

**PROPOSED
PROBATE, ESTATES AND
FIDUCIARIES CODE**

General Assembly of the Commonwealth of Pennsylvania

JOINT STATE GOVERNMENT COMMISSION

Harrisburg, Pennsylvania

1972

The Joint State Government Commission was created by Act of 1937, July 1, P. L. 2460, as amended, as a continuing agency for the development of facts and recommendations on all phases of government for the use of the General Assembly.

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Members of the Phi Kappa Phi Chapter at the University of Georgia

LETTER OF TRANSMITTAL

To the Members of the General Assembly
of the Commonwealth of Pennsylvania:

This report contains the proposed Probate, Estates and Fiduciaries Code formulated by the Joint State Government Commission's Task Force and Advisory Committee on Decedents' Estates Laws. The code does not effectuate substantive changes in the law other than modification of language required by the 1968 revision of the Judiciary Article of the Pennsylvania Constitution or by editorial considerations.

This report concludes only the first phase of the assignment of the Task Force and Advisory Committee. They now will further consider improvements and additions to existing law suggested during their work to date, including those found in the 1969 Uniform Probate Code. Any such suggestions or comments may be forwarded to the offices of the Commission.

Respectfully submitted,

FRED J. SHUPNIK, *Chairman*

*Joint State Government Commission
Capitol Building
Harrisburg, Pennsylvania
January 1972*

Reporter. Philip A. Bregy is the author of numerous publications in the decedents' estates field and of *Pennsylvania Intestate, Wills and Estates Acts of 1947*.

November 28, 1945 marked the first joint meeting of the Special Committee on Decedents' Estates Laws and its Advisory Committee. The latter committee, one of the first modern applications of the use of a group of experts to advise the Pennsylvania General Assembly, was composed of a blue-ribbon gathering of nine Orphans' Court Judges, two prominent trust company officers, and twenty-one attorneys practicing in the field of decedents' estates. Drafting meetings were held during 1946, one at Hershey on September 13, to review the second tentative draft of the Proposed Estates Act, and another in Philadelphia, on November 14 and 15, to consider the Wills Act.

In 1947, the Advisory Committee's efforts continued, pursuant to Senate Resolution No. 34 and as was subsequently reported by Ira T. Fiss, Chairman of the Joint State Government Commission, ". . . [I]n addition to recommending certain desirable changes in the substantive law, the Committee has simplified the structure of the acts. However, in all cases where it was desirable to preserve the authority of decisions under prior acts, the exact language of such prior acts has been retained." These efforts culminated in the enactment of its recommendations of April 24, later known as the Intestate Act of 1947, the Wills Act of 1947, the Estates Act of 1947, and the Principal and Income Act of 1947. These acts were well received by those utilizing their modernized provisions. To assist the Court, the legal profession and those responsible for administering the laws, the Commission issued its report, *Decedents' Estates Laws of 1947*, which contained the law as enacted and official comments of the Advisory Committee indicating the sources and rationale of the provisions. These comments and those to statutes subsequently enacted, have been utilized by the Supreme Court and other courts in arriving at the legislative intent necessary to effectively apply the law in cases before them. See *Martin Estate*, 365 Pa. 280, 283 (1950).

The Joint State Government Commission Advisory Committee, pursuant to Senate Resolution Serial No. 34 of the 1947 Session, prepared drafts of the Fiduciaries Act and the Fiduciaries Investment Act for submission to the 1949 Session of the General Assembly. Weldon B. Heyburn, Chairman of the Joint State Government Commission, in its report *Decedents' Estates Laws of 1949*, emphasized that, ". . . [T]he Fiduciaries Act of 1949 (Act No. 121) represents a complete revision of the Fiduciaries Act of 1917 with particular attention to the simplification of procedure. The Fiduciaries Investment Act of 1949 (Act No.

INTRODUCTION

The modern history of decedents' estates laws in Pennsylvania began on July 25, 1945 with the appointment of a special legislative committee to undertake a comprehensive study of those laws under the authority of Senate Resolution No. 46 (1945), which directed the Joint State Government Commission ". . . to study, revise and prepare for re-enactment, the Orphans' Court Partition Act, the Orphans' Court Act, the Revised Price Act, the Wills Act, the Register of Wills Act, the Intestate Act and the Fiduciaries Act, together with all of their supplements and amendments and all separate laws that should properly be incorporated therein. . . ."

No comprehensive review of decedents' estates laws had been attempted since 1915 when Governor Brumbaugh had appointed John Marshall Gest, George E. Alter and Thomas J. Baldrige as commissioners to codify and review the law. The work was completed and presented to the General Assembly on February 1, 1917; on June 7, 1917 seven separate statutes were enacted.

The 1945 special legislative committee, Representative Thomas H. Lee, Chairman, and Senator John M. Walker, Vice Chairman, was to be assisted by an Advisory Committee, composed of thirty-two recognized experts from the bench and bar. Meeting regularly in Judge David Hunter's chambers in Philadelphia, the Advisory Committee, under the direction of its Chairman, Robert Brigham, and Secretary Shippen Lewis, had the following membership: Robert W. Archbald, Jr., Paul Bedford, Hon. John C. Bell, Hon. W. Walter Braham, William H. Eckert, Roland Fleer, Hon. Ethan A. Gearhart, W. Pitt Gifford, Hon. Andrew Hourigan, Hon. David G. Hunter, A. J. White Hutton, Hon. Mark E. Lefever, Hon. William W. Litke, Alan S. Loose, Hon. J. Paul MacElree, Hon. Frederick A. Marx, Ralph D. McKee, Richard G. Miller, Raymond M. Remick, Hon. Karl E. Richards, William M. Robinson, Arthur Scully, Clarence L. Shaver, Boyd Lee Spahr, Thomas Stokes, Hon. Thomas P. Trimble, Paul C. Wagner, Hon. A. Kirk Wrenshall, Hon. J. Colvin Wright and Adolph L. Zeman.

M. Paul Smith, Esquire, Norristown, and Philip A. Bregy, Esquire, Philadelphia, were engaged as Research and Associate Research Consultants. M. Paul Smith, who as Adjunct Professor of Law taught Wills and Decedents' Estates at the Dickinson School of Law for twenty years, is the co-editor of "Fiduciary Review" and editor of *Fiduciary*

The most recent completed codification undertaken by the Committee was its work on the adoption laws and procedures under the direction of President Judge Hugh C. Boyle of the Allegheny County Orphans' Court who had been named to the Committee in 1959. Judge Boyle served as Chairman of a Subcommittee on Adoption which began its labors to modernize the 1925 Act governing adoption in 1962. For the history of this subcommittee's work, see the report, *Proposed Adoption Act* issued by the Commission in 1970 containing the provisions of the "Adoption Act" enacted on July 24, 1970 (Act No. 208).

This brief history would be incomplete without recognition of the capable leadership supplied by Hon. Mark E. Lefever, who succeeded from Vice-Chairman to temporary Chairman when Robert Brigham became ill; Judge Lefever became Chairman in 1957, upon the death of Mr. Brigham. Judge Lefever's knowledge and experience in decedents' estates laws was recognized by his election to a judgeship of the Philadelphia Orphans' Court in 1952; he also teaches as an Adjunct Professor at Temple University School of Law.

Over the years the Advisory Committee has provided continuous review and analysis of all proposed legislation in its field; its recommendations were transmitted through the legislative task force appointed by the Joint State Government Commission and were, with few exceptions, relied upon by the General Assembly.

In August 1969 the National Conference of Commissioners on Uniform State Laws approved and subsequently promulgated the Uniform Probate Code. Recognizing Pennsylvania's leadership in the field of decedents' estates laws, and in view of the incorporation into the Uniform Probate Code of many of Pennsylvania's statutory innovations, the General Assembly determined to review the Uniform Probate Code and existing provisions of the decedents' estates laws to assure the continued excellence of the statutes. Accordingly the Joint State Government Commission's Executive Committee, by resolution adopted July 21, 1970, directed that such a review be undertaken, ". . . with a view of recommending the adoption of the former, the codification of the latter or other appropriate action."

The Executive Committee, recognizing the nature of the major task to be undertaken, directed the augmentation of the Advisory Committee. Ten of the original appointments of 1945 were still actively participating in the work of the committee. These members and the interim appointments were joined in 1971 by fifteen new advisors: Hon. Anthony R. Appel, Thomas A. Beckley, Norman H. Brown, Paul E. Clouser, William J. Copeland, Robert F. Duguay, J. Frederick Gehr, George J.

544) brings together in an orderly form, the investment provisions relating to Pennsylvania fiduciaries, except personal representatives. . .”

Meetings on May 26 and 27, October 6 and 7, and December 1 and 2, 1949, were held in Philadelphia for the principal purpose of drafting a new Orphans' Court Act. The product was the drafts of the Orphans' Court Act of 1951, the Incompetents' Estates Act of 1951, the Register of Wills Act of 1951 and the Estate Tax Apportionment Act of 1951 which the Advisory Committee had prepared under the 1949 directive, House Concurrent Resolution Serial No. 74. The draft legislation was recommended by the Joint State Government Commission, introduced into the General Assembly, and enacted into law.

The Incompetents' Estates Act of 1951, which had left the jurisdiction of incompetents' estates in the courts of common pleas, was replaced by an act which gave the orphans' court exclusive jurisdiction over the estates of incompetents, except as to Philadelphia County and the other counties where courts of common pleas had acquired jurisdiction before the effective date of the act. By a 1957 amendment exclusive jurisdiction was finally placed in the orphans' court in all counties.

As reported by Baker Royer, Chairman of the Commission, in *Decedents' Estates Laws of 1951*, “. . . [T]he four acts represent a complete revision of earlier legislation, with particular emphasis on clarification of procedures and simplification of language. Archaic laws regarding incompetents' estates have been modernized and to a large degree made to conform to provisions of the Fiduciaries Act of 1949 relating to minors' estates. The Estate Tax Apportionment Act of 1951 has clarified and reduced to more understandable wording the difficult rules intended to apportion more fairly the burden of estate taxes.”

In the period 1947 to 1951 six members of the original Decedents' Estates Advisory Committee died and one resigned; four new members were named by the Commission's Executive Committee: Hon. Edward L. van Roden, Reuben E. Cohen, James G. Schmidt and Charles H. Ealy. Mr. Cohen, upon taking his place on the Advisory Committee, continued his service begun in 1945 as a member of the Task Force on Decedents' Estates Laws.

The next major undertaking of the Committee was accomplished in the Inheritance and Estate Tax Act of 1961 and its amendments of 1961 and 1963. Pennsylvania, which had been the first state to enact an Inheritance Tax Act (1826, April 7, P.L. 227), had long needed a codification of the statutes and case laws relating to the procedures for imposing and collecting the tax. In 1962 M. Paul Smith and Richard L. Grossman, the present Research Consultant to the Advisory Committee, authored the *Treatise on the Pennsylvania Inheritance and Estate Tax Act*.

ments, effected modification of existing law. A table comparing sections of selected laws with their disposition in Purdon's Statutes and in the code is found following the text.

Legislative policy changes suggested during the preparation of this code were reserved for further review prior to submission to the General Assembly in the form of amendments to the code after action upon it is completed.

*Joint State Government Commission
Capitol Building
Harrisburg, Pennsylvania
1972*

Hauptfuhrer, Jr., William McC. Houston, Frederick F. Jones, Hon. Edwin H. Satterthwaite, J. Pennington Straus, Hon. Lee F. Swope, Hon. Alfred L. Taxis and Vincent X. Yakowicz.

Senator Richard C. Frame, Chairman of the Task Force since 1967, set June 3, 1971 as the date for a reorganization meeting.

The first major decision overwhelmingly supported by the members was to acknowledge the advantages in retaining existing Pennsylvania statutory language in preference to introducing the unfamiliar terminology contained in the Uniform Probate Code. Accordingly it was agreed to codify existing law for incorporation into the Consolidated Pennsylvania Statutes as contemplated by Act No. 230 of November 25, 1970.

For the purpose of implementing this policy the Task Force and Advisory Committee was divided into five subcommittees chaired as follows: Philip A. Bregy, Subcommittee on Register of Wills, Orphans' Court Division; Roland Fler, Intestates, Wills, Non-Probate Transfers; William H. Eckert, Fiduciaries; George H. Hauptfuhrer, Jr., Persons Under Disability, Powers of Attorney and Thomas A. Beckley, Miscellaneous Acts. M. Paul Smith served once again as Chairman of the Drafting Committee. These subcommittees met throughout the Summer of 1971 and resolved the major drafting difficulties presented by the codification of existing laws. Each subcommittee concluded its task and enumerated proposed future improvements suggested by the Uniform Probate Code for consideration of the committee.

In the last quarter of 1971 the actual work of drafting the codification proceeded with Conrad C. M. Arensberg, Esquire, of the Joint State Government Commission staff, acting as liaison for the study groups. The draft code was submitted to the Advisory Committee in late October 1971. After two days of thorough discussion of all aspects of this draft, the officers of the committee and staff were directed to prepare the code for introduction into the General Assembly.

If enacted, this proposed code would become Title 20 of the Consolidated Pennsylvania Statutes incorporating the existing law as found in the Orphans' Court Act, the Register of Wills Act, the Intestate Act, the Wills Act, the Fiduciaries Act, the Estates Act, and the Incompetents' Estates Act, and ancillary legislation, most of which is currently published in Title 20 of Purdon's Pennsylvania Statutes Annotated.

The only modifications of existing law found in the code resulted through changes in the language necessitated by Article V, the new Judiciary Article of the Pennsylvania Constitution adopted in 1968, and editorial and technical changes required to make uniform similar provisions and practices. Only a few of these changes, noted in the Com-

AN ACT

Amending the act of November 25, 1970 (No. 230), entitled "An act codifying and compiling a part of the law of the Commonwealth," adding provisions relating to probate, estates and fiduciaries.

