his biological child.

[C51, §1416, 1417; R60, §2442, 2443; C73, §2466, 2467; C97, §3385; C24, 27, 31, 35, 39, §**12031;** C46, 50, 54, 58, 62, §636.46; C66, 71, 73, 75, 77, 79, 81, §633.222]

86 Acts, ch 1086, §1; 94 Acts, ch 1046, §28

Referred to in §633.3, 633.210

**633.223 Effect of adoption.**

1. Except as provided in subsection 3, a lawful adoption extinguishes the right of intestate succession of an adopted person from and through the adopted person's biological parents. The adopted person inherits from and through the adoptive parents in the same manner as a biological child inherits from and through the child's biological parents.

2. Except as provided in subsection 3, a lawful adoption extinguishes the right of intestate succession of a biological parent from and through the parent's biological child who is adopted. The adoptive parents inherit from and through the adopted person in the same manner as biological parents inherit from and through the parents' biological child.

3. An adoption of a person by the spouse or surviving spouse of a biological parent has no effect on the relationship for inheritance purposes between the adopted person and that biological parent or biological parent's heirs. An adoption of a person by the spouse or surviving spouse of a biological parent after the death of the other biological parent has no effect on the relationship for inheritance purposes between the adopted person and the deceased biological parent's heirs.

4. A person inherits through an adopted person, an adoptive parent, or a biological parent of an adopted person only if the adopted person, adoptive parent, or biological parent of an adopted person would have inherited under subsection 1, 2, or 3.

[C66, 71, 73, 75, 77, 79, 81, §633.223; 81 Acts, ch 194, §1]

94 Acts, ch 1046, §29

Referred to in §633.210

**633.224 Advancements — in general.**

When the owner of property transfers it as an advancement to a person who would be an heir of such transferor were the latter to die at that time, and the transferor dies intestate, then the property thus advanced shall be counted toward the share of the transferee in the estate, which for this purpose only shall be increased by the value of the advancement at the time the advancement was made. The transferee shall have no liability to the estate for such part, if any, of the advancement as may be in excess of the transferee's share in the estate as thus determined. Every gratuitous inter vivos transfer is presumed to be an absolute gift, and not an advancement. Such presumption is rebuttable.

[C51, §1419, 1420; R60, §2445, 2446; C73, §2459; C97, §3383; C24, 27, 31, 35, 39, §**12029;** C46, 50, 54, 58, 62, §636.44; C66, 71, 73, 75, 77, 79, 81, §633.224]

2013 Acts, ch 30, §163

Referred to in §633.210, 633.225, 633.226

[T] Section amended

**633.225 Valuation of advancements.**

An advancement under section 633.224 shall be valued as of the time when the advancee came into possession or enjoyment or as of the date of the death of the intestate, whichever first occurs.

[C51, §1419, 1420; R60, §2445, 2446; C73, §2459; C97, §3383; C24, 27, 31, 35, 39, §**12029;** C46, 50, 54, 58, 62, §636.44; C66, 71, 73, 75, 77, 79, 81, §633.225]

Referred to in §633.210

**633.226 Death of advancee before intestate.**

If an advancee under section 633.224 dies before the intestate, leaving an heir who takes from the intestate, the advancement shall be taken into account in the same manner as if it had been made directly to such heir. If such heir is entitled to a lesser share in the estate than the advancee would have been entitled to, had the advancee survived the intestate, then the heir shall be charged with only such proportion of the advancement as the amount the heir would have inherited, had there been no advancement, bears to the amount which the advancee would have inherited, had there been no advancement.

[C51, §1419, 1420; R60, §2445, 2446; C73, §2459; C97, §3383; C24, 27, 31, 35, 39, §**12029;** C46, 50, 54, 58, 62, §636.44; C66, 71, 73, 75, 77, 79, 81, §633.226]

Referred to in §633.210

## PART 2

## PROCEDURE FOR OPENING ADMINISTRATION OF INTESTATE ESTATES

**633.227 Administration granted.**

Where there is no will, administration shall be granted to any qualified person on the petition of:

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

[C51, §1311, 1312; R60, §2343, 2344; C73, §2354, 2355; C97, §3297; C24, 27, 31, 35, 39, §**11883;** C46, 50, 54, 58, 62, §633.39; C66, 71, 73, 75, 77, 79, 81, §633.227]

Referred to in §635.1

**633.228 Time allowed.**

1. To file such petition, there shall be allowed, commencing with the death of the decedent:

*a.* To the surviving spouse, a period of twenty days.

*b.* To each other class in succession, a period of ten days.

2. The period allowed each class shall be advanced to the period allowed the preceding class if there is no member of such preceding class. Any member of any class may file such petition after the expiration of the period allowed to the member if letters have not been issued prior thereto.

[C51, §1313; R60, §2345; C73, §2356; C97, §3298; C24, 27, 31, 35, 39, §**11884;** C46, 50, 54, 58, 62, §633.40; C66, 71, 73, 75, 77, 79, 81, §633.228]

2013 Acts, ch 30, §191

Referred to in §635.1

[T] Section amended

**633.229 Petition for administration of an intestate estate.**

The petition for administration of an intestate estate shall contain the following:

1. The name, domicile and date of death of the decedent.
2. If the decedent was domiciled outside the state at the time of the decedent's death, a statement that the decedent had property within the county in which the petition is filed, or any other basis for jurisdiction in such county.

3. The name and address of the surviving spouse, if any, and the name and address of each heir so far as known to the petitioner.

4. The estimated value of the personal property of the estate plus the estimated gross annual income of the estate during the period of administration.

[C66, 71, 73, 75, 77, 79, 81, §633.229]

**633.230 Notice in intestate estates.**

1. In intestate matters, the administrator, as soon as letters are issued, shall cause to be published once each week for two consecutive weeks in a daily or weekly newspaper of general circulation published in the county in which the estate is pending, and at any time during the pendency of administration that the administrator has knowledge of the name and address of a person believed to own or possess a claim which will not or may not be paid or otherwise satisfied during administration, provide by ordinary mail to each such claimant at the claimant's last known address, a notice of appointment which shall be in substantially the following form:

NOTICE OF APPOINTMENT OF
ADMINISTRATOR AND
NOTICE TO CREDITORS

In the District Court of Iowa
in and for ..... County.
In the Estate of ....., Deceased
Probate No. .....

To All Persons Interested in the Estate of ....., Deceased, who died on or about ..... (date):

You are hereby notified that on the ..... day of ..... (month), ..... (year), the undersigned was appointed administrator of the estate.

Notice is hereby given that all persons indebted to the estate are requested to make immediate payment to the undersigned, and creditors having claims against the estate shall file them with the clerk of the above named district court, as provided by law, duly authenticated, for allowance, and unless so filed by the later to occur of four months from the second publication of this notice or one month from the date of the mailing of this notice (unless otherwise allowed or paid) a claim is thereafter forever barred.

Dated this ..... day of ..... (month), ..... (year)

.....
Administrator of the estate
.....
Address
.....
Attorney for the administrator
.....
Address

Date of second publication
..... day of ..... (month), ..... (year)
(Date to be inserted by publisher)

2. An action based upon the failure to give notice by mail required by this section, section 633.304 or 633.305, to heirs of a decedent or to persons known by the personal representative to own or possess a claim in any estate in which the personal representative was discharged

prior to July 1, 1989, shall not be maintained in any court in this state unless commenced prior to July 1, 1991.

[C66, 71, 73, 75, 77, 79, 81, §633.230]

84 Acts, ch 1080, §1, 2; 89 Acts, ch 35, §2; 90 Acts, ch 1036, §1; 2000 Acts, ch 1058, §66

Referred to in §590.1, 633A.3109, 633A.3111, 635.13

**633.231 Notice in intestate estates — medical assistance claims.**

1. Upon opening administration of an intestate estate, the administrator shall, in accordance with section 633.410, provide by electronic transmission on a form approved by the department of human services to the entity designated by the department of human services, a notice of opening administration of the estate and of the appointment of the administrator, which shall include a notice to file claims with the clerk or to provide electronic notification to the administrator that the department has no claim within six months from the date of sending this notice, or thereafter be forever barred.

2. The notice shall be in substantially the following form:

NOTICE OF OPENING ADMINISTRATION
OF ESTATE, OF APPOINTMENT OF
ADMINISTRATOR, AND NOTICE
TO CREDITOR

In the District Court of Iowa
In and for ..... County.
In the Estate of ....., Deceased
Probate No. .....

To the Department of Human Services Who May Be Interested in the Estate of ....., Deceased, who died on or about ..... (date):

You are hereby notified that on the ..... day of ..... (month), ..... (year), an intestate estate was opened in the above-named court and that ..... was appointed administrator of the estate.

You are further notified that the birthdate of the deceased is ..... and the deceased's social security number is .....-.....-..... The name of the spouse is ..... The birthdate of the spouse is ..... and the spouse's social security number is .....-.....-....., and that the spouse of the deceased is alive as of the date of this notice, or deceased as of ..... (date).

You are further notified that the deceased was/was not a disabled or a blind child of the medical assistance recipient by the name of ....., who had a birthdate of ..... and a social security number of .....-.....-....., and the medical assistance debt of that medical assistance recipient was waived pursuant to section 249A.53, subsection 2, paragraph *"a"*, subparagraph (1), and is now collectible from this estate pursuant to section 249A.53, subsection 2, paragraph *"b"*.

Notice is hereby given that if the department of human services has a claim against the estate for the deceased person or persons named in this notice, the claim shall be filed with the clerk of the above-named district court, as provided by law, duly authenticated, for allowance within six months from the date of sending this notice and, unless otherwise allowed or paid, the claim is thereafter forever barred. If the department does not have a claim, the department shall return the notice to the administrator with notification stating the department does not have a claim within six months from the date of sending this notice.

Dated this ..... day of ..... (month), ..... (year)
.....
Administrator of estate
.....
Address
.....
Attorney for administrator
.....
Address

2001 Acts, ch 109, §1; 2002 Acts, ch 1119, §97; 2007 Acts, ch 134, §11; 2010 Acts, ch 1137, §4; 2011 Acts, ch 34, §139
Referred to in §633.410, 635.13
[T] Section not amended; internal reference change applied

**633.232 through 633.235** Reserved.

## DIVISION V

## RIGHTS OF SURVIVING SPOUSE

Referred to in §249A.3

## PART 1

## RIGHT TO TAKE AGAINST THE WILL

**633.236 Right of elective share of surviving spouse.**

When a married person domiciled in Iowa at the time of death dies, the surviving spouse shall have the right to take an elective share under the provisions of sections 633.237 through 633.246. If the surviving spouse has a conservator, the court may authorize or direct the conservator to elect the share as the court deems appropriate under the circumstances.

[C51, §1407; R60, §2435; C73, §2452; C97, §3376; S13, §3376; C24, 27, 31, 35, 39, §**12006, 12010;** C46, 50, 54, 58, 62, §636.21, 636.25; C66, 71, 73, 75, 77, 79, 81, §633.236]
88 Acts, ch 1064, §1; 2005 Acts, ch 38, §12
Referred to in §633.237, 633.245, 633.246, 633.247, 633.264, 633.647
[P] Effect on medical assistance eligibility, see §249A.3(11) and 633.246A

**633.237 Presumption against filing elective share.**

1. Following the appointment of a personal representative of the estate of the decedent, the personal representative shall cause to be served a written notice upon the surviving spouse pursuant to section 633.40, subsection 5, notifying the surviving spouse that unless, within four months after service of the notice, the spouse files an election in writing with the clerk of court electing the share as set forth in section 633.236 and sections 633.238 through 633.246, the spouse shall be deemed to take under the will or to receive the intestate share. If, within the four-month period following service of the notice, an affidavit is filed setting forth that the surviving spouse is incapable of making the election and does not have a conservator, the personal representative shall make application to the court for an order pursuant to section 633.244.

2. Following the death of a settlor of a revocable trust, the trustee of such revocable trust shall cause to be served a written notice upon the surviving spouse pursuant to section 633.40, subsection 5, notifying the surviving spouse that unless, within four months after service of the notice, the spouse files an election with the trustee electing the share as set forth in section 633.236 and sections 633.238 through 633.246, the spouse shall be deemed to take under the terms of the revocable trust. If, within the four-month period following service of the notice, an affidavit is filed setting forth that the surviving spouse is incapable of making the election

and does not have a conservator, the trustee shall make application to the court for an order pursuant to section 633.244.

3. If the surviving spouse has a conservator, notice shall be given to the conservator and the spouse pursuant to subsections 1 and 2.

4. The notice provisions under subsections 1 and 2 are not applicable if the surviving spouse or the spouse's conservator files, at any time, an election to take under the will, receive the intestate share, or take under the revocable trust. If the surviving spouse fails to file an election under this section within four months of the date notice is served, it shall be conclusively presumed that the surviving spouse elects to take under the will, receive the intestate share, or take under the revocable trust.

5. Upon application of the surviving spouse or the spouse's conservator filed before the time for making the election expires, the court may extend the period in which the surviving spouse may make the election.

[C73, §2452; C97, §3376; S13, §3376; C24, 27, 31, 35, 39, §**12007, 12010;** C46, 50, 54, 58, 62, §636.22, 636.25; C66, 71, 73, 75, 77, 79, 81, §633.237]

84 Acts, ch 1080, §3; 88 Acts, ch 1064, §2; 2005 Acts, ch 38, §13; 2009 Acts, ch 52, §3, 14; 2012 Acts, ch 1123, §3, 32

Referred to in §633.236, 633.241, 633.246, 633A.3110, 635.13

[SP] 2009 amendment to subsection 4 applies to estates of decedents and revocable trusts of settlors dying on or after July 1, 2009; 2009 Acts, ch 52, §14

[SP] 2012 amendment to subsections 1, 2, and 4, applies to estates of decedents dying on or after July 1, 2012; 2012 Acts, ch 1123, §32

**633.238 Elective share of surviving spouse.**

1. The elective share of the surviving spouse shall be limited to all of the following:

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

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

*c.* One-third of all personal property of the decedent that is not necessary for the payment of debts and charges.

*d.* One-third in value of the property held in trust not necessary for the payment of debts and charges over which the decedent was a grantor and retained at the time of death the power to alter, amend, or revoke the trust, or over which the decedent waived or rescinded any such power within one year of the date of death, and to which the surviving spouse has not made any express written relinquishment.

2. The elective share described in this section shall be in lieu of any property the spouse would otherwise receive under the last will and testament of the decedent, through intestacy, or under the terms of a revocable trust.

[C51, §1329, 1390, 1394, 1421; R60, §2361, 2422, 2477, 2479; C73, §2371, 2436, 2440; C97, §3312, 3362, 3366; C24, 27, 31, 35, 39, §**11918, 11986, 11990, 11991;** C46, 50, 54, 58, 62, §635.7, 636.1, 636.5, 636.6; C66, 71, 73, 75, 77, 79, 81, §633.238]

2005 Acts, ch 38, §14; 2009 Acts, ch 52, §4, 14

Referred to in §614.14, 633.236, 633.237, 633.239, 633.240, 633.246

[SP] 2009 amendment to subsection 1, unnumbered paragraph 1, applies to estates of decedents and revocable trusts of settlors dying on or after July 1, 2009; 2009 Acts, ch 52, §14

**633.239 Share to embrace homestead.**

The share of the surviving spouse in such real estate shall be set off in such manner as to include the homestead, or so much thereof as will be equal to the share allotted to the spouse pursuant to section 633.238 unless the spouse prefers a different arrangement, but no such different arrangement shall be allowed unless there is sufficient property remaining to pay the claims and charges against the decedent's estate.

[C51, §1395; R60, §2426; C73, §2441; C97, §3367; C24, 27, 31, 35, 39, §**11992;** C46, 50, 54, 58, 62, §636.7; C66, 71, 73, 75, 77, 79, 81, §633.239]

2005 Acts, ch 38, §15

Referred to in §633.236, 633.237

**633.240 Election to receive homestead.**

In estates in which the surviving spouse has filed an election and in all intestate estates, whether an election is filed or not, the surviving spouse or the spouse's conservator, if applicable, may, in lieu of the spouse's share in the real property possessed by the decedent at any time during the marriage, which has not been sold on execution or other judicial sale, and to which the surviving spouse has made no express written relinquishment of right, elect to receive a life estate in the homestead. Such election shall be made and entered of record as provided in section 633.245. In making such election, the surviving spouse shall have all the rights as to the personal property provided in section 633.238, subsection 1, paragraphs "*b*", "*c*", and "*d*". In case of failure to make such election, the right to receive the life estate in the homestead shall be waived.

[C97, §3377; S13, §3377; C24, 27, 31, 35, 39, §**12012;** C46, 50, 54, 58, 62, §636.27; C66, 71, 73, 75, 77, 79, 81, §633.240]

88 Acts, ch 1064, §3; 2005 Acts, ch 38, §16

Referred to in §633.236, 633.237, 633.245, 633.246, 633.647

**633.241 Time for election to receive life estate in homestead.**

If the surviving spouse does not make an election to receive the life estate in the homestead and file it with the clerk within four months from the date of service of notice under section 633.237, it shall be conclusively presumed that the surviving spouse waives the right to make the election. The court on application may, prior to the expiration of the period of four months, for cause shown, enter an order extending the time for making the election.

[C97, §3377; S13, §3377; C24, 27, 31, 35, 39, §**12013;** C46, 50, 54, 58, 62, §636.28; C66, 71, 73, 75, 77, 79, 81, §633.241]

84 Acts, ch 1080, §4; 2005 Acts, ch 38, §17; 2008 Acts, ch 1119, §16, 39

Referred to in §633.236, 633.237

**633.242 Rights of election personal to surviving spouse.**

The right of the surviving spouse to take an elective share, and the right of the surviving spouse to receive a life estate in the homestead, are personal. They are not transferable and cannot be exercised for the spouse subsequent to the spouse's death. If the surviving spouse dies prior to filing an election, it shall be conclusively presumed that the surviving spouse does not take such elective share.

[C66, 71, 73, 75, 77, 79, 81, §633.242]

2005 Acts, ch 38, §18

Referred to in §633.236, 633.237

**633.243 Filing elections.**

The filing of the elective share and the election to receive a life estate in the homestead shall be filed in the office of the clerk in which the decedent's estate is being administered and served on the trustee of the revocable trust. The court where the election is filed shall have exclusive jurisdiction over all matters regarding elections under this chapter.

[C24, 27, 31, 35, 39, §**12010;** C46, 50, 54, 58, 62, §636.25; C66, 71, 73, 75, 77, 79, 81, §633.243]

2005 Acts, ch 38, §19

Referred to in §633.236, 633.237

**633.244 Incompetent spouse — election by court.**

In case an affidavit is filed that the surviving spouse is incapable of determining whether to take the elective share, or to elect to receive a life estate in the homestead, and does not have a conservator, the court shall fix a time and place of hearing on the matter and cause a notice thereof to be served upon the surviving spouse in such manner and for such time as the court may direct. At the hearing, a guardian ad litem shall be appointed to represent the spouse and the court shall enter such orders as it deems appropriate under the circumstances. The guardian ad litem shall be a practicing attorney.

[S13, §3376, 3377; C24, 27, 31, 35, 39, §**12011, 12014;** C46, 50, 54, 58, 62, §636.26, 636.29; C66, 71, 73, 75, 77, 79, 81, §633.244]

88 Acts, ch 1064, §4; 90 Acts, ch 1271, §1513; 2005 Acts, ch 38, §20

Referred to in §229.27, 633.236, 633.237, 633.245, 633.246

**633.245 Record of election.**

The elections of the surviving spouse under section 633.236, 633.240 or 633.244 shall be entered on the proper records of the court.

[C73, §2452; C97, §3376; S13, §3376; C24, 27, 31, 35, 39, §**12008;** C46, 50, 54, 58, 62, §636.23; C66, 71, 73, 75, 77, 79, 81, §633.245]

Referred to in §633.236, 633.237, 633.240

**633.246 Election not subject to change.**

1. An election by or on behalf of a surviving spouse to take the share provided in section 633.211, 633.212, 633.236, 633.238, 633.240, or 633.244 shall be binding and shall not be subject to change except for such causes as would justify an equitable decree for the rescission of a deed.

2. An affirmative election to take under the will, receive the intestate share, or take under the revocable trust shall be irrevocable when filed as provided in section 633.237.

[C66, 71, 73, 75, 77, 79, 81, §633.246]

2009 Acts, ch 52, §5, 14; 2012 Acts, ch 1123, §4, 32

Referred to in §633.236, 633.237

[SP] 2009 amendment to this section applies to estates of decedents and revocable trusts of settlors dying on or after July 1, 2009; 2009 Acts, ch 52, §14

[SP] 2012 amendment to this section applies to estates of decedents dying on or after July 1, 2012; 2012 Acts, ch 1123, §32

**633.246A Medical assistance eligibility.**

Unless precluded from doing so under the terms of a premarital agreement, the failure of a surviving spouse to make an election under this division constitutes a transfer of assets for the purpose of determining eligibility for medical assistance pursuant to chapter 249A to the extent that the value received by making the election would have exceeded the value of property received absent the election.

2000 Acts, ch 1060, §7; 2005 Acts, ch 38, §21; 2006 Acts, ch 1104, §2

## PART 2

## PROCEDURE FOR SETTING OFF ELECTIVE SHARE

**633.247 Setting off elective share of surviving spouse.**

The share of the surviving spouse under section 633.236 may be set off by the mutual consent of all parties in interest, or by referees appointed by the court. An application to have the share set off by referees shall be made by an interested party in writing by filing with the clerk of court. A copy of such application shall be sent to all interested parties.

[C51, §1396, 1397; R60, §2427, 2428; C73, §2443, 2444; C97, §3369; S13, §3377; C24, 27, 31, 35, 39, §**11994, 12015;** C46, 50, 54, 58, 62, §636.9, 636.30; C66, 71, 73, 75, 77, 79, 81, §633.247]

84 Acts, ch 1080, §5; 88 Acts, ch 1064, §5; 2005 Acts, ch 38, §22

Referred to in §633.253

**633.248 Referee — notice.**

In the absence of mutual consent of all interested parties to the appointment of referees, the court shall fix a time and place for hearing upon such application and of the fact that referees will be appointed if such application is granted, and shall prescribe the time and manner of the service of notice of the hearing.

[C51, §1398; R60, §2429; C73, §2445; C97, §3370; C24, 27, 31, 35, 39, §**11995;** C46, 50, 54, 58, 62, §636.10; C66, 71, 73, 75, 77, 79, 81, §633.248]

2005 Acts, ch 38, §23

Referred to in §633.253

**633.249 Mode of setting off share in real estate.**

The referees may employ a licensed professional land surveyor, and may cause the shares in real estate to be set off by legally sufficient land descriptions. They shall make a report of their proceedings to the court as early as reasonably possible.

[C51, §1399; R60, §2430; C73, §2446; C97, §3371; C24, 27, 31, 35, 39, §**11996;** C46, 50, 54, 58, 62, §636.11; C66, 71, 73, 75, 77, 79, 81, §633.249]

2012 Acts, ch 1009, §33

Referred to in §633.253

**633.250 Report — delinquency.**

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

[C51, §1400; R60, §2431; C73, §2447; C97, §3372; C24, 27, 31, 35, 39, §**11997;** C46, 50, 54, 58, 62, §636.12; C66, 71, 73, 75, 77, 79, 81, §633.250]

Referred to in §633.253

**633.251 Confirmation — new reference.**

The court may set the report for hearing and prescribe the notice to be given to interested parties. The court may confirm the report, or may set it aside and refer the matter to the same or other referees, at its discretion.

[C51, §1401; R60, §2432; C73, §2448; C97, §3373; C24, 27, 31, 35, 39, §**11998;** C46, 50, 54, 58, 62, §636.13; C66, 71, 73, 75, 77, 79, 81, §633.251]

Referred to in §633.253

**633.252 Confirmation conclusive — possession.**

An order confirming a report of the referee shall be binding and conclusive unless appealed within thirty days and the surviving spouse may bring an action to obtain possession of any assets set apart to the surviving spouse. Such elective share constitutes a judgment lien in favor of such surviving spouse against the possessor of such assets.

[C51, §1402; R60, §2433; C73, §2449; C97, §3373; C24, 27, 31, 35, 39, §**11999;** C46, 50, 54, 58, 62, §636.14; C66, 71, 73, 75, 77, 79, 81, §633.252]

2005 Acts, ch 38, §24

Referred to in §633.253

**633.253 Right contested.**

Nothing in sections 633.247 through 633.252 shall prevent any person interested from controverting the right of the surviving spouse to the share thus set apart before confirmation of the report of the referees.

[C51, §1403; R60, §2434; C73, §2450; C97, §3374; C24, 27, 31, 35, 39, §**12000;** C46, 50, 54, 58, 62, §636.15; C66, 71, 73, 75, 77, 79, 81, §633.253]

**633.254 Sale — division of proceeds.**

If it appears to the court, upon application of the personal representative, the surviving spouse, or the report of the referee, that the property, or any part of it, cannot be advantageously divided, the court may order the whole, or any part of such property, sold, and the share of the surviving spouse in the proceeds paid over to the surviving spouse.

[C51, §1404; R60, §2478; C73, §2451; C97, §3375; C24, 27, 31, 35, 39, §**12001;** C46, 50, 54, 58, 62, §636.16; C66, 71, 73, 75, 77, 79, 81, §633.254]

Referred to in §633.256, 633.258

**633.255 Purchase of new homestead.**

In case the homestead is sold, the surviving spouse may use any or all of the spouse's share to procure a homestead which shall be exempt from liability for all debts from which the former homestead would have been exempt.

[C51, §1406; C73, §2451; C97, §3375; C24, 27, 31, 35, 39, § **12002;** C46, 50, 54, 58, 62, §636.17; C66, 71, 73, 75, 77, 79, 81, §633.255]

**633.256 Security to avoid sale.**
No sale shall be made under section 633.254 if anyone interested gives security to the satisfaction of the court, conditioned to pay the surviving spouse the appraised value of the share with seven percent interest on the same, within such reasonable time as the court may fix, not exceeding one year.
[C51, §1405; C73, §2451; C97, §3375; C24, 27, 31, 35, 39, §**12003;** C46, 50, 54, 58, 62, §636.18; C66, 71, 73, 75, 77, 79, 81, §633.256]

**633.257 Security by surviving spouse.**
If no such arrangement is made, the surviving spouse may keep the property by giving like security to pay the claims of all others interested upon like terms.
[C51, §1405; C73, §2451; C97, §3375; C24, 27, 31, 35, 39, §**12004;** C46, 50, 54, 58, 62, §636.19; C66, 71, 73, 75, 77, 79, 81, §633.257]

**633.258 Sale prohibited.**
Such sale under section 633.254 shall not be ordered so long as those in interest shall express a contrary desire and agree upon some mode of sharing and dividing the rents, profits, or use thereof, or shall consent that the court shall order the division of such rents, profits or use.
[C51, §1405; R60, §2478; C73, §2451; C97, §3375; C24, 27, 31, 35, 39, §**12005;** C46, 50, 54, 58, 62, §636.20; C66, 71, 73, 75, 77, 79, 81, §633.258]

**633.259 through 633.263** Reserved.

## DIVISION VI

## WILLS

### PART 1

### GENERAL PROVISIONS RELATING TO WILLS

**633.264 Disposal of property by will.**
Subject to the rights of the surviving spouse to take an elective share as provided by section 633.236, any person of full age and sound mind may dispose by will of all the person's property, except an amount sufficient to pay the debts and charges against the person's estate.
[C51, §1277, 1407; R60, §2309, 2435; C73, §2322, 2452; C97, §3270, 3376; S13, §3376; C24, 27, 31, 35, 39, §**11846, 12006;** C46, 50, 54, 58, 62, §633.1, 636.21; C66, 71, 73, 75, 77, 79, 81, §633.264]
2005 Acts, ch 38, §25; 2006 Acts, ch 1030, §77

**633.265 Procedure prescribed by will.**
When the interests of creditors will not thereby be prejudiced, a testator may prescribe the entire manner in which the testator's estate shall be administered, and, also, the manner in which the testator's affairs shall be conducted until the testator's estate is finally settled.
[C51, §1326; R60, §2358; C73, §2406; C97, §3336; C24, 27, 31, 35, 39, §**11955;** C46, 50, 54, 58, 62, §635.51; C66, 71, 73, 75, 77, 79, 81, §633.265]
[P] See also §633.172

**633.266 Adjusted gross estate.**
Unless otherwise defined, *"adjusted gross estate"* in a will means the entire value of the gross estate as determined under the federal estate tax less the aggregate amount of the

deductions allowed by sections 2053 and 2054 of the Internal Revenue Code as defined in section 422.3.

[82 Acts, ch 1053, §1]

2006 Acts, ch 1140, §9 – 11

Referred to in §633A.1102

[P] Internal Revenue Code definition is updated regularly; for applicable definition in a prior tax year, refer to Iowa Acts and Code or Code Supplement for that year

**633.267 Children born or adopted after execution of will.**

1. If a testator fails to provide in the testator's will for any child of the testator born to or adopted by the testator after the execution of the testator's last will, such child, whether born before or after the testator's death, shall receive a share in the estate of the testator equal in value to that which the child would have received under section 633.219, after taking into account the spouse's intestate share under section 633.211 or section 633.212, whichever section or sections are applicable, if the testator had died intestate, unless it appears from the will that such omission was intentional.

2. *a.* For the purposes of this section, a child born after the testator's death includes a child of the testator conceived and born after the testator's death, or a child born as the result of the implantation of an embryo after the testator's death, if all of the following conditions are met:

(1) A genetic parent-child relationship between the child and the testator is established.

(2) The testator, in a signed writing, authorized the testator's surviving spouse to use the deceased parent's genetic material to initiate the posthumous procedure that resulted in the child's birth or the testator by specific reference to the genetic material, bequeathed the genetic material to the other parent in a valid will.

(3) The child is born within two years of the death of the testator.

*b.* Any child of the testator whose share of the estate would be reduced by the birth of a child born as provided in paragraph *"a"* shall have one year from the birth of the child within which to bring an action challenging the child's right to a share of the estate under this section.

*c.* For the purposes of this subsection, *"genetic material"* means sperm, eggs, or embryos.

[C51, §1284, 1285; R60, §2316, 2317; C73, §2334, 2335; C97, §3279; S13, §3279; C24, 27, 31, 35, 39, §**11858;** C46, 50, 54, 58, 62, §633.13; C66, 71, 73, 75, 77, 79, 81, §633.267]

88 Acts, ch 1064, §6; 2008 Acts, ch 1119, §17, 39; 2011 Acts, ch 18, §3

Referred to in §633.477, 633A.3106

**633.268 Presumption attending devise to spouse.**

Where the testator's spouse is named as a devisee in a will, it shall be presumed, unless the intent is clear and explicit to the contrary, and except as provided in section 633.272, that such devise is in lieu of the intestate share and homestead rights of the surviving spouse.

[C97, §3270; C24, 27, 31, 35, 39, §**11847;** C46, 50, 54, 58, 62, §633.2; C66, 71, 73, 75, 77, 79, 81, §633.268]

**633.269 After acquired property.**

Any property acquired by the testator after the making of the testator's will shall pass thereby, and in like manner as if title thereto were vested in the testator at the time of making the will, unless the intent is clear and explicit to the contrary.

[C51, §1278; R60, §2310; C73, §2323; C97, §3271; C24, 27, 31, 35, 39, §**11849;** C46, 50, 54, 58, 62, §633.4; C66, 71, 73, 75, 77, 79, 81, §633.269]

**633.270 Contractual or mutual wills.**

No will shall be construed to be contractual or mutual, unless in such will the testator shall expressly state the intent that such will shall be so construed.

[C66, 71, 73, 75, 77, 79, 81, §633.270]

**633.271 Effect of divorce or dissolution.**

1. If after making a will the testator is divorced or the testator's marriage is dissolved,

all provisions in the will in favor of the testator's spouse or of a relative of the testator's spouse, including but not limited to dispositions, appointments of property, and nominations to serve in any fiduciary or representative capacity, are revoked by the divorce or dissolution of marriage, unless the will provides otherwise.

2. Unless the will provides otherwise, in the event the testator and spouse remarry each other, the provisions of the will revoked by the divorce or dissolution of marriage shall be reinstated unless otherwise revoked by the testator, except for provisions in favor of a person who died prior to the remarriage which shall not be reinstated.

3. For the purposes of this section, *"relative of the testator's spouse"* means a person who is related to the divorced testator's former spouse by blood, adoption, or affinity, and who, subsequent to a divorce or dissolution of marriage, ceased to be related to the testator by blood, adoption, or affinity.

[C66, 71, 73, 75, 77, 79, 81, §633.271]

2000 Acts, ch 1150, §3; 2005 Acts, ch 38, §26

**633.272 Partial intestacy.**

If part but not all of the estate of a decedent is validly disposed of by will, the part not disposed of by will shall be distributed as provided herein for intestate estates. If the testator left a surviving spouse, and the spouse does not take an elective share, the spouse shall receive, in addition to the property given to the spouse by the will, so much of the intestate property subject to the payment of its proportionate share of debts and charges as the spouse would receive pursuant to section 633.211 or 633.212.

[C66, 71, 73, 75, 77, 79, 81, §633.272]

94 Acts, ch 1165, §42; 2007 Acts, ch 134, §12, 28

Referred to in §633.268

**633.273 Antilapse statute.**

1. If a devisee dies before the testator, leaving issue who survive the testator, the devisee's issue who survive the testator shall inherit the property devised to the devisee per stirpes, unless from the terms of the will, the intent is clear and explicit to the contrary.

2. A person who would have been a devisee under a class gift, if the person had survived the testator, is treated as a devisee for purposes of this section, provided the person's death occurred after the execution of the will, unless from the terms of the will, the intent is clear and explicit to the contrary.

[C51, §1287; R60, §2319; C73, §2337; C97, §3281; C24, 27, 31, 35, 39, §**11861;** C46, 50, 54, 58, 62, §633.16; C66, 71, 73, 75, 77, 79, 81, §633.273]

89 Acts, ch 130, §1; 95 Acts, ch 63, §5

Referred to in §633.273A, 633.274

**633.273A Disposition of failed devise.**

Unless from the terms of the will the intent is clear and explicit to the contrary, and except as provided in section 633.273:

1. A devise, other than a residuary devise, that fails for any reason becomes a part of the residuary estate.

2. If the residuary estate is devised to two or more persons, the share of a residuary devisee that fails for any reason passes to the other residuary devisee or to the other residuary devisees in proportion to the interest of each in the remaining part of the residuary estate.

2013 Acts, ch 33, §1, 9

[SP] Section applies to estates of decedents dying on or after July 1, 2013; 2013 Acts, ch 33, §9

[T] NEW section

**633.274 Exception to antilapse statute.**

The devise to a spouse of the testator, where the spouse does not survive the testator, shall lapse notwithstanding the provisions of section 633.273, unless from the terms of the will, the intent is clear and explicit to the contrary.

[C66, 71, 73, 75, 77, 79, 81, §633.274]

**633.275 Testamentary additions to trusts.**

A devise or bequest, the validity of which is determinable by the law of this state, may be made by a will to the trustee of a trust established, or to be established, by the testator, or by the testator and some other person or persons, or by some other person or persons, including a funded or unfunded life insurance trust, although the trustor has reserved some or all rights of ownership of the insurance contracts, if the trust is identified in the testator's will, and if its terms are set forth in a written instrument other than a will executed before or concurrently with the execution of the testator's will, or in the valid last will of a person who has predeceased the testator regardless of the existence, size, or character of the corpus of the trust. The devise or bequest is not invalid because the trust is amendable or revocable, or both, or because the trust was amended after the execution of the will or after the death of the testator. Unless the testator's will provides otherwise, the property so devised or bequeathed shall not be deemed to be held under a testamentary trust of the testator, but shall become a part of the trust to which it is given and shall be administered and disposed of in accordance with the instrument or will setting forth the terms of the trust, including any amendments thereto made before the death of the testator, regardless of whether any such amendment was made before or after the execution of the testator's will, and, if the testator's will so provides, including any amendments to the trust made after the death of the testator. A revocation or termination of the trust before the death of the testator causes the devise or bequest to lapse. This section does not invalidate a devise or bequest made by a will executed prior to January 1, 1964.

[C66, 71, 73, 75, 77, 79, 81, §633.275, 633.276; 81 Acts, ch 195, §1]

Referred to in §633.277

**633.276 Separate identification of bequest.**

A will may refer to a written statement, letter, or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, except tangible personal property used in trade or business. Tangible personal property, for purposes of this section, includes household goods, furnishings, furniture, personal effects, clothing, jewelry, books, works of art, ornaments, and automobiles. If the writing is dated and is either in the handwriting of the testator or is signed by testator, and if it describes the items and distributees with reasonable certainty, the personal representative shall distribute the described items of tangible personal property to the distributees entitled to them. The writing may be referred to as one to be in existence at the time of the testator's death. The writing may be prepared before or after the execution of the will. The writing may be altered, added to, or changed in any respect by the testator after its preparation, and it may be a writing which has no significance apart from its effect upon the dispositions made by the will. Property passing by the writing shall be considered as property passing as a specific bequest under will.

[81 Acts, ch 195, §2]

Referred to in §450.4

**633.277 Uniformity of interpretation.**

Section 633.275 shall be so construed as to effectuate its general purpose to make uniform the law of those states which have adopted a similar provision.

[C66, 71, 73, 75, 77, 79, 81, §633.277]

**633.278 Devise of encumbered property.**

When any property subject to a mortgage, other lien or security interest, is specifically devised, the devisee shall take such property so devised subject to such mortgage, other lien or security interest, unless the will provides expressly or by necessary implication that such mortgage, other lien or security interest be otherwise paid. If there is a testamentary direction to discharge such mortgage, other lien or security interest, the rules of abatement specified in section 633.436 shall be applied.

[C66, 71, 73, 75, 77, 79, 81, §633.278]

## PART 2

## EXECUTION AND REVOCATION

**633.279 Signed and witnessed.**

1. *Formal execution.* All wills and codicils, except as provided in section 633.283, to be valid, must be in writing, signed by the testator, or by some person in the testator's presence and by the testator's express direction writing the testator's name thereto, and declared by the testator to be the testator's will, and witnessed, at the testator's request, by two competent persons who signed as witnesses in the presence of the testator and in the presence of each other; provided, however, that the validity of the execution of any will or instrument which was executed prior to January 1, 1964, shall be determined by the law in effect immediately prior to said date.

2. *Self-proved will.*

*a.* An attested will may be made self-proved at the time of its execution, or at any subsequent date, by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before a person authorized to administer oaths and take acknowledgments under the laws of this state, and evidenced by such person's certificate, under seal, attached or annexed to the will, in form and content substantially as follows:

Affidavit
State of..... )
County of..... ) ss

We, the undersigned, ....., ..... and ....., the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, declare to the undersigned authority that at the date of the instrument, we all knew the identity of each other; the instrument was exhibited to the witnesses by the testator, who declared it to be the testator's last will and testament and was signed by the testator or by another at the direction of the testator at ....., in the County of ....., State of ....., on the date shown in the instrument, and in the presence of each other as subscribing witnesses; that we, as witnesses, declare to the undersigned authority that in our presence the testator executed and acknowledged such will as the testator's will and that we, in the testator's presence, at the testator's request, and in the presence of each other, did subscribe our names thereto as attesting witnesses on the date of such will; and that the witnesses were sixteen years of age or older.

.....
Testator
.....
Witness
.....
Witness
.....

Subscribed, sworn and acknowledged before me by ....., the testator; and subscribed and sworn before me by ..... and ....., witnesses, this ..... day of ..... (month), ..... (year)

.....
Notary Public, or other notarial
officer authorized to take
(Stamp) and certify acknowledgments

and administer oaths

*b.* A self-proved will shall constitute proof of due execution of such instrument as required by section 633.293 and may be admitted to probate without testimony of witnesses.

[C51, §1281; R60, §2313; C73, §2326; C97, §3274; C24, 27, 31, 35, 39, §**11852;** C46, 50, 54, 58, 62, §633.7; C66, 71, 73, 75, 77, 79, 81, §633.279]

2000 Acts, ch 1058, §56; 2011 Acts, ch 25, §73; 2012 Acts, ch 1050, §57, 60; 2013 Acts, ch 33, §2, 9

Referred to in §622.1

[SP] 2013 amendment to subsection 2, paragraph a, applies to estates of decedents dying on or after July 1, 2013; 2013 Acts, ch 33, §9

[T] Subsection 2, paragraph a stricken and rewritten

**633.280 Competency of witnesses.**

Any person who is sixteen years of age, or older, and who is competent to be a witness generally in this state, may act as an attesting witness to a will.

[C66, 71, 73, 75, 77, 79, 81, §633.280]

**633.281 Interest of witnesses.**

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

[C51, §1282, 1283; R60, §2314, 2315; C73, §2327, 2328; C97, §3275; C24, 27, 31, 35, 39, §**11854;** C46, 50, 54, 58, 62, §633.9; C66, 71, 73, 75, 77, 79, 81, §633.281]

**633.282 Defect cured by codicil.**

If a codicil to a defectively executed will is duly executed, and such will is clearly identified in said codicil, the will and the codicil shall be considered as one instrument and the execution of both shall be deemed sufficient.

[C97, §3274; C24, 27, 31, 35, 39, §**11853;** C46, 50, 54, 58, 62, §633.8; C66, 71, 73, 75, 77, 79, 81, §633.282]

**633.283 Will executed in foreign state or country.**

A will executed outside this state, in the mode prescribed by the law, either of the place where executed or of the testator's domicile, shall be deemed to be legally executed, and shall be of the same force and effect as if executed in the mode prescribed by the laws of this state, provided said will is in writing and subscribed by the testator.

[C97, §3309; C24, 27, 31, 35, 39, §**11893;** C46, 50, 54, 58, 62, §633.49; C66, 71, 73, 75, 77, 79, 81, §633.283]

Referred to in §633.279

**633.284 Revocation — cancellation — revival.**

A will can be revoked in whole or in part only by being canceled or destroyed by the act or direction of the testator, with the intention of revoking it, or by the execution of a subsequent will. When done by cancellation, the revocation must be witnessed in the same manner as the making of a new will. No will, nor any part thereof, which shall be in any manner revoked, or which shall be or become invalid, can be revived otherwise than by a re-execution thereof, or by the execution of another will or codicil in which the revoked or invalid will, or part thereof, is incorporated by reference.

[C51, §1288, 1289; R60, §2320, 2321; C73, §2329, 2330; C97, §3276; S13, §3276; C24, 27, 31, 35, 39, §**11855;** C46, 50, 54, 58, 62, § 633.10; C66, 71, 73, 75, 77, 79, 81, §633.284]

## PART 3

## CUSTODY

**633.285 Custodian — filing — penalty.**

After being informed of the death of the testator, the person having custody of the testator's will shall deliver it to the court having jurisdiction of the testator's estate. Every person who willfully refuses or fails to deliver a will after being ordered by the court to do so shall be guilty of contempt of court. The person shall also be liable to any person aggrieved for the damages which may be sustained by such refusal or failure.

[C51, §1291, 1292; R60, §2323, 2324; C73, §2338, 2339; C97, §3282; C24, 27, 31, 35, 39, §**11862;** C46, 50, 54, 58, 62, §633.17; C66, 71, 73, 75, 77, 79, 81, §633.285]

Referred to in §633.286

**633.286 Deposit of will with clerk.**

The clerk shall maintain a file for the safekeeping of wills. There shall be placed therein wills deposited with the clerk by living testators or by persons on their behalf, and wills of deceased testators not accompanied by petitions for the probate thereof, when deposited with the clerk by persons having custody thereof as provided in section 633.285.

[C51, §1290; R60, §2322; C73, §2331; C97, §3277; C24, 27, 31, 35, 39, §**11856;** C46, 50, 54, 58, 62, §633.11; C66, 71, 73, 75, 77, 79, 81, §633.286]

Referred to in §633.645

**633.287 Manner of deposit.**

Every such will shall be enclosed in a sealed wrapper. The clerk shall indorse thereon the name of the testator, the name of the depositor, the date of deposit, and, if provided, the name of the person to be notified of the deposit of such will upon the death of the testator. The clerk shall hold such will until disposed of as provided in section 633.288 or 633.289.

[C66, 71, 73, 75, 77, 79, 81, §633.287]

Referred to in §633.645

**633.288 Delivery by clerk during lifetime of testator.**

During the lifetime of the testator, such will shall be delivered only to the testator, or to some person authorized by the testator by an order in writing duly acknowledged.

[C66, 71, 73, 75, 77, 79, 81, §633.288]

Referred to in §633.287, 633.645

**633.289 Delivery by clerk after death of testator.**

After being informed of the death of a testator, the clerk shall notify the person, if any, named in the indorsement on the wrapper of said will. If no petition for the probate thereof has been filed within thirty days after the death of the testator, it shall be publicly opened, and the court shall make such orders as it deems appropriate for the disposition of said will. The clerk shall notify the executor named therein and such other persons as the court shall designate of such action. If the proper venue is in another court, the clerk, upon request, shall transmit such will to such court, but before such transmission, the clerk shall make a true copy thereof and retain the same in the clerk's files.

[C66, 71, 73, 75, 77, 79, 81, §633.289]

Referred to in §633.287, 633.645

## PART 4

## PROCEDURE FOR PROBATE OF WILLS

**633.290 Petitions after death of testator.**

1. After the death of the testator, any interested person may file a verified petition in the district court of the proper county for any of the following:

*a.* To have the will admitted to probate.

*b.* For the appointment of the executor.

*c.* To request a hearing before the will is admitted to probate.

*d.* To request a hearing before the appointment of the executor.

*e.* For the production of the purported will of the decedent to be filed by the person believed by the petitioner to be in possession of the will.

2. Petitions for any of the reasons specified in subsection 1 may be combined.

[C66, 71, 73, 75, 77, 79, 81, §633.290]

2013 Acts, ch 30, §192; 2013 Acts, ch 33, §3, 9

Referred to in §635.1

[SP] 2013 amendment to section by 2013 Acts, ch 33, §3 applies to petitions filed on or after July 1, 2013; 2013 Acts, ch 33, §9

[T] See Code editor's note on simple harmonization

[T] Section amended

**633.291 Contents of petition for probate of will.**

A petition for probate of a will shall state:

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

2. If the decedent was not domiciled in the state at the time of the decedent's death, then, that the decedent had property within the county in which the petition is filed, or any other basis for jurisdiction in such county.

[C66, 71, 73, 75, 77, 79, 81, §633.291]

**633.292 Contents of petition for appointment of executor.**

A petition for the appointment of an executor shall state the name and address of the person nominated or proposed as executor, and that such person is qualified to act as executor. If the person proposed in said petition is not the person nominated in the will, the petition shall state the reason why the person nominated is not proposed as executor. Unless bond is waived in the will, the petition shall state the estimated value of the personal property of the estate plus the estimated gross annual income of the estate during the period of administration.

[C66, 71, 73, 75, 77, 79, 81, §633.292]

**633.293 Hearing upon petition.**

Upon the filing of a petition for probate of a will, the court or the clerk may, in its or the clerk's discretion, hear it forthwith, or at such time and place as the court or clerk may direct, with or without requiring notice, and upon proof of due execution of the will, admit the same to probate.

[C51, §1294; R60, §2326; C73, §2341; C97, §3284; S13, §3284; C24, 27, 31, 35, 39, §**11865;** C46, 50, 54, 58, 62, §633.20; C66, 71, 73, 75, 77, 79, 81, §633.293]

Referred to in §633.279

**633.294 Order of preference for appointment of executor.**

Letters testamentary may be granted to one or more persons found to be qualified. Preference for appointment shall be in the following order:

1. The person designated in the will;

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

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

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

[C66, 71, 73, 75, 77, 79, 81, §633.294]

**633.295 Testimony of witnesses.**

The proof may be made by the oral or written testimony of one or more of the subscribing witnesses to the will. If such testimony is in writing, it shall be substantially in the following form executed and sworn to after the death of the decedent:

In the District Court of Iowa
In and for ..... County
In the Matter of the Estate of .....
....., Deceased
Probate No. .....
Testimony of Subscribing
Witness on Probate of Will.
State of ..... )
..... County ) ss

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

I reside in the County of ....., State of .....; I knew the identity of the testator on the ..... day of ..... (month), ..... (year), the date of the instrument, the original or exact reproduction of which is attached hereto, now shown to me, and purporting to be the last will and testament of the said ....., deceased; I am one of the subscribing witnesses to said instrument; at the said date of said instrument, I knew the identity of ....., the other subscribing witness; that said instrument was exhibited to me and to the other subscribing witness by the testator, who declared the same to be the testator's last will and testament, and was signed by the testator at ....., in the County of ....., State of ....., on the date shown in said instrument, in the presence of myself and the other subscribing witness; and the other subscribing witness and I then and there, at the request of the testator, in the presence of said testator and in the presence of each other, subscribed our names thereto as witnesses.

.....
Name of witness
.....
Address

Subscribed and sworn to before me this ..... day of ..... (month), ..... (year)

.....
Notary Public in and for
(Stamp) the State of .....

[C66, 71, 73, 75, 77, 79, 81, §633.295]
2000 Acts, ch 1058, §56; 2012 Acts, ch 1050, §58, 60; 2013 Acts, ch 33, §4, 9
Referred to in §633.296, 633.319
[SP] 2013 amendment to section applies to estates of decedents dying on or after July 1, 2013; 2013 Acts, ch 33, §9
[T] Section amended

**633.296 Deposition.**

If it is desired to prove the execution of the will by deposition, rather than by use of the affidavit form provided in section 633.295, upon application, the clerk shall issue a commission to some officer authorized by the law of this state to take depositions, with the will annexed, and the officer taking the deposition shall exhibit it to the witness for identification, and, when identified by the witness, shall mark it as "Exhibit ....." and cause the witness to connect the witness' identification with it as such exhibit. Before sending out the commission, the clerk shall make and retain in the clerk's office a true copy of such will.

[C97, §3285; C24, 27, 31, 35, 39, §**11866;** C46, 50, 54, 58, 62, §633.21; C66, 71, 73, 75, 77, 79, 81, §633.296]

**633.297 Witnesses unavailable.**

If all of such witnesses are deceased or otherwise not available, then it shall be permissible to prove said will by the sworn testimony of two credible disinterested witnesses that the

signature to the will is in the handwriting of the person whose will it purports to be, and that the signatures of the witnesses are in the handwriting of such witnesses, or it may be proved by other sufficient evidence of the execution of such will.

[C46, 50, 54, 58, 62, §633.22; C66, 71, 73, 75, 77, 79, 81, §633.297]

[P] Other evidence, proof, §622.24

**633.298 Order admitting or disallowing probate of will.**

The court or the clerk shall enter an order either admitting said will to probate, or disallowing probate because of insufficient proof thereof.

[C66, 71, 73, 75, 77, 79, 81, §633.298]

**633.299 Order appointing executor.**

If a petition for appointment of an executor has been filed, the order admitting the will to probate shall include appointment of an executor thereof, unless the court or clerk shall determine that no appointment should be made at such time.

[C51, §1299, 1302; R60, §2331, 2334; C73, §2332, 2333; C97, §3278; C24, 27, 31, 35, 39, §**11857;** C46, 50, 54, 58, 62, §633.12; C66, 71, 73, 75, 77, 79, 81, §633.299]

**633.300 Certificate of probate.**

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

[C51, §1300; R60, §2332; C73, §2342; C97, §3286; C24, 27, 31, 35, 39, §**11867;** C46, 50, 54, 58, 62, §633.23; C66, 71, 73, 75, 77, 79, 81, §633.300]

93 Acts, ch 70, §13

Referred to in §633.301

**633.301 Copy of will for executor.**

When a will has been admitted to probate and certified pursuant to section 633.300, the clerk shall cause a certified copy thereof to be placed in the hands of the executor to whom letters are issued. The clerk shall retain the will in a separate file provided for that purpose until the time for contest has expired, and promptly thereafter shall place it with the files of the estate.

[C51, §1295, 1298; R60, §2327, 2330; C73, §2343, 2344; C97, §3287; S13, §3287; C24, 27, 31, 35, 39, §**11868;** C46, 50, 54, 58, 62, §633.24; C66, 71, 73, 75, 77, 79, 81, §633.301]

93 Acts, ch 70, §14; 2003 Acts, ch 151, §53

Referred to in §633.302

**633.302 Clerk filing copies of will.**

When the clerk places an original will in a separate file as provided in section 633.301, the clerk shall place and keep a true copy of such will in the probate file containing the proceedings in the estate which it governs.

[C66, 71, 73, 75, 77, 79, 81, §633.302]

**633.303 Charitable trusts — copy of wills to attorney general.** Repealed by 2009 Acts, ch 35, § 3. See § 633A.5107 and 633A.5108.

**633.304 Notice of probate of will with administration.**

1. As used in this section, "*heir*" means only such person as would, in an intestate estate, be entitled to a share under section 633.219.

2. On admission of a will to probate, the executor, as soon as letters are issued, shall cause to be published once each week for two consecutive weeks in a daily or weekly newspaper of general circulation published in the county in which the estate is pending and at any time during the pendency of administration that the executor has knowledge of the name and address of a person believed to own or possess a claim which will not or may not be paid or otherwise satisfied during administration, provide by ordinary mail to each such

claimant at the claimant's last known address, and as soon as practicable give notice, except to any executor, by ordinary mail to the surviving spouse, each heir of the decedent and each devisee under the will admitted to probate whose identities are reasonably ascertainable, at such persons' last known addresses, a notice of admission of the will to probate and of the appointment of the executor, in which shall be included a notice that any action to set aside the probate of the will must be brought within the later to occur of four months from the date of the second publication of the notice or one month from the date of mailing of this notice or thereafter be forever barred, and in which shall be included a notice to debtors to make payment, and to creditors having claims against the estate to file them with the clerk within four months from the second publication of the notice, or thereafter be forever barred.

3. The notice shall be substantially in the following form:

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

In the District Court of Iowa
in and for ..... County.
Probate No.
.....
In the Estate of ....., Deceased
To All Persons Interested in the Estate of ....., Deceased, who died on or about ..... (date):

You are hereby notified that on the ..... day of ..... (month), ..... (year), the last will and testament of ....., deceased, bearing date of the ..... day of ..... (month), ..... (year), was admitted to probate in the above named court and that ..... was appointed executor of the estate. Any action to set aside the will must be brought in the district court of said county within the later to occur of four months from the date of the second publication of this notice or one month from the date of mailing of this notice to all heirs of the decedent and devisees under the will whose identities are reasonably ascertainable, or thereafter be forever barred.

Notice is further given that all persons indebted to the estate are requested to make immediate payment to the undersigned, and creditors having claims against the estate shall file them with the clerk of the above named district court, as provided by law, duly authenticated, for allowance, and unless so filed by the later to occur of four months from the second publication of this notice or one month from the date of mailing of this notice (unless otherwise allowed or paid) a claim is thereafter forever barred.

Dated this ..... day of ..... (month), ..... (year)
.....
Executor of estate
.....
Address
.....
Attorney for executor
.....
Address
Date of second publication
..... day of ..... (month), ..... (year)
(Date to be inserted by publisher)

[C51, §1357, 1358; R60, §2389, 2390; C73, §2366; C97, §3304; C24, 27, 31, 35, 39, §**11890;** C46, 50, 54, 58, 62, §633.46; C66, 71, 73, 75, 77, 79, 81, §633.304]
84 Acts, ch 1080, §6; 89 Acts, ch 35, §3; 93 Acts, ch 111, §3; 2000 Acts, ch 1058, §67; 2000 Acts, ch 1150, §4; 2002 Acts, ch 1119, §98; 2013 Acts, ch 90, §217
Referred to in §590.1, 633.230, 633.305, 633A.3109, 633A.3111, 635.13
[T] Section amended

**633.304A Notice of probate of will — medical assistance claims.**

1. On admission of a will to probate, the executor shall, in accordance with section 633.410, provide by electronic transmission on a form approved by the department of human services to the entity designated by the department of human services, a notice of admission of the will to probate and of the appointment of the executor, which shall include a notice to file claims with the clerk or to provide electronic notification to the executor that the department has no claim within six months of sending this notice, or thereafter be forever barred.

2. The notice shall be in substantially the following form:

NOTICE OF PROBATE OF WILL,
OF APPOINTMENT OF EXECUTOR,
AND NOTICE TO CREDITORS

In the District Court of Iowa
In and for ..... County.
In the Estate of ....., Deceased
Probate No. .....

To the Department of Human Services, Who May Be Interested in the Estate of ....., Deceased, who died on or about ..... (date):

You are hereby notified that on the ..... day of ..... (month), ..... (year), the last will and testament of ....., deceased, bearing date of the ..... day of ..... (month), ..... (year), was admitted to probate in the above-named court and that ..... was appointed executor of the estate.

You are further notified that the birthdate of the deceased is ..... and the deceased's social security number is .....-.....-..... The name of the spouse is ..... The birthdate of the spouse is ..... and the spouse's social security number is .....-.....-....., and that the spouse of the deceased is alive as of the date of this notice, or deceased as of ..... (date).

You are further notified that the deceased was/was not a disabled or a blind child of the medical assistance recipient by the name of ....., who had a birthdate of ..... and a social security

number of .....-.....-....., and the medical assistance debt of that medical assistance recipient was waived pursuant to section 249A.53, subsection 2, paragraph *"a"*, subparagraph (1), and is now collectible from this estate pursuant to section 249A.53, subsection 2, paragraph *"b"*.

Notice is hereby given that if the department of human services has a claim against the estate for the deceased person or persons named in this notice, the claim shall be filed with the clerk of the above-named district court, as provided by law, duly authenticated, for allowance within six months from the date of sending this notice and, unless otherwise allowed or paid, the claim is thereafter forever barred. If the department does not have a claim, the department shall return the notice to the executor with notification that the department does not have a claim within six months from the date of sending this notice.

Dated this ..... day of ..... (month), ..... (year)

.....
Executor of estate

.....
Address

.....
Attorney for executor

.....
Address

2001 Acts, ch 109, §2; 2002 Acts, ch 1119, §99; 2007 Acts, ch 134, §13; 2010 Acts, ch 1137, §5
Referred to in §633.410, 635.13
[T] Section not amended; internal reference change applied

**633.305 Notice if no administration.**

1. On admission of a will to probate without administration of the estate, the proponent shall cause to be published, in the manner prescribed in section 633.304, a notice of the admission of the will to probate. As soon as practicable following the admission of the will to probate, the proponent shall give notice of the admission of the will to probate by ordinary mail addressed to the surviving spouse, each heir of the decedent, and each devisee under the will admitted to probate whose identities are reasonably ascertainable, at such persons' last known addresses. The notice of the admission of the will to probate shall include a notice that any action to set aside the will must be brought within the later to occur of four months from the date of the second publication of the notice or one month from the date of mailing of this notice, or thereafter be barred.

2. As used in this section, *"heir"* means only such person as would, in an intestate estate, be entitled to a share under section 633.219.

3. The notice shall be substantially in the following form:

Notice of Proof of Will
Without Administration

In the District Court of Iowa
in and for ..... County.
Probate No.
.....
In the Estate of ....., Deceased
To All Persons Interested in the Estate of ....., Deceased, who died on or about ..... (date):

You are hereby notified that on the ..... day of ..... (month), ..... (year), the last will and testament of ....., deceased, bearing date of the ..... day of

..... (month), ..... (year), was admitted to probate in the above named court and there will be no present administration of the estate. Any action to set aside the will must be brought in the district court of the county within the later to occur of four months from the date of the second publication of this notice or one month from the date of mailing of this notice to all heirs of the decedent and devisees under the will whose identities are reasonably ascertainable, or thereafter be forever barred.

Dated this ..... day of ..... (month), ..... (year)

.....

Proponent

.....

Attorney for estate

.....

Address

Date of second publication

..... day of ..... (month), ..... (year)

(Date to be inserted by publisher)

[C66, 71, 73, 75, 77, 79, 81, §633.305]

84 Acts, ch 1080, §7; 89 Acts, ch 35, §4; 93 Acts, ch 111, §4; 2000 Acts, ch 1058, §68; 2000 Acts, ch 1150, §5; 2002 Acts, ch 1119, §100; 2006 Acts, ch 1129, §11; 2008 Acts, ch 1032, §85

Referred to in §590.1, 633.230

**633.306 Record in foreign county.**

Whenever it shall appear that the testator died seized of real estate located in a county of this state other than that in which probate is granted, a complete transcript, properly authenticated, of the record entry of the order of court admitting the will to probate, and, if a copy of such will is not contained therein, a certified copy of such will shall be attached thereto, and the same shall be filed by the clerk in the office of the clerk of the district court in such other county, who shall cause the same to be entered in the probate docket, and said transcript shall be recorded in full in the book kept for the recording of wills in such county. When so recorded, such record may be read in evidence in all courts without further proof.

[S13, §3287; C24, 27, 31, 35, 39, §**11869;** C46, 50, 54, 58, 62, §633.25; C66, 71, 73, 75, 77, 79, 81, §633.306]

[P] See also §633.401

**633.307 Costs of transcript.**

The cost of such transcript and of the recording thereof shall be taxed against the estate of the decedent unless administration thereof is closed, in which event it shall be paid by the owner of the real estate involved.

[S13, §3287; C24, 27, 31, 35, 39, §**11870;** C46, 50, 54, 58, 62, §633.26; C66, 71, 73, 75, 77, 79, 81, §633.307]

## PART 5

## ACTIONS TO SET ASIDE OR CONTEST OF WILLS

**633.308 Setting aside probate of will.**

Any interested person may petition to set aside the probate of a will by filing a written petition in the probate proceedings. The petition for such purpose shall state the grounds therefor.

[C51, §1297; R60, §2329; C73, §2353; C97, §3296; C24, 27, 31, 35, 39, §**11882;** C46, 50, 54, 58, 62, §633.38; C66, 71, 73, 75, 77, 79, 81, §633.308]

**633.309 Time within which action must be commenced.**

An action to contest or set aside the probate of a will must be commenced in the court in which the will was admitted to probate within the later to occur of four months from the date of second publication of notice of admission of the will to probate or one month following the mailing of the notice to all heirs of the decedent and devisees under the will whose identities are reasonably ascertainable, at such persons' last known addresses.

[C51, §1659; R60, §1075, 1865, 2740; C73, §486, 2529; C97, §3447; S13, §2963-g, 3447; C24, 27, 31, 35, 39, §**11007;** C46, 50, 54, 58, 62, §614.1(3); C66, 71, 73, 75, 77, 79, 81, §633.309]

84 Acts, ch 1080, §8; 89 Acts, ch 35, §5

**633.310 Objections prior to admission of will to probate.**

Nothing herein contained shall prevent any interested person from filing objections to probate of a proposed will prior to probate thereof. If such objections are filed prior to the admission of the will to probate, the will shall not be admitted to probate pending trial and determination as to whether or not said instrument is the last will of the decedent.

[C24, 27, 31, 35, 39, §**11833;** C46, 50, 54, 58, 62, §632.2; C66, 71, 73, 75, 77, 79, 81, §633.310]

**633.311 Contest or objection shall be tried as a law action.**

An action objecting to the probate of a proffered will, or to set aside a will, is triable in the probate court as an action at law, and the rules of civil procedure governing law actions, including demand for jury trial, shall be applicable thereto.

[C97, §3283; C24, 27, 31, 35, 39, §**11864;** C46, 50, 54, 58, 62, §633.19; C66, 71, 73, 75, 77, 79, 81, §633.311]

**633.312 Joinder of parties.**

In all actions to contest or set aside a will, all known interested parties who have not joined with the contestants as plaintiffs in the action, shall be joined with proponents as defendants. When additional interested parties become known, the court shall order them brought in as party defendants. All such defendants shall be brought in by serving them with notice pursuant to the rules of civil procedure.

[C66, 71, 73, 75, 77, 79, 81, §633.312]

**633.313 Election of defendants to join with contestants.**

Any person named as a defendant in an action to contest or set aside a will may, at time of appearance, or by leave of court at any time thereafter, elect to join with the contestants.

[C66, 71, 73, 75, 77, 79, 81, §633.313]

**633.314 Taxation of costs.**

The court shall tax the costs in an action to contest or set aside a will. No costs shall be taxed against a losing party who has been joined in the action but who does not appear.

[C66, 71, 73, 75, 77, 79, 81, §633.314]

**633.315 Allowance for defending will.**

When any person is designated as executor in a will, or has been appointed as executor, and defends or prosecutes any proceedings in good faith and with just cause, whether successful or not, that person shall be allowed out of the estate necessary expenses and disbursements, including reasonable attorney fees in such proceedings.

[C66, 71, 73, 75, 77, 79, 81, §633.315]

**633.316 Notice to devisees in other wills.**

If the ground of objection is that another will of the decedent has been discovered, each devisee named in such other will shall be joined in the action.