TABLE OF CONTENTS

TITLE 20. PROBATE, ESTATES AND FIDUCIARIES CODE

- Chapter 1. Short Title and Definitions
- Chapter 3. Ownership of Property; Legal Title and Equitable Estate
- Chapter 7. Orphans' Court Divisions
- Chapter 9. Register of Wills
- Chapter 21. Intestate Succession
- Chapter 25. Wills
- Chapter 31. Dispositions Independent of Letters; Family Exemption; Probate of Wills and Grant of Letters
- Chapter 33. Administration and Personal Representatives
- Chapter 35. Accounts and Distribution
- Chapter 37. Estate Tax Apportionment
- Chapter 41. Foreign Fiduciaries
- Chapter 45. Sureties
- Chapter 51. Minors
- Chapter 53. Pennsylvania Uniform Gifts to Minors Act
- Chapter 55. Incompetents
- Chapter 57. Absentees and Presumed Decedents
- Chapter 61. Estates
- Chapter 71. Trust Estates
- Chapter 73. Fiduciaries Investments
- Chapter 81. Principal and Income
- Chapter 82. Revised Price Act
- Chapter 84. Military Service
- Chapter 85. Simultaneous Death
- Chapter 86. Anatomical Gifts
- Chapter 87. Employe Benefits
- Chapter 88. Slayers

Chapter 1. Short Title and Definitions	
Section 101. Short title.....	18
Section 102. Definitions.....	18
Chapter 3. Ownership of Property; Legal Title and Equitable Estate	
Section 301. Title to real and personal estate of a decedent....	19
Section 302. Title to real and personal estate of an incompetent	20
Section 303. Title to real and personal estate of a minor.....	20
Chapter 7. Orphans' Court Divisions	
Subchapter A. Organization	
Section 701. Orphans' court divisions.....	20
Section 702. Sessions; terms.....	21
Section 703. Rules.....	21
Subchapter B. Jurisdiction	
Section 711. Mandatory exercise of jurisdiction through the orphans' court division in general.....	22
Section 712. Nonmandatory exercise of jurisdiction through the orphans' court division.....	25
Section 713. Special provisions for Philadelphia County.....	26
Section 714. Conflict of laws.....	27
Section 715. Incidental powers.....	27
Subchapter C. Venue	
Section 721. Venue of decedents' and minors' estates.....	27
Section 722. Venue of trust estates.....	27
Section 723. Situs of testamentary trust.....	28
Section 724. Situs of inter vivos trust.....	28
Section 725. Change of situs; order of court.....	29
Subchapter D. Judges	
Section 731. Powers.....	29
Section 732. Powers when the court is not in session.....	29
Subchapter E. Duties of the Clerk and Sheriff	
Section 741. Duties of the clerk.....	29
Section 742. Dockets.....	30
Section 743. Bill of costs.....	30
Section 744. Translation of foreign language documents.....	30
Section 745. Advertisement of accounts.....	30
Section 746. Money paid into court.....	31
Section 747. Powers and duties of the sheriff.....	31
Section 748. Fees.....	31

Subchapter F. Masters, Auditors, Examiners, Guardians
Ad Litem and Trustees Ad Litem

Section	751. Appointment; purpose	31
Section	752. Compensation	32
Section	753. Subpoenas	32
Section	754. Power to administer oaths	32

Subchapter G. Procedure

Section	761. Petitions	33
Section	762. Accounts	33
Section	763. Writs of habeas corpus	33
Section	764. Citation	33
Section	765. Service of citation	34
Section	766. Proof of service	34
Section	767. Parties in interest	34
Section	768. Manner of service; proof	34
Section	769. Power of orphans' court division	34
Section	771. Decree without prior hearing; attachment; sequestration	35
Section	772. Injunctions	35
Section	773. Subpoenas	35
Section	774. Depositions and discovery	35
Section	775. Perpetuation of testimony and court records	35
Section	776. Testimony in proceedings removed from register	36
Section	777. Right to jury trial; discretion of orphans' court division	36
Section	778. Procedure for jury trials	37
Section	781. Methods of enforcement	37
Section	782. Procedure on attachment of the person	38
Section	783. Procedure on sequestration of real or personal property	38
Section	784. Procedure on execution on personal property	38
Section	785. Procedure on attachment execution	38
Section	786. Procedure on execution on real estate	39
Section	791. Allowance and allocation	39
Section	792. Right of appeal	39
Section	793. Effect of appeal	40
Section	794. Disposition of cases on appeal	40

Chapter 9. Register of Wills

Subchapter A. Jurisdiction and Powers

Section	901. Register's jurisdiction	40
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Section 902. Deputy register	40
Section 903. Witnesses; testimony	41
Section 904. Witness fees	41
Section 905. Enforcement of subpoenas, orders and costs	41
Section 906. Caveat	41
Section 907. Certification of records to court	42
Section 908. Appeals	42
Section 909. Bill of costs	43
Section 910. Transmission of accounts to the court	43
Subchapter B. Records and Certified Copies	
Section 921. Wills	43
Section 922. Inventories and appraisements	43
Section 923. Certified copies	43
Section 924. Recording proceedings in another county	44
Chapter 21. Intestate Succession	
Section 2101. Intestate descent	44
Section 2102. Share of surviving spouse	44
Section 2103. Shares of others than surviving spouse	45
Section 2104. Rules of descent	45
Section 2105. Spouse's rights	47
Section 2106. Forfeiture	47
Section 2107. Persons born out of wedlock	48
Section 2108. Adopted person	48
Section 2109. Advancements	48
Section 2110. Spouse's allowance; procedure	49
Section 2111. Procedure to establish title to real property when spouse claims entire estate	49
Section 2112. Property distributable to the Commonwealth	49
Section 2113. Limitations of claims	49
Section 2114. Personal estate of nonresident	50
Chapter 25. Wills	
Section 2501. Who may make a will	50
Section 2502. Form and execution of a will	50
Section 2503. Nuncupative wills	51
Section 2504. Witnesses	51
Section 2505. Revocation of a will	51
Section 2506. Revival of revoked or invalid will	52
Section 2507. Modification by circumstances	52
Section 2508. Change by election of surviving spouse	53

Section 2509. Forfeiture of right of election	54
Section 2510. How election made	54
Section 2511. Time for making election	55
Section 2512. Failure to make an election	55
Section 2513. Grantee or lienholder	55
Section 2514. Rules of interpretation	56
Section 2515. Devise or bequest to trust	59
Section 2516. Devise in fee tail abolished	60
Section 2517. Rule in Shelley's case	60
Section 2518. Alienage	60
Section 2519. Testamentary guardian	60
Section 2520. Personal estate of nonresident	61

Chapter 31. Dispositions Independent of Letters; Family Exemption; Probate of Wills and Grant of Letters

Subchapter A. Dispositions Independent of Letters

Section 3101. Payment of wages, salary, vacation benefits to family	61
Section 3102. Settlement of small estates on petition	62

Subchapter B. Family Exemption

Section 3121. When allowable	62
Section 3122. Payment or delivery of exemption	63
Section 3123. Payment from real estate	63
Section 3124. Income	65
Section 3125. Other remedies	65
Section 3126. Grantee or lienholder	65

Subchapter C. Probate

Section 3131. Place of probate	65
Section 3132. Manner of probate	66
Section 3133. Limit of time for probate	66
Section 3134. Nuncupative wills	66
Section 3135. Wills in foreign language	67
Section 3136. Wills probated outside the Commonwealth	67
Section 3137. Enforcing production of will	67
Section 3138. Later will or codicil	68

Subchapter D. Grant of Letters

Section 3151. Proper county	68
Section 3152. When 21 years elapsed	68
Section 3153. Contents of petition	68
Section 3154. Affidavit and oath	69

Section 3319. Power of attorney; delegation of power over subscription rights and fractional shares; authorized delegations	79
Section 3320. Voting stock by proxy	80
Section 3321. Nominee registration; corporate fiduciary as attorney-in-fact	80
Section 3322. Acceptance of deed in lieu of foreclosure	81
Section 3323. Compromise of controversies	81
Section 3324. Death or incompetency of fiduciary	82
Section 3325. Administrator C.T.A.	82
Section 3326. Administrator D.B.N. and D.B.N.C.T.A.	82
Section 3327. Surviving or remaining personal representatives	83
Section 3328. Disagreement of personal representatives	83
Section 3329. Effect of revocation of letters, probate of will, later will or codicil	83
Section 3330. Notice of devise or bequest to corporation or association	84
Section 3331. Liability of personal representative on contracts	84
Section 3332. Inherent powers and duties	84
Subchapter C. Sales, Pledges, Mortgages, Leases, Options and Exchanges	
Section 3351. Power to sell	84
Section 3352. Power to lease	85
Section 3353. Order of court	85
Section 3354. Power given in governing instrument	85
Section 3355. Restraint of sale	86
Section 3356. Purchase by personal representative	86
Section 3357. Title of purchaser	86
Section 3358. Collateral attack	87
Section 3359. Record of proceedings; county where real estate lies	87
Section 3360. Contracts, inadequacy of consideration or better offer; brokers' commissions	88
Subchapter D. Abatement, Survival and Control of Actions	
Section 3371. Actions which survive	88
Section 3372. Substitution of personal representative in pending action or proceedings	89
Section 3373. Action by or against personal representative	89
Section 3374. Death or removal of fiduciary	89
Section 3375. Abatement of action for failure to take out letters	89
Section 3376. Limitations against debt due estate	90

Section 3377. Execution on judgments.....	90
Subchapter E. Claims; Charges; Rights of Creditors	
Section 3381. Liens and charges existing at death not impaired..	90
Section 3382. Judgments which are liens at death.....	90
Section 3383. Statutes of limitations; claims not barred at death.	91
Section 3384. Notice of claim.....	91
Section 3385. Limitation upon claims.....	92
Section 3386. Failure to present claim at audit.....	92
Section 3387. Claims not due; certain to become due.....	92
Section 3388. Claims not certain to become due.....	92
Section 3389. Claims subject to litigation in other courts.....	93
Section 3390. Specific performance of contracts.....	93
Section 3391. Proceeding against personal representative.....	94
Section 3392. Classification and order of payment.....	94
Section 3393. Notice to Commonwealth and political sub- divisions.....	94

Chapter 35. Accounts and Distribution

Subchapter A. Accounts

Section 3501. Accounting required.....	95
Section 3502. Where filed.....	95
Section 3503. Notice to parties in interest.....	95
Section 3504. Representation of parties in interest.....	95

Subchapter B. Audits

Section 3511. Audits in counties having separate orphans' court division.....	96
Section 3512. Audits in counties having no separate orphans' court division.....	96
Section 3513. Statement of proposed distribution.....	96
Section 3514. Confirmation of account and approval of pro- posed distribution.....	97

Subchapter C. Review

Section 3521. Rehearing; relief granted.....	97
--	----

Subchapter D. Distribution

Section 3531. Estates not exceeding \$5,000.....	97
Section 3532. At risk of personal representative.....	98
Section 3533. Award upon final confirmation of account.....	98
Section 3534. Distribution in kind.....	99
Section 3535. Delivery of possession of real estate.....	99

Section 3536. Recording and registering decrees awarding real estate	99
Section 3537. Compensation	100
Subchapter E. Rights of Distributees	
Section 3541. Order of abatement	100
Section 3542. Contribution	101
Section 3543. Interest or income on distributive shares	101
Section 3544. Liability of personal representative for interest	102
Section 3545. Transcripts of balances due by personal representative	102
Section 3546. Determination of title to decedent's interest in real estate	102
Subchapter F. Legacies, Annuities and Other Charges	
Section 3551. Enforcement of payment	103
Section 3552. Discharge of portion of property from charges payable in the future	104
Section 3553. Discharge of property from lien of charge	104
Section 3554. Presumption of payment, release or extinguishment	105

Chapter 37. Estate Tax Apportionment

Section 3701. Definitions	106
Section 3702. Equitable apportionment	106
Section 3703. General rules	106
Section 3704. Method of apportionment	107
Section 3705. Enforcement of contribution or exoneration	108

Chapter 41. Foreign Fiduciaries

Subchapter A. Powers and Duties

Section 4101. In general	109
Section 4102. Powers with respect to securities and bank accounts	110
Section 4103. Service of process	111
Section 4104. Proof of authority in court proceedings	111
Section 4105. Effect of local proceedings	111

Subchapter B. Distributions to Foreign Fiduciaries

Section 4111. To foreign personal representative	111
Section 4112. To foreign trustee, guardian or committee	112

Subchapter C. Transfer of Administration	
Section 4121. Award to foreign guardian when minor or incompetent becomes a nonresident	112

Chapter 45. Sureties

Subchapter A. Rights in Administration	
Section 4501. Agreement concerning deposit of assets	113
Section 4502. Notice	113
Section 4503. Participation in administration	113
Section 4504. Information from fiduciary; accounting	113
Section 4505. Release of surety before discharge of fiduciary	114
Subchapter B. Enforcement of Bond	
Section 4521. Suits on bonds	114
Section 4522. Service of process on nonresident surety	114

Chapter 51. Minors

Subchapter A. Small Estates	
Section 5101. When guardian unnecessary	114
Section 5102. Power of natural guardian	115
Subchapter B. Appointment of Guardian	
Section 5111. County of appointment	115
Section 5112. Persons not qualified to be appointed by the court	116
Section 5113. Persons preferred in appointment	116
Section 5114. Service of process on nonresident guardian	116
Section 5115. Appointment of guardian in conveyance	116
Section 5116. Orphan beneficiaries, charitable uses or trusts; administration, cities of first class	117
Subchapter C. Bond	
Section 5121. Necessity, form and amount	117
Section 5122. When bond not required	118
Section 5123. Requiring or changing amount of bond	118
Subchapter D. Removal and Discharge	
Section 5131. Grounds and procedure	119
Subchapter E. Powers, Duties and Liabilities; in General	
Section 5141. Possession of real and personal property	119
Section 5142. Inventory	119
Section 5143. Abandonment of property	119

Section 5144. Powers, duties and liabilities identical with personal representatives	120
Section 5145. Investments	121
Section 5146. Guardian named in conveyance	121
Section 5147. Proceedings against guardian	122

Subchapter F. Sales, Pledges, Mortgages, Leases, Options and Exchanges

Section 5151. Power to sell personal property	122
Section 5152. Power to lease	122
Section 5153. Provisions identical to other estates	122
Section 5154. Title of purchaser	123

Subchapter G. Accounts, Audits, Reviews, Distribution

Section 5161. When accounting filed	123
Section 5162. Where accounts filed	123
Section 5163. Notice, audits, reviews and distribution	123
Section 5164. Distributions for support and education	124
Section 5165. Notice to guardian or guardian ad litem	125
Section 5166. Death of minor	125
Section 5167. Failure to present claim at audit	125

Chapter 53. Pennsylvania Uniform Gifts to Minors Act

Section 5301. Short title; registration of ownership	126
Section 5302. Definitions	126
Section 5303. Manner of making gift	128
Section 5304. Effect of gift	129
Section 5305. Duties and powers of custodian	130
Section 5306. Custodian's expenses, compensation, bond and liabilities	131
Section 5307. Exemption of third persons from liability	132
Section 5308. Resignation, death or removal of custodian; bond; designation of successor custodian	132
Section 5309. Accounting by custodian	134
Section 5310. Construction	134

Chapter 55. Incompetents

Subchapter A. Meaning of Incompetent

Section 5501. Meaning of incompetent	134
--	-----

Subchapter B. Small Estates	
Section 5505. Provisions similar to small estates of minors' estates	135

Subchapter C. Appointment of Guardian; Bonds; Removal and Discharge	
Section 5511. Petition and hearing	135
Section 5512. County of appointment	136
Section 5513. Temporary guardian	136
Section 5514. To fill vacancy; co-guardian	137
Section 5515. Provisions similar to other estates	137
Section 5516. Fiduciary estate	138
Section 5517. Adjudication of competency	138
Section 5518. Evidence of mental condition	138

Subchapter D. Powers, Duties and Liabilities of Guardians	
Section 5521. Provisions concerning powers, duties and liabilities	139
Section 5522. Power to lease	140
Section 5523. Collateral attack	140
Section 5524. Effect of determination of incompetency	140
Section 5525. Notice to Commonwealth and political subdivisions	141

Subchapter E. Accounts, Audits, Reviews and Distribution	
Section 5531. When accounting filed	141
Section 5532. Where accounts filed	141
Section 5533. Notice, audits, reviews and distribution	141
Section 5534. Recognition of claims	142
Section 5535. Disposition of trust income	142
Section 5536. Distributions of income and principal during incompetency	142
Section 5537. Reserve for funeral	143