[C66, 71, 73, 75, 77, 79, 81, §633.316]

**633.317 Where will is filed after letters of administration have been granted.**
If, after letters of administration have been granted, a will of the decedent is admitted to probate, such letters of administration are thereby revoked, and the person to whom such letters were issued shall promptly file a final report and make an accounting to the court.
[C66, 71, 73, 75, 77, 79, 81, §633.317]

**633.318 Where will is filed after letters testamentary have been granted.**
If, after a will has been admitted to probate, another instrument purporting to be the will of the decedent, which has not been previously presented for probate, is filed, the court shall determine whether or not the former grant of letters should be revoked pending determination of which instrument constitutes the will of the decedent.
[C66, 71, 73, 75, 77, 79, 81, §633.318]

**633.319 Proof of execution.**
If the lack of the due execution of a will constitutes a ground for objection, proof of such execution shall not be made by affidavit as provided in section 633.295.
[C66, 71, 73, 75, 77, 79, 81, §633.319]

**633.320 Declaratory judgment to determine last will.**
The executor or any person named as a beneficiary in a will may bring an action for a declaratory judgment to have such will declared to be the last will of the decedent. In such action, all known interested persons, including heirs of the decedent and persons named as beneficiaries in said instrument and other known instruments purporting to be wills of the decedent, shall be joined as parties.
[C66, 71, 73, 75, 77, 79, 81, §633.320]

**633.321 through 633.329** Reserved.

## DIVISION VII

## ADMINISTRATION OF ESTATES OF DECEDENTS

### PART 1

### GENERAL PROVISIONS — LIMITATION

**633.330 Character of proceedings.**
The administration of the estate of a decedent from the filing of the petition for probate and admission or for administration until the order approving the final report and discharge of the last personal representative shall be considered as one proceeding for purposes of jurisdiction. Such entire proceeding is a proceeding in rem.
[C66, 71, 73, 75, 77, 79, 81, §633.330]
Referred to in §633.515, 635.7

**633.331 Limitation of administration.**
Probate of a will, original administration of an intestate estate, or ancillary administration of an estate, shall not be granted after five years from the death of the decedent, whether the decedent died within or without this state, unless a petition for probate or administration is filed prior to the expiration of the five-year period. However, this section does not apply to the probate of a will of a decedent who died prior to January 1, 1964.
[C51, §1325; R60, §2357; C73, §2367; C97, §3305; S13, § 3305; C24, 27, 31, 35, 39, §**11891;** C46, 50, 54, 58, 62, §633.47; C66, 71, 73, 75, 77, 79, 81, §633.331; 81 Acts, ch 196, §1; 82 Acts, ch 1076, §1]

## EXEMPT PROPERTY AND INSURANCE

**633.332 Exempt personal property.**

When the decedent left a surviving spouse, all personal property which in the hands of the decedent as head of a family would be exempt from execution, which is bequeathed or set aside to the surviving spouse in accordance with the provisions of this chapter, shall be exempt in the hands of such surviving spouse as in the hands of the decedent.

[C51, §1329; R60, §2361; C73, §2371; C97, §3312; C24, 27, 31, 35, 39, §**11918;** C46, 50, 54, 58, 62, §635.7; C66, 71, 73, 75, 77, 79, 81, §633.332]

**633.333 Proceeds of insurance.**

The avails of any life or accident insurance, or other sum of money made payable to the decedent's estate by any mutual aid or benevolent society upon the death or disability of a member thereof, are not subject to the debts of the decedent, except by contract or by express provision in the will, and shall be disposed of like other property left by the decedent.

[C51, §1330; R60, §2362; C73, §1182, 2372; C97, §3313; C24, 27, 31, 35, 39, §**11919;** C46, 50, 54, 58, 62, §635.8; C66, 71, 73, 75, 77, 79, 81, § 633.333]

**633.334 Surviving spouse included as "heir".**

The words *"heirs"* and *"legal heirs"*, and other equivalent words used to designate the beneficiaries in any life insurance policy or certificate of membership in any mutual aid or benevolent association, where no contrary intention is expressed in such instrument, shall be construed to include the surviving husband or wife of the insured.

[C97, §3313; C24, 27, 31, 35, 39, §**11921;** C46, 50, 54, 58, 62, §635.10; C66, 71, 73, 75, 77, 79, 81, §633.334]

**633.335 Share of survivor.**

The share of such survivor in the proceeds of such policy or certificate made payable as aforesaid shall be the same as that provided by law for the distribution of the personal property of intestates.

[C97, §3313; C24, 27, 31, 35, 39, §**11922;** C46, 50, 54, 58, 62, §635.11; C66, 71, 73, 75, 77, 79, 81, §633.335]

## WRONGFUL DEATH

**633.336 Damages for wrongful death.**

When a wrongful act produces death, damages recovered as a result of the wrongful act shall be disposed of as personal property belonging to the estate of the deceased; however, if the damages include damages for loss of services and support of a deceased spouse, parent, or child, the damages shall be apportioned by the court among the surviving spouse, children, and parents of the decedent in a manner as the court may deem equitable consistent with the loss of services and support sustained by the surviving spouse, children, and parents respectively. Any recovery by a parent for the death of a child shall be subordinate to the recovery, if any, of the spouse or a child of the decedent. If the decedent leaves a spouse, child, or parent, damages for wrongful death shall not be subject to debts and charges of the decedent's estate, except for amounts to be paid to the department of human services for payments made for medical assistance pursuant to chapter 249A, paid on behalf of the decedent from the time of the injury which gives rise to the decedent's death up until the date of the decedent's death.

[R60, §4111; C73, §2526; C97, §3313; C24, 27, 31, 35, 39, §**11920;** C46, 50, 54, 58, 62, §635.9; C66, 71, 73, 75, 77, 79, 81, §633.336]

89 Acts, ch 111, §2; 2007 Acts, ch 132, §2, 3

**633.337 through 633.341** Reserved.

## PART 2

## TEMPORARY ADMINISTRATION

**633.342 Appointment of temporary administrator pending administration.**

1. When, from any cause, probate of a will or administration cannot be immediately granted, a temporary administrator may be appointed to collect, manage, preserve and dispose of the property of the deceased, as the court may prescribe, and no appeal from such appointment shall prevent the administrator's proceeding in the discharge of the administrator's duties.

2. Such temporary administrator shall make and file an inventory of the property of the deceased in the same manner as is required of personal representative, and shall preserve such property from injury, and may do all needful acts under the direction of the court, including the sale of property and the payment of claims as directed by the court. Upon the granting of administration, the powers of the temporary administrator shall cease, and the administration of the estate shall be transferred to the personal representative to whom letters are granted.

[C51, §1320 – 1324; R60, §2352 – 2356; C73, §2357 – 2361; C97, §3299, 3300; C24, 27, 31, 35, 39, §**11885, 11886;** C46, 50, 54, 58, 62, §633.41, 633.42; C66, §633.342, 633.343; C71, 73, 75, 77, 79, 81, §633.342]

**633.343 Appointment of temporary administrator during administration.**

At any time during the administration of an estate, the court, for good cause shown, may appoint a temporary administrator to carry out such orders of the court as may be necessary for the proper administration of such estate. No appeal from such appointment shall prevent the temporary administrator from proceeding in the discharge of the administrator's duties.

[C71, 73, 75, 77, 79, 81, §633.343]

**633.344 through 633.347** Reserved.

## PART 3

## TITLE AND POSSESSION OF DECEDENT'S PROPERTY

**633.348 Right to retain existing property.**

Notwithstanding the provisions of chapter 633A, subchapter IV, part 3, of this chapter, any personal representative may continue to hold any investment or property originally received by the personal representative and also any increase thereof.

[C66, 71, 73, 75, 77, 79, 81, §633.348]

99 Acts, ch 125, §106, 109; 2005 Acts, ch 38, §55

**633.349 Security to sustain devise or bequest.**

When a person by will makes such a disposition of the person's property as to prejudice the rights of creditors, the will may be sustained, by giving security to the satisfaction of the court for the payment of the debts and charges to the extent of the value of the property devised.

[C51, §1339; R60, §2371; C73, §2384; C97, §3320; C24, 27, 31, 35, 39, §**11930;** C46, 50, 54, 58, 62, §635.19; C66, 71, 73, 75, 77, 79, 81, §633.349]

**633.350 Title to decedent's estate — when property passes — possession and control thereof — liability for administration expenses, debts, and family allowance.**

Except as otherwise provided in this probate code, when a person dies, the title to the person's property, real and personal, passes to the person to whom it is devised by the person's last will, or, in the absence of such disposition, to the persons who succeed to the estate as provided in this probate code, but all of the property shall be subject to the possession of

the personal representative as provided in section 633.351 and to the control of the court for the purposes of administration, sale, or other disposition under the provisions of law, and such property, except homestead and other exempt property, shall be chargeable with the payment of debts and charges of the estate. There shall be no priority as between real and personal property, except as provided in this probate code or by the will of the decedent. If real property is titled at any time in a decedent's estate, such property shall be treated as titled in the name of the personal representative of the estate.

[C66, 71, 73, 75, 77, 79, 81, §633.350]

2005 Acts, ch 38, §51; 2009 Acts, ch 52, §6, 14; 2012 Acts, ch 1123, §5

[SP] 2009 amendment to this section applies retroactively to conveyances occurring on or after July 1, 1999; 2009 Acts, ch 52, §14

**633.351 Possession of real and personal property.**

During the period of administration, the personal representative shall take possession of the decedent's real estate, except the homestead and other property exempt to the surviving spouse. Every personal representative shall take possession of all the personal property of the decedent, except the property exempt to the surviving spouse. The personal representative may maintain an action for the possession of such real and personal property or to determine the title to any property of the decedent. Until property is distributed, the personal representative shall take reasonable steps to safeguard such property, pay any expenses related to such property, and collect any income generated by such property. Unless otherwise provided by the decedent's will, all such expenses shall be paid from the residuary estate and all such income shall be considered a part of the residuary estate.

[C51, §1327; R60, §2359; C73, §2402 – 2404, 2407; C97, §3333, 3334, 3337; C24, 27, 31, 35, 39, §**11952, 11953, 11956;** C46, 50, 54, 58, 62, §635.48, 635.49, 635.52; C66, 71, 73, 75, 77, 79, 81, §633.351]

2012 Acts, ch 1123, §6

Referred to in §633.350

**633.352 Collection of rents and payment of taxes and charges.**

Unless otherwise provided by the will, the provisions of chapter 637 that conflict with this division VII, part 3, shall not apply to the allocation and distribution of estate income.

[C73, §2403 – 2405; C97, §3334, 3335; C24, 27, 31, 35, 39, §**11953, 11954;** C46, 50, 54, 58, 62, §635.49, 635.50; C66, 71, 73, 75, 77, 79, 81, §633.352]

99 Acts, ch 124, §31; 2012 Acts, ch 1123, §7; 2013 Acts, ch 30, §164

[T] Section amended

**633.353 Surrender of possession upon application by personal representative.**

Upon application by the personal representative, and after such notice, if any, as the court may prescribe, for good cause shown, the court may enter an order authorizing said personal representative to surrender any of such property to the person or persons who, under the will or under the rules of intestate succession, will ultimately be entitled to such property.

[C66, 71, 73, 75, 77, 79, 81, §633.353]

**633.354 Surrender of possession upon application by any interested person.**

Upon application of any interested person and after such notice to the personal representative and to such other persons, if any, as the court may prescribe, and for good cause shown, the court may enter an order authorizing said personal representative to surrender any of such property to the person or persons who, under the will or under the rules of intestate succession, will ultimately be entitled to such property. The court may require a bond or other security conditioned as it may determine in connection with the delivery of such property.

[C66, 71, 73, 75, 77, 79, 81, §633.354]

**633.355 Delivery of specific devise after twelve months.**

Unless the court, for cause shown, determines that the possession of the personal representative shall continue for a longer period, the personal representative shall deliver all specifically devised property to the devisees entitled thereto after the expiration of twelve

months from the date of appointment of the personal representative. This section shall not preclude the court from directing that such delivery be made before such period has expired, nor shall the personal representative be prevented from delivering such property at an earlier time.

[C51, §1381 – 1383; R60, §2413 – 2415; C73, §2429 – 2431; C97, §3355 – 3357; C24, 27, 31, 35, 39, §**11978 – 11980;** C46, 50, 54, 58, 62, §635.73 – 635.75; C66, 71, 73, 75, 77, 79, 81, §633.355]

2012 Acts, ch 1123, §8

**633.356 Distribution of property by affidavit.**

1. When the gross value of the decedent's personal property that would otherwise be distributed by will or intestate succession does not exceed twenty-five thousand dollars and there is no real property or the real property passes to persons exempt from inheritance tax pursuant to section 450.9 as joint tenants with right of survivorship, and if forty days have elapsed since the death of the decedent, the successor of the decedent as defined in subsection 2 may, by filing an affidavit prepared pursuant to subsection 3 or 8, and without procuring letters of appointment, do any of the following with respect to one or more particular items of such personal property:

*a.* Receive any particular item of tangible personal property of the decedent.

*b.* Have any evidence of a debt, obligation, interest, right, security, or chose in action belonging to the decedent transferred.

*c.* Collect the proceeds from any life insurance policy or any other item of property for which a beneficiary has not been designated.

2. *"Successor of the decedent"* means:

*a.* If the decedent died testate, the beneficiary or beneficiaries who succeeded to the particular item of property of the decedent under the decedent's will. For the purposes of this subsection the trustee of a trust created during the decedent's lifetime is a beneficiary under the decedent's will if the trust succeeds to the particular item of property under the decedent's will.

*b.* If the decedent died intestate, the person or persons who succeeded to the particular item of property of the decedent under the laws of intestate succession of this state.

3. *a.* To collect money, receive tangible personal property, or have evidences of intangible personal property transferred under this chapter, the successor of the decedent shall furnish to the holder of the decedent's property an affidavit under penalty of perjury stating all of the following:

(1) The decedent's name, social security number, and the date and place of the decedent's death.

(2) That at least forty days have elapsed since the death of the decedent, as shown by an attached certified copy of the death certificate of the decedent.

(3) That the gross value of the decedent's personal property that would otherwise be distributed by will or intestate succession does not exceed twenty-five thousand dollars and there is no real property or the real property passes to persons exempt from inheritance tax pursuant to section 450.9 as joint tenants with right of survivorship.

(4) A description of the property of the decedent that is to be paid, transferred, or delivered to the successor.

(5) The name, address, and social security number of the successor of the decedent to the described property, and whether the successor is under a legal disability.

(6) If applicable, that attached copy of the decedent's will is the last will of the decedent and has been admitted to probate or otherwise filed in the office of a clerk of the district court.

(7) That no persons other than those listed in the affidavit have a right to the interest of the decedent in the described property.

(8) That the affiant requests that the described property be paid, delivered, or transferred to the successors of the decedent to the described property.

(9) That the affiant affirms under penalty of perjury that the affidavit is true and correct.

*b.* More than one person may execute an affidavit under this subsection.

4. *a.* If the decedent had evidence of ownership of the property described in the affidavit and the holder of the property would have the right to require presentation of the evidence

of ownership before the duty of the holder to pay, deliver, or transfer the property to the decedent would have arisen, the evidence of the ownership, if available, shall be presented with the affidavit to the holder of the decedent's property.

*b.* If the evidence of ownership is not presented to the holder of the property, the holder may require, as a condition for the payment, delivery, or transfer of the property, that the successor provide the holder with a bond in a reasonable amount determined by the holder to be sufficient to indemnify the holder against all liability, claims, demands, loss, damages, costs, and expenses that the holder may incur or suffer by reason of the payment, delivery, or transfer of the property. This subsection does not preclude the holder and the successor from dispensing with the requirement that a bond be provided, and instead entering into an agreement satisfactory to the holder concerning the duty of the successor to indemnify the holder.

*c.* Judgments rendered by any court in this state and mortgages belonging to a decedent whose personal property is being distributed pursuant to this section may, without prior order of court, be released, discharged, or assigned, in whole or in part, as to any particular property, and deeds may be executed in performance of real estate contracts entered into by the decedent, where an affidavit made pursuant to subsection 3 or 8 is filed in the office of the county recorder of the county wherein any judgment, mortgage, or real estate contract appears of record.

5. Reasonable proof of the identity of each successor of the decedent seeking distribution by virtue of the affidavit shall be provided to the satisfaction of the holder of the decedent's property.

6. *a.* If the requirements of this section are satisfied:

(1) The property described in the affidavit shall be paid, delivered, or transferred to the successor of the decedent's interest in the property.

(2) A transfer agent of a security described in the affidavit shall change registered ownership on the books of the corporation from the decedent to the person listed on the affidavit as the successor of the decedent's interest.

*b.* If the holder of the decedent's property refuses to pay, deliver, or transfer any property or evidence thereof to the successor of the decedent within a reasonable time, the successor may recover the property or compel its payment, delivery, or transfer in an action brought for that purpose against the holder of the property. If an action is brought against the holder under this subsection, the court shall award attorney's fees to the person bringing the action if the court finds that the holder of the decedent's property acted unreasonably in refusing to pay, deliver, or transfer the property to the person as required by this subsection.

7. *a.* If the requirements of this section are satisfied, receipt by the holder of the decedent's property of the affidavit under subsection 3 or 8 constitutes sufficient acquittance for the payment of money, delivery of property, or transferring the registered ownership of property pursuant to this chapter and discharges the holder from any further liability with respect to the money or property. The holder may rely in good faith on the statements in the affidavit and has no duty to inquire into the truth of any statement in the affidavit.

*b.* If the requirements of this section are satisfied, the holder is not liable for any debt owed by the decedent by reason of paying money, delivering property, or transferring registered ownership of property pursuant to this chapter.

8. *a.* When a deceased distributee is entitled to money or property claimed in an affidavit presented under this section with respect to a deceased person whose estate is being administered in this state, the personal representative of the person whose estate is being administered shall present the affidavit to the court in which the estate is being administered. The court shall direct the personal representative to pay the money or deliver the property to the person identified by the affidavit as the successor of the deceased distributee to the extent that the court determines that the deceased distributee was entitled to the money or property under the will or the laws of intestate succession.

*b.* When the department of human services is entitled to money or property of a decedent pursuant to section 249A.53, subsection 2, and no affidavit has been presented by a successor of the decedent as defined in subsection 2, within ninety days of the date of the decedent's death, the funds in the account or other property, up to the amount of

the claim of the department, shall be paid to the department upon presentation by the department or an entity designated by the department of an affidavit to the holder of the decedent's property. Such affidavit shall include the information specified in subsection 3, except that the department may submit proof of payment of funeral expenses as verification of the decedent's death instead of a certified copy of the decedent's death certificate. The amount of the department's claim shall also be included in the affidavit, which shall entitle the department to receive the funds as a successor of the decedent. The department shall issue a refund within sixty days to any claimant with a superior priority pursuant to section 633.425, if notice of such claim is given to the department, or to the entity designated by the department to receive notice, within one year of the department's receipt of funds. This paragraph shall apply to funds or property of the decedent transferred to the custody of the treasurer of state as unclaimed property pursuant to chapter 556.

9. The procedure provided by this section may be used only if no administration of the decedent's estate is pending.

91 Acts, ch 36, §6; 2001 Acts, ch 140, §3 – 5; 2004 Acts, ch 1015, §2 – 6; 2006 Acts, ch 1104, §3; 2010 Acts, ch 1137, §6; 2013 Acts, ch 30, §261; 2013 Acts, ch 33, §5

[T] See Code editor's note on simple harmonization
[T] Code editor directive applied
[T] Subsection 3, paragraph a, subparagraph (3) amended

**633.357 Custodial independent retirement accounts.**

1. As used in this section, unless the context otherwise requires:

*a.* *"Custodial independent retirement account"* means an individual retirement account in accordance with section 408(a) of the Internal Revenue Code or a Roth individual retirement account in accordance with section 408A of the Internal Revenue Code, the assets of which are not held in trust.

*b.* *"Designator"* means a person entitled to designate the beneficiary or beneficiaries of a custodial independent retirement account.

2. The assets of a custodial independent retirement account shall pass on or after the death of the designator of the custodial independent retirement account to the beneficiary or beneficiaries specified in the custodial independent retirement account agreement signed by the designator or designated by the designator in writing pursuant to the custodial independent retirement account agreement. Assets that pass to a beneficiary pursuant to this section shall not be considered part of the designator's probate estate except to the extent that the designator's estate is a beneficiary. The designation of a beneficiary shall not be considered testamentary and does not have to be witnessed.

3. This section applies to a custodial independent retirement account established and a beneficiary designation made prior to, on, or after July 1, 1999. This section shall be considered to be declarative of the law as the law existed immediately prior to July 1, 1999.

4. This section shall not be construed to imply that assets or benefits that are payable upon the death of a person to a beneficiary or beneficiaries designated in or pursuant to a written arrangement not described in this section, other than a will, are part of the person's probate estate or that the arrangement is testamentary.

99 Acts, ch 56, §4

**633.358 through 633.360** Reserved.

## PART 4

## INVENTORY

**633.361 Report and inventory.**

Within ninety days after qualification by the personal representative, unless a longer time is granted by the court, the personal representative shall file with the clerk a report and inventory of the property of the decedent, so far as the same has come to the knowledge

of the personal representative. The report and inventory shall be verified or affirmed under penalty of perjury. It shall include the following information:

1. Name, age and residence of decedent.
2. Date of death.
3. Whether decedent died testate or intestate.
4. Name and post office address of the personal representative.
5. Name and post office address of the surviving spouse, if any.
6. Name, relationship and post office address of each beneficiary under the will (if the decedent died testate) or of each heir (if the decedent died intestate). If any persons take by representation, the personal representative shall list the deceased person through whom those persons take and shall also list the persons taking under that deceased person.
7. If the decedent died testate, the name and address of each child, if any, born to or adopted by decedent after execution of the will.
8. Legal descriptions and estimated values of all the real estate of the decedent in the state of Iowa.
9. Legal descriptions and estimated values of all real estate of the decedent outside of the state of Iowa.
10. Personal property regarded as exempt from execution, with estimated values.
11. All other personal property of the decedent, with estimated values.
12. A listing of all other items, with estimated values, which are subject to Iowa inheritance tax or federal estate tax.
13. A report concerning any reductions in the amount of unified credit available for federal estate tax purposes.

[C51, §1328; R60, §2360; C73, §2370; C97, §3310; S13, §1481-a26; C24, §7319, 11913; C27, 31, 35, 39, §**11913;** C46, 50, 54, 58, 62, §635.1; C66, 71, 73, 75, 77, 79, 81, §633.361]

83 Acts, ch 177, §36, 38; 84 Acts, ch 1092, §1

Referred to in §450.22, 635.7

**633.362 Filing mandatory.**

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

[C97, §3310; C24, 27, 31, 35, 39, §**11915;** C46, 50, 54, 58, 62, §635.4; C66, 71, 73, 75, 77, 79, 81, §633.362]

**633.363 Reporting failure to court.**

The failure of the personal representative promptly to make said inventory and report shall be forthwith reported by the clerk to the court for such order as may be necessary to enforce the making and filing of the same.

[C27, 31, 35, §11913-b1; C39, §**11913.1;** C46, 50, 54, 58, 62, §635.2; C66, 71, 73, 75, 77, 79, 81, §633.363]

**633.364 Supplementary inventory.**

Whenever any additional information or property not mentioned in the inventory comes to the knowledge of a personal representative, the personal representative shall make a supplementary inventory thereof, such supplementary inventory to be filed within thirty days after such discovery.

[C51, §1333; R60, §2365; C73, §2376; C97, §3310; C24, 27, 31, 35, 39, §**11914;** C46, 50, 54, 58, 62, §635.3; C66, 71, 73, 75, 77, 79, 81, §633.364]

**633.365 Appraisement.**

Property belonging to the estate need not be appraised unless required for inheritance tax purposes, under the provisions of this probate code, or by order of court.

[C51, §1331, 1332; R60, §2363, 2364; C73, §2373, 2374, 2378; C97, §3311; S13, §3311; C24, 27, 31, 35, 39, §**11916, 11917;** C46, 50, 54, 58, 62, §635.5, 635.6; C66, 71, 73, 75, 77, 79, 81, §633.365]

2005 Acts, ch 38, §51

**633.366 Debts of executor.**

The naming of any person as executor in a will shall not operate as a discharge or bequest of any right of action owned by the testator against such persons, if it is a right that otherwise survives against such person. Every such right of action shall be included among the assets of the decedent in the inventory.

[C66, 71, 73, 75, 77, 79, 81, §633.366]

**633.367 Inventory and appraisement as evidence.**

Inventories and appraisements may be given in evidence in all proceedings, but shall not be conclusive, and other evidence may be introduced to vary the effect thereof.

[C66, 71, 73, 75, 77, 79, 81, §633.367]

**633.368 Property for payment of creditor's claims.**

The property liable for the payment of debts and charges against a decedent's estate shall include all property transferred by the decedent with intent to defraud the decedent's creditors or any of them, or transferred by any other means which is in law void or voidable as against the creditors or any of them; and the right to recover such property, so far as necessary for the payment of the debts and charges against the estate of the decedent, shall be exclusively in the personal representative, who shall take such steps as may be necessary to recover the same. Such property shall constitute general assets for the payment of all creditors.

[C73, §2381; C97, §3317; C24, 27, 31, 35, 39, §**11927;** C46, 50, 54, 58, 62, §635.16; C66, 71, 73, 75, 77, 79, 81, §633.368]

**633.369 through 633.373** Reserved.

## PART 5

## ALLOWANCE FOR SURVIVING SPOUSE AND MINOR CHILDREN

**633.374 Allowance to surviving spouse.**

1. The personal representative of the estate shall mail to the surviving spouse pursuant to section 633.40, subsection 5, a written notice regarding the right to request a spousal allowance. The notice shall inform the surviving spouse of the surviving spouse's right to submit an application to the court within four months of service of the notice, for support for a period of twelve months following the death of the decedent, and for support of the decedent's dependents who reside with the spouse for the same period of time.

2. The court shall, upon application, set off and order paid to the surviving spouse, as part of the costs of administration, sufficient of the decedent's property including assets held in a revocable trust of which the decedent is the settlor to the extent that estate assets are not sufficient as it deems reasonable for the proper support of the surviving spouse for the period of twelve months following the death of the decedent. Notice of hearing upon the application shall be given to the surviving spouse, personal representative if the application is not made by the personal representative, trustee of any revocable trust of which the decedent is the settlor, and all other interested persons. The court shall take into consideration the station in life of the surviving spouse, the assets and condition of the estate and any revocable trust

of which the decedent is the settlor, the nonprobate assets received by the surviving spouse by reason of the death of the decedent, and the income and other resources of the surviving spouse. If the trustee of a revocable trust of which the decedent was a settlor has previously made payments under section 633A.3114 to the spouse, the court shall reduce the award by the amount of such payments. The allowance shall also include such additional amount as the court deems reasonable for the proper support, during such period, of dependents of the decedent who reside with the surviving spouse. Such allowance to the surviving spouse shall not abate upon the death or remarriage of such spouse. If an application for support has not been filed within four months following service of the notice by or on behalf of the surviving spouse and the dependents of the decedent who reside with the surviving spouse, the surviving spouse and the dependents of the decedent shall be deemed to have waived the right to apply for support during the administration of the estate.

3. A surviving spouse who qualifies for a support allowance under this section may waive the right to such allowance for the surviving spouse and for the dependents of the decedent who reside with the surviving spouse by filing an affidavit acknowledging receipt of notice and irrevocably waiving the right to support under this section.

[C51, §1338; R60, §2370; C73, §2375, 2377; C97, §3314; C24, 27, 31, 35, 39, §**11923, 11924;** C46, 50, 54, 58, 62, §635.12, 635.13; C66, 71, 73, 75, 77, 79, 81, §633.374]

2008 Acts, ch 1119, §18, 39; 2012 Acts, ch 1123, §9, 32

Referred to in §633.376

[SP] 2012 amendment to this section applies to estates of decedents dying on or after July 1, 2012; 2012 Acts, ch 1123, §32

**633.375 Review of allowance to surviving spouse.**

The court may, upon the petition of any interested person, and after hearing pursuant to notice to all interested parties, review the allowance and increase or decrease the amount and make such other orders as it may deem proper.

[C51, §1338; R60, §2370; C73, §2375, 2377; C97, §3314; C24, 27, 31, 35, 39, §**11923;** C46, 50, 54, 58, 62, §635.12; C66, 71, 73, 75, 77, 79, 81, §633.375]

2012 Acts, ch 1123, §10, 32

[SP] 2012 amendment to this section applies to estates of decedents dying on or after July 1, 2012; 2012 Acts, ch 1123, §32

**633.376 Allowance to children who do not reside with surviving spouse.**

1. The court may also make an allowance under the same terms and conditions as provided in section 633.374 of an amount the court deems reasonable in light of the assets and condition of the estate, to provide for proper support during the period of twelve months following the decedent's death to a child of the decedent who does not reside with the surviving spouse and is any of the following:

*a.* Less than eighteen years of age.

*b.* Between the ages of eighteen and twenty-two years who is any of the following:

(1) Regularly attending an accredited school in pursuance of a course of study leading to a high school diploma or its equivalent.

(2) Regularly attending a course of vocational-technical training either as a part of a regular school program or under special arrangements adapted to the individual person's needs.

(3) Is, in good faith, a full-time student in a college, university, or community college.

(4) Has been accepted for admission to a college, university, or community college and the next regular term has not yet begun.

*c.* Is a child of any age who is dependent because of physical or mental disability.

2. The estate's personal representative shall mail pursuant to section 633.40, subsection 5, to the legal guardian of each child qualified under subsection 1 and to each child or the guardian ad litem for such child if necessary, who has no legal guardian, a written notice regarding the right to request an allowance. The notice shall inform the child and the child's guardian or guardian ad litem, if applicable, of the right to submit an application to the court, within four months after service of the notice, for support for a period of twelve months following the decedent's death. If an application for support has not been filed within four months after service of the notice by or on behalf of the child qualifying for support under subsection 1, the child shall be deemed to have waived the right to support under this section.

A child who qualifies for support under this section or the child's guardian or guardian ad litem may waive the child's right to such support by filing an affidavit acknowledging receipt of notice and irrevocably waiving the child's right to support under this section.

[C66, 71, 73, 75, 77, 79, 81, §633.376]

83 Acts, ch 101, §127; 86 Acts, ch 1245, §1497; 90 Acts, ch 1253, §120; 2009 Acts, ch 52, §7, 14; 2012 Acts, ch 1123, §11, 32; 2013 Acts, ch 90, §177

[SP] 2012 amendment to this section applies to estates of decedents dying on or after July 1, 2012; 2012 Acts, ch 1123, §32

[T] Subsection 2 amended

**633.377 Review of allowance to minor children.**

The court may, upon the petition of any interested person, and after hearing pursuant to notice to all interested parties, review the allowance made to the minor children who do not reside with the surviving spouse and may increase or decrease the amount and make such other orders as it may deem proper.

[C51, §1338; R60, §2370; C73, §2375, 2377; C97, §3314; C24, 27, 31, 35, 39, §**11923;** C46, 50, 54, 58, 62, §635.12; C66, 71, 73, 75, 77, 79, 81, §633.377]

2012 Acts, ch 1123, §12, 32

[SP] 2012 amendment to this section applies to estates of decedents dying on or after July 1, 2012; 2012 Acts, ch 1123, §32

**633.378 through 633.382** Reserved.

## PART 6

## SALE OF PROPERTY

**633.383 When power given in will.**

When power to sell, mortgage, lease, pledge or exchange property of the estate has been given to any personal representative under the terms of any will, the statutory requirements with reference to procedure for such purposes shall not apply.

[C51, §1297; R60, §2329; C73, §2353; C97, §3295, 3296; C24, 27, 31, 35, 39, §**11879 – 11882;** C46, 50, 54, 58, 62, §633.35 – 633.38; C66, 71, 73, 75, 77, 79, 81, §633.383]

**633.384 Equitable conversion and power of sale.**

A testamentary direction to sell real property, and the exercise of a testamentary power of sale of real property, shall constitute an equitable conversion of real estate into personal property, but shall not affect distribution of the estate under the provisions of the will.

[C51, §1297; R60, §2329; C73, §2353; C97, §3295, 3296; C24, 27, 31, 35, 39, §**11879 – 11882;** C46, 50, 54, 58, 62, §633.35 – 633.38; C66, 71, 73, 75, 77, 79, 81, §633.384]

**633.385 Conversion.**

1. *When realty treated as personalty.* Real property acquired by the personal representative by the completion of foreclosure proceedings, or by the forfeiture of real estate contracts, after the death of the decedent shall be deemed to be personal property for the purpose of administration and distribution of the estate.

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

[C66, 71, 73, 75, 77, 79, 81, §633.385]

**633.386 Sale, mortgage, pledge, lease or exchange of property — purposes.**

1. Any real or personal property belonging to the decedent, except exempt personal property and the homestead, may be sold, mortgaged, pledged, leased or exchanged by the personal representative for any of the following purposes:

*a.* The payment of debts and charges against the estate;

*b.* The distribution of the estate or any part thereof;

*c.* Any other purpose in the best interests of the estate.

2. Exempt personal property under such provisions as the court may direct, if not set off to the surviving spouse, may be sold, mortgaged, pledged, leased, or exchanged, provided that the surviving spouse consents thereto.

3. The homestead, under such provisions as the court may direct, if not set off to the surviving spouse and if the surviving spouse has not elected to occupy the homestead, may be sold, mortgaged, pledged, leased or exchanged.

4. The proceeds from the sale of any exempt personal property or from the sale of the homestead shall be held by the personal representative subject to the rights of the surviving spouse or issue, unless such surviving spouse or issue has expressly waived the rights to such proceeds.

[C51, §1341 – 1343; R60, §2373 – 2375; C73, §2386 – 2388; C97, §3322, 3323; C24, 27, 31, §11932, 11933; C35, §11932, 11933, 11951-g2; C39, §**11932, 11933, 11951.2;** C46, 50, 54, 58, 62, §635.21 – 635.23, 635.42; C66, 71, 73, 75, 77, 79, 81, §633.386]

Referred to in §633.22

**633.387 Sale of personal property without order of court.**

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

[C51, §1341; R60, §2373; C73, §2386; C97, §3322; C24, 27, 31, 35, 39, §**11932;** C46, 50, 54, 58, 62, §635.21; C66, 71, 73, 75, 77, 79, 81, §633.387]

Referred to in §450.7, 633.22

**633.388 Petition to sell, mortgage, exchange, pledge or lease property.**

A petition to sell, mortgage, exchange, pledge or lease any real or personal property shall set forth the reasons for the application and describe the property involved. It may apply for different authority as to separate parts of the property; or it may apply in the alternative for authority to sell, mortgage, exchange, pledge or lease. Whenever it is for the best interests of the estate, real and personal property of the estate may be sold, mortgaged, exchanged, pledged or leased as a unit.

[C51, §1342, 1343; R60, §2374, 2375; C73, §2387, 2388; C97, §3323; C24, 27, §11933; C35, §11933, 11951-g4; C39, §**11933, 11951.4;** C46, 50, 54, 58, 62, §635.23, 635.44; C66, 71, 73, 75, 77, 79, 81, §633.388]

Referred to in §633.22, 633.391, 633.400

**633.389 Notice on sale, mortgage, exchange, pledge or lease of property.**

Upon the filing of the petition unless notice is waived in writing, notice in accordance with section 633.40, shall be served on all persons interested in the property, provided that as to personal property and as to the lease of real property not specifically devised, for a period not to exceed one year, the court may hear the petition without notice. When notice is required, the notice shall state briefly the nature of the application. Upon satisfactory proof, the court may order the sale, mortgage, exchange, pledge or lease of the property described, or any part of the property, at a price and upon terms and conditions as the court may authorize. For the purposes of this section, the term *"all persons interested"* includes only distributees in the estate and persons who have requested notice as provided by this probate code.

[C51, §1342 – 1344; R60, §2374 – 2376; C73, §2387 – 2389; C97, §3323, 3324; C24, §11933, 11934, 11935; C27, 31, §11933, 11935; C35, §11933, 11935, 11951-g5; C39, §**11933, 11935, 11951.5;** C46, 50, 54, 58, 62, §635.23 – 635.25, 635.45; C66, 71, 73, 75, 77, 79, 81, §633.389; 81 Acts, ch 193, §2]

2005 Acts, ch 38, §51

Referred to in §633.22

**633.390 Sale subject to mortgage.**

When a claim is secured by a mortgage on property, the court may, with the consent of the mortgagee, order the sale of the property subject to the mortgage, and such consent shall release the estate should a deficiency later appear.

[C66, 71, 73, 75, 77, 79, 81, §633.390]

Referred to in §633.22

**633.391 Quieting adverse claims.**

A petition to determine questions of conflicting and controverted title, or to remove clouds from any title or interest of property involved, may be combined with the petition provided in section 633.388.

[C66, 71, 73, 75, 77, 79, 81, §633.391]

Referred to in §633.22

**633.392 Terms of sale.**

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

[C51, §1347, 1348, 1350; R60, §2379, 2380, 2382; C73, §2392, 2393, 2395; C97, §3326; C24, 27, 31, 35, 39, §**11938;** C46, 50, 54, 58, 62, §635.27; C66, 71, 73, 75, 77, 79, 81, §633.392]

Referred to in §633.22

**633.393 Purchase by holder of lien.**

At any sale of real or personal property upon which there is a mortgage, pledge or other lien, the holder of such lien may become the purchaser, and may apply the amount of the lien on the purchase price in the following manner. If no claim thereon has been filed or allowed, the court, at the hearing on the report of sale and for confirmation of the sale, may examine into the validity and enforceability of the lien or charge and the amount due thereunder and secured thereby, and may authorize the personal representative to accept the receipt of such purchaser for the amount due thereunder and secured thereby as payment pro tanto. If such mortgage, pledge or other lien is a valid claim against the estate and has been allowed, the receipt of the purchaser for the amount due the purchaser from the proceeds of the sale is a payment pro tanto. If the amount for which the property is purchased, whether or not a claim for it has been filed or allowed, is insufficient to defray the expenses and discharge the mortgage, pledge or other lien, the purchaser must pay an amount sufficient to pay the balance of such expenses. Nothing permitted under the terms of this section shall be deemed to be an allowance of a claim based upon such mortgage, pledge or other lien.

[C66, 71, 73, 75, 77, 79, 81, §633.393]

Referred to in §633.22

**633.394 Order to sell, mortgage, pledge, exchange or lease to be refused if bond given.**

1. *Bond to prevent sale.* Any person interested in the estate may prevent a sale, mortgage, pledge, exchange or lease of the whole or any part of the real estate or personal property for any purpose, by giving bond to the satisfaction of the court, conditioned that the person will pay such demands against the estate as the court shall require, not to exceed the value of the property thus kept from sale, mortgage, pledge, exchange, or lease, as soon as called upon by the court for that purpose.

2. *Breach of bond — procedure.* If the conditions of such bond are broken, the property will be liable for the debts, unless it has passed into the hands of innocent purchasers, and the executor or administrator may take possession thereof and sell it under the direction of the court, or may prosecute the bond, or pursue both remedies at the same time, if the court so directs.

3. *Effect of bond.* If the conditions of the bond are complied with, the property shall pass by devise, bequest, distribution, or descent in the same manner as though there had been no debts against the estate.

[C51, §1351 – 1353; R60, §2383 – 2385; C73, §2396 – 2398; C97, §3328, 3329; C24, 27, 31, 35, 39, §**11941 – 11943;** C46, 50, 54, 58, 62, §635.30 – 635.32; C66, 71, 73, 75, 77, 79, 81, §633.394]

Referred to in §633.22

**633.395 Validity of proceedings.**

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

[C66, 71, 73, 75, 77, 79, 81, §633.395]

Referred to in §633.22

**633.396 Order for sale, mortgage, pledge, exchange or lease of real property.**

The order shall describe the property to be sold, mortgaged, pledged, exchanged or leased, and may designate the sequence in which the several parcels shall be sold, mortgaged, pledged, exchanged or leased. An order for sale may direct whether the property shall be sold at private sale or public auction, and, if the latter, the place or places of sale. The order of sale may prescribe the terms, conditions and manner of sale. The court may, in its discretion, provide for appraisal for its guidance as to value of the property, and determine whether or not additional bond shall be deposited by the personal representative. If real property is to be mortgaged, it may fix the maximum amount of principal, the earliest and latest dates of maturity, and the purposes for which the proceeds shall be used. An order for sale, mortgage, pledge, exchange or lease shall remain in force until terminated by the court.

[C51, §1345 – 1350; R60, §2377 – 2382; C73, §2390 – 2395; C97, §3325 – 3327; C24, 27, 31, 35, 39, §**11937 – 11940;** C46, 50, 54, 58, 62, §635.26 – 635.29; C66, 71, 73, 75, 77, 79, 81, §633.396]

Referred to in §633.22

**633.397 Sale at public auction.**

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

[C51, §1347, 1348, 1350; R60, §2379, 2380, 2382; C73, §2392, 2393, 2395; C97, §3326; C24, 27, 31, 35, 39, §**11938;** C46, 50, 54, 58, 62, §635.27; C66, 71, 73, 75, 77, 79, 81, §633.397]

Referred to in §633.22

**633.398 Adjournment of sale at public auction.**

The personal representative may adjourn any sale from time to time when, in the personal representative's discretion, it is deemed for the best interests of the estate to do so, but no adjournment shall be to a time more than three months from the date first fixed for the sale. Every adjournment shall be announced publicly at the time and place at which adjournment is made.

[C51, §1347, 1348, 1350; R60, §2379, 2380, 2382; C73, §2392, 2393, 2395; C97, §3326; C24, 27, 31, 35, 39, §**11938;** C46, 50, 54, 58, 62, §635.27; C66, 71, 73, 75, 77, 79, 81, §633.398]

Referred to in §633.22

**633.399 Report for approval.**

After making any such sale, mortgage, exchange or lease of real property, the personal representative shall make a verified report thereof to the court. The court shall examine said report, and if satisfied that the sale, mortgage, exchange, or lease has been at a price and upon terms advantageous to the estate, and, in all respects, made in conformity with law, and that it ought to be confirmed, shall confirm the same and order the personal representative to deliver a deed, mortgage, lease or other proper instruments to the persons entitled thereto; provided, however, that in the event said real property has been sold at private sale without an appraisal for inheritance tax purposes or for purpose of such sale, or, if it has been so appraised and has been sold at private sale for less than the appraised value thereof, then,

upon the filing of such report, the court may enter an order fixing a time and place for hearing thereon and prescribe a notice of such hearing to be served upon all interested persons, any one of whom, prior to the time fixed for such hearing, may file written objections to the entry of an order approving said sale. If not satisfied that the sale, mortgage, exchange, or lease has been made in conformity with law and that it is to the best interests of the estate, the court may reject the sale, mortgage, exchange, or lease, and enter such orders as the court may deem advisable.

[C51, §1354, 1355; R60, §2386, 2387; C73, §2399, 2400; C97, §3330, 3331; C24, 27, 31, §11944 – 11947; C35, §11944 – 11947, 11951-g6, -g7; C39, §**11944 – 11947, 11951.6, 11951.7;** C46, 50, 54, 58, 62, §635.33 – 635.36, 635.46, 635.47; C66, 71, 73, 75, 77, 79, 81, §633.399]

Referred to in §633.22, 633.400

**633.400 Joining report with petition.**

The report of any private sale, mortgage, exchange, or lease of real property, as provided in section 633.399, may be joined with the petition provided in section 633.388.

[C66, 71, 73, 75, 77, 79, 81, §633.400]

Referred to in §633.22

**633.401 Record in foreign county.**

When real property so conveyed or encumbered is located in a county other than that in which such proceedings are had, a complete transcript of the record of all proceedings relating thereto shall be filed by the personal representative in the office of the clerk in such county.

[C97, §3331; C24, 27, 31, 35, 39, §**11949;** C46, 50, 54, 58, 62, §635.38; C66, 71, 73, 75, 77, 79, 81, §633.401]

**633.402 Sale defined.**

For purposes of part 6 of this division, sale of property includes but is not limited to the granting of an easement, the granting of an option, the granting of a right of refusal and the granting or conveyance of any other interest, title or right regarding property.

[81 Acts, ch 193, §3]

**633.403 through 633.409** Reserved.

## PART 7

## CLAIMS AGAINST DECEDENT'S ESTATE, AND TIME AND MANNER OF FILING CLAIMS

Referred to in §231E.5, 231E.8

**633.410 Limitation on filing claims against decedent's estate.**

1. All claims against a decedent's estate, other than charges, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract or otherwise, are forever barred against the estate, the personal representative, and the distributees of the estate, unless filed with the clerk within the later to occur of four months after the date of the second publication of the notice to creditors or, as to each claimant whose identity is reasonably ascertainable, one month after service of notice by ordinary mail to the claimant's last known address.

2. Notwithstanding subsection 1, claims for debts created under section 249A.53, subsection 2, relating to the recovery of medical assistance payments shall be barred under this section unless filed with the clerk within six months after sending notice by electronic transmission, on the form prescribed in section 633.231 for intestate estates or on the form prescribed in section 633.304A for testate estates, to the entity designated by the department of human services to receive notice.

3. Notice is not required to be given by mail to any creditor whose claim will be paid or otherwise satisfied during administration and the personal representative may waive the

limitation on filing provided under this section. This section does not bar claims for which there is insurance coverage, to the extent of the coverage, or claimants entitled to equitable relief due to peculiar circumstances.

[C51, §1373; R60, §2405; C73, §2421; C97, §3349; C24, 27, 31, 35, 39, §**11972;** C46, 50, 54, 58, 62, §635.68; C66, 71, 73, 75, 77, 79, 81, §633.410]

84 Acts, ch 1080, §9; 85 Acts, ch 92, §1; 89 Acts, ch 35, §6; 95 Acts, ch 68, §7; 2001 Acts, ch 109, §3; 2007 Acts, ch 134, §14; 2010 Acts, ch 1137, §7

Referred to in §633.231, 633.304A, 633.413, 633.414, 633.415, 633.444

[T] Section not amended; internal reference change applied

**633.411 Pleading statute of limitations.**

It shall be within the discretion of the personal representative to determine whether or not the applicable statute of limitations shall be pleaded to bar a claim which the personal representative believes to be just, provided, however, that this section shall not apply where the personal representative was appointed upon the application of a creditor.

[C66, 71, 73, 75, 77, 79, 81, §633.411]

**633.412 When claim not affected by statute of limitations.**

A claim shall not be barred by the statute of limitations if the claim was not barred at the time of the decedent's death and is filed against the decedent's estate within four months from the date of the decedent's death.

[C51, §1373; R60, §2405; C73, §2421; C97, §3349; C24, 27, 31, 35, 39, §**11972;** C46, 50, 54, 58, 62, §635.68; C66, 71, 73, 75, 77, 79, 81, §633.412]

84 Acts, ch 1080, §10

Referred to in §633.414

**633.413 Claims barred when no administration commenced.**

All claims barrable under the provisions of section 633.410 shall, in any event, be barred if administration of the estate, whether testate or intestate, original or ancillary is not commenced within five years after the death of the decedent.

[C51, §1325, 1356; R60, §2357, 2388; C73, §2367, 2401; C97, §3305, 3332; S13, §3305; C24, 27, 31, 35, 39, §**11891, 11951;** C46, 50, 54, 58, 62, §633.47, 635.40; C66, 71, 73, 75, 77, 79, 81, §633.413]

Referred to in §633.414

**633.414 Liens not affected by failure to file claim.**

Nothing in sections 633.410, 633.412 and 633.413 shall affect or prevent any action or proceeding to enforce any mortgage, pledge or other lien upon property of the estate.

[C66, 71, 73, 75, 77, 79, 81, §633.414]

**633.415 Commencement or continuance of separate action.**

Any action pending against the decedent at the time of the decedent's death that survives, shall also be considered a claim filed against the estate if notice of substitution is served upon the personal representative as defendant within the time provided for filing claims in section 633.410; however, this provision shall not bar parties entitled to equitable relief due to peculiar circumstances. A copy of the proof of service of notice of such proceedings shall be filed in the probate proceedings but shall not be jurisdictional.

A separate action based on a debt or other liability of the decedent may be commenced against a personal representative of the decedent in lieu of filing a claim in the estate. Such an action shall be commenced by serving an original notice on the personal representative within the time provided for filing claims in section 633.410 and such action shall also be considered a claim filed against the estate. Such action may be commenced only in a county wherein the venue would have been proper had the decedent survived and the action been commenced against the decedent. A copy of the proof of service of notice shall be filed in the probate proceedings but shall not be jurisdictional.

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

In all cases where by the death of the party to be charged, the bringing of the action against the estate shall have been delayed beyond the period provided by the statute of limitations, the action may be brought if the original notice is served on the personal representative as defendant, and proof of service of notice of such proceeding is filed in the probate proceedings within the time provided for filing claims in section 633.410.

[C51, §1373; R60, §2405; C73, §2421; C97, §3349; C24, 27, 31, 35, 39, §**11972;** C46, 50, 54, 58, 62, §635.68; C66, 71, 73, 75, 77, 79, 81, §633.415]

Referred to in §633.416, 633.417

**633.416 Compulsory counterclaims — rules of civil procedure.**

In an action commenced by or against the fiduciary under the provisions of section 633.415, or in any action pending by or against the decedent that survives under the provisions of section 633.415, the rules of civil procedure as to compulsory counterclaims shall apply in such action.

[C66, 71, 73, 75, 77, 79, 81, §633.416]

[P] See R.C.P. 1.241 et seq.

**633.417 Separate action in lieu of proceeding on claims.**

The provisions of sections 633.438 to 633.448 are not applicable to actions continued or commenced under section 633.415.

[C66, 71, 73, 75, 77, 79, 81, §633.417]

**633.418 Form and verification of claims — general requirements.**

No claim shall be allowed against an estate on application of the claimant unless it shall be in writing, filed in duplicate with the clerk, stating the claimant's name and address, describing the nature and the amount thereof, if ascertainable, and accompanied by the affidavit of the claimant, or someone for the claimant, that the amount is justly due, or if not yet due, when it will or may become due, that no payments have been made thereon which are not credited, and that there are no offsets to the same, to the knowledge of the affiant, except as therein stated. If the claim is contingent, the nature of the contingency shall also be stated. The duplicate of said claim shall be mailed by the clerk to the personal representative or the personal representative's attorney of record.

[C51, §1359; R60, §2391; C73, §2408; C97, §3338; C24, 27, 31, 35, 39, §**11957, 11958;** C46, 50, 54, 58, 62, §635.53, 635.54; C66, 71, 73, 75, 77, 79, 81, §633.418]

**633.419 Requirements when claim founded on written instrument.**

If a claim is founded on a written instrument, the original or a copy thereof with all endorsements must be attached to the claim. The original instrument must be exhibited to the personal representative or court, upon demand, unless it is lost or destroyed, in which case its loss or destruction must be stated in the claim.

[C51, §1359; R60, §2391; C73, §2408; C97, §3338; C24, 27, 31, 35, 39, §**11957;** C46, 50, 54, 58, 62, §635.53; C66, 71, 73, 75, 77, 79, 81, §633.419]

**633.420 How claim entitled.**

All claims filed against the estate shall be entitled in the name of the claimant against the personal representative as such, naming the estate, and in all further proceedings thereon that title shall be preserved.

[C73, §2409; C97, §3339; C24, 27, 31, 35, 39, §**11960;** C46, 50, 54, 58, 62, §635.56; C66, 71, 73, 75, 77, 79, 81, §633.420]

**633.421 Unsecured claims not yet due.**

Upon proof of an unsecured claim which will become due at some future time, the same may be paid if the claimant will consent to such discount as the court thinks reasonable; otherwise, the court shall direct the investment of an amount which will provide for the payment of the claim when it becomes due.

[C51, §1364, 1377; R60, §2396, 2409; C73, §2413, 2425; C97, §3342, 3352; C24, 27, 31, 35, 39, §**11964, 11975;** C46, 50, 54, 58, 62, §635.60, 635.70; C66, 71, 73, 75, 77, 79, 81, §633.421]

**633.422 Secured claims not yet due.**

When a creditor holds any security for a claim not yet due, the creditor may file the claim as a claim not yet due with the right of withdrawing the claim if the compromise offer is not satisfactory, and, after such withdrawal, rely entirely on the creditor's security, or the creditor may elect to rely entirely on the creditor's security without the necessity of filing a claim.

[C51, §1364, 1377; R60, §2396, 2409; C73, §2413, 2425; C97, §3342, 3352; C24, 27, 31, 35, 39, §**11964, 11975;** C46, 50, 54, 58, 62, §635.60, 635.70; C66, 71, 73, 75, 77, 79, 81, §633.422]

**633.423 Procedure for secured claims.**

When a creditor holds any security for the creditor's claim, the security shall be described in the claim. If the claim is secured by a mortgage, pledge or other lien which has been recorded, it shall be sufficient to describe the lien by date, and refer to the volume, page and place of recording. The claim shall be allowed in the amount remaining unpaid at the time of its allowance, and the judgment allowing it shall describe the security. Payment of the claim shall be upon the basis of the full amount thereof if the creditor shall surrender the creditor's security; otherwise payment shall be upon the basis of one of the following:

1. If the creditor shall exhaust the security before receiving payment, then upon the full amount of the claim allowed, less the amount realized upon exhausting the security; or

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

[C66, 71, 73, 75, 77, 79, 81, §633.423]

**633.424 Contingent claims.**

Contingent claims which cannot be allowed as absolute debts shall, nevertheless, be filed in the court and proved. If allowed as a contingent claim, the order of allowance shall state the nature of the contingency. If such claim shall become absolute before distribution of the estate, it shall be paid in the same manner as absolute claims of the same class. In all other cases, the court may provide for the payment of contingent claims in any one of the following methods:

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

2. The court may order the personal representative to make distribution of the estate but to retain sufficient funds to pay the claim if and when the same becomes absolute; but, for this purpose, the estate shall not be kept open longer than two years after distribution of the remainder of the estate; and if such claim has not become absolute within that time, distribution shall be made to the distributees of the funds so retained, after paying any costs and expenses accruing during such period, and such distributees shall be liable to the creditor to the extent of the estate received by them, if such contingent claim thereafter becomes absolute. When distribution is so made to distributees, the court may require such distributees to give bond for the satisfaction of their liability to the contingent creditor, or

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

4. Such other method as the court may order.

[C51, §1365; R60, §2397; C73, §2414; C97, §3343; C24, 27, 31, 35, 39, §**11965;** C46, 50, 54, 58, 62, §635.61; C66, 71, 73, 75, 77, 79, 81, §633.424]

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

**633.425 Classification of debts and charges.**

In any estate in which the assets are, or appear to be, insufficient to pay in full all debts and charges of the estate, the personal representative shall classify the debts and charges as follows:

1. Court costs.
2. Other costs of administration.
3. Reasonable funeral and burial expenses.
4. All debts and taxes having preference under the laws of the United States.
5. Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending at the decedent's last illness.
6. All taxes having preferences under the laws of this state.
7. Any debt for medical assistance paid pursuant to section 249A.53, subsection 2.
8. All debts owing to employees for labor performed during the ninety days next preceding the death of the decedent.
9. All unpaid support payments as defined in section 598.1, subsection 9, and all additional unpaid awards and judgments against the decedent in any dissolution, separate maintenance, uniform support, or paternity action to the extent that the support, awards, and judgments have accrued at the time of death of the decedent.
10. All other claims allowed.

[C51, §1370 – 1372, 1374, 1376, 1378, 1379; R60, §2402 – 2404, 2406, 2408, 2410, 2411; C73, §2418 – 2420, 2422, 2424, 2426, 2427; C97, §3347, 3348, 3350, 3353; S13, §3348; C24, 27, 31, 35, 39, §**11969 – 11971, 11973, 11976;** C46, 50, 54, 58, 62, §635.65 – 635.67, 635.69, 635.71; C66, 71, 73, 75, 77, 79, 81, §633.425; 82 Acts, ch 1197, §1]

94 Acts, ch 1120, §11

Referred to in §230.30, 249A.53, 252.13, 331.805, 633.356, 633.426, 633A.3104

[P] Labor or wage claims preferred, §626.69, 680.7, 681.13

[T] Section not amended; internal reference change applied

**633.426 Order of payment of debts and charges.**

Payment of debts and charges of the estate shall be made in the order provided in section 633.425, without preference of any claim over another of the same class. If the assets of the estate are insufficient to pay in full all of the claims of a class, then such claims shall be paid on a pro rata basis, without preference between claims then due and those of the same class not due.

[C51, §1378, 1379; R60, §2410, 2411; C73, §2426, 2427; C97, §3353; C24, 27, 31, 35, 39, §**11976;** C46, 50, 54, 58, 62, §635.71; C66, 71, 73, 75, 77, 79, 81, §633.426]

2008 Acts, ch 1032, §86

Referred to in §633A.3104

**633.427 Payment of contingent claims by distributees — contribution.**

If a contingent claim has been filed and allowed against an estate and all the assets of the estate have been distributed, and the claim becomes absolute, the creditor has the right to recover on the claim against those distributees whose distributive shares have been increased because the amount of the claim as finally determined was not paid prior to final distribution, if an action for recovery is commenced within four months after the claim becomes absolute. Such distributees are jointly and severally liable, but a distributee is not liable for an amount exceeding the amount of the estate or fund so distributed to that distributee. If more than one distributee is liable to the creditor, the creditor shall make parties to the action all such distributees who can be reached by process. By its judgment, the court shall determine the amount of the liability of each of the distributees as between themselves, but if any distributee is insolvent or unable to pay that distributee's proportion, or is beyond the reach of process, the others, to the extent of their respective liabilities, are nevertheless liable to the creditor for the whole amount of the creditor's debt. If any person liable for the debt fails to pay

that person's just proportion to the creditors, the person is liable to indemnify all who, by reason of the failure, have paid more than their just proportion of the debt, the indemnity to be recovered in the same action or in separate actions.

[C66, 71, 73, 75, 77, 79, 81, §633.427]

84 Acts, ch 1080, §11

**633.428 Allowance by personal representative.**

Where a claim has been filed and is admitted in writing by the personal representative, it shall stand allowed in the absence of fraud or collusion.

[C73, §2410; C97, §3340; S13, §3340; C24, 27, 31, 35, 39, §**11961;** C46, 50, 54, 58, 62, §635.57; C66, 71, 73, 75, 77, 79, 81, §633.428]

**633.429 Compelling payment of claims.**

No claimant shall be entitled to compel payment unless the claimant's claim has been duly filed and allowed.

[C66, 71, 73, 75, 77, 79, 81, §633.429]

**633.430 Execution and levies prohibited.**

No execution shall issue upon, nor shall any levy be made against, any property of the estate under any judgment against a decedent or a personal representative, but the provisions of this section shall not be construed to prevent the enforcement of mortgages.

[C51, §1368; R60, §2400; C73, §2416; C97, §3345; C24, 27, 31, 35, 39, §**11967;** C46, 50, 54, 58, 62, §635.63; C66, 71, 73, 75, 77, 79, 81, §633.430]

**633.431 Claims of personal representative.**

If the personal representative is a creditor of the decedent, the personal representative shall file the claim as other creditors, and the court shall appoint some competent person as temporary administrator to represent the estate in the matter of allowing or disallowing such claim. The same procedure shall be followed in the case of corepresentatives where all such representatives are creditors of the estate; but if one of the corepresentatives is not a creditor of the estate, such disinterested representative shall represent the estate in the matter of allowing or disallowing such claim against the estate by a corepresentative.

[C51, §1369; R60, §2401; C73, §2417; C97, §3346; C24, 27, 31, 35, 39, §**11968;** C46, 50, 54, 58, 62, §635.64; C66, 71, 73, 75, 77, 79, 81, §633.431]

**633.432 Allowance or disallowance of claim of personal representative.**

The temporary administrator shall, after investigation, file a report with the court recommending the allowance or disallowance of such claim. Unless the court allows the claim, it shall then be disposed of as a contested claim in accordance with the provisions of sections 633.439 to 633.448.

[C66, 71, 73, 75, 77, 79, 81, §633.432]

**633.433 Payment of debts and charges before expiration of four months' period.**

As soon as the personal representative is possessed of sufficient means over and above the other costs of administration, the personal representative shall pay any allowance made by the court for the surviving spouse and children of the decedent, and may pay the expenses of funeral, burial, and last illness. Prior to the expiration of four months after the date of the second publication of notice to creditors, the personal representative shall pay other debts and charges against the estate as the court orders, and the court may require bond or other security to be given by the creditor to refund such part of the payment as may be necessary to make payment in accordance with this probate code. All payments made by the personal representative without order of court are at the personal representative's own peril.

[C51, §1370, 1371, 1374, 1376, 1378, 1379; R60, §2402, 2403, 2406, 2408, 2410, 2411; C73, §2418, 2419, 2422, 2424, 2426, 2427; C97, §3347, 3350, 3353; C24, 27, 31, 35, 39, §**11969, 11973, 11976;** C46, 50, 54, 58, 62, §635.65, 635.69, 635.71; C66, 71, 73, 75, 77, 79, 81, §633.433]

84 Acts, ch 1080, §12; 2005 Acts, ch 38, §51

**633.434 Payment of debts and charges after expiration of four months' period.**

The personal representative shall, as soon as practicable following appointment, make reasonably diligent efforts to ascertain the names and addresses of all persons believed to own or possess claims against a decedent's estate.

Upon the expiration of the later to occur of four months after the date of the second publication of notice to creditors or one month after the service of the notice by ordinary mail upon all claimants whose identities are reasonably ascertainable, at their last known addresses and whose claims will not or may not be paid or otherwise satisfied during administration, the personal representative shall pay the debts and charges against the estate in accordance with this probate code. If it appears at any time that the estate is or may be insolvent, that there are insufficient funds on hand, or that there is other good and sufficient cause, the personal representative may report that fact to the court and apply for any order that the personal representative deems necessary.

[C51, §1370, 1371, 1374, 1376, 1378, 1379; R60, §2402, 2403, 2406, 2408, 2410, 2411; C73, §2418, 2419, 2422, 2424, 2426, 2427; C97, §3347, 3350, 3353; C24, 27, 31, 35, 39, §**11969, 11973, 11976;** C46, 50, 54, 58, 62, §635.65, 635.69, 635.71; C66, 71, 73, 75, 77, 79, 81, §633.434]

84 Acts, ch 1080, §13; 89 Acts, ch 35, §7; 2005 Acts, ch 38, §27

**633.435 Debts and charges not filed.**

The personal representative may pay any valid debts and charges against the estate even though no claim for such debts and charges has been filed, but all such payments made by the personal representative shall be at the personal representative's own peril.

[C66, 71, 73, 75, 77, 79, 81, §633.435]

**633.436 General order for abatement.**

1. Except as provided in sections 633.211 and 633.212, shares of the distributees shall abate, for the payment of debts and charges, federal and state estate taxes, legacies, the shares of children born or adopted after the making of a will, or the share of the surviving spouse who elects to take against the will, without any preference or priority as between real and personal property, in the following order:

*a.* Property not disposed of by the will;

*b.* Property devised to the residuary devisee, except property devised to a surviving spouse who takes under the will;

*c.* Property disposed of by the will, but not specifically devised and not devised to the residuary devisee, except property devised to a surviving spouse who takes under the will;

*d.* Property specifically devised, except property devised to a surviving spouse who takes under the will;

*e.* Property devised to a surviving spouse who takes under the will.

2. A general devise charged on any specific property or fund shall, for purposes of abatement, be deemed property specifically devised to the extent of the value of the property on which it is charged. Upon the failure or insufficiency of the property on which it is charged, it shall be deemed property not specifically devised to the extent of such failure or insufficiency.

[C51, §1284, 1285; R60, §2316, 2317; C73, §2334, 2335; C97, §3279; S13, §3279, 3279-a; C24, 27, 31, 35, 39, §**11858, 11859;** C46, 50, 54, 58, 62, §633.13, 633.14; C66, 71, 73, 75, 77, 79, 81, §633.436]

85 Acts, ch 19, §3; 2008 Acts, ch 1119, §19; 2010 Acts, ch 1138, §58

Referred to in §633.278, 633.437

**633.437 Contrary provision as to abatement.**

1. When provisions of the will, trust or other testamentary instrument of the decedent provide explicitly for an order of abatement contrary to the provisions of section 633.436, the provisions of the will or other testamentary instrument shall determine the order of abatement.

2. Except as provided in subsection 1 of this section, if the provisions of the will, the testamentary plan, or the express or the implied purpose of the devise would be defeated by

the order of abatement as provided in section 633.436, then upon application to the court by a fiduciary or a distributee, and after notice to all interested parties, the court shall determine the order for abatement of the shares of distributees in such other manner as may be found necessary to give effect to the intention of the testator. In order to change the order of abatement as provided in section 633.436, it will be necessary for the court to find it clear and convincing that the provisions of the will, the testamentary plan, or the express or implied purpose of the devise would be defeated by the order of abatement stated in section 633.436.

[C66, 71, 73, 75, 77, 79, 81, §633.437]

## DENIAL AND CONTEST OF CLAIMS

**633.438 General denial of claims.**

Where a claim has been filed, but not admitted in writing by the personal representative before a request for hearing has been given as hereinafter provided, the claim shall be considered as denied without any pleading on behalf of the personal representative.

[C73, §2410; C97, §3340; S13, §3340; C24, 27, 31, 35, 39, §**11961;** C46, 50, 54, 58, 62, §635.57; C66, 71, 73, 75, 77, 79, 81, §633.438]

Referred to in §633.417, 633.666

**633.439 Disallowance by personal representative.**

At any time after the filing of a claim against an estate, the personal representative may give the claimant and the claimant's attorney of record, if any, written notice of disallowance of claim. The notice shall be given by certified mail addressed to the claimant at the address stated in the claim and to the claimant's attorney of record, if any.