Chapter 57. Absentees and Presumed Decedents	
Section 5701. Proof of death	143
Section 5702. Trustee for absentee	144
Section 5703. Distribution of property of absentee	145
Section 5704. Notice to absentee	146
Section 5705. Search for absentee	146

Chapter 61. Estates	
Section 6101. Definitions	146
Section 6102. Termination of trusts	147
Section 6103. Release or disclaimer of powers or interests	147
Section 6104. Rule against perpetuities	148
Section 6105. Rule against perpetuities; disposition when in- validity occurs	149
Section 6106. Income accumulations; when valid	149
Section 6107. Income accumulations; disposition when invalid- ity occurs	150
Section 6108. Designation of beneficiaries of insurance or em- ploye death benefits not testamentary	150
Section 6109. Combination of charitable trusts	151
Section 6110. Administration of charitable estates	151
Section 6111. Conveyances to defeat marital rights	152
Section 6112. Spendthrift trusts	153
Section 6113. Limited estates in personalty and in the proceeds of the conversion of real estate	153
Section 6114. Rules of interpretation	153
Section 6115. Estates pur auter vie	155
Section 6116. Estates in fee tail abolished	155
Section 6117. Rule in Shelley's case	155

Chapter 71. Trust Estates

Subchapter A. Appointment of Trustees	
Section 7101. To fill vacancy	155
Section 7102. Service of process on nonresident trustee	156
Section 7103. Resident co-trustee	156
Subchapter B. Bond of Trustees	
Section 7111. Necessity, form and amount	156
Section 7112. Requiring or changing amount of bond	157
Subchapter C. Removal and Discharge	
Section 7121. Grounds and procedure	157
Subchapter D. Powers, Duties and Liabilities	
Section 7131. Possession of real and personal property	157
Section 7132. Abandonment of property	158
Section 7133. Powers, duties and liabilities identical with per- sonal representatives	158
Section 7134. Investments	159

Section 7135. Substituted or succeeding trustee.....	159
Section 7136. Effect of removal, or of probate of later will or codicil.....	159

Subchapter E. Sales, Pledges, Mortgages, Leases, Options and Exchanges

Section 7141. Power to sell.....	160
Section 7142. Power to lease.....	160
Section 7143. Title of purchaser.....	160

Subchapter F. Accounts, Audits, Reviews and Distributions

Section 7181. When account filed.....	161
Section 7182. Where accounts filed.....	161
Section 7183. Notice, audits, reviews and distribution.....	161
Section 7184. Disposition of income.....	162
Section 7185. Compensation.....	162
Section 7186. Failure to present claim at audit.....	163
Section 7187. Interest or income on distributive shares.....	163

Subchapter G. Separation and Combination of Trusts

Section 7191. Separate trusts.....	164
Section 7192. Combination of trusts.....	164

Chapter 73. Fiduciaries Investments

Section 7301. Definition of fiduciary.....	164
Section 7302. Authorized investments; in general.....	164
Section 7303. Government obligations.....	165
Section 7304. Obligations of Federal organizations.....	166
Section 7305. Obligations of Pennsylvania governmental organizations.....	167
Section 7306. Obligations of governmental organizations existing prior to the laws of Pennsylvania, other states and the District of Columbia.....	170
Section 7307. Corporate bonds.....	170
Section 7308. Mortgages.....	171
Section 7309. Fractional interests.....	172
Section 7310. Stocks.....	173
Section 7311. Real estate.....	174
Section 7312. Ground rent.....	174
Section 7313. Interest-bearing deposit.....	174
Section 7314. Common trust fund and mortgage investment fund.....	174
Section 7315. Retention of investments.....	175

Section 7316. Life insurance, building and loan shares, and similar assets	175
Section 7317. Investments which become unauthorized	175
Section 7318. Court direction	175
Section 7319. Directions of testator or settlor	176

Chapter 81. Principal and Income

Section 8101. Definition of terms	176
Section 8102. Application of the chapter; powers of settlor	177
Section 8103. Income and principal; disposition	177
Section 8104. Apportionment of income	178
Section 8105. Corporate dividends and share rights	179
Section 8106. Premium and discount bonds	181
Section 8107. Principal used in business	181
Section 8108. Principal comprising animals	182
Section 8109. Disposition of natural resources	182
Section 8110. Interest-bearing obligations in default	183
Section 8111. Expenses; trust estates	183
Section 8112. Expenses; nontrust estates	184

Chapter 82. Revised Price Act

Section 8201. Powers of courts to authorize sale, etc., of certain lands	185
Section 8202. When jurisdiction to be exercised	186
Section 8203. Jurisdiction where land wholly in one county	188
Section 8204. Jurisdiction and proceedings where land in two counties; recording mortgages	188
Section 8205. Existing laws, rights and powers not affected	188
Section 8206. Petition, citation and proceedings	188
Section 8207. Sale of land in which minor has remainder; disposition of proceeds	189
Section 8208. Effect of decree; requisites of petition	190
Section 8209. Appointment of master	190
Section 8210. Bond to secure application of moneys	190
Section 8211. Execution of conveyances	191
Section 8212. Title acquired; nonliability of purchaser	191
Section 8213. Payment or foreclosure of mortgage	191
Section 8214. Title to money or property received on sale, exchange, etc.; distribution, investment or application	192
Section 8215. How moneys expended	193
Section 8216. Before whom instruments may be acknowledged	193

Section 8217.	Title not affected by defect in appointment	193
Section 8218.	Nonliability of purchaser for misapplication of purchase price	194
Section 8219.	Notice of public sales	194
Section 8220.	Terms of sale; security for unpaid purchase money	194
Section 8221.	Effect of sale on liens	194
Section 8222.	Confirmation of sales	194
Section 8223.	Proceedings where fiduciary dies or is removed or neglects to execute deed	195
Section 8224.	Where one joint fiduciary dies or becomes in- capacitated	195
Section 8225.	Where joint fiduciary dies or becomes incapable before sale is made	196
Section 8226.	Effect of sale or conveyance	196
Section 8227.	Title not affected by subsequent removal of fiduciary	196
Section 8228.	Sale or mortgage to fiduciary	197
Section 8229.	Private sale may be authorized	197
Section 8230.	Objections to private sale and proceedings thereon	197
Section 8231.	Appeals	198
Section 8232.	Ratification of certain sales heretofore made	198
Section 8233.	Sales heretofore made under decree of court validated	198
Section 8234.	Sales of real estate of lunatics confirmed	198

Chapter 84. Military Service

Subchapter A. Fiduciaries in Military Service

Section 8401.	Definition of terms	199
Section 8402.	Powers of courts with respect to fiduciaries in military service	199
Section 8403.	Petition for relief; joinder of parties; notice	199
Section 8404.	Security by substituted fiduciaries; duties and responsibilities	200
Section 8405.	Duration of decree; impeachment of acts	200
Section 8406.	Fiduciaries relieved of duties and liabilities while in military service	200
Section 8407.	Power to control, remove, discharge and settle accounts	200

Subchapter B. Notice to Veterans' Bureau	
Section 8411. Notice of action to United States Veterans' Bureau.....	201
Section 8412. Veterans' Bureau's objection to account; costs...	201
 Chapter 85. Simultaneous Death	
Section 8501. No sufficient evidence of survivorship.....	201
Section 8502. Beneficiaries of another person's disposition of property.....	201
Section 8503. Joint tenants or tenants by the entirety.....	202
Section 8504. Insurance policies.....	202
Section 8505. Chapter does not apply if decedent provides otherwise.....	202
 Chapter 86. Anatomical Gifts	
Section 8601. Definitions.....	202
Section 8602. Persons who may execute an anatomical gift...	203
Section 8603. Persons who may become donees; purposes for which anatomical gifts may be made.....	204
Section 8604. Manner of executing anatomical gifts.....	204
Section 8605. Delivery of document of gift.....	205
Section 8606. Amendment of revocation of the gift.....	206
Section 8607. Rights and duties at death.....	206
 Chapter 87. Employe Benefits	
Section 8701. Existing trust may continue for term necessary to accomplish purpose.....	207
Section 8702. Combining trusts.....	207
Section 8703. Transfer of assets to corporate trustee; investments; common trust funds.....	207
Section 8704. Payments upon employe's death; third party claims.....	208
 Chapter 88. Slayers	
Section 8801. Definition of terms.....	208
Section 8802. Slayer not to acquire property as result of slaying.	209
Section 8803. Descent, distribution, dower, curtesy and statutory rights as survivor.....	209
Section 8804. Legacies.....	209
Section 8805. Tenancies by the entirety.....	209

of any such fiduciary, who is subject primarily to the control of the court of another jurisdiction and has not received ancillary authority in the Commonwealth.

“Foreign guardian.” Means a guardian, or one performing the function of a guardian, who is subject primarily to the control of the court of another jurisdiction and has not received ancillary authority in the Commonwealth.

“Guardian.” Means a fiduciary who has the care and management of the estate or person of a minor or an incompetent person.

“Incompetent.” Means a person determined to be incompetent under the provisions of Chapter 55 of this code.

“Letters.” Means letters testamentary or letters of administration of any description.

“Personal representative.” Means an executor or administrator of any description.

“Register.” Means the register of wills having jurisdiction of granting of letters testamentary or of administration.

“Trust.” Means any trust, whether testamentary or inter vivos, subject to the jurisdiction of the orphans’ court division.

“Will.” Means a written will, codicil or other testamentary writing and a nuncupative will.

Source: This section is new; “clerk” is derived from Section 102(1) of the Orphans’ Court Act of 1951, August 10, P.L. 1163; “court” is new, derived from the Orphans’ Court Act, *supra*; “fiduciary” is derived from Section 102(4) of the Orphans Court Act, *supra*; “first complete advertisement of the grant of letters” is derived from Section 102(8) of the Fiduciaries Act of 1949, April 18, P.L. 512, added 1956, February 23, P.L. (1955) 1084; “foreign fiduciary” is derived from Section 102(7) of the Fiduciaries Act, *supra*, amended 1951, Aug. 17, P.L. 1258; “foreign guardian” is derived from Section 102(5) of the Incompetents’ Estates Act, 1956, February 28, P.L. (1955) 1154; “guardian” is derived from Section 102(4) of the Incompetents’ Estates Act, *supra*; “letters” is derived from Section 102(5) of the Register of Wills Act, 1951, June 28, P.L. 638; “personal representative” is derived from Section 102(4) of the Register of Wills Act, *supra*; “register” is derived from Section 102(5) of the Fiduciaries Act, *supra*; “trust” is derived from Section 102(6) of the Fiduciaries Act, *supra*; “will” is derived from Section 102(6) of the Register of Wills Act, *supra*; “incompetent” is new.

Comment: For a definition of “inter vivos trust,” see Section 711(3), *infra*.

CHAPTER 3

OWNERSHIP OF PROPERTY; LEGAL TITLE AND EQUITABLE ESTATE

Section 301. Title to real and personal estate of a decedent.—(a)

Personal estate.—Legal title to all personal estate of a decedent shall pass at his death to his personal representative, if any, as of the date of his death.

(b) Real estate.—Legal title to all real estate of a decedent shall pass at his death to his heirs or devisees, subject, however, to all the powers granted to the personal representative by this code and lawfully by the will and to all orders of the court.

Source: This section is derived from Sections 103 and 104 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 302. Title to real and personal estate of an incompetent.—Legal title to all real estate and personal property of an incompetent shall remain in him, subject, however, to all the powers granted to his guardian by this code and lawfully by a governing instrument and to all orders of the court.

Source: This section is derived from Section 103 of the Incompetents' Estates Act, 1956, February 28, P.L. (1955) 1154.

Section 303. Title to real and personal estate of a minor.—Legal title to all real and personal property of a minor shall remain in him, subject, however, to all the powers granted to his guardian by this code and lawfully by a governing instrument and to all orders of the court.

Source: This section is new, suggested by Section 103 of the Incompetents' Estates Act, 1956, February 28, P.L. (1955) 1154.

CHAPTER 7

ORPHANS' COURT DIVISIONS

SUBCHAPTER A ORGANIZATION

Section 701. Orphans' court divisions.—(a) Judicial districts having separate orphans' court divisions.—There shall be a separate orphans' court division of the court of common pleas in the judicial districts of Allegheny, Beaver, Berks, Bucks, Cambria, Chester, Dauphin, Delaware, Erie, Fayette, Lackawanna, Lancaster, Lehigh, Luzerne, Montgomery, Philadelphia, Schuylkill, Washington, Westmoreland and York Counties. Each separate orphans' court division shall have the number of judges provided by law.

(b) Judicial districts having no separate orphans' court division.—In each judicial district having no separate orphans' court division, there

shall be an orphans' court division composed of the judges of the court of common pleas of that judicial district.

Source: This section is derived from Sections 202 and 203 of the Orphans' Court Act of 1951, August 10, P.L. 1163.

Comment: Prior to the 1968 constitutional amendment, orphans' courts existed as courts of record in all counties. The 20 counties enumerated in subsection (a) had separate orphans' courts manned by separately elected judges. In the other counties the orphans' courts were composed of the judges of the courts of common pleas. The Orphans' Court Act of 1951 governed jurisdiction and procedure of all the orphans' courts, separate and nonseparate. The new Judiciary Article of the Constitution of 1968 abolished all orphans' courts. It provided for orphans' court divisions of the courts of common pleas only in those judicial districts which formerly had separate orphans' courts. No vestige of the old orphans' courts was left in the other counties, so that, absent legislative action, there would be no statutory procedure for probate and trust matters in those counties. However, Article VIII, Section 8, of the constitutional amendment expressly authorizes the General Assembly to ". . . establish additional . . . divisions of existing courts, as needed . . ." In order to preserve uniform procedure for probate and trust matters in all judicial districts, the present section, in subsection (a), confirms the separate orphans' court divisions in the 20 counties and, in subsection (b), creates nonseparate orphans' court divisions composed of the judges of the courts of common pleas in the counties which do not have such divisions under the Constitution.

Section 702. Sessions; terms.—Each orphans' court division shall be in session as often as its judges shall think necessary or proper. There shall be no terms of the orphans' court division.

Source: This section is derived from Section 205 of the Orphans' Court Act of 1951, August 10, P.L. 1163.

Section 703. Rules.—Rules and forms of procedure, not inconsistent with the Constitution and laws of the Commonwealth and with rules of the Supreme Court, may be made and prescribed by each orphans' court division for the conduct of proceedings before it.

Source: This section is derived from Section 206 of the Orphans' Court Act of 1951, August 10, P.L. 1163.

SUBCHAPTER B JURISDICTION

Section 711. Mandatory exercise of jurisdiction through the orphans' court division in general.—Except as provided in section 713 the jurisdiction of the court of common pleas over the following shall be exercised through its orphans' court division:

(1) Decedents' estates. The administration and distribution of the real and personal property of decedents' estates and the control of the decedent's burial.

(2) Testamentary trusts. The administration and distribution of the real and personal property of testamentary trusts whether created before or after the effective date of this chapter, except any testamentary trust created before the effective date of the Fiduciaries Act of 1917, jurisdiction of which was acquired by the court of common pleas prior to January 1, 1969 unless the president judge of such court orders the jurisdiction of the trust to be exercised through the orphans' court division.