[C66, 71, 73, 75, 77, 79, 81, §633.439; 81 Acts, ch 193, §4]

Referred to in §633.417, 633.432, 633.666

**633.440 Contents of notice of disallowance.**

Such a notice of disallowance shall advise the claimant that the claim has been disallowed and will be forever barred unless the claimant shall within twenty days after the date of mailing the notice, file a request for hearing on the claim with the clerk, and mail a copy of such request for hearing to the personal representative and the attorney of record, if any, by certified mail.

[C66, 71, 73, 75, 77, 79, 81, §633.440]

99 Acts, ch 56, §5

Referred to in §633.417, 633.432, 633.666

**633.441 Proof of service.**

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

[C66, 71, 73, 75, 77, 79, 81, §633.441]

Referred to in §633.417, 633.432, 633.666

**633.442 Claims barred after twenty days.**

Unless the claimant shall within twenty days after the date of mailing the notice of disallowance, file a request for hearing with the clerk and mail a copy of the request for hearing to the personal representative and to the attorney of record, if any, the claim shall be deemed disallowed, and shall be forever barred.

[C66, 71, 73, 75, 77, 79, 81, §633.442]

Referred to in §633.417, 633.432, 633.443, 633.666

**633.443 Request for hearing by claimant.**

At the time of the filing of a claim against an estate, or at any time thereafter prior to the time that the claim may be barred by the provisions of section 633.442, or the approval of the final report of the personal representative after notice to the claimant, the claimant may file a

request for hearing with the clerk, and mail a copy of the request for hearing to the personal representative and attorney of record, if any.

[C51, §1359, 1361; R60, §2391, 2393; C73, §2408; C97, §3338; C24, 27, 31, 35, 39, §**11959;** C46, 50, 54, 58, 62, §635.55; C66, 71, 73, 75, 77, 79, 81, §633.443]

Referred to in §633.417, 633.432, 633.666

**633.444 Applicability of rules of civil procedure.**

Within twenty days from the filing of the request for hearing on a claim, the personal representative shall move or plead to said claim in the same manner as though the claim were a petition filed in an ordinary action, and thereafter, all provisions of law and rules of civil procedure applicable to motions, pleadings and the trial of ordinary actions shall apply; provided, however, that a restatement of such claim shall not be barred by the provisions of section 633.410.

[C66, 71, 73, 75, 77, 79, 81, §633.444]

Referred to in §633.417, 633.432, 633.666

**633.445 Offsets and counterclaims.**

At the time of the filing of an answer to a claim, the personal representative shall plead all offsets against the claim, and shall plead all counterclaims against the claimant of which the personal representative has knowledge. An offset or counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding the amount, or different in kind, from that sought in the claim.

[C66, 71, 73, 75, 77, 79, 81, §633.445]

Referred to in §633.417, 633.432, 633.666

**633.446 Burden of proof.**

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

[C97, §3340; S13, §3340; C24, 27, 31, 35, 39, §**11962;** C46, 50, 54, 58, 62, §635.58; C66, 71, 73, 75, 77, 79, 81, §633.446]

Referred to in §633.417, 633.432, 633.666

**633.447 Trial and hearing.**

The trial of a claim and the offsets or counterclaims, if any, shall be to the court without a jury; provided, however, that the court may, in its discretion, either on its own motion or upon the motion of any party, submit the same to a jury; and provided further, that in the event that the amount of the claim or a counterclaim exceeds the sum of three hundred dollars, either party shall be entitled to a jury trial, if written demand therefor is made as provided in the rules of civil procedure in relation to the trial of ordinary actions.

[C51, §1360, 1362, 1366; R60, §2392, 2394, 2398; C73, §2411, 2415; C97, §3341, 3344; C24, 27, 31, 35, 39, §**11963, 11966;** C46, 50, 54, 58, 62, §635.59, 635.62; C66, 71, 73, 75, 77, 79, 81, §633.447]

Referred to in §633.417, 633.432, 633.666

[P] See R.C.P. 1.902

**633.448 Allowance and judgment.**

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

[C66, 71, 73, 75, 77, 79, 81, §633.448]

Referred to in §633.417, 633.432, 633.666

**633.449 Payment of federal estate taxes.**

All federal estate taxes, distinguished from state inheritance and estate taxes, owing by the estate of a decedent shall be paid from the property of the estate, unless the will of the decedent, or other trust instrument, provides expressly to the contrary.

[C66, 71, 73, 75, 77, 79, 81, §633.449]

2008 Acts, ch 1119, §20; 2010 Acts, ch 1138, §59

**633.450 through 633.468** Reserved.

## PART 8

## ACCOUNTING, DISTRIBUTION, FINAL REPORT, AND DISCHARGE

Referred to in §231E.5

**633.469 Interlocutory report.**

The personal representative may at any time file an interlocutory accounting to the court showing the condition of the estate, its debts and property, the amount of money received, and the disposition made of any of the assets of the estate.

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

[C51, §1422, 1423; R60, §2447, 2448; C73, §2469; C97, §3394, 3420; C24, 27, 31, 35, 39, §**12042, 12043, 12070;** C46, 50, 54, 58, 62, §638.2, 638.3, 638.33; C66, 71, 73, 75, 77, 79, 81, §633.469]

**633.470 Waiver of accounting.**

The distributee, if under no legal disability, may waive the accounting.

[C66, 71, 73, 75, 77, 79, 81, §633.470]

**633.471 Right of retainer.**

When a distributee of an estate is indebted to the estate, or if a distributee takes as an heir of a deceased devisee indebted to the estate, the amount of such indebtedness, if due, or the present worth of the indebtedness, if not due, shall be treated as a setoff and retained by the personal representative out of any testate or intestate property, real or personal, of the estate to which such distributee is entitled. In intestate estates, the personal representative shall have the same right of setoff and retainer against an heir whose ancestor was indebted to the estate. The right of setoff and retainer shall be prior and superior to the rights of judgment creditors, heirs or assigns of such distributee.

[C51, §1383 – 1386; R60, §2415 – 2418; C73, §2431 – 2434; C97, §3357 – 3360; C24, 27, 31, 35, 39, §**11980 – 11983;** C46, 50, 54, 58, 62, §635.75 – 635.78; C66, 71, 73, 75, 77, 79, 81, §633.471]

2012 Acts, ch 1123, §13, 32

[SP] 2012 amendment to this section applies to estates of decedents dying on or after July 1, 2012; 2012 Acts, ch 1123, §32

**633.472 Property distributed in kind.**

Property not otherwise disposed of by the personal representative may be distributed in kind.

[C51, §1384, 1385, 1392; R60, §2416, 2417, 2424; C73, §2432, 2433, 2438; C97, §3358, 3359, 3364; C24, 27, 31, 35, 39, §**11981, 11982, 11988;** C46, 50, 54, 58, 62, §635.76, 635.77, 636.3; C66, 71, 73, 75, 77, 79, 81, §633.472]

**633.473 Final settlement — time limit.**

Final settlement shall be made within three years, after the second publication of the notice to creditors, unless otherwise ordered by the court after notice to all interested parties.

[C51, §1393; R60, §2425; C73, §2439, 2469; C97, §3365, 3394; C24, 27, 31, 35, 39, §**11989, 12044;** C46, 50, 54, 58, 62, §636.4, 638.4; C66, 71, 73, 75, 77, 79, 81, §633.473]

Referred to in §635.8

**633.474** Repealed by 83 Acts, ch 44, § 2.

**633.475 Compromise of personal taxes.**

For the purpose of facilitating the speedy settlement and distribution of estates, the county treasurer of such county, by and with the consent of the board of supervisors may compromise and agree upon the amount of personal taxes at any time due or to become due the county from an estate, and payment in accordance with such compromise or agreement shall be for the satisfaction of all taxes in such estate matter. No compensation shall be allowed any person because of such compromise or agreement.

[C39, §**12781.1, 12781.2;** C46, 50, 54, 58, 62, §682.35, 682.36; C66, 71, 73, 75, 77, 79, 81, §633.475]

**633.476 Action against distributees — costs — tender.**

In an action against the distributees, where the judgment is to be against them in proportion to the respective amounts received by them from the estate, costs awarded against them shall be in like proportion, and anyone may tender the amount due from that distributee to the plaintiff, which shall have the same effect, as far as the distributee is concerned, as though that distributee were the sole defendant.

[C51, §1440, 1441; R60, §2465, 2466; C73, §2485, 2486; C97, §3408; C24, 27, 31, 35, 39, §**12060;** C46, 50, 54, 58, 62, §638.20; C66, 71, 73, 75, 77, 79, 81, §633.476]

**633.477 Final report.**

Each personal representative shall, in the personal representative's final report, set forth:

1. An accurate description of all the real estate of which the decedent died seized, stating the nature and extent of the decedent's interest therein, which has not been sold and conveyed by the personal representative.
2. Whether the deceased died testate or intestate.
3. The name and place of residence of the surviving spouse, or that none survived the deceased.
4. In intestate estates, the name and place of residence of each of the heirs and their relationship to the deceased.
5. In testate estates, the name and place of residence of each of the devisees and their relationship to the deceased, and the name and residence of after-born children, if any, as defined in section 633.267.
6. Whether any legacy or devise remains a charge on the real estate, and, if so, the nature and amount thereof.
7. Whether any distributee is under any legal disability.
8. The name of the conservator or trustee for any distributee, and the court from which the letters were issued.
9. An accounting of all property coming into the hands of the personal representative and a detailed accounting of all cash receipts and disbursements. The accounting may be omitted if waived by all interested parties.
10. A statement as to whether or not all statutory requirements pertaining to taxes have been complied with including whether the federal estate tax due has been paid, whether a lien continues to exist for any federal estate tax, and whether inheritance tax was paid or a return was filed in this state.
11. Upon the request of the personal representative, an itemization of services performed, time spent for such services, and responsibilities assumed by the personal representative's attorney for all estates of decedents dying after January 1, 1981. If the itemization is not

included, there shall be set forth a statement that the personal representative was informed of the provisions of this subsection and did not request the itemization.

12. A statement as to whether all statutory requirements pertaining to claims have been complied with and a statement as to whether all claims, including charges, have been paid and whether a lien continues to exist on any property as security for any claim.

13. A statement as to whether the decedent left any genetic material, and if the decedent left genetic material, if the personal representative has reserved sufficient estate assets to fund the distribution to which posthumous heirs, if any, would be entitled to receive; that the personal representative will wait until two years after the decedent's date of death to make final distributions; and that the personal representative will submit a supplemental report after such final distributions have been made.

[C73, §2491; C97, §3412; C24, 27, 31, 35, 39, §**12071;** C46, 50, 54, 58, 62, §638.34; C66, 71, 73, 75, 77, 79, 81, §633.477]

87 Acts, ch 54, §1; 89 Acts, ch 35, §8; 2005 Acts, ch 38, §28; 2011 Acts, ch 18, §4

Referred to in §633.479

**633.478 Notice of application for discharge.**

A personal representative shall not be discharged from further duty or responsibility upon final settlement until notice of the final report or of an application for discharge has been served upon all persons interested, in accordance with section 633.40, unless notice is waived. An order prescribing notice may be made before or after the filing of the final report.

[C97, §3422; C24, 27, 31, 35, 39, §**12073;** C46, 50, 54, 58, 62, §638.36; C66, 71, 73, 75, 77, 79, 81, §633.478; 81 Acts, ch 193, §5]

Referred to in §633.479

**633.479 Discharge.**

Upon final settlement of an estate, an order shall be entered discharging the personal representative from further duties and responsibilities. The order approving the final report shall constitute a waiver of the omission from the final report of any of the recitals required in section 633.477.

An order approving the final report and discharging the personal representative shall not be required if all distributees otherwise entitled to notice are adults, under no legal disability, have signed waivers of notice as provided in section 633.478, have signed statements of consent agreeing that the prayer of the final report shall constitute an order approving the final report and discharging the personal representative, and if the statements of consent are dated not more than thirty days prior to the date of the final report, and if compliance with sections 422.27 and 450.58 have been fulfilled and receipts, sworn statements, and certificates, as any of these that are required, are on file. In those instances final order shall not be required and the prayer of the final report shall be considered as granted and shall have the same force and effect as an order of discharge of the personal representative and an order approving the final report.

[C51, §1434; R60, §2459; C73, §2476; C97, §3400; C24, 27, 31, 35, 39, §**12052;** C46, 50, 54, 58, 62, §638.12; C66, 71, 73, 75, 77, 79, 81, §633.479]

83 Acts, ch 44, §1; 2003 Acts, ch 151, §54; 2004 Acts, ch 1073, §50

Referred to in §633.480

**633.480 Certificate to county recorder for tax purposes with administration.**

After discharge as provided in section 633.479, the personal representative shall deliver to the county recorder of the county in which the real estate is situated a certificate pertaining to each parcel of real estate described in the final report of the personal representative which has not been sold by the personal representative. The certificate shall include the name and complete mailing address, as shown on the final report, of the individual or entity in whose name each parcel of real estate is to be taxed. The county recorder shall deliver the certificate to the county auditor as provided in section 558.58.

[C66, 71, 73, 75, 77, 79, 81, §633.480; 82 Acts, ch 1054, §2, ch 1118, §1]

84 Acts, ch 1221, §7; 91 Acts, ch 116, §19; 2001 Acts, ch 45, §10; 2003 Acts, ch 151, §55

Referred to in §633.481, 635.7

**633.481 Certificate to county recorder for tax purposes without administration.**

When an inventory or report is filed under section 450.22, without administration of the estate of the decedent, the heir or heir's attorney shall prepare and deliver to the county recorder of the county in which the real estate is situated a certificate pertaining to each parcel of real estate described in the inventory or report. Any fees for certificates or recording fees required by this section or section 633.480 shall be assessed as costs of administration. The fees for recording and indexing the instrument shall be as provided in section 331.604. The county recorder shall deliver the certificates to the county auditor as provided in section 558.58.

[C66, 71, 73, 75, 77, 79, 81, §633.481; 82 Acts, ch 1054, §3]

84 Acts, ch 1221, §8; 86 Acts, ch 1079, §6; 90 Acts, ch 1081, §4; 2003 Acts, ch 151, §56; 2009 Acts, ch 27, §37

Referred to in §635.7

**633.482 through 633.486** Reserved.

PART 9

REOPENING

**633.487 Limitation on rights.**

No person, having been served with notice of the hearing upon the final report and accounting of a personal representative or having waived such notice, shall, after the entry of the final order approving the same and discharging the said personal representative, have any right to contest, in any proceeding, other than by appeal, the correctness or the legality of the inventory, the accounting, distribution, or other acts of the personal representative, or the list of heirs set forth in the final report of the personal representative, provided, however, that nothing contained in this section shall prohibit any action against the personal representative and the personal representative's surety under the provisions of section 633.186 on account of any fraud committed by the personal representative.

[C97, §3422; C24, 27, 31, 35, 39, §**12073;** C46, 50, 54, 58, 62, §638.36; C66, 71, 73, 75, 77, 79, 81, §633.487]

**633.488 Reopening settlement.**

Whenever a final report has been approved and a final accounting has been settled in the absence of any person adversely affected and without notice to the person, the hearing on such report and accounting may be reopened at any time within five years from the entry of the order approving the same, upon the application of such person, and, upon a hearing, after such notice as the court may prescribe to be served upon the personal representative and the distributees, the court may require a new accounting, or a redistribution from the distributees. In no event, however, shall any distributee be liable to account for more than the property distributed to that distributee. If any property of the estate shall have passed into the hands of good faith purchasers for value, the rights of such purchasers shall not, in any way, be affected.

[C51, §1431; R60, §2456; C73, §2475; C97, §3399; C24, 27, 31, 35, 39, §**12051;** C46, 50, 54, 58, 62, §638.11; C66, 71, 73, 75, 77, 79, 81, §633.488]

**633.489 Reopening administration.**

Upon the petition of any interested person, the court may, with such notice as it may prescribe, order an estate reopened if other property be discovered, if any necessary act remains unperformed, or for any other proper cause appearing to the court. It may reappoint the personal representative, or appoint another personal representative, to administer any additional property or to perform other such acts as may be deemed necessary. The provisions of law as to original administration shall apply, insofar as applicable, to

accomplish the purpose for which the estate is reopened, but a claim which is already barred can, in no event, be asserted in the reopened administration.

[S13, §3305; C24, 27, 31, 35, 39, §**11892;** C46, 50, 54, 58, 62, §633.48; C66, 71, 73, 75, 77, 79, 81, §633.489]

**633.490 through 633.494** Reserved.

## DIVISION VIII

## FOREIGN WILLS AND ANCILLARY ADMINISTRATION

### PART 1

### FOREIGN WILLS

**633.495 Admission of wills of nonresidents.**

A will of a nonresident of this state, not probated in any other state or county, may be admitted to probate in any county of this state where either real or personal property of the deceased nonresident is located.

[C66, 71, 73, 75, 77, 79, 81, §633.495]

**633.496 Foreign probated wills.**

A will probated in any other state or country shall be admitted to probate in this state upon the production of a copy thereof and of the original record of probate, authenticated by the certificate of the clerk of the court in which such probation was made, or, if there be no clerk, then by the certificate of the judge of such court, and by the seal of office of such officer if the officer or office has a seal.

[C51, §1296; R60, §2328; C73, §2351; C97, §3294; C24, 27, 31, 35, 39, §**11877;** C46, 50, 54, 58, 62, §633.33; C66, 71, 73, 75, 77, 79, 81, §633.496]

**633.497 Foreign wills as a muniment of title.**

After the expiration of the five-year period from the date of the death of the decedent, an exemplified copy of a will which has not been denied probate in Iowa, and of the order admitting it to probate in a foreign state or country, may be recorded in the office of the county recorder of any county where real estate owned by the testator is located. The record of such a will and of the order admitting the will to probate shall operate to dispose of said property as though said will had been admitted to probate in this state. Nothing contained in this section shall operate to defeat the rights, acquired prior to such record, of purchasers for value whose rights are shown of record.

[C66, 71, 73, 75, 77, 79, 81, §633.497]

**633.498 Foreign wills — procedure.**

All provisions of law relating to the carrying of domestic wills into effect after their probate shall apply, so far as applicable, to foreign wills admitted to probate in this state.

[C73, §2352; C97, §3295; C24, 27, 31, 35, 39, §**11878;** C46, 50, 54, 58, 62, §633.34; C66, 71, 73, 75, 77, 79, 81, §633.498]

**633.499** Reserved.

## PART 2

## ANCILLARY ADMINISTRATION

**633.500 Appointment of foreign administrator.**

Notwithstanding any other provision of this probate code, if administration of the estate of a deceased intestate nonresident has been granted in accordance with the law of the state where the nonresident resided, the duly qualified administrator of the estate of the nonresident may upon application be appointed administrator in this state, unless another has already been appointed and provided that a resident administrator be appointed to serve with the nonresident administrator; provided further, however, that for good cause shown, the court may appoint the nonresident administrator to act alone without the appointment of a resident administrator.

[C51, §1309; R60, §2341; C73, §2368; C97, §3306; C24, 27, 31, 35, 39, §**11894;** C46, 50, 54, 58, 62, §633.50; C66, 71, 73, 75, 77, 79, 81, §633.500]

2005 Acts, ch 38, §51

Referred to in §633.501

**633.501 Application for appointment of foreign administrator.**

The application for any such appointment under section 633.500 shall contain the name and address of the foreign administrator and of the resident administrator, if any, to be appointed, and shall be accompanied by a certificate of the clerk of the court of original jurisdiction certifying that such estate is under administration, and a certification of the original letters or other authority authorizing the nonresident administrator to act in that estate.

[C66, 71, 73, 75, 77, 79, 81, §633.501]

**633.502 Appointment of foreign fiduciary.**

Notwithstanding any other provision of this probate code, the duly qualified fiduciary under a will admitted to probate in another state, may upon application be appointed fiduciary in this state, after said will has been admitted to probate in this state, provided that a resident fiduciary be appointed to serve with the nonresident fiduciary; provided further, however, that, for good cause shown, the court may appoint, the nonresident fiduciary to act alone without the appointment of a resident fiduciary.

[C51, §1310; R60, §2342; C73, §2369; C97, §3306; C24, 27, 31, 35, 39, §**11895;** C46, 50, 54, 58, 62, §633.51; C66, 71, 73, 75, 77, 79, 81, §633.502]

2005 Acts, ch 38, §51

**633.503 Application for appointment of foreign executor or trustee.**

The application for appointment of a nonresident executor or trustee shall include the name and address of the nonresident executor or trustee, and the name and address of the resident executor or trustee, if any, to be appointed. It shall be accompanied by a certificate of the clerk of the foreign court granting the original letters or other authority conferring the power upon the nonresident executor or trustee to act as such. The application shall also state the cause for the appointment of the nonresident executor or trustee to act as the sole executor or trustee, if such appointment is desired. When the will has not been admitted to probate in any other state, the application shall include the name and address of the executor or trustee, if any, named in the will of the nonresident, and of the resident executor or trustee to be appointed.

[C66, 71, 73, 75, 77, 79, 81, §633.503]

**633.504 Removal of property — payment of claims.**

In all estates of nonresidents, being administered in this state, the court may require payment of all claims filed and allowed belonging to residents of this state, and all legacies

or distributive shares payable to residents of this state, before allowing any of the property in the estate to be removed from the state.

[C97, §3306; C24, 27, 31, 35, 39, §**11896;** C46, 50, 54, 58, 62, §633.52; C66, 71, 73, 75, 77, 79, 81, §633.504]

**633.505 through 633.509** Reserved.

DIVISION IX

ESTATES OF ABSENTEES

**633.510 Administration authorized — petition.**

Administration may be had upon the estate of an absentee. A petition therefor must be filed in the office of the clerk and must allege:

1. Whether the absentee was a resident or a nonresident of this state, and the absentee's address at the absentee's last known domicile; that the absentee has, without known cause, left the absentee's usual place of residence, and concealed the absentee's whereabouts from the absentee's family, for a period of five years.

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

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

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

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

[C97, §3307; S13, §3307; C24, 27, 31, 35, 39, §**11901;** C46, 50, 54, 58, 62, §634.1; C66, 71, 73, 75, 77, 79, 81, §633.510]

**633.511 Notice.**

Upon filing of such petition, the court shall, by a proper order, prescribe the notice and the return day therein, which shall be addressed to and served upon such absentee and the alleged distributees of the absentee's estate.

[C97, §3307; S13, §3307; C24, 27, 31, 35, 39, §**11902;** C46, 50, 54, 58, 62, §634.2; C66, 71, 73, 75, 77, 79, 81, §633.511]

**633.512 Service.**

Said notice shall in all cases be served:

1. By publication in the county in which the petition is filed, once each week for three consecutive weeks, in a newspaper designated by the court; and

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

[C97, §3307; S13, §3307; C24, 27, 31, 35, 39, §**11903;** C46, 50, 54, 58, 62, §634.3; C66, 71, 73, 75, 77, 79, 81, §633.512]

**633.513 Proof of service — filing.**

Proof of the publication and service of such notice shall be filed with the clerk aforesaid on or before the day set for hearing.

[C97, §3307; S13, §3307; C24, 27, 31, 35, 39, §**11904;** C46, 50, 54, 58, 62, §634.4; C66, 71, 73, 75, 77, 79, 81, §633.513]

**633.514 Hearing — continuance — orders.**

If, on the day set for hearing, the absentee fails to appear, the court shall appoint some disinterested person as guardian ad litem to appear for the absentee and all distributees not appearing, and said cause shall thereupon stand continued for twenty days. The guardian

ad litem shall be a practicing attorney. The court shall have authority to make further continuance upon proper showing. The guardian ad litem shall investigate the matter and things alleged in the petition. Upon the further hearing, the court shall hear the proofs, and, if satisfied of the truth of the allegations of the petition, shall enter an order establishing the death of the absentee as a matter of law.

[C97, §3307; S13, §3307; C24, 27, 31, 35, 39, §**11905;** C46, 50, 54, 58, 62, §634.5; C66, 71, 73, 75, 77, 79, 81, §633.514]

90 Acts, ch 1271, §1514

Referred to in §633.515

**633.515 Administration.**

Upon the entry of such further order under section 633.514, administration of the estate of such absentee, whether testate or intestate, shall proceed as provided herein for the administration of the estates of other decedents, notwithstanding the provisions of section 633.330.

[S13, §3307, 3307-a; C24, 27, 31, 35, 39, §**11906 – 11910;** C46, 50, 54, 58, 62, §634.6 – 634.10; C66, 71, 73, 75, 77, 79, 81, §633.515]

**633.516 Rights of absentee barred — sale by spouse.**

An order establishing the death of an absentee forever bars the rights of homestead and distributive share of the absentee, and the absentee's interest in and to any real estate owned or held by the spouse of the absentee, and in which the spouse may have a legal or equitable interest. Conveyance of any such real estate by the spouse, after four months from date of publication of second notice of the appointment of a personal representative, is free and clear of any claim or right of homestead or distributive share on the part of the absentee.

[S13, §3307-b; C24, 27, 31, 35, 39, §**11911;** C46, 50, 54, 58, 62, §634.11; C66, 71, 73, 75, 77, 79, 81, §633.516]

84 Acts, ch 1080, §14

**633.517 Missing soldiers or sailors — presumption of death.**

1. A written finding of presumed death, made by the secretary of defense, or other officer or employee of the United States authorized to make such finding, pursuant to the federal Missing Persons Act, 56 Stat. 143, 1092, and P.L. 408, Ch. 371, 2d Session 78th Congress codified at 10 U.S.C. § 1501 et seq., as now or hereafter amended, or a duly certified copy of such a finding, shall be received in any court, office, or other place in this state, as evidence of the death of the person therein found to be dead, and of the date, circumstances, and place of the disappearance.

2. An official written report or record, or a duly certified copy thereof, that a person is missing, missing in action, interned in a neutral country, or beleaguered, besieged, or captured by an enemy, or is dead, or is alive, made by any officer or employee of the United States authorized by the Act referred to in subsection 1 of this section, or by any other law of the United States, to make such a report or record, shall be received in any court, office or other place in this state as evidence that such person is missing, missing in action, interned in a neutral country, or beleaguered, besieged, or captured by an enemy, or is dead, or is alive, as the case may be.

3. For the purposes of subsections 1 and 2 of this section, any finding, report, or record, or duly certified copy thereof, purporting to have been signed by such an officer or employee of the United States as is described in said subsections, shall prima facie be deemed to have been signed and issued by such an officer or employee pursuant to law, and the person signing the same shall prima facie be deemed to have acted within the scope of the person's authority. If a copy purports to have been certified by a person authorized by law to certify the same, such certified copy shall be prima facie evidence of the person's authority so to certify.

[C46, 50, 54, 58, 62, §634.12; C66, 71, 73, 75, 77, 79, 81, §633.517]

2010 Acts, ch 1061, §77

**633.518 Presumption of death — petition and inquiry.**

If a petition is presented by an interested person to a district judge or magistrate alleging that a designated person has disappeared and after a diligent search cannot be found, and if it appears to the satisfaction of the judge or magistrate that the circumstances surrounding the disappearance afford reasonable grounds for the belief that the person has suffered death from accidental or other violent means, the judge or magistrate shall summon and impanel a jury of six qualified persons to inquire into the facts surrounding and the presumption to be raised from the disappearance. If no one submits a petition within forty days of the reported disappearance, a judge or magistrate may submit the petition from personal knowledge of the case.

2002 Acts, ch 1108, §28

**633.519 Presumption of death — verdict and entry of order.**

If a jury in an inquiry regarding the disappearance of an individual renders a unanimous verdict in writing that sufficient evidence has been presented to them from which it fairly may be presumed that the missing person has met death, and if the judge or magistrate concurs in the verdict, then, after a period of six months has elapsed, the person shall be presumed to be dead and the judge or magistrate shall enter an order to that effect. However, in cases where there is clear and convincing evidence of the presumed death, the judge or magistrate may enter the order prior to the elapsing of the six-month period.

2002 Acts, ch 1108, §29

**633.520 Presumption of death — natural or man-made disaster.**

A written finding of presumed death of a person resulting from a natural or man-made disaster, made by a local, state, or federal officer or employee authorized to make such a finding, or a duly certified copy of such a finding, shall be received by a judge or magistrate as evidence of the death of the person therein found to be dead, and of the date, circumstances, and place of the disappearance. Upon receipt of such evidence the judge or magistrate may enter an order of presumption of death of the person. Upon presentation of a certified court order, a certificate of death shall be filed pursuant to section 144.26.

2002 Acts, ch 1108, §30

**633.521 and 633.522** Reserved.

## DIVISION X

## UNIFORM SIMULTANEOUS DEATH ACT

**633.523 No sufficient evidence of survivorship.**

Where the title to property or the devolution thereof depends upon priority of death, and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if the person had survived, except as provided otherwise in sections 633.524 to 633.527.

[C46, 50, 54, 58, 62, §637.1; C66, 71, 73, 75, 77, 79, 81, §633.523]

Referred to in §633.527, 633.528, 633A.4704

**633.524 Beneficiaries of another person's disposition of property.**

Where two or more beneficiaries are designated to take successively, by reason of survivorship, under another person's disposition of property, and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries, and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived.

[C46, 50, 54, 58, 62, §637.2; C66, 71, 73, 75, 77, 79, 81, §633.524]

Referred to in §633.523, 633.527, 633.528, 633A.4704

**633.525 Joint tenants.**

Where there is no sufficient evidence that two joint tenants have died otherwise than simultaneously, the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than two joint tenants and all of them have so died, the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

[C46, 50, 54, 58, 62, §637.3; C66, 71, 73, 75, 77, 79, 81, §633.525]

Referred to in §633.523, 633.528, 633A.4704

**633.526 Insurance policies.**

Where the insured and the beneficiary in a policy of life or accident insurance have died, and there is no sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

[C46, 50, 54, 58, 62, §637.4; C66, 71, 73, 75, 77, 79, 81, §633.526]

Referred to in §633.523, 633.527, 633.528, 633A.4704

**633.527 Limitation of application.**

Sections 633.523, 633.524 and 633.526 shall not apply in the case of wills, living trusts, deeds, contracts of insurance, or other contracts wherein provision has been made for distribution of property different from the provisions of those sections.

[C46, 50, 54, 58, 62, §637.6; C66, 71, 73, 75, 77, 79, 81, §633.527]

2003 Acts, ch 95, §5

Referred to in §633.523, 633.528, 633A.4704

**633.528 Uniformity of interpretation.**

Sections 633.523 to 633.527 shall be so construed and interpreted as to effectuate their general purpose to make uniform the law relating to simultaneous death.

[C46, 50, 54, 58, 62, §637.7; C66, 71, 73, 75, 77, 79, 81, §633.528]

Referred to in §633A.4704

**633.529 through 633.534** Reserved.

## DIVISION XI

## FELONIOUS DEATH

**633.535 Person causing death.**

1. A person who intentionally and unjustifiably causes or procures the death of another shall not receive any property, benefit, or other interest by reason of the death as an heir, distributee, beneficiary, appointee, or in any other capacity whether the property, benefit, or other interest passed under any form of title registration, testamentary or nontestamentary instrument, intestacy, renunciation, or any other circumstance. The property, benefit, or other interest shall pass as if the person causing death died before the decedent.

2. A joint tenant who intentionally and unjustifiably causes or procures the death of another joint tenant which affects their interests so that the share of the decedent passes as the decedent's property has no rights by survivorship. This provision applies to joint tenancies and tenancies by the entireties in real and personal property, joint and multiple-party accounts in banks, savings and loan associations, credit unions, and other institutions, and any other form of co-ownership with survivorship rights.

3. A named beneficiary of a bond, life insurance policy, or any other contractual arrangement who intentionally and unjustifiably causes or procures the death of the principal obligee or person upon whose life the policy is issued or whose death generates the benefits under any other contractual arrangement is not entitled to any benefit under the

bond, policy, or other contractual arrangement, and the benefits become payable as though the person causing death had predeceased the decedent.

[C97, §3386; S13, §3386; C24, 27, 31, 35, 39, §**12032;** C46, 50, 54, 58, 62, §636.47; C66, 71, 73, 75, 77, 79, 81, §633.535]

87 Acts, ch 9, §1; 88 Acts, ch 1134, §111

Referred to in §633.536, 633.537

**633.536 Procedure to deny benefits to a person causing death.**

A determination under section 633.535 may be made by any court of competent jurisdiction by a preponderance of the evidence separate and apart from any criminal proceeding arising from the death. However, such a civil proceeding shall not proceed to trial, and the person causing death is not required to submit to discovery in such a civil proceeding until the criminal proceeding has been finally determined by the trial court, or in the event no criminal charge has been brought, until six months after the date of death. A person convicted of murder or voluntary manslaughter of the decedent is conclusively presumed to have intentionally and unjustifiably caused the death for purposes of this section and section 633.535.