(3) Inter vivos trusts. The administration and distribution of the real and personal property of inter vivos trusts, and the reformation or setting aside of any such trusts, whether created before or after the effective date of this chapter, except any inter vivos trust jurisdiction of which was acquired by the court of common pleas prior to January 1, 1969 unless the president judge of such court orders the jurisdiction of the trust to be exercised through the orphans' court division.

“Inter vivos trust” means an express trust other than a trust created by a will, taking effect during the lifetime or at or after the death of the settlor.

It includes:

- (i) a life insurance trust;
- (ii) a trust created under a deed, agreement or declaration except as hereinafter excluded;
- (iii) a common trust fund or mortgage investment fund created by a corporate fiduciary for the investment of funds held by it as fiduciary or co-fiduciary;
- (iv) a tentative trust; and
- (v) similar trusts.

“Inter vivos trust” does not include:

- (vi) a resulting or constructive trust created by operation of law;
- (vii) a trust for creditors;
- (viii) an escrow relationship;

- (ix) a temporary trust to hold disputed property;
- (x) a principal and agent relationship;
- (xi) a trust primarily for the benefit of business employes, their families or appointees, under a stock bonus, pension, disability or death benefit, profit-sharing or other employe-benefit plan;
- (xii) a trust for bondholders;
- (xiii) a mortgagee in possession relationship; and
- (xiv) similar trusts or fiduciary relationships.

(4) Minors' estates. The administration and distribution of the real and personal property of minors' estates.

(5) Custodianships for minors' property. Matters relating to custodianship of the property of minors, as provided by law.

(6) Guardian of persons of minors. The appointment, control and removal of the guardian of the person of any minor.

(7) Adoptions. Adoptions, subject to the provisions of section 713.

(8) Custody of minors. The determination of the right to the custody of a minor in connection with any proceeding for his adoption or for the appointment of a guardian of his person, except as provided in section 713.

(9) Birth records. Except as provided in section 713, all proceedings which may be necessary to be presented to a court for determination with regard to issues concerning recordation of birth and birth records or the alteration, amendment or modification of such birth records or the right to obtain a certified copy of the same. Whenever a person is entitled to take an appeal from the action of the Department of Health in connection with any matters concerning birth records the appeal shall be taken to the orphans' court division of the county in which the person is a resident. In all other matters in which a petition is addressed to a court in connection with matters of birth records, the filing of which petition is not in the nature of an appeal but is an original proceeding, shall be filed and determined by the orphans' court division of the county in which the petitioner resides.

(10) Incompetents' estates. The administration and distribution of the real and personal property of the estates of incompetents, except where jurisdiction thereof was acquired by the court of common pleas prior to January 1, 1969 unless the president judge of such court orders the jurisdiction of the trust to be exercised through the orphans' court division.

(11) Absentees' and presumed decedents' estates. The administration and distribution of the real and personal property of absent persons and of presumed decedents.

(12) Fiduciaries. The appointment, control, settlement of the accounts of, removal and discharge of, and allowance to and allocation of compensation among, all fiduciaries of estates and trusts, jurisdiction of which is exercised through the orphans' court division, except that the register shall continue to grant letters testamentary and of administration to personal representatives as heretofore.

(13) Specific performance of contracts. To enforce specifically the performance by either party of any agreement made by a decedent to purchase or sell real or personal property.

(14) Legacies, annuities and charges. Proceedings for the enforcement of legacies, annuities and charges placed on real or personal property by will, inter vivos trust, or decree of an orphans' court or orphans' court division or for the discharge of the lien thereof.

(15) Construction of administrative power. The construction of an administrative power as to real estate proposed to be exercised by a fiduciary of an estate or trust, jurisdiction of which is exercised through the orphans' court division.

(16) Disposition of title to real estate to render it freely alienable. The disposition of any interest in real estate of one disabled from dealing with it when title to it has been acquired by descent or will, or is in an estate or trust jurisdiction of which is exercised through the orphans' court division.

(17) Title to personal property. The adjudication of the title to personal property in the possession of the personal representative, or registered in the name of the decedent or his nominee, or alleged by the personal representative to have been in the possession of the decedent at the time of his death.

(18) Appeals and proceedings from registers. Appeals from and proceedings removed from registers.

(19) Marriage licenses. Marriage licenses, as provided by law.

(20) Inheritance and estate taxes. Matters relating to inheritance and estate taxes, as provided by law.

(21) Nonprofit corporations. The administration and proper application of funds awarded by an orphans' court or an orphans' court division to a nonprofit corporation heretofore or hereafter organized under the laws of the Commonwealth of Pennsylvania for a charitable purpose at the direction of the orphans' court or orphans' court division or at the direction of a settlor or testator of a trust or estate, jurisdiction of which is exercised through the orphans' court division except as the administrative, presiding or president judge of such division disclaims the exercise of future jurisdiction thereof.

Source: This section is derived from Section 301 of the Orphans' Court Act of 1951, August 10, P.L. 1163, amended 1956, February 10, P.L. (1955) 1022; definition of "inter vivos trust" is derived from Section 301(3) of the Orphans' Court Act of 1951, *supra*, as amended 1965, December 22, P.L. 1192 and from Section 102(6) of the Orphans' Court Act of 1951, *supra*; clause (19) is derived from the Orphans' Court Act of 1951, *supra*, added 1965, December 22, P.L. 1193.

Comment: The wording of the opening sentence of former Section 301 of the Orphans' Court Act of 1951 has been changed to adopt the language of Sections 4, 16(p) and 17(a) of the Schedule to the Judiciary Article of the 1968 constitutional amendment.

Clause (5) has been added to conform to the Pennsylvania Uniform Gifts to Minors Act, now found in Chapter 53. Certain other provisions applicable exclusively to Philadelphia County are found in Section 713, *infra*.

Section 712. Nonmandatory exercise of jurisdiction through the orphans' court division.—Except as provided in section 713 the jurisdiction of the court of common pleas over the following may be exercised through the orphans' court division:

(1) Title to real estate. The determination of the persons to whom the title to real estate of a decedent or of the creator of an estate or trust has passed by devise or descent or by the terms of the trust instrument where jurisdiction of such estate or trust is exercised through the orphans' court division: Provided, That nothing herein shall be construed to restrict the provisions of section 711 relating to distribution of real estate in an estate or trust.

(2) Guardian of person. The appointment, control and removal of the guardian of the person of any incompetent.

Source: This section is derived from Section 302 of the Orphans' Court Act of 1951, August 10, P.L. 1163, amended 1959, October 13, P.L. 1311.

Comment: This section continues the provisions of the Orphans' Court Act of 1951 for certain matters which previous to the 1968 constitutional amendment could have been heard in either the orphans' court or the court of common pleas. It is included to assure the continuance of existing practices until such time as experience with the consolidated courts might dictate otherwise.

Section 713. Special provisions for Philadelphia County.—The provisions of section 711, insofar as they relate to adoptions and birth records, shall not apply to Philadelphia County. In Philadelphia County the jurisdiction over adoptions and all proceedings which may be necessary to be presented to a court for determination with regard to issues concerning recordation of birth and birth records or the alteration, amendment or modification of such birth records or the right to obtain a certified copy of the same, shall be exercised through the family court division of the court of common pleas. Whenever a resident of Philadelphia is entitled to take an appeal from the action of the Department of Health in connection with any matters concerning birth records, the appeal shall be taken to the family court division of the court of common pleas of Philadelphia. In all other matters in which a petition is addressed to a court by a resident of Philadelphia in connection with matters of birth records, the filing of which petition is not in the nature of an appeal but is an original proceeding, the petition shall be determined by the family court division of the court of common pleas of Philadelphia.

Source: This section is derived from the unnumbered paragraph following Section 301(18) of the Orphans' Court Act of 1951, August 10, P.L. 1163, amended 1959, November 10, P.L. 1467.

Comment: This section continues the special provisions for Philadelphia in the Orphans' Court Act of 1951 with changes in language required by the constitutional amendment of 1968.

There is no similar section relating to Allegheny County because, although Section 17 (a) of the Schedule to the new Judiciary Article made certain changes with respect to adoption, delayed birth records and custody of children, these were expressly made subject to local rule of court and the Court of Common Pleas of Allegheny County has

adopted a rule retaining the jurisdiction over all such proceedings in its Orphans' Court Division consistent with the practice in all other counties except Philadelphia.

Section 714. Conflict of laws.—Nothing in this chapter shall be construed to interfere with the rules of law applicable to the determination of the question whether Pennsylvania courts have jurisdiction of the subject matters enumerated in this chapter.

Source: This section is derived from Section 303 of the Orphans' Court Act of 1951, August 10, P.L. 1163.

Section 715. Incidental powers.—The orphans' court division shall have all legal and equitable powers required for or incidental to the jurisdiction it exercises.

Source: This section is derived from Section 304 of the Orphans' Court Act of 1951, August 10, P.L. 1163.

SUBCHAPTER C VENUE

Section 721. Venue of decedents' and minors' estates.—When a Pennsylvania court has jurisdiction of a decedent's or a minor's estate, except as otherwise provided by law, the venue for all purposes shall be as follows:

(1) Decedents' estates. In the case of a decedent's estate, in the county where the letters are granted to the personal representative, and in the absence of such letters, then where the decedent had his last family or principal residence, and if the decedent had no domicile in the Commonwealth, then in any county where any of his property is located.

(2) Minors' estates. In the case of a guardian of a minor appointed by the court, in the county whose court appointed the guardian. In the case of a guardian of a minor not appointed by the court, or when there is a minor's estate but no guardian, in the county whose court which at the time proceedings are first initiated would have jurisdiction to appoint a guardian of the estate.

Source: This section is derived from Section 305 of the Orphans' Court Act of 1951, August 10, P.L. 1163.

Section 722. Venue of trust estates.—When a Pennsylvania court has jurisdiction of any trust, testamentary or inter vivos, except as otherwise provided by law, the venue for all purposes shall be in the county where at the time being is the situs of the trust. The situs of the trust

shall remain in the county of the court which first assumed jurisdiction of the trust, unless and until such court shall order a change of situs under the provisions of this chapter.

Source: This section is derived from Section 306 of the Orphans' Court Act of 1951, August 10, P.L. 1163.

Section 723. Situs of testamentary trust.—The situs of a testamentary trust shall be in the county where letters were granted to the personal representative, and in the absence of such letters, then in a county where such letters could have been granted, and if no such letters could have been granted, then in a county in which any trustee resides or is located.

Source: This section is derived from Section 307 of the Orphans' Court Act of 1951, August 10, P.L. 1163.

Section 724. Situs of inter vivos trust.—(a) When provided for in trust instrument.—If the trust instrument expressly provides for the situs of the inter vivos trust, its situs shall be at the place within or without the Commonwealth which is in accord with such provision.

(b) Not provided for in trust instrument.—If the trust instrument does not expressly provide for the situs of the inter vivos trust, its situs shall be:

(1) Resident settlor. In the case of an inter vivos trust whose settlor is domiciled in the Commonwealth:

(i) in the settlor's lifetime, either in the county of his principal residence or in the county in which any of the trustees resides or is located; and

(ii) after the settlor's death, either in the county in which letters have been granted to his personal representative, or in a county in which letters could have been granted, or in a county in which any trustee resides or is located.

(2) Nonresident settlor. In the case of an inter vivos trust whose settlor:

(i) is not domiciled in the Commonwealth at the time when during his lifetime the first application is made to a court concerning the trust; or

(ii) was not domiciled in the Commonwealth at his death if the first application to a court concerning the trust was made thereafter, in a county in which any trustee resides, and if there is no such trustee, then in a county where property of the trust is located.

Source: This section is derived from Section 308 of the Orphans' Court Act of 1951, August 10, P.L. 1163.

Section 725. Change of situs; order of court.—A court having jurisdiction of a testamentary or inter vivos trust, on application of a trustee or of any party in interest, after such notice to all parties in interest as it shall direct and aided if necessary by the report of a master, and after such accounting and such provision to insure the proper payment of all taxes to the Commonwealth and any political subdivision thereof as the court shall require, may direct, notwithstanding any of the other provisions of this chapter, that the situs of the trust shall be changed to any other place within or without the Commonwealth if the court shall find the change necessary or desirable for the proper administration of the trust. Upon such change of situs becoming effective by the assumption of jurisdiction by another court, the jurisdiction of the court as to the trust shall cease and thereupon the situs of the trust for all purposes shall be as directed by the court.

Source: This section is derived from Section 309 of the Orphans' Court Act of 1951, August 10, P.L. 1163.

SUBCHAPTER D JUDGES

Section 731. Powers.—Any judge of an orphans' court division, whether or not it consists of more than one judge, may hear and determine all matters jurisdiction of which is exercised through the orphans' court division. His determination thereof shall be a final decree, unless exceptions thereto are authorized by rule of court or the decree discloses that it is not intended as such.

Source: This section is derived from Section 401 of the Orphans' Court Act of 1951, August 10, P.L. 1163.

Section 732. Powers when the court is not in session.—Any judge of an orphans' court division shall have powers, whether or not the court is in session, to administer ex parte business and to issue process.

Source: This section is derived from Section 403 of the Orphans' Court Act of 1951, August 10, P.L. 1163.

SUBCHAPTER E DUTIES OF THE CLERK AND SHERIFF

Section 741. Duties of the clerk.—The clerk of each orphans' court division shall have custody of the records and of the seal of the division, shall faithfully perform, under the direction of the division the duties of his office, and may appoint an assistant clerk or clerks, but only with the consent and approval of the division. He shall attest in the name of the president, presiding or administrative judge of the division all

process, subpoenas, certificates, copies of records and other documents which shall be issued out of the division.

Source: This section is derived from Section 501 of the Orphans' Court Act of 1951, August 10, P.L. 1163.

Section 742. Dockets.—The clerk of each orphans' court division shall keep in the dockets provided for that purpose a record of all proceedings of the division. Local rules may prescribe the recording of all or parts of instruments filed with the division or the clerk, or may prescribe that any instrument be filed in duplicate, and that the duplicates be bound into volumes and preserved in lieu of recording, or may prescribe that any instrument be copied by photographic or other mechanical process.

Source: This section is derived from Section 502 of the Orphans' Court Act of 1951, August 10, P.L. 1163.

Section 743. Bill of costs.—(a) Each orphans' court division may establish a bill of costs to be charged for the services of the clerk not otherwise provided for by law.

(b) Each separate orphans' court division may establish a bill of costs to be charged to the parties and the estates before them for settlement for the services of the clerk in the transaction of its business.

Source: This section is derived from Section 503 of the Orphans' Court Act of 1951, August 10, P.L. 1163, amended 1956, March 20, P.L. (1955) 1306.

Section 744. Translation of foreign language documents.—A writing not in English shall not be filed in the orphans' court division or in the office of the clerk unless there is attached to it and filed with it a translation into English sworn to be correct. A writing filed in violation of this section shall not constitute notice to any person.

Source: This section is derived from Section 504 of the Orphans' Court Act of 1951, August 10, P.L. 1163.

Section 745. Advertisement of accounts.—(a) Requirement of notice; contents of notice.—The clerk of the orphans' court division shall give notice by advertisement of the time when accounts filed with him and with the register will be presented to the division for confirmation, stating in the advertisement the names and capacities of the respective accountants.