[C97, §3386; S13, §3386; C24, 27, 31, 35, 39, §**12033;** C46, 50, 54, 58, 62, §636.48; C66, 71, 73, 75, 77, 79, 81, §633.536]

87 Acts, ch 9, §2

**633.537 Third party nonliability.**

Any insurance company, bank, or other obligor making payment according to the terms of its policy or obligation is not liable by reason of section 633.535 unless prior to payment it has received at its home office or principal address written notice of the claimed applicability of section 633.535.

[C97, §3386; S13, §3386; C24, 27, 31, 35, 39, §**12034;** C46, 50, 54, 58, 62, §636.49; C66, 71, 73, 75, 77, 79, 81, §633.537]

87 Acts, ch 9, §3

**633.538 through 633.542** Reserved.

## DIVISION XII

## PROCEEDINGS FOR ESCHEAT

**633.543 Proceedings for escheat.**

When the court has reason to believe that any property of the estate of a decedent within the county should by law escheat, the court must forthwith inform the attorney general of the state of Iowa thereof, and appoint some suitable person as personal representative to take charge of such property, unless a personal representative has already been appointed.

[C51, §1443; R60, §2468; C73, §2461; C97, §3388; C24, 27, 31, 35, 39, §**12036;** C46, 50, 54, 58, 62, §636.51; C66, 71, 73, 75, 77, 79, 81, §633.543]

**633.544 Notice to persons interested.**

The personal representative must give such notice of the death of the deceased, and of the amount and kind of property left by the decedent within the state, as, in the opinion of the court appointing the personal representative shall be best calculated to notify those interested, or supposed to be interested, in the property.

[C51, §1444; R60, §2469; C73, §2462; C97, §3389; C24, 27, 31, 35, 39, §**12037;** C46, 50, 54, 58, 62, §636.52; C66, 71, 73, 75, 77, 79, 81, §633.544]

**633.545 Sale — proceeds.**

If within six months from the giving of notice, a claimant does not appear, the property may be sold and the proceeds paid over by the personal representative to the department of administrative services for the benefit of the permanent school fund.

[C51, §1445; R60, §2470; C73, §2463; C97, §3390; C24, 27, 31, 35, 39, §**12038;** C46, 50, 54, 58, 62, §636.53; C66, 71, 73, 75, 77, 79, 81, §633.545]

83 Acts, ch 185, §56, 62; 88 Acts, ch 1134, §112; 2003 Acts, ch 145, §286

**633.546 Payment to person entitled.**

The money or any portion of it shall be paid at any time within ten years after the sale of the property or the appropriation of the money, but not afterwards, to anyone showing entitlement thereto.

[C51, §1446; R60, §2471; C73, §2464; C97, §3391; C24, 27, 31, 35, 39, §**12039;** C46, 50, 54, 58, 62, §636.54; C66, 71, 73, 75, 77, 79, 81, §633.546]

**633.547 through 633.550** Reserved.

## DIVISION XIII

## OPENING GUARDIANSHIPS AND CONSERVATORSHIPS

**633.551 Guardianships and conservatorships — general provisions.**

1. The determination of incompetency of the proposed ward or ward and the determination of the need for the appointment of a guardian or conservator or of the modification or termination of a guardianship or conservatorship shall be supported by clear and convincing evidence.

2. The burden of persuasion is on the petitioner in an initial proceeding to appoint a guardian or conservator. In a proceeding to modify or terminate a guardianship or conservatorship, if the guardian or conservator is the petitioner, the burden of persuasion remains with the guardian or conservator. In a proceeding to terminate a guardianship or conservatorship, if the ward is the petitioner, the ward shall make a prima facie showing of some decision-making capacity. Once a prima facie showing is made, the burden of persuasion is on the guardian or conservator to show by clear and convincing evidence that the ward is incompetent.

3. In determining whether a guardianship or conservatorship is to be established, modified, or terminated, the district court shall consider if a limited guardianship or conservatorship pursuant to section 633.635 or 633.637 is appropriate. In making the determination, the court shall make findings of fact to support the powers conferred on the guardian or conservator.

4. In proceedings to establish, modify, or terminate a guardianship or conservatorship, in determining if the proposed ward or ward is incompetent as defined in section 633.3, the court shall consider credible evidence from any source to the effect of third-party assistance in meeting the needs of the proposed ward or ward. However, neither party to the action shall have the burden to produce such evidence relating to third-party assistance.

5. Except as otherwise provided in sections 633.672 and 633.673, in proceedings to establish a guardianship or conservatorship, the costs, including attorney fees and expert witness fees, shall be assessed against the ward or the ward's estate unless the proceeding is dismissed either voluntarily or involuntarily, in which case fees and costs may be assessed against the petitioner for good cause shown.

97 Acts, ch 178, §4; 2007 Acts, ch 134, §15, 28

Referred to in §633.556, 633.570, 633.635, 633.717

## PART 1

## OPENING GUARDIANSHIPS

**633.552 Petition for appointment of guardian.**

Any person may file with the clerk a verified petition for the appointment of a guardian. The petition shall state the following information so far as known to the petitioner.

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

2. That the proposed ward is in either of the following categories:

*a.* Is a person whose decision-making capacity is so impaired that the person is unable to care for the person's personal safety or to attend to or provide for necessities for the person such as food, shelter, clothing, or medical care, without which physical injury or illness might occur.

*b.* Is a minor.

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

4. That the proposed ward is a resident of the state of Iowa or is present in the state, and that the ward's best interests require the appointment of a guardian in this state.

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

[R60, §1449; C73, §2272; C97, §3219; C24, 27, §12614, 12616; C31, 35, §12614, 12616, 12644-c3; C39, §**12614, 12616, 12644.03;** C46, 50, 54, 58, 62, §670.2, 670.4, 672.3; C66, 71, 73, 75, 77, 79, 81, §633.552]

84 Acts, ch 1299, §10; 85 Acts, ch 29, §1; 97 Acts, ch 178, §5

Referred to in §229.27, 235B.18, 235B.19, 633.635, 633.675, 633.717

**633.553** Repealed by 84 Acts, ch 1299, § 19.

**633.554 Notice to proposed ward.**

1. *a.* If the proposed ward is an adult, notice of the filing of the petition shall be served upon the proposed ward in the manner of an original notice and the content of the notice is governed by the rules of civil procedure governing original notice.

*b.* Except where the proposed ward is the petitioner, notice shall also be served upon the ward's spouse. If the proposed ward has no spouse, notice shall be served upon the proposed ward's adult children, if any.

2. *a.* If the proposed ward is a minor or if the proposed ward is an adult under a standby petition and the court determines, pursuant to section 633.561, subsection 1, paragraph "*b*", that the proposed ward is entitled to representation, notice in the manner of original notice, or another form of notice ordered by the court, given to the attorney appointed to represent the ward is notice to the proposed ward.

*b.* Notice shall also be served upon:

(1) The parents of the proposed ward, if the proposed ward is a minor.

(2) The spouse of the proposed ward, if the proposed ward is an adult. If the proposed ward has no spouse, notice shall be served upon the proposed ward's adult children, if any.

3. Service of notice under this section upon persons other than the proposed ward shall be made upon such persons whose identities are reasonably ascertainable pursuant to section 633.40, subsection 5. Proof of service shall be made by affidavit, to which copies of all documents served shall be attached.

[C31, 35, §12644-c4; C39, §**12644.04;** C46, 50, 54, 58, 62, §672.4; C66, 71, 73, 75, 77, 79, 81, §633.554]

84 Acts, ch 1299, §11; 85 Acts, ch 29, §2; 85 Acts, ch 148, §6; 2000 Acts, ch 1036, §1

Referred to in §229.27, 235B.18, 633.562

**633.555 Pleadings and trial — rules of civil procedure.**

All other pleadings and the trial of the cause shall be governed by the rules of civil procedure. The cause shall be tried as a law action, and either party shall be entitled to a jury trial if demand is made therefor as provided by the rules of civil procedure.

[C73, §2273; C97, §3220; C24, 27, §12621; C31, 35, §12621, 12644-c6; C39, §**12621, 12644.06;** C46, 50, 54, 58, 62, §670.9, 672.6; C66, 71, 73, 75, 77, 79, 81, §633.555]

Referred to in §229.27, 235B.18

[P] See R.C.P. 1.902

**633.556 Appointment of guardian.**

1. If the allegations of the petition as to the status of the proposed ward and the necessity for the appointment of a guardian are proved by clear and convincing evidence, the court may appoint a guardian. If the court appoints a guardian based upon mental incapacity of the proposed ward because the proposed ward is a person with an intellectual disability, as defined in section 4.1, the court shall make a separate determination as to the ward's competency to vote. The court shall find a ward incompetent to vote only upon determining that the person lacks sufficient mental capacity to comprehend and exercise the right to vote.

2. In all proceedings to appoint a guardian, the court shall consider the functional limitations of the proposed ward and whether a limited guardianship, as authorized in section 633.635, is appropriate.

3. Section 633.551 applies to the appointment of a guardian.

[R60, §1449; C73, §2272; C97, §3219; C24, 27, 31, 35, 39, §**12614;** C46, 50, 54, 58, 62, §670.2; C66, 71, 73, 75, 77, 79, 81, §633.556]

97 Acts, ch 178, §6; 98 Acts, ch 1100, §79; 98 Acts, ch 1185, §10; 2002 Acts, ch 1134, §113, 115; 2012 Acts, ch 1019, §138

Referred to in §48A.2, 229.27, 235B.18

**633.557 Appointment of guardian on voluntary petition.**

1. A guardian may also be appointed by the court upon the verified petition of the proposed ward, without further notice, if the proposed ward is other than a minor under the age of fourteen years, provided the court determines that such an appointment will inure to the best interest of the applicant. However, if an involuntary petition is pending, the court shall be governed by section 633.634. The petition shall provide the proposed ward notice of a guardian's powers as provided in section 633.562.

2. In all proceedings to appoint a guardian, the court shall consider whether a limited guardianship, as authorized in section 633.635, is appropriate.

[C51, §1495; R60, §2547; C73, §2244; C97, §3195; C24, 27, 31, 35, 39, §**12576, 12617;** C46, 50, 54, 58, 62, §668.4, 670.5; C66, 71, 73, 75, 77, 79, 81, §633.557]

89 Acts, ch 178, §9; 97 Acts, ch 178, §7

Referred to in §633.634

[P] See also §633.572

**633.558 Appointment of temporary guardian.**

A temporary guardian may be appointed, but only after a hearing on such notice, and subject to such conditions, as the court shall prescribe.

[C73, §2273; C97, §3220; C24, 27, 31, §12620; C35, §12620, 12644-c5; C39, §**12620, 12644.05;** C46, 50, 54, 58, 62, §670.8, 672.5; C66, 71, 73, 75, 77, 79, 81, §633.558]

**633.559 Preference as to appointment of guardian.**

Except for a minor child for whom the court's jurisdiction over the child's guardianship was established pursuant to transfer of the child's case in accordance with section 232.104, the parents of a minor child, or either of them, if qualified and suitable, shall be preferred over all others for appointment as guardian. Preference shall then be given to any person, if qualified and suitable, nominated as guardian for a minor child by a will executed by the parent having custody of a minor child, and any qualified and suitable person requested by a minor fourteen years of age or older, or by standby petition executed by a person having

physical and legal custody of a minor. Subject to these preferences, the court shall appoint as guardian a qualified and suitable person who is willing to serve in that capacity.

[C51, §1491, 1492, 1495, 1498; R60, §2543, 2544, 2547, 2550; C73, §2241, 2242, 2244, 2249; C97, §3192, 3193, 3195; C24, 27, 31, 35, 39, §**12573, 12574, 12576;** C46, 50, 54, 58, 62, §668.1, 668.2, 668.4; C66, 71, 73, 75, 77, 79, 81, §633.559]

94 Acts, ch 1153, §9; 2010 Acts, ch 1143, §2

**633.560 Appointment of guardian on a standby basis.**

A petition for the appointment of a guardian on a standby basis may be filed by any person under the same procedure and requirements as provided in sections 633.591 to 633.597, for appointment of standby conservator, insofar as applicable. In all proceedings to appoint a guardian, the court shall consider whether a limited guardianship, as authorized in section 633.635, is appropriate.

[C66, 71, 73, 75, 77, 79, 81, §633.560]

97 Acts, ch 178, §8

**633.561 Representation.**

1. In a proceeding for the appointment of a guardian:

*a.* If the proposed ward is an adult and is not the petitioner, the proposed ward is entitled to representation. Upon the filing of the petition, the court shall appoint an attorney to represent the proposed ward, set a hearing on the petition, and provide for notice of the appointment of counsel and the date for hearing.

*b.* If the proposed ward is either a minor or an adult under a standby petition, the court shall determine whether, under the circumstances of the case, the proposed ward is entitled to representation. The determination regarding representation may be made with or without notice to the proposed ward, as the court deems necessary. If the court determines that the proposed ward is entitled to representation, the court shall appoint an attorney to represent the proposed ward. After making the determination regarding representation, the court shall set a hearing on the petition, and provide for notice on the determination regarding representation and the date for hearing.

*c.* The court may take action under paragraph *"a"* or *"b"* prior to the service of the original notice upon the proposed ward.

*d.* The court may reconsider the determination regarding representation upon application by any interested person.

*e.* The court may discharge the attorney appointed by the court if it appears upon the application of the proposed ward or any other interested person that the ward has privately retained an attorney who has filed an appearance on behalf of the proposed ward.

2. The court shall ensure that all proposed wards entitled to representation have been provided with notice of the right to representation and right to be personally present at all proceedings and shall make findings of fact in any order of disposition setting out the manner in which notification was provided.

3. If the proposed ward is entitled to representation and is indigent or incapable of requesting counsel, the court shall appoint an attorney to represent the proposed ward. The cost of court appointed counsel for indigents shall be assessed against the county in which the proceedings are pending. For the purposes of this subsection, the court shall find a person is indigent if the person's income and resources do not exceed one hundred fifty percent of the federal poverty level or the person would be unable to pay such costs without prejudicing the person's financial ability to provide economic necessities for the person or the person's dependents.

4. An attorney appointed pursuant to this section shall:

*a.* Ensure that the proposed ward has been properly advised of the nature and purpose of the proceeding.

*b.* Ensure that the proposed ward has been properly advised of the ward's rights in a guardianship proceeding.

*c.* Personally interview the proposed ward.

*d.* File a written report stating whether there is a return on file showing that proper

service on the proposed ward has been made and also stating that specific compliance with paragraphs *"a"* through *"c"* has been made or stating the inability to comply by reason of the proposed ward's condition.

*e.* Represent the proposed ward.

*f.* Ensure that the guardianship procedures conform to the statutory and due process requirements of Iowa law.

5. In the event that an order of appointment is entered, the attorney appointed pursuant to this section, to the extent possible, shall:

*a.* Inform the proposed ward of the effects of the order entered for appointment of guardian.

*b.* Advise the ward of the ward's rights to petition for modification or termination of the guardianship.

*c.* Advise the ward of the rights retained by the ward.

6. If the court determines that it would be in the ward's best interest to have legal representation with respect to any proceedings in a guardianship, the court may appoint an attorney to represent the ward at the expense of the ward or the ward's estate, or if the ward is indigent the cost of the court appointed attorney shall be assessed against the county in which the proceedings are pending.

7. If the court determines upon application that it is appropriate or necessary, the court may order that the attorney appointed pursuant to this section be given copies of and access to the proposed ward's health information by describing with reasonable specificity the health information to be disclosed or accessed, for the purpose of fulfilling the attorney's responsibilities pursuant to this section.

84 Acts, ch 1299, §12; 85 Acts, ch 29, §3; 85 Acts, ch 148, §7; 89 Acts, ch 178, §10; 2000 Acts, ch 1036, §2; 2012 Acts, ch 1123, §14, 32

Referred to in §633.554

[SP] Subsection 7 applies to all judicial proceedings on or after July 1, 2012, in which an order for the appointment of a guardian is sought or has been issued; 2012 Acts, ch 1123, §32

**633.562 Notification of guardianship powers.**

In a proceeding for the appointment of a guardian, the proposed ward shall be given written notice which advises the proposed ward that if a guardian is appointed, the guardian may, without court approval, provide for the care of the ward, manage the ward's personal property and effects, assist the ward in developing self-reliance and receiving professional care, counseling, treatment or services as needed, and ensure that the ward receives necessary emergency medical services. The notice shall also advise the proposed ward that, upon the court's approval, the guardian may change the ward's permanent residence to a more restrictive residence, and arrange for major elective surgery or any other nonemergency major medical procedure. The notice shall clearly advise the proposed ward in boldface type of a minimum size of ten points, of the right to counsel and the potential deprivation of the proposed ward's civil rights. The notice shall also state that the proposed ward may use the ward's own attorney instead of an attorney appointed by the court. In an involuntary guardianship proceeding, the notice shall be served upon the proposed ward with the notice of the filing of the petition as provided in section 633.554.

89 Acts, ch 178, §11; 2000 Acts, ch 1036, §3

Referred to in §633.557

**633.563 through 633.565** Reserved.

## PART 2

## OPENING CONSERVATORSHIPS

**633.566 Petition for appointment of conservator.**

Any person may file with the clerk a verified petition for the appointment of a conservator. The petition shall state the following information, so far as known to the petitioner:

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

2. That the proposed ward is in either of the following categories:

*a.* Is a person whose decision-making capacity is so impaired that the person is unable to make, communicate, or carry out important decisions concerning the person's financial affairs.

*b.* Is a minor.

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

4. The estimated present value of the real estate, the estimated value of the personal property, and the estimated gross annual income of the estate. If any money is payable, or to become payable, to the proposed ward by the United States through the United States department of veterans affairs, the petition shall so state.

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

6. That the proposed ward resides in the state of Iowa, is a nonresident, or that the proposed ward's residence is unknown, and that the proposed ward's best interests require the appointment of a conservator in the state of Iowa.

[C51, §1493, 1494; R60, §1449, 2545, 2546; C73, §2243, 2253, 2272, 2273; C97, §3194, 3202, 3219, 3220; C24, 27, §12575, 12605, 12614, 12619; C31, 35, §12575, 12605, 12614, 12619, 12644-c3; C39, §**12575, 12605, 12614, 12619, 12644.03;** C46, 50, 54, 58, 62, §668.3, 668.32, 670.2, 670.7, 672.3; C66, 71, 73, 75, 77, 79, 81, §633.566]

84 Acts, ch 1299, §13; 85 Acts, ch 29, §4; 97 Acts, ch 178, §9; 2009 Acts, ch 26, §18

Referred to in §633.675, 633.717

**633.567** Repealed by 84 Acts, ch 1299, § 19.

**633.568 Notice to proposed ward.**

1. *a.* If the proposed ward is an adult, notice of the filing of the petition shall be served upon the proposed ward in the manner of an original notice and the content of the notice is governed by the rules of civil procedure governing original notice.

*b.* Except where the ward is the petitioner, notice shall also be served upon the ward's spouse. If the ward has no spouse, notice shall be served upon the ward's adult children, if any.

2. *a.* If the proposed ward is a minor or if the proposed ward is an adult under a standby petition and the court determines, pursuant to section 633.575, subsection 1, paragraph "*b*", that the proposed ward is entitled to representation, notice in the manner of original notice, or another form of notice ordered by the court, given to the attorney appointed to represent the ward is notice to the proposed ward.

*b.* Notice shall also be served upon:

(1) The parents of the proposed ward, if the ward is a minor.

(2) The spouse of the proposed ward, if the proposed ward is an adult. If the ward has no spouse, notice shall be served upon the proposed ward's adult children, if any.

3. Service of notice under this section upon persons other than the proposed ward shall be made upon such persons whose identities are reasonably ascertainable pursuant to section 633.40, subsection 5. Proof of service shall be made by affidavit, to which copies of all documents served shall be attached.

[C31, 35, §12644-c4; C39, §**12644.04;** C46, 50, 54, 58, 62, §672.4; C66, 71, 73, 75, 77, 79, 81, §633.568]

84 Acts, ch 1299, §14; 85 Acts, ch 29, §5; 85 Acts, ch 148, §8; 2000 Acts, ch 1036, §4; 2002 Acts, ch 1119, §190

Referred to in §633.576

**633.569 Pleadings and trial — rules of civil procedure.**

All other pleadings and the trial of the cause shall be governed by the rules of civil procedure. The cause shall be tried as a law action, and either party shall be entitled to a jury trial if demand is made therefor as provided by the rules of civil procedure.

[C73, §2273; C97, §3220; C24, 27, §12621; C31, 35, §12621, 12644-c6; C39, §**12621, 12644.06;** C46, 50, 54, 58, 62, §670.9, 672.6; C66, 71, 73, 75, 77, 79, 81, §633.569]

[P] See R.C.P. 1.902

**633.570 Appointment of conservator.**

1. If the allegations of the petition as to the status of the proposed ward and the necessity for the appointment of a conservator are proved by clear and convincing evidence, the court may appoint a conservator.

2. In all proceedings to appoint a conservator, the court shall consider the functional limitations of the person and whether a limited conservatorship, as authorized in section 633.637, is appropriate.

3. Section 633.551 applies to the appointment of a conservator.

[R60, §1449; C73, §2272; C97, §3219; C24, 27, §12614, 12616; C31, 35, §12614, 12616, 12644-c8; C39, §**12614, 12616, 12644.08;** C46, 50, 54, 58, 62, §670.2, 670.4, 672.8; C66, 71, 73, 75, 77, 79, 81, §633.570]

97 Acts, ch 178, §10

**633.571 Preference as to appointment of conservator.**

The parents of a minor, or either of them, if qualified and suitable, shall be preferred over all others for appointment as conservator. Preference shall then be given to any person, if qualified and suitable, nominated as conservator for a minor child by a will executed by the parent having custody of a minor child, and any qualified and suitable person requested by a minor fourteen years of age or older, or by standby petition executed by a person having physical and legal custody of a minor. Subject to these preferences, the court shall appoint as conservator a qualified and suitable person who is willing to serve in that capacity.

[C51, §1491, 1492, 1495, 1498; R60, §2543, 2544, 2547, 2550; C73, §2241, 2242, 2244, 2249; C97, §3192, 3193, 3195; C24, 27, 31, 35, 39, §**12573, 12574, 12576;** C46, 50, 54, 58, 62, §668.1, 668.2, 668.4; C66, 71, 73, 75, 77, 79, 81, §633.571]

94 Acts, ch 1153, §10

**633.572 Appointment of conservator on voluntary petition.**

1. A conservator may also be appointed by the court upon the verified petition of the proposed ward, without further notice, if the proposed ward is other than a minor under the age of fourteen years, provided the court determines that such an appointment will inure to the best interest of the applicant. However, if an involuntary petition is pending, the court shall be governed by section 633.634. The petition shall provide the proposed ward notice of a conservator's powers as provided in section 633.576.

2. In all proceedings to appoint a conservator, the court shall consider whether a limited conservatorship, as authorized in section 633.637, is appropriate.

[C51, §1495; R60, §2547; C73, §2244; C97, §3195; C24, 27, 31, 35, 39, §**12576, 12617, 12618;** C46, 50, 54, 58, 62, §668.4, 670.5, 670.6; C66, 71, 73, 75, 77, 79, 81, §633.572]

89 Acts, ch 178, §12; 97 Acts, ch 178, §11

Referred to in §633.634

[P] See also §633.557

**633.573 Appointment of temporary conservator.**

Except as provided in section 235B.19, a temporary conservator may be appointed but only after a hearing on such notice, and subject to such conditions, as the court shall prescribe.

[C73, §2273; C97, §3220; C24, 27, §12620; C31, 35, §12620, 12644-c5; C39, §**12620, 12644.05;** C46, 50, 54, 58, 62, §670.8, 672.5; C66, 71, 73, 75, 77, 79, 81, §633.573]

2006 Acts, ch 1080, §2

Referred to in §235B.19

**633.574 Procedure in lieu of conservatorship.**

If a conservator has not been appointed, money due a minor or other property to which a minor is entitled, not exceeding in the aggregate twenty-five thousand dollars in value, shall be paid or delivered to a custodian under any uniform transfers to minors Act. The written receipt of the custodian constitutes an acquittance of the person making the payment of money or delivery of property.

[C51, §1493, 1494; R60, §2545, 2546; C73, §2243; C97, §3194; C24, 27, 31, 35, 39, §**12575;** C46, 50, 54, 58, 62, §668.3; C66, 71, 73, 75, 77, 79, 81, §633.574; 82 Acts, ch 1052, §2]

84 Acts, ch 1067, §48; 95 Acts, ch 63, §6; 2005 Acts, ch 38, §29

[P] See also chapter 565B, §633.108, 633.681, R.C.P. 1.1228

**633.575 Representation.**

1. In a proceeding for the appointment of a conservator:

*a.* If the proposed ward is an adult and is not the petitioner, the proposed ward is entitled to representation. Upon the filing of the petition, the court shall appoint an attorney to represent the proposed ward, set a hearing on the petition, and provide for notice of the appointment of counsel and the date for hearing.

*b.* If the proposed ward is either a minor or an adult under a standby petition, the court shall determine whether, under the circumstances of the case, the proposed ward is entitled to representation. The determination regarding representation may be made with or without notice to the proposed ward, as the court deems necessary. If the court determines that the proposed ward is entitled to representation, the court shall appoint an attorney to represent the proposed ward. After making the determination regarding representation, the court shall set a hearing on the petition, and provide for notice on the determination regarding representation and the date for hearing.

*c.* The court may take action under paragraph *"a"* or *"b"* prior to the service of the original notice upon the proposed ward.

*d.* The court may reconsider the determination regarding representation upon application by any interested person.

*e.* The court may discharge the attorney appointed by the court if it appears upon the application of the proposed ward or any other interested person that the ward has privately retained an attorney who has filed an appearance on behalf of the proposed ward.

2. The court shall ensure that all proposed wards entitled to representation have been provided with notice of the right to representation and right to be personally present at all proceedings and shall make findings of fact in any order of disposition setting out the manner in which notification was provided.

3. If the proposed ward is entitled to representation and is indigent or incapable of requesting counsel, the court shall appoint an attorney to represent the proposed ward. The cost of court appointed counsel for indigents shall be assessed against the county in which the proceedings are pending. For the purposes of this subsection, the court may find a person is indigent if the person's income and resources do not exceed one hundred fifty percent of the federal poverty level or the person would be unable to pay such costs without prejudicing the person's financial ability to provide economic necessities for the person or the person's dependents.

4. An attorney appointed pursuant to this section, to the extent possible, shall:

*a.* Ensure that the proposed ward has been properly advised of the nature of the proceeding and its purpose.

*b.* Ensure that the proposed ward has been properly advised of the ward's rights in a conservatorship proceeding.

*c.* Personally interview the proposed ward.

*d.* File a written report stating whether there is a return on file showing that proper service on the proposed ward has been made and also stating that specific compliance with paragraphs *"a"* through *"c"* has been made or stating the inability to comply by reason of the proposed ward's condition.

*e.* Represent the proposed ward.

*f.* Ensure that the conservatorship procedures conform to the statutory and due process requirements of Iowa law.

5. In the event that an order of appointment is entered, the attorney appointed pursuant to this section, to the extent possible, shall:

*a.* Inform the proposed ward of the effects of the order entered for appointment of conservator.

*b.* Advise the ward of the ward's rights to petition for modification or termination of conservatorship.

*c.* Advise the ward of the rights retained by the ward.

6. If the court determines that it would be in the ward's best interest to have legal representation with respect to any proceedings in a conservatorship, the court may appoint an attorney to represent the ward at the expense of the ward or the ward's estate, or if the ward is indigent the cost of the court appointed attorney shall be assessed against the county in which the proceedings are pending.

7. If the court determines upon application that it is appropriate or necessary, the court may order that the attorney appointed pursuant to this section be given copies of and access to the proposed ward's health information by describing with reasonable specificity the health information to be disclosed or accessed, for the purpose of fulfilling the attorney's responsibilities pursuant to this section.

84 Acts, ch 1299, §15; 85 Acts, ch 29, §6; 85 Acts, ch 148, §9; 89 Acts, ch 178, §13; 2000 Acts, ch 1036, §5; 2013 Acts, ch 33, §6, 9

Referred to in §633.568

[SP] Subsection 7 applies to all judicial proceedings held on or after July 1, 2013, in which an order for the appointment of a conservatorship is sought or has been issued; 2013 Acts, ch 33, §9

[T] NEW subsection 7

**633.576 Notification of conservatorship powers.**

In a proceeding for the appointment of a conservator, the proposed ward shall be given written notice which advises the proposed ward that if a conservator is appointed, the conservator may, without court approval, manage the proposed ward's principal, income, and investments, sue and defend any claim by or against the ward, sell and transfer personal property, and vote at corporate meetings. The notice shall also advise the proposed ward that, upon the court's approval, the conservator may invest the ward's funds, execute leases, make payments to or for the benefit of the ward, support the ward's legal dependents, compromise or settle any claim, and do any other thing that the court determines is in the ward's best interests. The notice shall clearly advise the proposed ward, in boldface type of a minimum size of ten points, of the right to counsel and the potential deprivation of the proposed ward's civil rights. The notice shall also state that the proposed ward may use the ward's own attorney instead of an attorney appointed by the court. In an involuntary conservatorship proceeding, the notice shall be served upon the proposed ward with the notice of the filing of the petition as provided in section 633.568.

89 Acts, ch 178, §14; 2000 Acts, ch 1036, §6

Referred to in §633.572, 633.591

**633.577 through 633.579** Reserved.

## PART 3

## CONSERVATORSHIPS FOR ABSENTEES

**633.580 Petition for appointment of conservator for absentee.**

When a person owns property located in the state of Iowa, the person's whereabouts are unknown, and no provision for the care, control, and supervision of such property has been made, with the result that such property is likely to be lost or damaged, or that the dependents of such owner are likely to be deprived of means of support because of such absence, it shall be proper for any person to file with the clerk a petition for the appointment of a conservator

of such property of the absentee. The petition shall state the following information, so far as known to the petitioner:

1. The name, age, and last known post office address of the proposed ward.
2. The facts concerning the disappearance of the absentee.
3. The name and post office address of the proposed conservator, and that the proposed conservator is qualified to serve in that capacity.
4. A general description of the property of the proposed ward within this state and of the proposed ward's right to receive property; also, the estimated present value of the real estate, the estimated value of the personal property, and the estimated gross annual income of the estate. If any money is payable, or to become payable, to the proposed ward by the United States through the United States department of veterans affairs, the petition shall so state.
5. That the property of the absentee is likely to be lost or damaged, or that the absentee's dependents are likely to be deprived of means of support, because of the absence, and that no proper provision has been made for the care, control, and supervision over such property.

[S13, §3228-a; C24, 27, 31, 35, 39, §**12632;** C46, 50, 54, 58, 62, §671.1; C66, 71, 73, 75, 77, 79, 81, §633.580]

2009 Acts, ch 26, §19

**633.581 Original notice governed by rules of civil procedure.**

Notice of the filing of such a petition and of the hearing thereon shall be served upon the absentee by publication in the manner of an original notice and the rules of civil procedure governing original notices by publication shall also govern such a notice as to content.

[S13, §3228-a; C24, 27, 31, 35, 39, §**12633;** C46, 50, 54, 58, 62, §671.2; C66, 71, 73, 75, 77, 79, 81, §633.581]

**633.582 Notice on county attorney.**

Such notice shall also be served on the county attorney of the county in which the petition is filed and on the spouse and children of the absentee as provided by the rules of civil procedure. If there is no spouse or children, such notice shall be served on such persons and in such manner as the court may prescribe.

[S13, §3228-a; C24, 27, 31, 35, 39, §**12634;** C46, 50, 54, 58, 62, §671.3; C66, 71, 73, 75, 77, 79, 81, §633.582]

**633.583 Pleadings and trial — rules of civil procedure.**

All other pleadings and the trial of the cause shall be governed by the rules of civil procedure.

[S13, §3228-a; C24, 27, 31, 35, 39, §**12635;** C46, 50, 54, 58, 62, §671.4; C66, 71, 73, 75, 77, 79, 81, §633.583]

**633.584 Appointment of conservator.**

In the event that the absentee does not appear at said hearing, the court shall hear the petition and the proof offered. All evidence shall be made a part of a transcript to be filed in such proceedings. If the allegations of the petition are proved, the court may appoint a conservator.

[S13, §3228-b, -c; C24, 27, 31, 35, 39, §**12636, 12637, 12639;** C46, 50, 54, 58, 62, §671.5, 671.6, 671.8; C66, 71, 73, 75, 77, 79, 81, §633.584]

**633.585 Appointment of temporary conservator.**

A temporary conservator may be appointed, but only after a hearing on such notice, and subject to such conditions as the court shall prescribe.