(b) Manner of advertisement.—The notice shall be advertised at least once a week during the four weeks immediately preceding the time for presentation of the accounts to the division in the case of accounts filed with the register, and at least once a week during the two weeks immediately preceding the time for presentation of the accounts to the

division in the case of accounts filed with the clerk:

(1) in the legal publication, if any, designated by rule of court for the publication of legal notices; and

(2) in at least one newspaper of general circulation published within the county, and if no such newspaper is published in that county, then in one such newspaper published nearest to that county.

(c) Cost of advertisement.—The expense of the advertisement and of the proof thereof shall be charged to the estate or trust and allowed to the clerk of the division, who shall pay the publication costs to the newspapers upon delivery of the proofs of publication.

Source: This section is derived from Section 505 of the Orphans' Court Act of 1951, August 10, P.L. 1163.

Section 746. Money paid into court.—The clerk of each orphans' court division shall have custody of all funds paid into each division. Pending the distribution thereof, the clerk of the division may invest the funds but shall have no duty to do so. Any such investment, except as the division shall otherwise direct, shall be restricted to obligations of the United States or the United States Treasury, or of the Commonwealth.

Source: This section is derived from Section 506 of the Orphans' Court Act of 1951, August 10, P.L. 1163.

Section 747. Powers and duties of the sheriff.—The sheriff shall serve process and execute orders directed to him pursuant to the provisions of this chapter.

Source: This section is derived from Section 511 of the Orphans' Court Act of 1951, August 10, P.L. 1163.

Section 748. Fees.—The fees and allowances of the sheriff shall be as provided by law or in the absence thereof as fixed by rule of court.

Source: This section is derived from Section 512 of the Orphans' Court Act of 1951, August 10, P.L. 1163.

SUBCHAPTER F MASTERS, AUDITORS, EXAMINERS, GUARDIANS AD LITEM AND TRUSTEES AD LITEM

Section 751. Appointment; purpose.—The orphans' court division may appoint:

(1) Masters. A master to investigate any issue of fact and to report

his findings of fact, conclusions of law and recommendations to the court.

(2) Auditors of accounts of fiduciaries. Except in the circumstances prohibited by law, an auditor to examine and audit an account and to determine distribution.

(3) Auditors to state accounts. An auditor to state an account when a proper account cannot be obtained from a fiduciary or other person required to state an account.

(4) Examiners of assets. By general rule or special order, an examiner or examiners to make periodic or special examinations of assets of estates or trusts, and to require all persons in whose custody or control such assets may be held to present them for examination.

(5) Guardians and trustees ad litem. On petition or on its own motion, a guardian or a trustee ad litem to represent the interest, not already represented by a fiduciary, of:

- (i) a person not sui juris; or
- (ii) an absentee; or
- (iii) a presumed decedent; or
- (iv) an unborn or unascertained person.

Source: This section is derived from Section 601 of the Orphans' Court Act of 1951, August 10, P.L. 1163.

Section 752. Compensation.—Any person appointed by the orphans' court division as master, auditor, examiner, guardian ad litem or trustee ad litem, shall be compensated by reasonable fees fixed by the division and paid from such source as it shall direct.

Source: This section is derived from Section 602 of the Orphans' Court Act of 1951, August 10, P.L. 1163.

Section 753. Subpoenas.—Masters, auditors and examiners shall have the power to issue subpoenas with or without a clause of duces tecum to witnesses to appear before them when necessary for the performance of any of their duties. If any person who has been duty subpoenaed fails to obey the subpoena, the master, auditor or examiner issuing the subpoena may report the neglect or refusal to the orphans' court division. The orphans' court division upon receiving such report shall have power to issue an attachment in the same manner as is provided in the case of subpoenas issued by it.

Source: This section is derived from Section 603 of the Orphans' Court Act of 1951, August 10, P.L. 1163.

Section 754. Power to administer oaths.—Masters, auditors and ex-

aminers shall have the power to administer oaths to parties and witnesses.

Source: This section is derived from Section 604 of the Orphans' Court Act of 1951, August 10, P.L. 1163.

SUBCHAPTER G PROCEDURE

Section 761. Petitions.—All applications to the orphans' court division shall be by petition in the form prescribed by rules of the Supreme Court.

Source: This section is derived from Section 701 of the Orphans' Court Act of 1951, August 10, P.L. 1163.

Section 762. Accounts.—The orphans' court division may decide or dispose of any question relating to the administration or distribution of an estate or trust and exercise any of its powers in respect thereof upon the filing of an account or in any other appropriate proceeding. The account may be a complete accounting of the estate or trust or of only the transactions which raise the question to be determined.

Source: This section is derived from Section 702 of the Orphans' Court Act of 1951, August 10, P.L. 1163.

Section 763. Writs of habeas corpus.—In any proceeding for the adoption of a minor or for the appointment of a guardian of his person, the orphans' court division may award a writ of habeas corpus.

Source: This section is derived from Section 703 of the Orphans' Court Act of 1951, August 10, P.L. 1163.

Section 764. Citation.—Jurisdiction of the person shall be obtained by citation to be awarded by the orphans' court division upon application of any party in interest. The citation shall direct the party named therein to file a complete answer under oath to the averments of the petition on or before a day certain, which shall not be less than 10 days after the service thereof, and to show cause as the decree of the division shall provide.

Source: This section is derived from Section 704 of the Orphans' Court Act of 1951, August 10, P.L. 1163, amended 1965, July 22, P.L. 235.

Comment: Also see Sup. Ct. O.C. Rules, Section 3, Rule 2(a), as amended January 1, 1968.

The 1965 amendment which validated certain jurisdiction acquired prior to its amendment has been omitted as no longer necessary.

Section 765. Service of citation.—A citation to obtain jurisdiction of a person may be served by an adult person, or by the sheriff of the county wherein the citation issued, or by deputization of the sheriff of the county where the service may be had in any county of the Commonwealth, in the same manner as a writ of summons in an action of assumpsit. When no other time is specially fixed by the orphans' court division, the order awarding the citation shall be void unless the citation is issued within six months.

Source: This section is derived from Section 705 of the Orphans' Court Act of 1951, August 10, P.L. 1163.

Section 766. Proof of service.—Proof of service shall be by affidavit of the person or the return of the sheriff making service, and shall set forth the same information as a sheriff's return in an action of assumpsit.

Source: This section is derived from Section 706 of the Orphans' Court Act of 1951, August 10, P.L. 1163.

Section 767. Parties in interest.—In any proceeding where the orphans' court division considers that the interests of any taxing authority, including the United States, any state and any political subdivision thereof, may be adversely affected directly or indirectly by a decision of such division because of the effect of such decision on assets subject to tax or for any other reason, the division shall have the power on its own motion or on the application of any party in interest, including the taxing authority, and upon such notice as it may direct, to authorize the taxing authority through its proper officer to appear as a party in interest, and if such an appearance is entered, the taxing authority shall be considered to be a party in interest aggrieved by any decision adversely affecting its interests.

Source: This section is derived from Section 707 of the Orphans' Court Act of 1951, August 10, P.L. 1163, amended 1963, August 13, P.L. 670.

Section 768. Manner of service; proof.—Notice of any proceeding in an orphans' court division may be given within or outside the Commonwealth by personal service, by registered mail, by publication, or otherwise, as the division shall direct by general rule or special order. Notice may be in the form of a citation served as provided in this section.

Source: This section is derived from Section 711 of the Orphans' Court Act of 1951, August 10, P.L. 1163.

Section 769. Power of orphans' court division.—Should the respondent fail to comply with the requirements of any citation or notice, the division, upon proof of service thereof, shall have the power to make such order as may be just and necessary.

Source: This section is derived from Section 721 of the Orphans' Court Act of 1951, August 10, P.L. 1163.

Section 771. Decree without prior hearing; attachment; sequestration.—The orphans' court division, without a prior hearing, may allow the issuing of a writ of attachment of the person or a writ of sequestration, or both, against any one who the division is satisfied is about to leave the Commonwealth or conceals his whereabouts to the prejudice of the complainant or of an estate or trust, jurisdiction of which is exercised through the division. On the return of the writ the orphans' court division may proceed as on the return of a citation or make such order as it shall deem appropriate. An attachment or sequestration issued without a prior hearing may be dissolved at any time by the division upon the respondent's giving security, to the court's satisfaction, for his appearance on a day certain to answer the petition and to abide the orders and decrees of the division in the premises.

Source: This section is derived from Section 731 of the Orphans' Court Act of 1951, August 10, P.L. 1163.

Section 772. Injunctions.—The orphans' court division shall have all the powers of any court of equity to issue injunctions in all matters where jurisdiction is to be exercised through the division.

Source: This section is derived from Section 732 of the Orphans' Court Act of 1951, August 10, P.L. 1163.

Section 773. Subpoenas.—The orphans' court division may issue subpoenas with or without a clause of duces tecum into any county of the Commonwealth to witnesses to appear before it or any master, auditor or examiner appointed by it.

Source: This section is derived from Section 741 of the Orphans' Court Act of 1951, August 10, P.L. 1163.

Section 774. Depositions and discovery.—The orphans' court division, by general rule or special order, may prescribe the practice relating to depositions, discovery and the production of documents. To the extent not provided for by general rule or special order, the practice relating to such matters shall conform to the practice in the division of the court having jurisdiction over actions at law.

Source: This section is derived from Section 742 of the Orphans' Court Act of 1951, August 10, P.L. 1163.

Section 775. Perpetuation of testimony and court records.—The orphans' court division, by general rule or special order, may prescribe the practice relating to the perpetuation of testimony and to the perpetuation of lost or destroyed court records. When proved, such court

records shall have the same legal effect as original records would have had. Notice of proceedings for the perpetuation of testimony and for the perpetuation of lost or destroyed court records shall be given in such manner as the division shall direct.

Source: This section is derived from Section 743 of the Orphans' Court Act of 1951, August 10, P.L. 1163.

Section 776. Testimony in proceedings removed from register.—On appeal from the register, or in a proceeding removed from the register, the orphans' court division may find, upon the testimony taken before the register, that a substantial dispute of fact exists and grant a jury trial. When upon the testimony taken before the register a jury trial is not granted, the division shall hear the testimony de novo unless all parties appearing in the proceeding agree that the case be heard on the testimony taken before the register. In any event, the division may require witnesses already examined and other witnesses to appear before it. The division, in its discretion, may impanel a jury at any stage of the proceedings.

Source: This section is derived from Section 744 of the Orphans' Court Act of 1951, August 10, P.L. 1163, amended 1956, February 10, P.L. (1955) 1022.

Section 777. Right to jury trial; discretion of orphans' court division.—(a) Title to property.—When a substantial dispute of fact shall arise concerning the decedent's title to property, real or personal, any party in interest shall be entitled to a trial of such issue by a jury. The verdict of the jury shall have the same effect as the verdict of a jury in a case at law.

(b) Determination of incompetency.—Any person against whom proceedings have been instituted to establish his incompetency shall be entitled to a trial of such issue by a jury. The verdict of the jury shall have the same effect as the verdict of a jury in a case at law.

(c) Will contest and other matters.—When a contest shall arise concerning the validity of a writing alleged to be testamentary, or concerning any matter other than as provided in subsections (a) and (b) of this section, the orphans' court division, in its discretion at any stage of the proceedings, may impanel a jury to decide any question of fact, but the verdict of the jury shall be advisory only.

(d) Waiver of right.—A person desiring a trial by jury shall make demand therefor in writing at least ten days prior to the initial hearing before the orphans' court division or; if the initial hearing is dispensed with as provided in section 778(b) then at least ten days prior to the trial. The right to trial by jury is waived if such demand is not so made

or, after having been made, the person claiming the right fails to appear.

Source: This section is derived from Section 745 of the Orphans' Court Act of 1951, August 10, P.L. 1163, amended 1961, July 14, P.L. 610.

Section 778. Procedure for jury trials.—(a) Jury.—Jury trials in any case begun before or certified or appealed to an orphans' court division shall be tried in the division. The division shall draw a jury and preside at the trial of the issue and shall have all the powers of a judge in trials by jury in cases at law. The panel of jurors drawn for service in other divisions of the court shall be available for such service in the orphans' court division when required, and in judicial districts where there is a separate orphans' court division, the court of common pleas shall, by appropriate rules, provide for and regulate the manner in which the jurors shall be made available and sent to the orphans' court division when required for the trial of issues therein.

(b) Combined hearings and trials.—In any case begun before or certified or appealed to the orphans' court division, the court may, on its own motion or on motion of a party and with reasonable notice to all parties:

(1) Combine the hearing to determine whether a substantial dispute of fact exists with the trial to determine the dispute, and impanel a jury before determining whether or not a substantial dispute of fact exists; and

(2) Combine the hearing and trial on all wills, the issues in regard to which are closely interrelated.

The court may withdraw the case from the jury, if the court determines that no substantial dispute of fact exists.

(c) Rules of court.—Unless and until an orphans' court division otherwise directs, the appropriate rules of the division of the court having jurisdiction over actions at law shall apply to jury trials of issues in the orphans' court division, and matters relating to such trials shall be heard and disposed of by the orphans' court division.

Source: This section is derived from Section 746 of the Orphans' Court Act of 1951, August 10, P.L. 1163, amended 1956, February 10, P.L. (1955) 1022.

Section 781. Methods of enforcement.—Compliance with an order or decree of an orphans' court division may be enforced by attachment of the person; sequestration of real or personal property; execution on personal property; attachment execution; or execution on real estate.

Source: This section is derived from Section 751 of the Orphans' Court Act of 1951, August 10, P.L. 1163.

Section 782. Procedure on attachment of the person.—(a) Direction of writs.—A writ of attachment of the person shall be directed to and executed by the sheriff of the county in which the court or branch of the court is located or of any county where the person to be attached is located.

(b) Discharge of person attached for contempt.—Any person attached for contempt may be discharged from custody by the orphans' court division upon purging himself of contempt to the satisfaction of the division by whose order he was attached.

Source: This section is derived from Section 752 of the Orphans' Court Act of 1951, August 10, P.L. 1163.

Section 783. Procedure on sequestration of real or personal property.—A writ of sequestration of real or personal property of an estate or trust, or of the respondent, to enforce an order or decree of the orphans' court division in the administration of the estate or trust shall be allowed by the orphans' court division as fully as in any court of equity, and shall be directed to and executed by the sheriff of the county in which the court or branch of the court is located or of any county where property to be sequestered is located. The orphans' court division, by general rule or special order, may prescribe the practice relating to sequestration of real and personal property. To the extent not provided for by general rule or special order, the practice relating to sequestration shall conform to the practice in the division of the court having jurisdiction over actions at law.

Source: This section is derived from Section 753 of the Orphans' Court Act of 1951, August 10, P.L. 1163.

Section 784. Procedure on execution on personal property.—Writs of execution on personal property shall be allowed by the orphans' court division and directed to and executed by the sheriff of the proper county. The proceedings thereon shall be the same as on execution on personal property issued out of the division of the court having jurisdiction over actions at law.

Source: This section is derived from Section 754 of the Orphans' Court Act of 1951, August 10, P.L. 1163.

Section 785. Procedure on attachment execution.—Writs of attachment execution shall be allowed by the orphans' court division and directed to and executed by the sheriff of the proper county. The proceedings thereon shall be the same as attachment executions issued out of the division of the court having jurisdiction over actions at law.

Source: This section is derived from Section 755 of the Orphans' Court Act of 1951, August 10, P.L. 1163.

Section 786. Procedure on execution on real estate.—(a) Filing.—The prothonotary of any court of common pleas shall, on demand of the fiduciary or of any party in interest, file and docket a certified transcript or extract from the record showing that an orphans' court division has adjudged an amount to be due by any person, and such transcripts or extract shall constitute a judgment of the court against such person from the time of its filing with the same effect as if it had been obtained in an action in the division of the court having jurisdiction over actions at law. If the amount adjudged to be due shall be increased or decreased on appeal, the prothonotary shall, if the decree of the appellate court is certified to him, change his records accordingly, and if the appellate court has increased the amount, the excess shall constitute a judgment from the time when the records are so changed.

(b) Satisfaction and discharge.—If the orphans' court division shall order such person to be relieved from any such judgment, the prothonotary shall, on demand of any party in interest, enter on his records a certified copy of such order, which shall operate as a satisfaction of the judgment.

(c) Executions.—Execution may be issued on the judgment out of the court against the real estate of such respondent by any interested party for the recovery of so much as may be due to him, in the same manner as upon any other judgment rendered by the court.

Source: This section is derived from Section 756 of the Orphans' Court Act of 1951, August 10, P.L. 1163.

Section 791. Allowance and allocation.—The allowance and allocation of costs incident to proceedings before the orphans' court division or to the administration of estates or trusts within its jurisdiction shall be as now or hereafter provided by law, and in the absence thereof, as fixed by the division by general rule or special order.

Source: This section is derived from Section 761 of the Orphans' Court Act of 1951, August 10, P.L. 1163.

Section 792. Right of appeal.—Any party in interest who is aggrieved by a final order or decree of the orphans' court division, or a fiduciary whose estate or trust is so aggrieved, may appeal therefrom to the proper appellate court. An appeal in like manner may be taken from a decree of distribution of the orphans' court division which is not final within the meaning of this section, provided the division shall certify that the decree is sufficiently definite to determine the substantial issues between the parties.

Source: This section is derived from Section 771 of the Orphans' Court Act of 1951, August 10, P.L. 1163.

Section 793. Effect of appeal.—No appeal from an order or decree of an orphans' court division concerning the validity of a will or the right to administer shall suspend the powers or prejudice the acts of a personal representative acting thereunder. The reversal or modification of any decree of an orphans' court division in a proceeding in which the division has jurisdiction of the sale, mortgage, exchange or conveyance of real or personal estate shall not divest any estate or interest acquired thereunder by a person not a party to the appeal.

Source: This section is derived from Section 772 of the Orphans' Court Act of 1951, August 10, P.L. 1163.

Section 794. Disposition of cases on appeal.—The Supreme Court of the Commonwealth shall, in all cases of appeal from a decree of the orphans' court division, hear, try and determine the same as to right and justice may belong, and decree according to the equity thereof, and may place or allocate the record costs, including printing costs, upon an appellant or appellee or upon the estate or trust.

Source: This section is derived from Section 773 of the Orphans' Court Act of 1951, August 10, P.L. 1163.

Comment: See Appellate Court Jurisdiction Act, 1970, July 31, P. L. — (Act No. 223), §202(3).

CHAPTER 9
REGISTER OF WILLS
SUBCHAPTER A
JURISDICTION AND POWERS

Section 901. Register's jurisdiction.—Within the county for which he has been elected or appointed, the register shall have jurisdiction of the probate of wills, the grant of letters to a personal representative, and any other matter as provided by law.

Source: This section is derived from Section 201 of the Register of Wills Act of 1951, June 28, P.L. 638.

Section 902. Deputy register.—Every register shall appoint a deputy or two deputies who shall have power to perform the duties of the office in his behalf and for whose conduct he and his surety shall be accountable. In case of a vacancy in the office of register, the first deputy shall

exercise all the powers of the register until a successor is appointed or elected.

Source: This section is derived from Section 202 of the Register of Wills Act of 1951, June 28, P.L. 638.

Section 903. Witnesses; testimony.—The register shall have power to:

(1) Subpoenas. Issue a subpoena to any person in any county of the Commonwealth to appear or produce papers or records before him.

(2) Administering oaths. Administer oaths and affirmations to parties and witnesses appearing before him and to designate any clerk or clerks in his employ to administer such oaths and affirmations to parties and witnesses appearing before them, whether within or without the county of the register's jurisdiction, or without the Commonwealth.

(3) Depositions. Issue commissions or rules to take the depositions of witnesses in another county or outside the Commonwealth. The practice relating thereto shall conform to the practice in the local orphans' court division.

Source: This section is derived from Section 203 of the Register of Wills Act of 1951, June 28, P.L. 638, clause (2) amended 1963, June 11, P.L. 126.

Section 904. Witness fees.—Witnesses appearing before the register in obedience to the register's subpoena shall be entitled to the same fees and mileage as are allowed by law to witnesses in the orphans' court division.

Source: This section is derived from Section 204 of the Register of Wills Act of 1951, June 28, P.L. 638.

Section 905. Enforcement of subpoenas, orders and costs.—Should any person refuse to comply with any subpoena or order of the register or to pay all costs, the register shall forthwith certify the record of the proceedings to the court. The court, upon petition of any party in interest, shall compel payment of the costs and shall enforce obedience to the subpoena or order in the same manner as in cases of subpoenas and orders issued or made by the court.

Source: This section is derived from Section 205 of the Register of Wills Act of 1951, June 28, P.L. 638.

Section 906. Caveat.—(a) Bond.—When a caveat has been filed, the register shall not delay the probate of a will or the grant of letters for more than ten days after the filing of the petition for probate or for the grant of letters, or after the filing of the caveat, whichever shall be later, unless within such ten-day period a party in interest shall file with the register his bond in the name of the Commonwealth with sufficient

surety in such amount, not less than \$500 or more than \$5,000, as the register considers necessary, conditioned for the payment of any costs which may be decreed against the caveator.

(b) Failure to give bond.—If no bond is filed within the ten-day period, the caveat shall be considered abandoned, except as the register, for cause shown, shall extend the time.

(c) Costs.—The register, or the court upon appeal, shall determine the amount of costs occasioned by a caveat and direct by whom they shall be paid. If all or part of the costs shall be finally decreed to be paid by the caveator, any party interested in the costs may bring suit on the caveator's bond as provided by law.

Source: This section is derived from Section 206 of the Register of Wills Act of 1951, June 28, P.L. 638.

Section 907. Certification of records to court.—Whenever a caveat shall be filed or a dispute shall arise before the register concerning the probate of a will, the grant of letters or the performance of any other function by the register, he may certify, or the court upon petition of any party in interest may direct the register at any stage of the proceedings to certify, the entire record to the court, which shall proceed to a determination of the issue in dispute. No letters of administration pendente lite shall be granted by the register after proceedings have been removed to the court except by leave of court.

Source: This section is derived from Section 207 of the Register of Wills Act of 1951, June 28, P.L. 638.

Section 908. Appeals.—(a) When allowed.—Any party in interest who is aggrieved by a decree of the register, or a fiduciary whose estate or trust is so aggrieved, may appeal therefrom to the court within two years of the decree: Provided, That the executor designated in an instrument shall not by virtue of such designation be deemed a party in interest who may appeal from a decree refusing probate of it. The court, upon petition of a party in interest, may limit the time for appeal to six months.

(b) Bond.—Anyone appealing from a decree of the register shall, within ten days after filing his appeal, file with the register his bond in the name of the Commonwealth with sufficient surety in such amount, not less than \$500 or more than \$5,000, as the register considers necessary, conditioned for the payment of any costs that may be decreed against him. If no bond is filed within the ten-day period, the appeal shall be considered abandoned.

(c) Effect of appeal.—No appeal from a decree of the register shall

suspend the powers or prejudice the acts of a personal representative to whom letters have been granted.

(d) Excepted appeals.—This section shall not apply to appeals for inheritance tax purposes, nor to appeals specifically regulated by law.

Source: This section is derived from Section 208 of the Register of Wills Act of 1951, June 28, P.L. 638.

Section 909. Bill of costs.—(a) The court may establish a bill of costs to be charged for the services of the register not otherwise provided by law.

(b) In judicial districts as defined in subsection (a) of section 701 of this title, the orphans' court divisions shall establish a bill of costs to be chargeable to parties and to estates for the probate of wills and testaments, and granting letters testamentary and of administration, and for all services of the register of wills of such county in the transaction of the business of his office.

Source: This section is derived from Section 209 of the Register of Wills Act of 1951, June 28, P.L. 638, subsection (b) added 1956, March 20, P.L. (1955) 1307.

Section 910. Transmission of accounts to the court.—All accounts filed with the register shall be transmitted to the court for audit and confirmation on dates fixed by the court by general rule or special order and shall be advertised as required by law.

Source: This section is derived from Section 403 of the Register of Wills Act of 1951, June 28, P.L. 638.

SUBCHAPTER B RECORDS AND CERTIFIED COPIES

Section 921. Wills.—All probated wills shall be indexed and recorded by the register, and shall remain in his office, except for the period required to be in the custody of a higher court. The recording may be accomplished by photographic or other mechanical process.

Source: This section is derived from Section 501 of the Register of Wills Act of 1951, June 28, P.L. 638.

Section 922. Inventories and appraisements.—The register shall index and record all inventories and appraisements filed with him. The recording may be accomplished by photographic or other mechanical process.

Source: This section is derived from Section 502 of the Register of Wills Act of 1951, June 28, P.L. 638.

Section 923. Certified copies.—Every register upon the request of

any person paying the fee therefor, shall make and certify under the seal of his office true copies of his records or of papers filed with him or of proceedings before him. Such certified copies shall be as good evidence as the original in any judicial proceeding in the Commonwealth.

Source: This section is derived from Section 503 of the Register of Wills Act of 1951, June 28, P.L. 638.

Section 924. Recording proceedings in another county.—Copies of wills and probate proceedings and records of the grant of letters of administration and proceedings relating thereto, duly certified by the register, may be filed in the office of the register in any county where real estate of the decedent is located. The register with whom such papers are filed shall forthwith record the same, and the record thereof shall be as valid and effectual in law as the original, or its duly certified copy, or its record would be for all purposes of vesting title, of evidence, and of notice.

Source: This section is derived from Section 504 of the Register of Wills Act of 1951, June 28, P.L. 638.

CHAPTER 21

INTESTATE SUCCESSION

Section 2101. Intestate descent.—The real and personal estate of a decedent, whether male or female, subject to payment of debts and charges, and not disposed of by will or otherwise, shall descend as hereinafter provided.

Source: This section is derived from Section 1 of the Intestate Act of 1947, April 24, P.L. 80.

Section 2102. Share of surviving spouse.—The surviving spouse shall be entitled to the following share or shares:

(1) More than one child. One-third if the decedent is survived by more than one child, or by one or more children and the issue of a deceased child or children, or by the issue of more than one deceased child; or

(2) One child. One-half if the decedent is survived by one child only, or by no child, but by the issue of one deceased child; or

(3) No issue. The first \$20,000 in value of one-half of the balance of the estate, if the decedent is survived by no issue. In case of partial intestacy, any amount received by the surviving spouse under the will

shall satisfy pro tanto the \$20,000 allowance; or

(4) No issue or other designated person. All of the estate if the decedent is survived by no issue, parent, brother, sister, child of a brother or sister, grandparent, uncle or aunt.

Source: This section is derived from Section 2 of the Intestate Act of 1947, April 24, P.L. 80, paragraph (3) last amended 1967, October 9, P.L. 420.

Section 2103. Shares of others than surviving spouse.—The share of the estate, if any, to which the surviving spouse is not entitled, and the entire estate if there is no surviving spouse, shall descend in the following order:

(1) Issue. To the issue of the decedent.

(2) Parents. If no issue survives the decedent, then to the parents or parent of the decedent.

(3) Brothers, sisters or their issue. If no parent survives the decedent, then to the issue of each of the decedent's parents.

(4) Grandparents. If no issue of either of the decedent's parents but at least one grandparent survives the decedent, then half to the parental grandparents or grandparent, or if both are dead, to the children of each of them and the children of the deceased children of each of them, and half to the maternal grandparents or grandparent, or if both are dead to the children of each of them and the children of the deceased children of each of them. If both of the paternal grandparents or both of the maternal grandparents are dead leaving no child or grandchild to survive the decedent, the half which would have passed to them or to their children and grandchildren shall be added to the half passing to the grandparents or grandparent on the other side.

(5) Uncles, aunts and their children and grandchildren. If no grandparent survives the decedent, then to the uncles and aunts and the children and grandchildren of deceased uncles and aunts of the decedent as provided in section 2104(1).

(6) Commonwealth. In default of all persons hereinbefore described, then to the Commonwealth of Pennsylvania.

Source: This section is derived from Section 3 of the Intestate Act of 1947, April 24, P.L. 80, paragraph (5) last amended 1965, December 22, P.L. 1191.

Section 2104. Rules of descent.—The provisions of this chapter shall be applied to both real and personal estate in accordance with the following rules:

(1) Taking in different degrees. The shares descending under this chapter to the issue of the decedent, to the issue of his parents or grandparents or to his uncles or aunts or to their children, or grandchildren, shall descend to them as follows: The part of the estate descending to any such persons shall be divided into as many equal shares as there shall be persons in the nearest degree of consanguinity to the decedent living and taking shares therein and persons in that degree who have died before the decedent and have left issue to survive him who take shares therein. One equal share shall descend to each such living person in the nearest degree and one equal share shall descend by representation to the issue of each such deceased person, except that no issue of a child of an uncle or aunt of the decedent shall be entitled to any share of the estate unless there be no relatives as close as a child of an uncle or aunt living and taking a share therein, in which case the grandchildren of uncles and aunts of the decedent shall be entitled to share, but no issue of a grandchild of an uncle or aunt shall be entitled to any share of the estate.

(2) Taking in same degree. When persons entitled to take under this chapter other than as a surviving spouse are all in the same degree of consanguinity to the decedent, they shall take in equal shares.

(3) Whole and half blood. Persons taking under this chapter shall take without distinction between those of the whole and those of the half blood.

(4) After-born persons; time of determining relationships. Persons begotten before the decedent's death but born thereafter, shall take as if they had been born in his lifetime.

(5) Source of ownership. Real estate shall descend under this chapter without regard to the ancestor or other relation from whom it has come.

(6) Quantity of estate. Any person taking real or personal estate under this chapter shall take such interest as the decedent had therein.

(7) Tenancy in estate. When real or personal estate or shares therein shall descend to two or more persons, they shall take it as tenants in common, except that if it shall descend to a husband and wife they shall take it as tenants by the entirety.

(8) Alienage. Real and personal estate shall descend without regard to whether the decedent or any person otherwise entitled to take under this chapter is or has been an alien.

(9) Person related to decedent through two lines. A person related

to the decedent through two lines of relationship shall take one share only which shall be the larger share.

Source: This section is derived from Section 4 of the Intestate Act of 1947, April 24, P.L. 80, paragraph (1) last amended 1967, October 9, P.L. 420; (2) added 1957, July 10, P.L. 623.