[C66, 71, 73, 75, 77, 79, 81, §633.585]

**633.586 through 633.590** Reserved.

## PART 4

## STANDBY CONSERVATORSHIPS

**633.591 Voluntary petition for appointment of conservator — standby basis.**

Any person of full age and sound mind may execute a verified petition for the voluntary appointment of a conservator of the person's property upon the express condition that such petition shall be acted upon by the court only upon the occurrence of an event specified or the existence of a described condition of the mental or physical health of the petitioner, the occurrence of which event, or the existence of which condition, shall be established in the manner directed in the petition. The petition, if executed on or after January 1, 1991, shall advise the proposed ward of a conservator's powers as provided in section 633.576.

[C66, 71, 73, 75, 77, 79, 81, §633.591]

89 Acts, ch 178, §15; 90 Acts, ch 1036, §2; 91 Acts, ch 36, §7

Referred to in §633.560, 633.634

**633.591A Voluntary petition for appointment of conservator for a minor — standby basis.**

A person having physical and legal custody of a minor may execute a verified petition for the appointment of a standby conservator of the proposed ward's property, upon the express condition that the petition shall be acted upon by the court only upon the occurrence of an event specified or the existence of a described condition of the mental or physical health of the petitioner, the occurrence of which event, or the existence of which condition, shall be established in the manner directed in the petition.

94 Acts, ch 1153, §11

Referred to in §633.560

**633.592 Petition may nominate conservator.**

Such petition may nominate a person for appointment to serve as such conservator, and may request that the appointment be made without bond, or with bond of a certain stated sum. The court in appointing the conservator shall give due regard to such nomination and other requests and recommendations contained in the petition.

[C66, 71, 73, 75, 77, 79, 81, §633.592]

Referred to in §633.560

**633.593 Deposit of petition.**

Such petition may be deposited with the clerk of the county in which the party resides, or with any person, firm, bank or trust company selected by the petitioner.

[C66, 71, 73, 75, 77, 79, 81, §633.593]

Referred to in §633.560, 633.595

**633.594 Revocation of petition.**

Such petition may be revoked by the petitioner at any time before appointment of a conservator by the court, provided that the petitioner is of sound mind. Revocation shall be accomplished by the destruction of the petition by the petitioner, or by the execution of an acknowledged instrument of revocation. If the petition has been deposited with the clerk, the revocation may likewise be deposited there.

[C66, 71, 73, 75, 77, 79, 81, §633.594]

Referred to in §633.560

**633.595 Filing petition upon occurrence of condition.**

At any time after the deposit of the petition with the clerk, and before its revocation, it may be brought on for hearing by the filing of a verified statement to the effect that the occurrence of the event or the condition provided for in the petition has come to pass. If the petition has not been deposited with the clerk under the provisions of section 633.593, then it may be

brought on for hearing at any time by the filing of it and such a verified statement with the clerk of the county in which the person who executed the petition then resides.

[C66, 71, 73, 75, 77, 79, 81, §633.595]

Referred to in §633.560

**633.596 Considerations — appointment of conservator.**

At the time a standby petition is filed under this part, the court shall consider whether a limited conservatorship, as authorized in section 633.637, is appropriate.

[C66, 71, 73, 75, 77, 79, 81, §633.596]

97 Acts, ch 178, §12

Referred to in §633.560

**633.597 Conservator shall have same powers and duties.**

The powers and duties of such a conservator shall be the same as those of a conservator appointed in response to any of the other petitions authorized in this probate code.

[C66, 71, 73, 75, 77, 79, 81, §633.597]

2005 Acts, ch 38, §51

Referred to in §633.560

**633.598 through 633.602** Reserved.

## PART 5

## FOREIGN CONSERVATORS

**633.603 Appointment of foreign conservators.**

When there is no conservatorship, nor any application therefor pending, in this state, the duly qualified foreign conservator or guardian of a nonresident ward may, upon application, be appointed conservator of the property of such person in this state; provided that a resident conservator is appointed to serve with the foreign conservator; and provided further, that for good cause shown, the court may appoint the foreign conservator to act alone without the appointment of a resident conservator.

[C51, §1512; R60, §2564; C73, §2266; C97, §3213; C24, 27, 31, 35, 39, §**12606;** C46, 50, 54, 58, 62, §669.1; C66, 71, 73, 75, 77, 79, 81, §633.603]

**633.604 Application.**

The application for appointment of a foreign conservator or guardian as conservator in this state shall include the name and address of the nonresident ward, and of the nonresident conservator or guardian, and the name and address of the resident conservator to be appointed. It shall be accompanied by a certified copy of the original letters or other authority conferring the power upon the foreign conservator or guardian to act as such. The application shall also state the cause for the appointment of the foreign conservator to act as sole conservator, if such be the case.

[C51, §1513; R60, §2565; C73, §2267; C97, §3214; C24, 27, 31, 35, 39, §**12607;** C46, 50, 54, 58, 62, §669.2; C66, 71, 73, 75, 77, 79, 81, §633.604]

**633.605 Personal property.**

A foreign conservator or guardian of a nonresident may be authorized by the court of the county wherein such ward has personal property to receive the same upon compliance with the provisions of sections 633.606, 633.607 and 633.608.

[C73, §2269; C97, §3216; C24, 27, 31, 35, 39, §**12609;** C46, 50, 54, 58, 62, §669.4; C66, 71, 73, 75, 77, 79, 81, §633.605]

**633.606 Copy of bond.**

Such foreign conservator or guardian shall file in the office of the clerk in the county where the property is situated, a certified copy of the conservator's or guardian's official bond,

duly authenticated by the court granting the letters, and shall also execute a receipt for the property received by the conservator or guardian.

[C51, §1514; R60, §2566; C73, §2268, 2270; C97, §3215, 3217; C24, 27, 31, 35, 39, §**12608, 12610;** C46, 50, 54, 58, 62, §669.3, 669.5; C66, 71, 73, 75, 77, 79, 81, §633.606]

Referred to in §633.605

**633.607 Order for delivery.**

Upon the filing of the bond as above provided, and the court being satisfied with the amount thereof, it shall order the personal property of the ward delivered to such conservator or guardian.

[C73, §2271; C97, §3218; C24, 27, 31, 35, 39, §**12611;** C46, 50, 54, 58, 62, §669.6; C66, 71, 73, 75, 77, 79, 81, §633.607]

Referred to in §633.605

**633.608 Recording of bond — notice to court.**

The clerk shall record the bonds and the receipt, and notify by mail the court which granted the letters of conservatorship or guardianship of the amount of property delivered to the fiduciary and the date of delivery thereof.

[C73, §2271; C97, §3218; C24, 27, 31, 35, 39, §**12612;** C46, 50, 54, 58, 62, §669.7; C66, 71, 73, 75, 77, 79, 81, §633.608]

Referred to in §633.605

**633.609 through 633.613** Reserved.

## PART 6

## CONSERVATORSHIPS INVOLVING VETERANS ADMINISTRATION

**633.614 Application of other provisions to veterans' conservatorships.**

Whenever moneys are paid or are payable pursuant to any law of the United States through the United States department of veterans affairs to a conservator or a guardian, the provisions of sections 633.615, 633.617, and 633.622 shall apply to the administration of said moneys. However, such provisions shall be construed to be supplementary to the other provisions for conservators, and shall not be exclusive of such provisions.

[C31, 35, §12644-c2; C39, §**12644.02;** C46, 50, 54, 58, 62, §672.2; C66, 71, 73, 75, 77, 79, 81, §633.614]

2009 Acts, ch 26, §20

**633.615 Secretary of veterans affairs — party in interest.**

The secretary of veterans affairs of the United States, the secretary's successor, or the designee of either, shall be a party in interest in any proceeding for the appointment or removal of a conservator, or for the termination of the conservatorship, and in any suit or other proceeding, including reports and accountings, affecting in any manner the administration of those assets that were derived in whole or in part from benefits paid by the United States department of veterans affairs. Not less than fifteen days prior to the time set for a hearing in any such matters, notice, in writing, of the time and place thereof shall be given by mail to the office of the United States department of veterans affairs having jurisdiction over the area in which such matter is pending.

[C31, 35, §12644-c4, -c11; C39, §**12644.04, 12644.11;** C46, 50, 54, 58, 62, §672.4, 672.11; C66, 71, 73, 75, 77, 79, 81, §633.615]

2009 Acts, ch 26, §21

Referred to in §633.614

**633.616** Repealed by 75 Acts, ch 208, § 17.

**633.617 Ward rated incompetent by United States department of veterans affairs.**

Upon the trial of an issue arising upon a prayer for the appointment of either a temporary or a permanent conservator, a certificate of the secretary of the United States department of veterans affairs, or the secretary's representative, setting forth the fact that the defendant veteran has been rated incompetent by the United States department of veterans affairs upon examination in accordance with the laws and regulations governing the United States department of veterans affairs, shall be prima facie evidence of the necessity for such appointment, and the court may appoint a conservator for the property of such person.

[C31, 35, §12644-c3, -c7; C39, §**12644.03, 12644.07;** C46, 50, 54, 58, 62, §672.3, 672.7; C66, 71, 73, 75, §633.616; C77, 79, 81, §633.617]

2009 Acts, ch 26, §22

Referred to in §633.614

**633.618 through 633.621** Repealed by 75 Acts, ch 208, § 17.

**633.622 Bond requirements.**

In administering moneys paid by the United States department of veterans affairs, the conservator, unless it is a bank or trust company qualified to act as a fiduciary in this state, shall execute and file with the clerk a bond by a recognized surety company equal to such moneys and the annual income therefrom, plus the expected annual United States department of veterans affairs benefit payments.

[C31, 35, §12644-c14, -c15; C39, §**12644.14, 12644.15;** C46, 50, 54, 58, 62, §672.14, 672.15; C66, 71, 73, 75, 77, 79, 81, §633.622]

2009 Acts, ch 26, §23

Referred to in §633.614

**633.623 through 633.626** Reserved.

## PART 7

## COMBINING PETITION FOR GUARDIAN AND CONSERVATOR

**633.627 Combining petitions.**

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

[C66, 71, 73, 75, 77, 79, 81, §633.627]

Referred to in §633.27A

**633.628 Same person as guardian and conservator.**

The same person may be appointed to serve as both guardian and conservator.

[C66, 71, 73, 75, 77, 79, 81, §633.628]

**633.629 through 633.632** Reserved.

# DIVISION XIV

# ADMINISTRATION OF GUARDIANSHIPS AND CONSERVATORSHIPS

## PART 1

## APPOINTMENT AND QUALIFICATION OF GUARDIANS AND CONSERVATORS

**633.633 Provisions applicable to all fiduciaries shall govern.**

The provisions of this probate code applicable to all fiduciaries shall govern the appointment, qualification, oath and bond of guardians and conservators, except that a guardian shall not be required to give bond unless the court, for good cause, finds that the best interests of the ward require a bond. The court shall then fix the terms and conditions of such bond.

[C51, §1496; R60, §2548; C73, §2246; C97, §3197; S13, §3228-d; C24, 27, §12577 – 12579, 12640; C31, 35, §12577 – 12579, 12640, 12644-c9; C39, §**12577 – 12579, 12640, 12644.09;** C46, 50, 54, 58, 62, §668.5 – 668.7, 671.9, 672.9; C66, 71, 73, 75, 77, 79, §633.634; C81, §633.633]

2005 Acts, ch 38, §51

**633.633A Liability of guardians and conservators.**

Guardians and conservators shall not be held personally liable for actions or omissions taken or made in the official discharge of the guardian's or conservator's duties, except for any of the following:

1. A breach of fiduciary duty imposed by this probate code.
2. Willful or wanton misconduct in the official discharge of the guardian's or conservator's duties.

89 Acts, ch 178, §16; 2005 Acts, ch 38, §51

Referred to in §602.8102(105A)

**633.633B Tort liability of guardians and conservators.**

The fact that a person is a guardian or conservator shall not in itself make the person personally liable for damages for the acts of the ward.

89 Acts, ch 178, §17

Referred to in §602.8102(105A)

**633.634 Combination of voluntary and standby petitions with involuntary petition for hearing.**

If prior to the time of hearing on a petition for the appointment of a guardian or a conservator, a petition is filed under the provisions of section 633.557, 633.572 or 633.591, the court shall combine the hearing on such petitions and determine who shall be appointed guardian or conservator, and such petition shall be triable to the court.

[C66, 71, 73, 75, 77, 79, §633.635; C81, §633.634]

Referred to in §633.557, 633.572

**633.635 Responsibilities of guardian.**

1. Based upon the evidence produced at the hearing, the court may grant a guardian the following powers and duties which may be exercised without prior court approval:

*a.* Providing for the care, comfort and maintenance of the ward, including the appropriate training and education to maximize the ward's potential.

*b.* Taking reasonable care of the ward's clothing, furniture, vehicle and other personal effects.

*c.* Assisting the ward in developing maximum self-reliance and independence.

*d.* Ensuring the ward receives necessary emergency medical services.

*e.* Ensuring the ward receives professional care, counseling, treatment, or services as needed. If necessitated by the physical or mental disability of the ward, the provision of

professional care, counseling, treatment, or services limited to the provision of routine physical and dental examinations and procedures under anesthesia is included, if the anesthesia is provided within the scope of the health care practitioner's scope of practice.

*f.* Any other powers or duties the court may specify.

2. A guardian may be granted the following powers which may only be exercised upon court approval:

*a.* Changing, at the guardian's request, the ward's permanent residence if the proposed new residence is more restrictive of the ward's liberties than the current residence.

*b.* Arranging the provision of major elective surgery or any other nonemergency major medical procedure. For the purposes of this paragraph, "*major elective surgery*" and "*nonemergency major medical procedure*" do not include the provision to the ward of professional care, counseling, treatment, or services limited to the provision of routine physical and dental examinations and procedures under anesthesia, if the use of anesthesia is necessitated by the physical or mental disability of the ward, and if the anesthesia is provided within the scope of the health care practitioner's scope of practice.

*c.* Consent to the withholding or withdrawal of life-sustaining procedures in accordance with chapter 144A.

3. For the purposes of this section:

*a.* "*Routine dental examinations and procedures*" includes preventive services, diagnostic services, restorative services, periodontal services, endodontic services, oral surgery, prosthetic services, and orthodontic procedures.

*b.* "*Routine physical examinations and procedures*" includes examinations and procedures performed for the purpose of general treatment or diagnosis or for the purpose of treatment or diagnosis related to a specific illness, symptom, complaint, or injury.

4. The court may take into account all available information concerning the capabilities of the ward and any additional evaluation deemed necessary, including the availability of third-party assistance to meet the needs of the ward or proposed ward, and may direct that the guardian have only a specially limited responsibility for the ward. In that event, the court shall state those areas of responsibility which shall be supervised by the guardian and all others shall be retained by the ward. The court may make a finding that the ward lacks the capacity to contract a valid marriage.

5. From time to time, upon a proper showing, the court may modify the respective responsibilities of the guardian and the ward, after notice to the ward and an opportunity to be heard. Any modification that would be more restrictive or burdensome for the ward shall be based on clear and convincing evidence that the ward continues to fall within the categories of section 633.552, subsection 2, paragraph "*a*" or "*b*", and that the facts justify a modification of the guardianship. Section 633.551 applies to the modification proceedings. Any modification that would be less restrictive for the ward shall be based upon proof in accordance with the requirements of section 633.675.

[C81, §633.635]

84 Acts, ch 1299, §16; 85 Acts, ch 29, §7; 87 Acts, ch 100, §2; 91 Acts, ch 93, §4; 97 Acts, ch 178, §13, 14; 2000 Acts, ch 1063, §1 – 3

Referred to in §144A.7, 633.551, 633.556, 633.557, 633.560

## PART 2

## RIGHTS AND TITLE OF WARD

**633.636 Effect of appointment of guardian or conservator.**

The appointment of a guardian or conservator shall not constitute an adjudication that the ward is of unsound mind.

[C66, 71, 73, 75, 77, 79, 81, §633.636]

**633.637 Powers of ward.**

A ward for whom a conservator has been appointed shall not have the power to convey, encumber, or dispose of property in any manner, other than by will if the ward possesses the requisite testamentary capacity, unless the court determines that the ward has a limited ability to handle the ward's own funds. If the court makes such a finding, it shall specify to what extent the ward may possess and use the ward's own funds.

Any modification of the powers of the ward that would be more restrictive of the ward's control over the ward's financial affairs shall be based upon clear and convincing evidence and the burden of persuasion is on the conservator. Any modification that would be less restrictive of the ward's control over the ward's financial affairs shall be based upon proof in accordance with the requirements of section 633.675.

[C66, 71, 73, 75, 77, 79, 81, §633.637]

97 Acts, ch 178, §15

Referred to in §633.551, 633.570, 633.572, 633.596, 633.638

**633.638 Presumption of fraud.**

If a conservator be appointed, all contracts, transfers and gifts made by the ward after the filing of the petition shall be presumed to be a fraud against the rights and interest of the ward except as otherwise directed by the court pursuant to section 633.637.

[C24, 27, 31, 35, 39, §**12622;** C46, 50, 54, 58, 62, §670.10; C66, 71, 73, 75, 77, 79, 81, §633.638]

[P] See also §633.650

**633.639 Title to ward's property.**

The title to all property of the ward is in the ward and not the conservator subject, however, to the possession of the conservator and to the control of the court for the purposes of administration, sale or other disposition, under the provisions of the law. Any real property titled at any time in the name of a conservatorship shall be deemed to be titled in the ward's name subject to the conservator's right of possession.

[C66, 71, 73, 75, 77, 79, 81, §633.639]

2009 Acts, ch 52, §8, 14

[SP] 2009 amendment to this section applies retroactively to conveyances occurring on or after July 1, 1999; 2009 Acts, ch 52, §14

**633.640 Conservator's right to possession.**

Every conservator shall have a right to, and shall take, possession of all of the real and personal property of the ward. The conservator shall pay the taxes and collect the income therefrom until the conservatorship is terminated. The conservator may maintain an action for the possession of the property, and to determine the title to the same.

[C73, §2245; C97, §3196; C24, 27, 31, 35, 39, §**12584, 12585;** C46, 50, 54, 58, 62, §668.11, 668.12; C66, 71, 73, 75, 77, 79, 81, §633.640]

## PART 3

## DUTIES AND POWERS OF CONSERVATOR

**633.641 Duties of conservator.**

It is the duty of the conservator of the estate to protect and preserve it, to invest it prudently, to account for it as herein provided, and to perform all other duties required of the conservator by law, and at the termination of the conservatorship, to deliver the assets of the ward to the person entitled thereto.

The conservator shall report to the department of human services the assets and income of any ward receiving medical assistance under chapter 249A. Reports shall be made upon establishment of a conservatorship for an individual applying for or receiving medical assistance, upon application for benefits on behalf of the ward, upon annual or semiannual review of continued medical assistance eligibility, when any significant change in principal or income occurs in the conservatorship account, or as otherwise requested by the department of human services. Written reports shall be provided to the department of human services

county office for the county in which the ward resides or the county office in which the ward's medical assistance is administered.

[C51, §1499; R60, §2551; C73, §2250; C97, §3200; S13, §3228-d; C24, 27, 31, 35, 39, §**12581, 12640;** C46, 50, 54, 58, 62, §668.9, 671.9; C66, 71, 73, 75, 77, 79, 81, §633.641]

94 Acts, ch 1112, §2

**633.642** Repealed by 85 Acts, ch 29, § 11.

**633.643 Disposal of will by conservator.**

When an instrument purporting to be the will of the ward comes into the hands of a conservator, the conservator shall immediately deliver it to the court.

[C66, 71, 73, 75, 77, 79, 81, §633.643]

Referred to in §633.644, 633.645

**633.644 Court order to preserve testamentary intent of ward.**

Upon receiving an instrument purporting to be the will of a living ward under the provisions of section 633.643, the court may open said will and read it. The court with or without notice, as it may determine, may enter such orders in the conservatorship as it deems advisable for the proper administration of the conservatorship in light of the expressed testamentary intent of the ward.

[C66, 71, 73, 75, 77, 79, 81, §633.644]

**633.645 Court to deliver will to clerk.**

An instrument purporting to be the will of a ward coming into the hands of the court under the provisions of section 633.643, shall thereafter be resealed by the court and be deposited with the clerk to be held by said clerk as provided in sections 633.286 through 633.289.

[C66, 71, 73, 75, 77, 79, 81, §633.645]

**633.646 Powers of the conservator without order of court.**

The conservator shall have the full power, without prior order of court, with relation to the estate of the ward:

1. To collect, receive, receipt for any principal or income, and to enforce, defend against or prosecute any claim by or against the ward or the conservator; to sue on and defend claims in favor of, or against, the ward or the conservator.
2. To sell and transfer personal property of a perishable nature and personal property for which there is a regularly established market.
3. To vote at corporate meetings in person or by proxy.
4. To receive additional property from any source.
5. Notwithstanding the provisions of chapter 633A, subchapter IV, part 3, to continue to hold any investment or other property originally received by the conservator, and also any increase thereof, pending the timely filing of the first annual report.

[S13, §3228-d; C24, 27, 31, 35, 39, §**12640;** C46, 50, 54, 58, 62, §671.9; C66, 71, 73, 75, 77, 79, 81, §633.646]

99 Acts, ch 125, §107, 109; 2005 Acts, ch 38, §55

**633.647 Powers of conservator subject to the approval of the court.**

Conservators shall have the following powers subject to the approval of the court after hearing on such notice, if any, as the court may prescribe:

1. To invest the funds belonging to the ward.
2. To execute leases.
3. To make payments to, or for the benefit of, the ward in any of the following ways:

*a.* Directly to the ward;
*b.* Directly for the maintenance, welfare and education of the ward;
*c.* To the legal guardian of the person of the ward; or
*d.* To anyone who at the time shall have the custody and care of the person of the ward.

4. To apply any portion of the income or of the estate of the ward for the support of any person for whose support the ward is legally liable.

5. To compromise or settle any claim by or against the ward or the conservator; to adjust, arbitrate or compromise claims in favor of or against the ward or the conservator.

6. To make an election for the ward who is a surviving spouse as provided in sections 633.236 and 633.240.

7. To exercise the right to disclaim on behalf of the ward as provided in section 633E.5.

8. To do any other thing that the court determines to be to the best interests of the ward and the ward's estate.

[C97, §3225; S13, §3225, 3228-d; C24, 27, 31, 35, 39, §**12629, 12640;** C46, 50, 54, 58, 62, §670.17, 671.9; C66, 71, 73, 75, 77, 79, 81, §633.647]

88 Acts, ch 1064, §7; 2002 Acts, ch 1086, §3, 21; 2004 Acts, ch 1015, §7; 2005 Acts, ch 38, §55

Referred to in §633.648

**633.648 Appointment of attorney in compromise of personal injury settlements.**

Notwithstanding the provisions of section 633.647 prior to authorizing a compromise of a claim for damages on account of personal injuries to the ward, the court may order an independent investigation by an attorney other than by the attorney for the conservator. The cost of such investigation, including a reasonable attorney fee, shall be taxed as part of the cost of the conservatorship.

[C66, 71, 73, 75, 77, 79, 81, §633.648]

**633.649 Powers of conservators — same as all fiduciaries.**

Except as expressly modified herein, conservators shall have the powers relating to all fiduciaries as set out in sections 633.63 to 633.162.

[S13, §3228-d; C24, 27, 31, 35, 39, §**12640;** C46, 50, 54, 58, 62, §671.9; C66, 71, 73, 75, 77, 79, 81, §633.649]

**633.650 Breach of contracts.**

Under order of court, for good cause shown, after such notice as the court may prescribe, a conservator shall have the power to breach contracts of the ward entered into by the ward prior to the appointment of the conservator, thereby incurring such liability of the ward's estate for such breach as the ward would have incurred for such breach if the ward had been competent.

[R60, §1454; C73, §2277; C97, §3226; C24, 27, 31, 35, 39, §**12586;** C46, 50, 54, 58, 62, §668.13; C66, 71, 73, 75, 77, 79, 81, §633.650]

[P] See also §633.638

**633.651** Repealed by 89 Acts, ch 178, § 21.

## PART 4

## TRANSFERRING, ENCUMBERING, AND LEASING PROPERTY BY CONSERVATOR

**633.652 Procedure applicable to personal representatives shall govern.**

Conservators shall have the power to sell, mortgage, exchange, pledge and lease real and personal property belonging to the ward, including the homestead and exempt personal property, when it appears to be to the best interests of the ward, in the same manner and by the same procedure that is provided in this probate code for sale, mortgage, exchange, pledge and lease by personal representatives in administration of estates of decedents.

[C51, §1500 – 1508; R60, §1453, 2552 – 2560; C73, §2257 – 2265, 2276; C97, §3206 – 3212, 3225; S13, §3225; C24, 27, 31, §12587 – 12596, 12628; C35, §12587 – 12596, 12628, 12644-g1,

-g2, -g3, -g4, -g5; C39, §**12587 – 12596, 12628, 12644.21 – 12644.25;** C46, 50, 54, 58, 62, §668.14 – 668.23, 670.16, 673.1 – 673.5; C66, 71, 73, 75, 77, 79, 81, §633.652]
2005 Acts, ch 38, §51
[P] See §597.6 – 597.9

## PART 5

## CLAIMS

**633.653 Claims against the ward, the conservatorship or the conservator in that capacity.**
Claims accruing before or after the appointment of the conservator, and whether arising in contract or tort or otherwise, after being allowed or established as provided in sections 633.654 to 633.656, shall be paid by the conservator from the assets of the conservatorship.
[C66, 71, 73, 75, 77, 79, 81, §633.653]

**633.653A Claims for cost of medical care or services.**
The provision of medical care or services to a ward who is a recipient of medical assistance under chapter 249A creates a claim against the conservatorship for the amount owed to the provider under the medical assistance program for the care or services. The amount of the claim, after being allowed or established as provided in this part, shall be paid by the conservator from the assets of the conservatorship.
93 Acts, ch 106, §9

**633.654 Form and verification of claims — general requirements.**
No claim shall be allowed against the estate of a ward upon application of the claimant unless it shall be in writing, filed in duplicate with the clerk, stating the claimant's name and address, and describing the nature and the amount thereof, if ascertainable. It shall be accompanied by the affidavit of the claimant, or of someone for the claimant, that the amount is justly due, or if not due, when it will or may become due, that no payments have been made thereon which are not credited, and that there are no offsets to the same, to the knowledge of the affiant, except as therein stated. The duplicate of said claim shall be mailed by the clerk to the conservator or the conservator's attorney of record; however, valid contract claims arising in the ordinary course of the conduct of the business or affairs of the ward by the conservator may be paid by the conservator without requiring affidavit or filing.
[C66, 71, 73, 75, 77, 79, 81, §633.654]
Referred to in §633.653, 633.664

**633.655 Requirements when claim founded on written instrument.**
If a claim is founded upon a written instrument, the original of such instrument, or a copy thereof, with all endorsements, must be attached to the claim. The original instrument must be exhibited to the conservator or to the court, upon demand, unless it has been lost or destroyed, in which case, its loss or destruction must be stated in the claim.
[C51, §1359; R60, §2391; C73, §2408; C97, §3338; C24, 27, 31, 35, 39, §**11957, 11958;** C46, 50, 54, 58, 62, §635.53, 635.54; C66, 71, 73, 75, 77, 79, 81, §633.655]
Referred to in §633.653

**633.656 How claim entitled.**
All claims filed against the estate of the ward shall be entitled in the name of the claimant against the conservator as such, naming the conservator, and in all further proceedings thereon, this title shall be preserved.
[C73, §2409; C97, §3339; C24, 27, 31, 35, 39, §**11960;** C46, 50, 54, 58, 62, §635.56; C66, 71, 73, 75, 77, 79, 81, §633.656]
Referred to in §633.653

**633.657 Filing of claim required.**
The filing of a claim in the conservatorship tolls the statute of limitations applicable to such claim.
[C66, 71, 73, 75, 77, 79, 81, §633.657]

**633.658 Compelling payment of claims.**
No claimant shall be entitled to compel payment until the claimant's claim has been duly filed and allowed.
[C66, 71, 73, 75, 77, 79, 81, §633.658]
Referred to in §633.664

**633.659 Allowance by conservator.**
When a claim has been filed and has been admitted in writing by the conservator, it shall stand allowed, in the absence of fraud or collusion.
[C66, 71, 73, 75, 77, 79, 81, §633.659]

**633.660 Execution and levy prohibited.**
No execution shall issue upon, nor shall any levy be made against, any property of the estate of a ward under any judgment against the ward or a conservator, but the provisions of this section shall not be so construed as to prevent the enforcement of a mortgage, pledge or other lien upon property in an appropriate proceeding.
[C66, 71, 73, 75, 77, 79, 81, §633.660]

**633.661 Claims of conservators.**
If the conservator is a creditor of the ward, the conservator shall file the claim as other creditors, and the court shall appoint some competent person as temporary conservator to represent the ward at the hearing on the conservator's claim. The same procedure shall be followed in the case of coconservators where all such conservators are creditors of the ward; but if one of the coconservators is not a creditor of the ward, such disinterested conservator shall represent the ward at the hearing on any claim against the ward by a coconservator.
[C51, §1369; R60, §2401; C73, §2417; C97, §3346; C24, 27, 31, 35, 39, §**11968;** C46, 50, 54, 58, 62, §635.64; C66, 71, 73, 75, 77, 79, 81, §633.661]

**633.662 Claims not filed.**
The conservator may pay any valid claim against the estate of the ward even though such claim has not been filed, but all such payments made by the conservator shall be at the conservator's own peril.
[C66, 71, 73, 75, 77, 79, 81, §633.662]

**633.663 Waiver of statute of limitations by conservator.**
It shall be within the discretion of the conservator to determine whether or not the applicable statute of limitation shall be invoked to bar a claim which the conservator believes to be just, and the conservator's decision as to the invoking of such statute shall be final.
[C66, 71, 73, 75, 77, 79, 81, §633.663]

**633.664 Liens not affected by failure to file claim.**
Nothing in sections 633.654 and 633.658 shall affect or prevent an action or proceeding to enforce any mortgage, pledge or other lien upon the property of the ward.
[C66, 71, 73, 75, 77, 79, 81, §633.664]

**633.665 Separate actions and claims.**
Any action pending against the ward at the time the conservator is appointed shall also be considered a claim filed in the conservatorship if notice of substitution is served on the conservator as defendant, and a duplicate of the proof of service of notice of such proceeding is filed in the conservatorship proceeding.
A separate action based on a debt or other liability of the ward may be commenced against the conservator as such in lieu of filing a claim in the conservatorship. Such an action shall

be commenced by serving an original notice on the conservator and filing a duplicate of the proof of service of notice of such proceeding in the conservatorship proceeding. Such an action shall also be considered a claim filed in the conservatorship. Such an action may be commenced only in a county where the venue would have been proper if there were no conservatorship and the action had been commenced against the ward.

[C66, 71, 73, 75, 77, 79, 81, §633.665]

Referred to in §633.666

**633.666 Denial and contest of claims.**

The provisions of sections 633.438 to 633.448 shall be applicable to the denial and contest of claims against conservatorships, but shall not be applicable to actions continued or commenced under section 633.665.

[C66, 71, 73, 75, 77, 79, 81, §633.666]

**633.667 Payment of claims in insolvent conservatorships.**

When it appears that the assets in a conservatorship are insufficient to pay in full all the claims against such conservatorship, the conservator shall report such matter to the court, and the court shall, upon hearing, with notice to all persons who have filed claims in the conservatorship, make an order for the pro rata payment of claims giving claimants the same priority, if any, as they would have if the ward were not under conservatorship.

[R60, §1455; C73, §2278; C97, §3227; C24, 27, 31, 35, 39, §**12630;** C46, 50, 54, 58, 62, §670.18; C66, 71, 73, 75, 77, 79, 81, §633.667]

## PART 6

## GIFTS

**633.668 Conservator may make gifts.**

For good cause shown and under order of court, a conservator may make gifts on behalf of the ward out of the assets under a conservatorship to persons or religious, educational, scientific, charitable, or other nonprofit organizations to whom or to which such gifts were regularly made prior to the commencement of the conservatorship, or on a showing to the court that such gifts would benefit the ward or the ward's estate from the standpoint of income, gift, estate or inheritance taxes. The making of gifts out of the assets must not foreseeably impair the ability to provide adequately for the best interests of the ward.

[C66, 71, 73, 75, 77, 79, 81, §633.668]

85 Acts, ch 29, §8

## PART 7

## GUARDIAN'S REPORTS

**633.669 Reporting requirements — assistance by clerk.**

1. A guardian appointed under this chapter shall file with the court the following written verified reports:

*a.* An initial report within sixty days of the guardian's appointment.

*b.* An annual report, within ninety days of the close of the reporting period, unless the court otherwise orders on good cause shown.

*c.* A final report within thirty days of the termination of the guardianship under section 633.675 unless that time is extended by the court.

2. Reports required by this section must include:

*a.* The current mental and physical condition of the ward.

*b.* The present living arrangement of the ward, including a description of each residence where the ward has resided during the reporting period.

*c.* A summary of the medical, educational, vocational and other professional services provided for the ward.

*d.* A description of the guardian's visits with and activities on behalf of the ward.

*e.* A recommendation as to the need for continued guardianship.

*f.* Other information requested by the court or useful in the opinion of the guardian.

3. The court shall develop a simplified uniform reporting form for use in filing the required reports.

4. The clerk of the court shall notify the guardian in writing of the reporting requirements and shall provide information and assistance to the guardian in filing the reports.

5. Reports of guardians shall be reviewed and approved by a district court judge or referee.

6. Reports required by this section shall, if requested, be served on the attorney appointed to represent the ward in the guardianship proceeding and all other parties appearing in the proceeding.

[C66, 71, 73, 75, 77, 79, 81, §633.669]

84 Acts, ch 1299, §17; 85 Acts, ch 29, §9; 2007 Acts, ch 134, §16, 28

Referred to in §232.104

## PART 8

## CONSERVATOR'S INVENTORY AND REPORTS

**633.670 Inventory — reporting requirements.**

1. A conservator appointed under this chapter shall file with the court:

*a.* An inventory within sixty days of the conservator's appointment. This inventory shall include all property of the ward that has come into the conservator's possession or of which the conservator has knowledge. When additional property comes into the possession of the conservator or to the knowledge of the conservator, a supplemental inventory shall be filed within thirty days.

*b.* Written verified reports and accountings as follows:

(1) Annually, within ninety days of the close of the reporting period, unless the court otherwise orders on good cause shown.

(2) Within thirty days following the date of removal.

(3) Upon filing resignation and before the resignation is accepted by the court.

(4) Within sixty days following the date of termination.

(5) At other times as the court may order.

2. The clerk of court shall notify the conservator in writing of the reporting requirements.

3. Reports of conservators shall be reviewed and approved by a district court judge or referee.

[R60, §2568, 2569; C73, §2254, 2255; C97, §3203, 3204, 3222; C24, 27, §12597, 12598, 12627; C31, 35, §12597, 12598, 12627, 12644-c11; C39, §**12597, 12598, 12627, 12644.11;** C46, 50, 54, 58, 62, §668.24, 668.25, 670.15, 672.11; C66, 71, 73, 75, 77, 79, 81, §633.670]

84 Acts, ch 1299, §18; 85 Acts, ch 29, §10; 2007 Acts, ch 134, §17, 28

Referred to in §633.671

**633.671 Requirements of report and accounting.**

The report and accounting required by section 633.670 shall account for all of the period since the close of the accounting contained in the next previous report, and shall include the following information as far as applicable:

1. The balance of funds on hand at the close of the last previous accounting, and all amounts received from whatever source during the period covered by the accounting.

2. All disbursements made during the period covered by the accounting.

3. Any changes in investments since the last previous report, including a list of all assets, and recommendations of the conservator for the retention or disposition of any property held by the conservator.

4. The amount of the bond and the name of the surety on it.

5. The residence or physical location of the ward.

6. The general physical and mental condition of the ward.

7. Such other information as shall be necessary to show the condition of the affairs of the conservatorship.

[R60, §2568, 2569; C73, §2254, 2255; C97, §3203, 3204; C24, 27, §12597, 12598; C31, 35, §12597, 12598, 12644-c11; C39, §**12597, 12598, 12644.11;** C46, 50, 54, 58, 62, §668.24, 668.25, 672.11; C66, 71, 73, 75, 77, 79, 81, §633.671]

## PART 9

## COSTS AND ACCOUNTS

**633.672 Payment of court costs in conservatorships.**

No order shall be entered approving an annual report of a conservator until the court costs which have been docketed have been paid or provided for. The court may, upon application, enter an order waiving payment of the court costs in indigent cases. However, if the conservatorship subsequently becomes financially capable of paying any waived costs, the conservator shall immediately pay the costs.

[C66, 71, 73, 75, 77, 79, 81, §633.672]

89 Acts, ch 178, §18

Referred to in §633.551

**633.673 Court costs in guardianships.**

The ward or the ward's estate shall be charged with the court costs of a ward's guardianship, including the guardian's fees and the fees of the attorney for the guardian. The court may, upon application, enter an order waiving payment of the court costs in indigent cases. However, if the ward or ward's estate becomes financially capable of paying any waived costs, the costs shall be paid immediately.

[C97, §3222; S13, §3228-f; C24, 27, 31, 35, 39, §**12626, 12642;** C46, 50, 54, 58, 62, §670.14, 671.11; C66, 71, 73, 75, 77, 79, 81, §633.673]

89 Acts, ch 178, §19

Referred to in §633.551

**633.674 Settlement of accounts.**

The court shall settle each account filed by a conservator by allowing or disallowing it, either in whole or in part, or by surcharging the account against the conservator.

[C66, 71, 73, 75, 77, 79, 81, §633.674]

## PART 10

## TERMINATION OF GUARDIANSHIPS AND CONSERVATORSHIPS

**633.675 Cause for termination.**

1. A guardianship shall cease, and a conservatorship shall terminate, upon the occurrence of any of the following circumstances:

*a.* If the ward is a minor, when the ward reaches full age.

*b.* The death of the ward.

*c.* A determination by the court that the ward is no longer a person whose decision-making capacity is so impaired as to bring the ward within the categories of section 633.552, subsection 2, paragraph "*a*", or section 633.566, subsection 2, paragraph "*a*". In a proceeding to terminate a guardianship or a conservatorship, the ward shall make a prima facie showing that the ward has some decision-making capacity. Once the ward has made that showing, the guardian or conservator has the burden to prove by clear and convincing evidence that the ward's decision-making capacity is so impaired, as provided in section 633.552, subsection

2, paragraph *"a"*, or section 633.566, subsection 2, paragraph *"a"*, that the guardianship or conservatorship should not be terminated.

*d.* Upon determination by the court that the conservatorship or guardianship is no longer necessary for any other reason.

2. Notwithstanding subsection 1, paragraphs *"a"* through *"d"*, if the court appointed a guardian for a minor child for whom the court's jurisdiction over the child's guardianship was established pursuant to transfer of the child's case in accordance with section 232.104, the court shall not enter an order terminating the guardianship before the child becomes age eighteen unless the court finds by clear and convincing evidence that the best interests of the child warrant a return of custody to the child's parent.

[S13, §3228-e; C24, 27, 31, 35, 39, §**12641;** C46, 50, 54, 58, 62, §671.10, 672.21; C66, 71, 73, 75, 77, 79, 81, §633.675]

97 Acts, ch 178, §16; 2010 Acts, ch 1143, §3; 2011 Acts, ch 25, §74

Referred to in §633.635, 633.637, 633.669

**633.676 Assets exhausted.**

At any time that the assets of the ward's estate do not exceed the amount of the charges and claims against it, the court may direct the conservator to proceed to terminate the conservatorship.

[C46, 50, 54, 58, 62, §668.33; C66, 71, 73, 75, 77, 79, 81, §633.676]

**633.677 Accounting to ward — notice.**

Upon the termination of a conservatorship, the conservator shall pay the costs of administration and shall render a full and complete accounting to the ward or the ward's personal representative and to the court. Notice of the final report of a conservator shall be served on the ward or the ward's personal representative, in accordance with section 633.40, unless notice is waived. An order prescribing notice may be made before or after the filing of the final report.

[C46, 50, 54, 58, 62, §672.21; C66, 71, 73, 75, 77, 79, 81, §633.677; 81 Acts, ch 193, §6]

**633.678 Delivery of assets.**

Upon the termination of a conservatorship, all assets of the conservatorship shall be delivered, under direction of the court, to the person or persons entitled to them.

[C46, 50, 54, 58, 62, §668.33; C66, 71, 73, 75, 77, 79, 81, §633.678]

**633.679 Petition to terminate — cases transferred from juvenile court — request for voting rights reinstatement.**

1. Except as otherwise provided in subsection 2, at any time after the appointment of a guardian or conservator, the person under guardianship or conservatorship may apply to the court by petition, alleging that the person is no longer a proper subject thereof, and asking that the guardianship or conservatorship be terminated.

2. Unless the child or guardian dies or other exceptional circumstances arise, if the court has appointed a guardian for a minor child for whom the court's jurisdiction over the child's guardianship was established pursuant to transfer of the child's case in accordance with section 232.104, a petition shall not be filed asking that the guardianship be terminated or modified until at least six months has elapsed from the date the order was entered appointing the guardian.

3. A person under an order appointing a guardian which order found the person incompetent to vote may include a request for reinstatement of the person's voting rights in a petition to terminate the guardianship or by filing a separate petition for modification of this determination.

[C97, §3222; C24, 27, 31, 35, 39, §**12623;** C46, 50, 54, 58, 62, §670.11; C66, 71, 73, 75, 77, 79, 81, §633.679]

89 Acts, ch 178, §20; 98 Acts, ch 1185, §11; 2010 Acts, ch 1143, §4

**633.680 Limit on application to terminate.**
If any petition for terminating such guardianship or conservatorship shall be denied, no other petition shall be filed therefor until at least six months shall have elapsed since the denial of the former one.
[C97, §3222; C24, 27, 31, 35, 39, §**12627;** C46, 50, 54, 58, 62, §670.15; C66, 71, 73, 75, 77, 79, 81, §633.680]

**633.681 Assets of minor ward exhausted.**
When the assets of a minor ward's conservatorship are exhausted or consist of personal property only of an aggregate value not in excess of twenty-five thousand dollars, the court, upon application or upon its own motion, may terminate the conservatorship. The order for termination shall direct the conservator to deliver any property remaining after the payment of allowed claims and expenses of administration to a custodian under any uniform transfers to minors Act. Such delivery shall have the same force and effect as if delivery had been made to the ward after attaining majority.
[C46, 50, 54, 58, 62, §668.33; C66, 71, 73, 75, 77, 79, 81, §633.681; 82 Acts, ch 1052, §3]
98 Acts, ch 1118, §2; 2005 Acts, ch 38, §30

**633.682 Discharge of conservator and release of bond.**
Upon settlement of the final accounting of a conservator, and upon determining that the property of the ward has been delivered to the person or persons lawfully entitled thereto, the court shall discharge the conservator and exonerate the surety on the conservator's bond.
[S13, §3228-h; C24, 27, 31, 35, 39, §**12644;** C46, 50, 54, 58, 62, §671.13, 672.21; C66, 71, 73, 75, 77, 79, 81, §633.682]

**633.683 through 633.698** Reserved.

## DIVISION XV

## UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

### PART 1

### GENERAL PROVISIONS

**633.699 Powers of trustees.** Transferred to § 633.750; 2010 Acts, ch 1086, § 25.

**633.699A Modification or termination of uneconomical testamentary trust.** Repealed by 2005 Acts, ch 38, § 50. See § 633.751, 633A.2205, 633A.5103.

**633.699B Applicability of law.** Transferred to § 633.751; 2010 Acts, ch 1086, § 25.

**633.700 Short title.**
This division shall be known and may be cited as the *"Iowa Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act"*.
2010 Acts, ch 1086, §1, 24, 25
[SP] Former §633.700 transferred to §633.752 pursuant to directive in 2010 Acts, ch 1086, §25
[SP] Section applies to proceedings begun before July 1, 2010, regardless of whether a guardianship or protective order has been issued; 2010 Acts, ch 1086, §24

**633.701 Definitions.**
As used in this division, unless the context otherwise requires:
1. *"Adult"* means an individual who is eighteen years of age or older.
2. *"Conservator"* means a person appointed by the court to have the custody and control of the property of an adult under the provisions of this chapter.

3. *"Court"* means, when referring to a court of this state, the district court sitting in probate with jurisdiction of conservatorships and guardianships.

4. *"Foreign judgment"* means a judgment, decree, or order of a court of the United States or of any other court that meets any of the following requirements:

*a.* Is entitled to full faith and credit in this state.

*b.* Appoints a guardian or conservator in the issuing jurisdiction.

5. *"Guardian"* means a person appointed by the court to make decisions regarding the adult under the provisions of this chapter.

6. *"Guardianship order"* means an order appointing a guardian as defined in section 633.3.

7. *"Guardianship proceeding"* means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued.

8. *"Incapacitated person"* means an adult who has been adjudged by a court to meet one of the following conditions:

*a.* Has a decision-making capacity which is so impaired that the person is unable to care for the person's personal safety or to attend to or provide for necessities for the person such as food, shelter, clothing, or medical care, without which physical injury or illness may occur.

*b.* Has a decision-making capacity which is so impaired that the person is unable to make, communicate, or carry out important decisions concerning the person's financial affairs.

9. *"Party"* means the respondent, petitioner, guardian, conservator, or any other person allowed by the court to participate in a guardianship or protective proceeding.

10. *"Person"* means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, or government; governmental subdivision, agency, or instrumentality; or any other legal or commercial entity.

11. *"Protected person"* means an adult for whom a conservatorship has been issued.

12. *"Protective order"* means an order appointing a conservator as defined in section 633.3. *"Protective order"* does not include protective orders issued pursuant to chapter 664A or protective orders issued pursuant to sections 235B.18 and 235B.19.

13. *"Protective proceeding"* means a judicial proceeding in which a conservatorship is sought or has been granted.

14. *"Record"* means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

15. *"Respondent"* means an adult for whom a conservatorship or guardianship is sought.

16. *"State"* means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

2010 Acts, ch 1086, §2, 24, 25

[SP] Former §633.701 transferred to 633.753 pursuant to directive in 2010 Acts, ch 1086, §25

[SP] Section applies to proceedings begun before July 1, 2010, regardless of whether a guardianship or protective order has been issued; 2010 Acts, ch 1086, §24

**633.702 International application.**

A court of this state shall treat a foreign country as if it were a state of the United States for the purpose of applying this part and parts 2, 3, and 5.

2010 Acts, ch 1086, §3, 24, 25

[SP] Former §633.702 transferred to 633.754 pursuant to directive in 2010 Acts, ch 1086, §25

[SP] Section applies to proceedings begun before July 1, 2010, regardless of whether a guardianship or protective order has been issued; 2010 Acts, ch 1086, §24

**633.703 Communication between courts.**

1. A court of this state may communicate with a court in another state concerning a proceeding arising under this division. The court may allow the parties to participate in the communication. Except as otherwise provided in subsection 2, the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

2. Communication between courts concerning schedules, calendars, court records, and other administrative matters may occur without making a record.

2010 Acts, ch 1086, §4, 24, 25

[SP] Former §633.703 transferred to §633.755 pursuant to directive in 2010 Acts, ch 1086, §25

[SP] Section applies to proceedings begun before July 1, 2010, regardless of whether a guardianship or protective order has been issued; 2010 Acts, ch 1086, §24

**633.704 Cooperation between courts.**

1. In a guardianship or protective proceeding in this state, a court of this state may request the appropriate court of another state to do any of the following:

*a.* Hold an evidentiary hearing.

*b.* Order a person in the other state to produce evidence or give testimony pursuant to procedures of that state.

*c.* Order that an evaluation or assessment be made of the respondent.

*d.* Order any appropriate investigation of a person involved in a proceeding.

*e.* Forward to the court of this state a certified copy of the transcript or other record of the hearing pursuant to paragraph "*a*" or any other proceeding, the evidence otherwise produced pursuant to paragraph "*b*", and any evaluation or assessment prepared in compliance with an order pursuant to paragraph "*c*" or "*d*".

*f.* Issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent.

*g.* Issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in 45 C.F.R. § 164.504, as amended.

2. If a court of another state in which a guardianship or protective proceeding is pending requests the assistance described in subsection 1, a court of this state has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

2010 Acts, ch 1086, §5, 24, 25; 2013 Acts, ch 90, §178

[SP] Section applies to proceedings begun before July 1, 2010, regardless of whether a guardianship or protective order has been issued; 2010 Acts, ch 1086, §24

[T] Subsection 2 amended

## PART 2

## JURISDICTION

Referred to in §633.702

**633.705 Taking testimony in another state.**

1. In addition to other procedures that may be available in a guardianship or protective proceeding, the testimony of a witness who is located in another state may be offered by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

2. In a guardianship or protective proceeding, a court in this state may permit a witness located in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means. A court of this state shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

3. Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing shall not be excluded from evidence on an objection based on the best evidence rule.

2010 Acts, ch 1086, §6, 24, 25

[SP] Section applies to guardianship and protective proceedings in existence on or after July 1, 2010; 2010 Acts, ch 1086, §24

**633.706 Definitions.**

As used in this part, unless the context otherwise requires:

1. "*Emergency*" means a circumstance that likely will result in substantial harm to a

respondent's health, safety, or welfare, and for which the appointment of a guardian is necessary because no other person has authority and is willing to act on the respondent's behalf.

2. *"Home state"* means either of the following:

*a.* The state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian.

*b.* The state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of a petition for a protective order or the appointment of a guardian.

3. *"Significant-connection state"* means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.

2010 Acts, ch 1086, §7, 24, 25

[SP] Section applies to guardianship and protective proceedings in existence on or after July 1, 2010; 2010 Acts, ch 1086, §24

**633.707 Significant connection factors.**

In determining whether a respondent has a significant connection with a particular state, the court shall consider all of the following:

1. The location of the respondent's family and other persons required to be notified of the guardianship or protective proceeding.

2. The length of time the respondent at any time was physically present in the state and the duration of any absence.

3. The location of the respondent's property.

4. The extent to which the respondent has ties to the state such as voter registration, state or local tax return filing, vehicle registration, driver's license, social relationships, and receipt of services.

2010 Acts, ch 1086, §8, 24, 25; 2011 Acts, ch 25, §75

Referred to in §633.716

[SP] Section applies to guardianship and protective proceedings in existence on or after July 1, 2010; 2010 Acts, ch 1086, §24

**633.708 Exclusive basis.**

This part provides the exclusive jurisdictional basis for a court of this state to appoint a guardian or issue a protective order for an adult.

2010 Acts, ch 1086, §9, 24, 25

[SP] Section applies to guardianship and protective proceedings in existence on or after July 1, 2010; 2010 Acts, ch 1086, §24

**633.709 Jurisdiction.**

A court of this state has jurisdiction to appoint a guardian or issue a protective order for a respondent if any of the following apply:

1. This state is the respondent's home state.

2. This state is a significant-connection state and, on the date the petition is filed, any of the following apply:

*a.* The respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because this state is a more appropriate forum.

*b.* The respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state, and, before the court makes the appointment or issues the order, all of the following apply:

(1) A petition for an appointment or order is not filed in the respondent's home state.

(2) An objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding.

(3) The court in this state concludes that it is an appropriate forum under the factors set forth in section 633.712.

3. Either of the following apply:

*a.* This state does not have jurisdiction under either subsection 1 or 2, the respondent's home state and all significant-connection states have declined to exercise jurisdiction because

this state is the more appropriate forum, and jurisdiction in this state is consistent with the Constitution of the State of Iowa and the Constitution of the United States.

*b.* The requirements for special jurisdiction under section 633.710 are met.

2010 Acts, ch 1086, §10, 24, 25

Referred to in §633.710, 633.712, 633.713, 633.715

[SP] Section applies to guardianship and protective proceedings in existence on or after July 1, 2010; 2010 Acts, ch 1086, §24

**633.710 Special jurisdiction.**

1. A court of this state lacking jurisdiction under section 633.709 has special jurisdiction to do any of the following:

*a.* Appoint a guardian in an emergency for a period not to exceed ninety days for a respondent who is physically present in this state.

*b.* Issue a protective order with respect to real or tangible personal property located in this state.

*c.* Appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to section 633.716.

2. If a petition for the appointment of a guardian in an emergency is brought in this state and this state was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.

2010 Acts, ch 1086, §11, 24, 25

Referred to in §633.709, 633.711, 633.715

[SP] Section applies to guardianship and protective proceedings in existence on or after July 1, 2010; 2010 Acts, ch 1086, §24

**633.711 Exclusive and continuing jurisdiction.**

Except as otherwise provided in section 633.710, a court that has appointed a guardian or issued a protective order consistent with this chapter has exclusive and continuing jurisdiction over the proceeding until terminated by the court or the appointment or order expires by its own terms.

2010 Acts, ch 1086, §12, 24, 25

[SP] Section applies to guardianship and protective proceedings in existence on or after July 1, 2010; 2010 Acts, ch 1086, §24

**633.712 Appropriate forum.**

1. A court of this state with jurisdiction under section 633.709 to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

2. If a court of this state declines to exercise its jurisdiction under subsection 1, the court shall either dismiss or stay the proceeding. The court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.

3. In determining whether it is an appropriate forum, the court shall consider all of the following:

*a.* Any expressed preference of the respondent.

*b.* Whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation.

*c.* The length of time the respondent was physically present in or was a legal resident of this state or another state.

*d.* The distance of the respondent from the court in each state.

*e.* The financial circumstances of the respondent's estate.

*f.* The nature and location of the evidence.

*g.* The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence.

*h.* The familiarity of the court of each state with the facts and issues in the proceeding.

*i.* If an appointment were to be made, the court's ability to monitor the conduct of the guardian or conservator.

2010 Acts, ch 1086, §13, 24, 25

Referred to in §633.709, 633.713

[SP] Section applies to guardianship and protective proceedings in existence on or after July 1, 2010; 2010 Acts, ch 1086, §24

**633.713 Jurisdiction declined by reason of conduct.**

If at any time a court of this state determines that the court acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may do any of the following:

1. Decline to exercise jurisdiction.

2. Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction.

3. Continue to exercise jurisdiction after considering all of the following:

*a.* The extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction.

*b.* Whether it is a more appropriate forum than the court of any other state under the factors set forth in section 633.712.

*c.* Whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of section 633.709.

4. If a court of this state determines that the court acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, the court may assess necessary and reasonable expenses against that party, including attorney fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court shall not assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of this state unless authorized by law other than this division.

2010 Acts, ch 1086, §14, 24, 25

[SP] Section applies to guardianship and protective proceedings in existence on or after July 1, 2010; 2010 Acts, ch 1086, §24

**633.714 Notice of proceeding.**

If a petition for the appointment of a guardian or issuance of a protective order is brought in this state and this state was not the respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of this state, notice of the petition must be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice must be given in the same manner as notice is required to be given in this state.

2010 Acts, ch 1086, §15, 24, 25

[SP] Section applies to guardianship and protective proceedings in existence on or after July 1, 2010; 2010 Acts, ch 1086, §24

## PART 3

## TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP

Referred to in §633.702

**633.715 Proceedings in more than one state.**

Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in this state under section 633.710, if a petition for the appointment of a guardian or issuance of a protective order is filed in this state and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

1. If the court in this state has jurisdiction under section 633.709, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to section 633.709 before the appointment or issuance of the order.

2. If the court in this state does not have jurisdiction under section 633.709, whether at

the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this state shall dismiss the petition unless the court in the other state determines that the court in this state is a more appropriate forum.

2010 Acts, ch 1086, §16, 24, 25

[SP] Section applies to proceedings begun before July 1, 2010, regardless of whether a guardianship or protective order has been issued; 2010 Acts, ch 1086, §24

**633.716 Transfer of guardianship or conservatorship to another state.**

1. A guardian or conservator appointed in this state may petition the court to transfer the guardianship or conservatorship to another state.

2. Notice of a petition under subsection 1 shall be given to the persons that would be entitled to notice of a petition in this state for the appointment of a guardian or conservator.

3. On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the petition, the court shall hold a hearing on a petition filed pursuant to subsection 1.

4. The court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court in the other state and the court finds all of the following:

*a.* The incapacitated person is physically present in or is reasonably expected to move permanently to the other state.

*b.* An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the incapacitated person.

*c.* Plans for care and services for the incapacitated person in the other state are reasonable and sufficient.

5. The court shall issue a provisional order granting a petition to transfer a conservatorship and shall direct the conservator to petition for conservatorship in the other state if the court is satisfied that the conservatorship will be accepted by the court of the other state and the court finds all of the following:

*a.* The protected person is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state considering the factors in section 633.707.

*b.* An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person.

*c.* Adequate arrangements will be made for management of the protected person's property.

6. The court shall issue a final order confirming the transfer and terminating the guardianship or conservatorship upon its receipt of all of the following:

*a.* A provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to section 633.717.

*b.* The documents required to terminate a guardianship or conservatorship in this state.

2010 Acts, ch 1086, §17, 24, 25

Referred to in §633.710, 633.717

[SP] Section applies to proceedings begun before July 1, 2010, regardless of whether a guardianship or protective order has been issued; 2010 Acts, ch 1086, §24

## PART 4

## REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES

**633.717 Accepting guardianship or conservatorship transferred from another state.**

1. To confirm transfer of a guardianship or conservatorship transferred to this state under provisions similar to section 633.716, the guardian or conservator must petition the court in

this state to accept the guardianship or conservatorship. The petition must include a certified copy of the other state's provisional order of transfer.

2. Notice of a petition under subsection 1 must be given to those persons that would be entitled to notice if the petition were to petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this state. The notice must be given in the same manner as notice is required to be given in this state.

3. On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to subsection 1.

4. The court shall issue an order provisionally granting a petition filed under subsection 1 unless any of the following applies:

*a.* An objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person.

*b.* The guardian or conservator is ineligible for appointment in this state.

5. The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in this state upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to section 633.716 transferring the proceeding to this state.

6. Not later than ninety days after issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship or conservatorship needs to be modified to conform to the laws of this state.

7. Subject to subsections 4 and 6, in granting a petition under this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator.

8. The denial by a court of this state of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in this state under section 633.551, 633.552, or 633.566, if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

2010 Acts, ch 1086, §18, 24, 25; 2011 Acts, ch 34, §140

Referred to in §633.716

[SP] Section applies to proceedings begun before July 1, 2010, regardless of whether a guardianship or protective order has been issued; 2010 Acts, ch 1086, §24

**633.718 Registration of guardianship orders.**

If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this state, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in this state by filing as a foreign judgment in a court, in any appropriate county of this state, certified copies of the order and letters of office.

2010 Acts, ch 1086, §19, 24, 25

[SP] Section applies to proceedings begun before July 1, 2010, regardless of whether a guardianship or protective order has been issued; 2010 Acts, ch 1086, §24

**633.719 Registration of protective orders.**

If a conservator has been appointed in another state and a petition for a protective order is not pending in this state, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in this state by filing as a foreign judgment in a court of this state, in any county in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond.

2010 Acts, ch 1086, §20, 24, 25

[SP] Section applies to proceedings begun before July 1, 2010, regardless of whether a guardianship or protective order has been issued; 2010 Acts, ch 1086, §24

## PART 5

## MISCELLANEOUS PROVISIONS

Referred to in §633.702

**633.720 Effect of registration.**

1. Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in this state all powers authorized in the order of appointment except as prohibited under the laws of this state, including maintaining actions and proceedings in this state and, if the guardian or conservator is not a resident of this state, subject to any conditions imposed upon nonresident parties.

2. A court of this state may grant any relief available under this division and other law of this state to enforce a registered order.

2010 Acts, ch 1086, §21, 24, 25

[SP] Section applies to guardianship and protective proceedings in existence on or after July 1, 2010; 2010 Acts, ch 1086, §24

**633.721 Uniformity of application and construction.**

In applying and construing this uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

2010 Acts, ch 1086, §22, 24, 25

[SP] Section applies to proceedings begun before July 1, 2010, regardless of whether a guardianship or protective order has been issued; 2010 Acts, ch 1086, §24

**633.722 Relation to Electronic Signatures in Global and National Commerce Act.**

This division modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., but does not modify, limit, or supersede section 101(c) of that Act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that Act, 15 U.S.C. § 7003(b).

2010 Acts, ch 1086, §23 – 25

[SP] Section applies to proceedings begun before July 1, 2010, regardless of whether a guardianship or protective order has been issued; 2010 Acts, ch 1086, §24

**633.723 through 633.749** Reserved.

## DIVISION XVI

## TRUSTS

**633.750 Powers of trustees.**

Unless it is otherwise provided by the will creating a testamentary trust, the instrument creating an express trust, or by an order or decree duly entered by a court of competent jurisdiction, a trustee shall have all the powers granted a trustee under sections 633A.4401 and 633A.4402. Documents incorporating by reference powers granted a trustee under the probate code or under this section shall be interpreted accordingly, even if the execution or adoption of the instrument creating the trust occurred prior to July 1, 2005.

[C66, 71, 73, 75, 77, 79, 81, §633.699]

97 Acts, ch 158, §45; 2005 Acts, ch 38, §31, 55; 2010 Acts, ch 1086, §25

C2011, §633.750

**633.751 Applicability of law.**

The terms of this division, and all other terms of this probate code relating to trusts and trustees, shall apply only to trusts that remain under continuous court supervision pursuant to section 633.10 and to trusts that have not been released from such continuous supervision pursuant to section 633.10. Regarding all such trusts, the terms of this chapter shall supersede any inconsistent terms in the trust code, chapter 633A, and such trusts shall be governed by terms of the trust code, chapter 633A, that are not inconsistent with this probate code.

2005 Acts, ch 38, §32

CS2005, §633.699B
2006 Acts, ch 1010, §156; 2010 Acts, ch 1086, §25
C2011, §633.751

**633.752 Intermediate report of trustees.**

Unless specifically relieved from so doing by the instrument creating the trust or by order of the court, the trustee shall make a written report under oath to the court once each year within ninety days of the close of the reporting period, and more often if required by the court. Such report shall state:

1. The period covered by the report.
2. All changes in beneficiaries since the last previous report.
3. Any changes in investments since the last previous report, including a list of all assets, and recommendations of the trustee for the retention or disposition of any property held by the trustee.
4. A detailed accounting for all cash receipts and disbursements, and for all property of the trust, unless such accounting shall be waived in writing by all beneficiaries.

[C66, 71, 73, 75, 77, 79, 81, §633.700]
2005 Acts, ch 3, §105; 2007 Acts, ch 134, §18, 28; 2008 Acts, ch 1032, §87; 2010 Acts, ch 1086, §25
C2011, §633.752
Referred to in §633.753

**633.753 Final report of trustee.**

Upon the partial or total termination of a trust, or upon the transfer of the trusteeship due to resignation, removal, dissolution, or other disqualification of the trustee of any trust pending in court, the trustee shall make a final report to the court, showing for the period since the filing of the last report the facts required for an intermediate report; provided, however, that unless specifically required by the court to do so, the trustee shall not in any event, be required to report such facts for any period of time as to which the trustee has, under any of the provisions of section 633.752, been expressly relieved from reporting. In any event, the final report of the trustee shall include the following:

1. The name and last known address of each beneficiary.
2. A statement as to those beneficiaries who are known to be minors or under any other legal disability.
3. Distributions made or to be made to each beneficiary at the time of such termination.

[C66, 71, 73, 75, 77, 79, 81, §633.701]
2010 Acts, ch 1086, §25
C2011, §633.753
Referred to in §633.755

**633.754 Notice of application for discharge.**

No final report of a trustee of a trust pending in court shall be approved, and no such trustee shall be discharged from further duty or responsibility upon final settlement, until notice of the trustee's application for discharge shall have been served upon all persons interested, in accordance with section 633.40, unless notice is waived. An order prescribing notice may be made before or after the filing of the final report.

[C66, 71, 73, 75, 77, 79, 81, §633.702]
2010 Acts, ch 1086, §25
C2011, §633.754

**633.755 Discharge.**

Upon final settlement of a trust, an order shall be entered discharging the trustee from further duties and responsibilities. The order approving the final report shall constitute a waiver of the omission from the final report of any of the recitals required in section 633.753.

[C66, 71, 73, 75, 77, 79, 81, §633.703]
2010 Acts, ch 1086, §25
C2011, §633.755

## DIVISION XVII

## POWERS OF ATTORNEY

[SP] Transferred to chapter 633B; 2005 Acts, ch 38, § 53

## DIVISION XVIII

## MEDICAL ASSISTANCE TRUSTS

[SP] Transferred to chapter 633C; 2005 Acts, ch 38, § 53

## DIVISION XIX

## TRANSFER ON DEATH SECURITY REGISTRATION

[SP] Transferred to chapter 633D; 2005 Acts, ch 38, § 53

## DIVISION XX

## UNIFORM DISCLAIMER OF PROPERTY INTEREST ACT

[SP] Transferred to chapter 633E; 2005 Acts, ch 38, § 53

## DIVISION XXI

## IOWA TRUST CODE

**633.1101 through 633.6308** Transferred to chapter 633A; 2005 Acts, ch 38, § 54.

**633.7101** Repealed by 2005 Acts, ch 38, § 50. See § 633A.1107.