Section 2105. Spouse's rights.—(a) Widow.—The shares of the estate to which the widow is entitled shall be in lieu and full satisfaction of her dower at common law, so far as relates to real estate of which the husband dies seised; and her share in real estate aliened by the husband in his lifetime, without her joining in the conveyance shall be the same as her share in real estate of which the husband dies seised. The widow shall receive the same share in a future estate owned by the husband as in an estate of which he dies seised, although the particular estate shall not terminate before the death of the husband.

(b) Surviving husband.—The shares of the estate to which the surviving husband is entitled shall be in lieu and full satisfaction of his curtesy at common law so far as relates to real estate of which the wife dies seised, and his share in real estate aliened by the wife in her lifetime without his joining in the conveyance shall be the same as his share in real estate of which the wife dies seised. The surviving husband shall receive the same share in a future estate owned by the wife as in an estate of which she dies seised, although the particular estate shall not terminate before the death of the wife.

Source: This section is derived from Section 5 of the Intestate Act of 1947, April 24, P.L. 80, subsection (b) amended 1963, July 25, P.L. 280.

Section 2106. Forfeiture.—(a) Husband's share.—A husband who, for one year or upwards previous to the death of his wife, shall have wilfully neglected or refused to provide for her, or who for that period or upwards shall have wilfully and maliciously deserted her, shall have no title or interest under this chapter in her real or her personal estate.

(b) Wife's share.—A wife who, for one year or upwards previous to the death of her husband, shall have wilfully and maliciously deserted him, shall have no title or interest under this chapter in his real or personal estate.

(c) Slayer's share.—Any person who participates either as a principal or as an accessory before the fact in the wilful and unlawful killing of any person shall not in any way acquire property or receive any benefits as the result of such killing, but such property or benefits shall be distributed as provided by law.

(d) Surviving spouse as witness.—The surviving husband or wife

shall be a competent witness as to all matters pertinent to the issue of forfeiture under this section.

Source: This section is derived from Section 6 of the Intestate Act of 1947, April 24, P.L. 80.

Comment: In regard to subsection (c), Slayer's Share, see also Chapter 88, *infra*.

Section 2107. Persons born out of wedlock.—(a) Child of mother.—For purposes of descent by, from and through a person born out of wedlock, he shall be considered the child of his mother but not of his father.

(b) Marriage of parents.—When the parents of a person born out of wedlock shall have married each other, he shall be legitimated for purposes of descent by, from and through him as if he had been born during the wedlock of his parents.

Source: This section is derived from Section 7 of the Intestate Act of 1947, April 24, P.L. 80, as amended 1971, June 17, No. 21.

Section 2108. Adopted person.—For purposes of descent by, from and through an adopted person he shall be considered the issue of his adopting parent or parents and not the issue of his natural parents: Provided, That if a natural parent shall have married the adopting parent, the adopted person for purposes of descent by, from and through him shall also be considered the issue of such natural parent.

Source: This section is derived from Section 8 of the Intestate Act of 1947, April 24, P.L. 80.

Section 2109. Advancements.—(a) In general.—If any person, other than the surviving spouse taking real or personal estate from the decedent, shall have received any estate by settlement or advancement of the decedent, in either real or personal estate, the value of such settlement or advancement shall be charged against the share of the person who shall have received it, so that the total share received by him, including the value of such settlement or advancement, shall not exceed the share received by each of the other persons who take equally from the decedent.

(b) Valuation.—The settlement or advancement shall be considered as of its value when the advancee came into enjoyment of it or at the death of the decedent, whichever occurred first.

Source: This section is derived from Section 9 of the Intestate Act of 1947, April 24, P.L. 80, as amended 1970, Feb. 24, P.L.—(Act No. 26).

Section 2110. Spouse's allowance; procedure.—The allowance shall be set aside and awarded in distribution to the surviving spouse, or his successor in interest, in the same manner as other distributive shares of the estate are awarded, without any right in the surviving spouse to choose particular real or personal property in satisfaction thereof. Nothing herein shall be construed as limiting the right of the surviving spouse and other distributees to demand that property, not theretofore sold, be distributed in kind to them.

Source: This section is derived from Section 10 of the Intestate Act of 1947, April 24, P.L. 80.

Section 2111. Procedure to establish title to real property when spouse claims entire estate.—A surviving spouse entitled, under the provisions of this chapter to the entire estate of the decedent shall have it awarded to him in the same manner as a lesser share of the estate would be so awarded.

Source: This section is derived from Section 11 of the Intestate Act of 1947, April 24, P.L. 80, as amended 1956, February 10, P.L. (1955) 1037.

Section 2112. Property distributable to the Commonwealth.—When the estate is distributable to the Commonwealth, as statutory heir under the provisions of this chapter, it shall be reduced to cash in all cases by the personal representative and awarded by the court in distribution to the Commonwealth, and paid by the personal representative through the Department of Revenue into the State Treasury.

Source: This section is derived from Section 12 of the Intestate Act of 1947, April 24, P.L. 80, as amended 1956, February 10, P.L. (1955) 1037.

Section 2113. Limitations of claims.—(a) Shares not claimed within seven years.—Any person entitled under this chapter to a share of the estate of the decedent must make legal claim to his share of the personal estate within seven years of the death of the decedent or be debarred from claiming such share thereof as shall have been distributed pursuant to adjudication or decree: Provided, That if any such person shall be a minor at the death of the decedent, the seven-year period shall commence to run upon his attaining majority.

(b) Pleading limitation.—The bar of subsection (a) may be pleaded by any person interested in the estate including the Commonwealth, but it may not be pleaded by a personal representative of the decedent to enable him to retain any part of the decedent's estate to which he is not legally entitled.

Source: This section is derived from Section 13 of the Intestate Act of 1947, April 24, P.L. 80.

Section 2114. Personal estate of nonresident.—Nothing contained in this chapter with respect to a distribution of personal estate shall extend to the estate of a decedent whose domicile at his death is out of the Commonwealth.

Source: This section is derived from Section 14 of the Intestate Act of 1947, April 24, P.L. 80.

CHAPTER 25

WILLS

Section 2501. Who may make a will.—(a) Persons 21 or older.—Any person of sound mind 21 years of age or older may by will dispose of all his real and personal estate subject to payment of debts and charges.

(b) Persons in military service and mariners.—Any person of sound mind 18 years of age or older and being in the Armed Forces of the United States in active service at home or abroad, or being a mariner on land or at sea, may by will dispose of all his real and personal estate subject to payment of debts and charges. He may thereafter revoke such will whether or not he is still in such service or is a mariner.

Source: This section is derived from Section 1 of the Wills Act of 1947, April 24, P.L. 89, subsection (b) last amended 1961, June 14, P.L. 357.

Section 2502. Form and execution of a will.—Every will, except nuncupative wills but including wills of mariners and persons in the Armed Forces of the United States, shall be in writing and shall be signed by the testator at the end thereof, subject to the following rules and exceptions:

(1) Words following signature. The presence of any writing after the signature to a will, whether written before or after its execution, shall not invalidate that which precedes the signature.

(2) Signature by mark. If the testator is unable to sign his name for any reason, a will to which he makes his mark and to which his name is subscribed in his presence before or after he makes his mark, shall be as valid as though he had signed his name thereto: Provided, That he makes his mark in the presence of two witnesses who sign their names to the will in his presence.

(3) Signature by another. If the testator is unable to sign his name or to make his mark for any reason, a will to which his name is subscribed in his presence and by his express direction shall be as valid as

though he had signed his name thereto: Provided, That he declares the instrument to be his will in the presence of two witnesses who sign their names to it in his presence.

Source: This section is derived from Section 2 of the Wills Act of 1947, April 24, P.L. 89.

Section 2503. Nuncupative wills.—(a) When permissible.—A nuncupative will may be made only by a person in imminent peril of death, whether from illness or otherwise, shall be valid only if the testator died as a result of the peril, and must be declared to be his will by the testator before two disinterested witnesses, reduced to writing by or under the direction of both of the witnesses within ten days after such declaration, and submitted for probate within three months of the death of the testator.

(b) Property disposable.—A nuncupative will attempting to dispose of personal property of an aggregate value in excess of \$500, or of real estate in any amount, shall be wholly void.

(c) Effect on prior will.—A nuncupative will shall neither revoke nor change an existing written will.

Source: This section is derived from Section 3 of the Wills Act of 1947, April 24, P.L. 89.

Section 2504. Witnesses.—(a) General rule.—Except as provided in subsection (b) hereof, no will shall be valid unless proved by the oaths or affirmations of two competent witnesses.

(b) Foreign execution.—A written will of a testator domiciled outside of Pennsylvania but within the United States, executed and proved in accordance with the law of his domicile, shall be effective as to property within Pennsylvania.

Source: This section is derived from Section 4 of the Wills Act of 1947, April 24, P.L. 89, as amended 1956, February 17, P.L. (1955) 1070.

Section 2505. Revocation of a will.—No will or codicil in writing, or any part thereof, can be revoked or altered otherwise than:

(1) Will or codicil. By some other will or codicil in writing;

(2) Other writing. By some other writing declaring the same, executed and proved in the manner required of wills; or

(3) Act to the document. By being burnt, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revocation, by the testator himself or by another person in his presence and by his express direction. If such act is done by any person other than the testator, the direction of the testator must be proved by the oaths or affirmations

of two competent witnesses.

Source: This section is derived from Section 5 of the Wills Act of 1947, April 24, P.L. 89.

Section 2506. Revival of revoked or invalid will.—If, after the making of any will, the testator shall execute a later will which expressly or by necessary implication revokes the earlier will, the revocation of the later will shall not revive the earlier will, unless the revocation is in writing and declares the intention of the testator to revive the earlier will, or unless, after such revocation, the earlier will shall be reexecuted. Oral republication of itself shall be ineffective to revive a will.

Source: This section is derived from Section 6 of the Wills Act of 1947, April 24, P.L. 89.

Section 2507. Modification by circumstances.—Wills shall be modified upon the occurrence of any of the following circumstances, among others:

(1) Death within 30 days; religious and charitable gifts. Any bequest or devise for religious or charitable purposes included in a will or codicil executed within 30 days of the death of the testator shall be invalid to the extent that someone who would benefit by its invalidity objects: Provided, That the Commonwealth shall not have the right so to object. No such objection shall be valid unless it is in writing signed by the objector and unless a copy thereof shall be filed with the clerk of the court having jurisdiction within six months of the probate of the will. Each person so objecting shall receive the share he would have received if the entire bequest or devise had been invalid and the balance, if any, of the bequest or devise shall be valid. The 30-day period shall be so computed as to include the day on which the will or codicil is written and to exclude the day of death. Unless the testator directs otherwise, if such a will or codicil could revoke or supersede a prior will or codicil executed at least 30 days before the testator's death, and not theretofore revoked or superseded and the original of which can be produced in legible condition, and if each instrument shall contain an identical gift for substantially the same religious or charitable purpose, the gift in the later will or codicil shall not be subject to objection; or if each instrument shall give for substantially the same religious or charitable purpose a cash legacy or a share of the residuary estate or a share of the same asset, payable immediately or subject to identical prior estates and conditions, the later gift shall not be subject to objection to the extent to which it shall not exceed the prior gift. If a bequest or devise is revoked within 30 days of death and the revocation has the effect of increasing the religious or charitable bequest or devise, such increase

shall not be considered a new or additional bequest or devise for religious or charitable purposes within the meaning of this act.

(2) Divorce. If the testator is divorced from the bonds of matrimony after making a will, all provisions in the will in favor of or relating to his spouse so divorced shall thereby become ineffective for all purposes.

(3) Marriage. If the testator marries after making a will, the surviving spouse shall receive the share of the estate to which he would have been entitled had the testator died intestate, unless the will shall give him a greater share.

(4) Birth or adoption. If the testator fails to provide in his will for his child born or adopted after making his will, unless it appears from the will that the failure was intentional, such child shall receive out of the testator's property not passing to a surviving spouse, such share as he would have received if the testator had died unmarried and intestate owning only that portion of his estate not passing to a surviving spouse.

(5) Slaying. Any person who participates either as a principal or as an accessory before the fact in the wilful and unlawful killing of any person shall not in any way acquire property or receive any benefits as the result of the wilful and unlawful killing but such property or benefits shall be distributed as provided by Chapter 88 of this code.

Source: This section is derived from Section 7 of the Wills Act of 1947, April 24, P.L. 89, paragraph (1) amended 1970, April 22, P.L. 305; (2) amended 1956, February 17, P.L. (1955) 1070.

Comment: With regard to clause (5), Slaying, see also Chapter 88, *infra*.

Section 2508. Change by election of surviving spouse.—(a) Right of election.—When a married person dies testate as to any part of his estate, the surviving spouse while living shall have a right of election under the limitations and conditions hereinafter stated: Provided, That the spouse so electing also must elect to take against all conveyances within the scope of subsection (a) of section 6111, of which he is a beneficiary.

(b) Share of estate.—The surviving spouse, upon an election to take against the will, shall be entitled to one-third of the real and personal estate of the testator if the testator is survived by more than one child or by one or more children and the issue of a deceased child or children or by the issue of more than one deceased child, and in all other cir-

cumstances the surviving spouse shall be entitled to one-half of the real and personal estate of the testator.

(c) Power of appointment.—The surviving spouse, upon an election to take against the will, shall not be entitled to any share in property passing under a power of appointment given by someone other than the testator and exercised by the will of the testator whether or not such power has been exercised in favor of the surviving spouse and whether or not the appointed and the individual estates have been blended.

Source: This section is derived from Section 8 of the Wills Act of 1947, April 24, P.L. 89, subsection (a) amended 1956, February 17, P.L. (1955) 1070.

Section 2509. Forfeiture of right of election.—(a) By husband.—A husband, who for one year or upwards previous to the death of his wife, shall have wilfully neglected or refused to provide for her, or who for that period or upwards shall have wilfully and maliciously deserted her, shall have no right of election.

(b) By wife.—A wife, who for one year or upwards previous to the death of her husband shall have wilfully and maliciously deserted him, shall have no right of election.

(c) Slayer.—Any surviving spouse who participates either as a principal or as an accessory before the fact in the wilful and unlawful killing of the testator shall have no right of election.

(d) Surviving spouse as witness.—The surviving husband or wife shall be a competent witness as to all matters pertinent to the issue of forfeiture under this section.

Source: This section is derived from Section 9 of the Wills Act of 1947, April 24, P.L. 89.

Section 2510. How election made.—The surviving spouse electing to take under or against the will shall manifest the election in writing signed by him and acknowledged before an officer authorized by law to take acknowledgments of deeds. The election or a copy thereof shall be mailed or delivered to the personal representative of the testator or his attorney. The election shall be filed in the office of the clerk of the orphans' court division of the district where the will was probated, and a record shall be made of such filing by the clerk. When the estate includes real estate the election or a duplicate original or a certified copy thereof shall be recorded in the office of the recorder of deeds of each county in which any of the real estate of the testator lies, and shall be indexed by the recorder in the grantors' index under the name of the surviving spouse. The costs of filing and recording the election shall be paid out of the estate as a part of the administration expenses.

Source: This section is derived from Section 10 of the Wills Act of 1947, April 24, P.L. 89.

Section 2511. Time for making election.—As between the surviving spouse and other legatees and devisees, the spouse's election shall be in time if within one year after the probate of will the surviving spouse shall:

(i) mail or deliver the election or a copy thereof to the personal representative of the testator or his attorney; or

(ii) file it in the office of the clerk of the orphans' court division and mail or deliver a copy to the personal representative or his attorney; or

(iii) record such election or a duplicate original or certified copy thereof in the offices of the recorder of deeds of any county in which real estate of the testator lies and mail or deliver a copy to the personal representative or his attorney.

The orphans' court division, on application of the surviving spouse made within one year after the probate of the will, may extend the time for making the election for such period and upon such terms and conditions as the court shall deem proper under the circumstances. A certified copy of the decree of the court extending the time for making the election may be recorded and indexed in the office of the recorder of deeds in any county in which any of the real estate of the testator lies in the manner provided in section 2510 hereof.

Source: This section is derived from Section 11 of the Wills Act of 1947, April 24, P.L. 89.

Section 2512. Failure to make an election.—(a) Effect.—Except as provided in section 2507(3) hereof, failure to make an election in the manner and within the time limits set forth in section 2511 hereof shall be deemed an election to take under the will or an acquiescence in the provisions thereof. No payment or distribution from the estate, except the exemption allowed by law to the surviving spouse, shall be required to be made to the surviving spouse within one year after the probate of the will unless his election to take under or acquiesce in the will shall have been made and filed as provided in section 2510 hereof.

(b) Personal right.—The right of election shall be personal to the surviving spouse and shall not be exercised after his death.

Source: This section is derived from Section 12 of the Wills Act of 1947, April 24, P.L. 89, subsection (a) amended 1956, February 17, P.L. (1955) 1070.

Section 2513. Grantee or lienholder.—An election shall be void as against a bona fide grantee of or holder of a lien on real estate in any county unless:

(i) the election or a duplicate original or certified copy thereof is recorded in such county within one year after the probate of the will or if thereafter then before the recording or entering of the instrument or lien under which such grantee or lienholder claims; or

(ii) a certified copy of the decree of the court extending the time for making the election has been recorded in such county within one year after the probate of the will or if thereafter then before the recording or entering of such instrument or lien and the election or a duplicate original or certified copy thereof has been recorded in such county within the time set by the court or if thereafter then before the recording or entering of such instrument or lien.

Source: This section is derived from Section 13 of the Wills Act of 1947, April 24, P.L. 89.

Section 2514. Rules of interpretation.—In the absence of a contrary intent appearing therein, wills shall be construed as to real and personal estate in accordance with the following rules:

(1) Wills construed as if executed immediately before death. Every will shall be construed, with reference to the testator's real and personal estate, to speak and take effect as if it had been executed immediately before the death of the testator.

(2) After-acquired property. The real and personal estate acquired by a testator after making his will shall pass by a general devise or bequest.

(3) Devises of real estate. All devises of real estate shall pass the whole estate of the testator in the premises devised, although there be no words of inheritance or of perpetuity.

(4) Meaning of "heirs" and "next of kin," etc.; time of ascertaining class. A devise or bequest of real or personal estate, whether directly or in trust, to the testator's or another designated person's "heirs" or "next of kin" or "relatives" or "family" or to "the persons thereunto entitled under the intestate laws" or to persons described by words of similar import, shall mean those persons, including the spouse, who would take under the intestate laws if the testator or other designated person were to die intestate at the time when such class is to be ascertained, a resident of the Commonwealth, and owning the estate so devised or bequeathed: Provided, however, That the share of a spouse, other than the spouse of the testator, shall not include the allowance under the intestate laws. The time when such class is to be ascertained shall be the time when the devise or bequest is to take effect in enjoyment.

(5) Time for ascertaining class. In construing a devise or bequest to a class other than a class described in section 2514(4), the class shall be ascertained at the time the devise or bequest is to take effect in enjoyment, except that the issue then living of any member of the class who

is then dead shall take per stirpes the share which their deceased ancestor would have taken if he had then been living.

(6) Meaning of "die without issue" and similar phrases. In any devise or bequest of real or personal estate, the words "die without issue," "die without leaving issue," "have no issue," or other words importing either a want or failure of issue of any person in his lifetime or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in his lifetime or at his death, and not an indefinite failure of his issue.

(7) Adopted children. In construing clauses (9), (10) and (11) of this section, relating to lapsed and void devises and legacies, and in construing a will making a devise or bequest to a person or persons described by relationship to the testator or to another, any person adopted before the death of the testator shall be considered the child of his adopting parent or parents and not the child of his natural parents: Provided, That if a natural parent shall have married the adopting parent before the testator's death, the adopted person shall also be considered the child of such natural parent.

(8) Persons born out of wedlock. In construing clauses (9), (10) and (11) of this section, relating to lapsed and void devises and legacies, and in construing a will making a devise or bequest to a person or persons described by relationship to the testator or to another, a person born out of wedlock shall be considered the child of his mother and not of his father: Provided, That when the parents of a person born out of wedlock shall have married each other, he shall thereafter be considered as having been born within the period of time during which the parents were married.

(9) Lapsed and void devises and legacies; substitution of issue. A devise or bequest to a child or other issue of the testator or to his brother or sister or to a child of his brother or sister whether designated by name or as one of a class shall not lapse if the beneficiary shall fail to survive the testator and shall leave issue surviving the testator but shall pass to such surviving issue who shall take per stirpes the share which their deceased ancestor would have taken had he survived the testator: Provided, That such a devise or bequest to a brother or sister or to the child of a brother or sister shall lapse to the extent to which it will pass to the testator's spouse or issue as a part of the residuary estate or under the intestate laws.

(10) Lapsed and void devises and legacies; shares not in residue. A devise or bequest not being part of the residuary estate which shall fail

or be void because the beneficiary fails to survive the testator or because it is contrary to law or otherwise incapable of taking effect or which has been revoked by the testator or is undisposed of or is released or disclaimed by the beneficiary, if it shall not pass to the issue of the beneficiary under the provisions of clause (9) hereof, and if the disposition thereof shall not be otherwise expressly provided for by law, shall be included in the residuary devise or bequest, if any, contained in the will.

(11) Lapsed and void devises and legacies; shares in residue. When a devise or bequest as described in clause (10) hereof shall be included in a residuary clause of the will and shall not be available to the issue of the devisee or legatee under the provisions of clause (9) hereof, and if the disposition shall not be otherwise expressly provided for by law, it shall pass to the other residuary devisees or legatees, if any there be, in proportion to their respective shares or interests in the residue.

(12) Real estate subject to a mortgage. The devisee of real estate which is subject to a mortgage shall take subject thereto, and shall not be entitled to exoneration out of the other estate of the testator, real or personal; and this whether the mortgage was created by the testator or by a previous owner or owners, and notwithstanding any general direction by the testator that his debts be paid.

(13) Power of appointment. A general devise of the real estate of the testator, or of the real estate of the testator in any place, or in the occupation of any person mentioned in his will, or otherwise described in a general manner, shall be construed to include any real estate, or any real estate to which such description shall extend, as the case may be, which he shall have power to appoint in any manner he shall think proper, and shall operate as an execution of such power. In like manner, a bequest of the personal estate of the testator, or any bequest of personal property described in a general manner, shall be construed to include any personal estate, or any personal estate to which such description shall extend, as the case may be, which he shall have power to appoint in any manner he shall think proper, and shall operate as an execution of such power. In like manner, a general pecuniary legacy, when the assets of the individual estate of the testator are not sufficient for its payment, shall, to the extent necessary to make possible the payment of the legacy, be construed to include any estate which the testator shall have power to appoint in any manner he shall think proper, and shall to such extent operate as an execution of such power.

(14) Cemetery lot. If in a will no express disposition or other mention

is made of a cemetery lot owned by the testator at his decease and wherein he or any member of his family is buried, the ownership of the lot shall not pass from his lawful heirs by a residuary or other general clause of the will but shall descend to his heirs as if he had died intestate.

(15) Inheritance tax. The inheritance tax imposed by the Inheritance and Estate Tax Act of 1961 upon the transfer of real or personal property which passes by will absolutely and in fee, and which is not part of the residuary estate, shall be paid out of the residuary estate and charged in the same manner as a general administration expense. Such inheritance tax imposed upon the transfer of any estate, income or interest for a term of years, for life or for other limited period, shall be paid out of the principal of the property by which the estate income or interest is supported.

(16) Ademption. A specific devise or bequest shall not be adeemed when the testator or the testator's estate receives an asset in exchange for the subject of the devise or bequest and the act which otherwise would have caused the ademption occurs while the testator is an adjudged incompetent. In such case the devise or bequest shall be deemed to apply to whatever was received in exchange.

Source: This section is derived from Section 14 of the Wills Act of 1947, April 24, P.L. 89, paragraph (4) amended 1970, February 24, P.L. 61; (5) added 1970, June 22, P.L. 398; (7) amended 1956, February 17, P.L. (1955) 1070; (8) amended 1971, June 17, No. 19; (14) added 1953, June 3, P.L. 278; (15) added 1961, September 15, P.L. 1343 and amended 1963, July 25, P.L. 304; (16) added 1965, December 22, P.L. 1194.

Section 2515. Devise or bequest to trust.—A devise or bequest in a will may be made to the trustee of a trust (including an unfunded life insurance trust, although the settlor has reserved any or all rights of ownership in the insurance contracts) established, in writing, by the testator or any other person before, concurrently with or after the execution of the will. Such devise or bequest shall not be invalid because the trust is amendable or revocable, or both, or because the trust was amended after execution of the will. Unless the will provides otherwise, the property so devised or bequeathed shall not be deemed held under a testamentary trust of the testator but shall become and be a part of the principal of the trust to which it is given to be administered and disposed of in accordance with the provisions of the instrument establishing that trust and any amendment thereof. An entire revocation of the trust prior to the testator's death shall invalidate the devise or bequest unless the will directs otherwise.

Source: This section is derived from Section 14.1 of the Wills Act of 1947, April 24, P.L. 89, added 1957, July 11, P.L. 763 and amended 1970, April 22, P.L. 305.

Section 2516. Devise in fee tail abolished.—Whenever by any devise an estate in fee tail would be created according to the common law of the Commonwealth, it shall pass an estate in fee simple, and as such shall be inheritable and freely alienable.

Source: This section is derived from Section 15 of the Wills Act of 1947, April 24, P.L. 89.

Section 2517. Rule in Shelley's case.—The rule in Shelley's case and its corollaries shall not be applied, and a devise or bequest directly or in trust which shall express an intent to create an estate for life with remainder to the life tenant's heirs or the heirs of his body or his issue or his next of kin or persons described by words of similar import, shall not operate to give such life tenant an estate in fee in real estate or an absolute estate in personalty.

Source: This section is derived from Section 16 of the Wills Act of 1947, April 24, P.L. 89.

Section 2518. Alienage.—Real and personal estate shall pass without regard to whether the testator or any devisee or legatee is or has been an alien.

Source: This section is derived from Section 17 of the Wills Act of 1947, April 24, P.L. 89.

Section 2519. Testamentary guardian.—(a) Guardian of the person.—A person competent to make a will, being the sole surviving parent or adopting parent of any unmarried minor child, may appoint a testamentary guardian of the person of such child during his minority, for any shorter period: Provided, That no father who, for one year or upwards previous to his death, shall have wilfully neglected or refused to provide for his child, and no mother who, for a like period, shall have deserted her child or wilfully failed to perform her parental duties, shall have the right to appoint a testamentary guardian of the person of such child.

(b) Guardian of the estate.—Any person may by will appoint a guardian of real or personal property passing to a minor upon his death, when such property:

(1) Is devised, bequeathed or appointed to the minor in that person's will or descends from that person to the minor by intestacy.

(2) Is the proceeds of an insurance or annuity contract on the testator's life, unless the owner of the contract has made an inter vivos designation of a guardian therefor.

(3) Arises from an inter vivos transfer, the major portion of which

constituted a gift from the testator, unless the testator has made an inter vivos designation of a guardian therefor.

(4) Is a cause of action arising by reason of the testator's death.

(5) Is a pension or death benefit from an employer of the testator or a society or organization of which the testator was a member.

(6) Is a tentative trust of which the testator was the settlor.

Source: This section is derived from Section 18 of the Wills Act of 1947, April 24, P.L. 89, subsection (b) amended 1956, February 17, P.L. 1070 and (b)(1) last amended 1963, July 23, P.L. 327.

Section 2520. Personal estate of nonresident.—Nothing contained in this chapter shall be construed to apply to the disposition of personal estate by a testator whose domicile at the time of his death is out of the Commonwealth.

Source: This section is derived from Section 19 of the Wills Act of 1947, April 24, P.L. 89.

CHAPTER 31

DISPOSITIONS INDEPENDENT OF LETTERS; FAMILY EXEMPTION; PROBATE OF WILLS AND GRANT OF LETTERS

SUBCHAPTER A DISPOSITIONS INDEPENDENT OF LETTERS

Section 3101. Payment of wages, salary, vacation benefits to family.—Any employer of a person dying domiciled in the Commonwealth at any time after the death of the employe, whether or not a personal representative has been appointed, may pay wages, salary or any accrued vacation benefits or pension due the deceased in an amount not exceeding \$1,000 to the spouse, any child, the father or mother, or any sister or brother (preference being given in the order named) of the deceased employe. Any employer making such a payment shall be released to the same extent as if payment had been made to a duly appointed personal representative of the decedent and he shall not be required to see to the application thereof. Any person to whom payment is made shall be answerable therefor to anyone prejudiced by an improper distribution.

Source: This section is derived from Section 201 of the Fiduciaries Act of 1949, April 18, P.L. 512, last amended 1963, May 20, P.L. 46.

Section 3102. Settlement of small estates on petition.—When any person dies domiciled in the Commonwealth owning property (exclusive of real estate and of wages, salary or any accrued vacation benefits or pension payable under section 3101, but including personal property claimed as the family exemption) of a gross value not exceeding \$5,000, the orphans' court division of the county wherein the decedent was domiciled at the time of his death, upon petition of any party in interest, in its discretion, with or without appraisal, and with such notice as the court shall direct, and whether or not letters have been issued or a will probated, may direct distribution of the property (including wages, salary or any accrued vacation benefits or pensions not paid under section 3101) to the parties entitled thereto. The decree of distribution so made shall constitute sufficient authority to all transfer agents, registrars and others dealing with the property of the estate to recognize the persons named therein as entitled to receive the property to be distributed without administration, and shall in all respects have the same effect as a decree of distribution after an accounting by a personal representative. Within one year after such decree of distribution has been made, any party in interest may file a petition to revoke the decree and shall direct restitution as equity and justice shall require.

Source: This section is derived from Section 202 of the Fiduciaries Act of 1949, April 18, P.L. 512, last amended 1970, May 5, P.L. 336.

SUBCHAPTER B FAMILY EXEMPTION

Section 3121. When allowable.—The spouse of any decedent dying domiciled in the Commonwealth, and if there be no spouse, or if he has forfeited his rights, then such children as are members of the same household as the decedent, and in the event there are no such children, then the parent or parents of the decedent who are members of the same household as the decedent, may retain or claim as an exemption either real or personal property, or both, not theretofore sold by the personal representative, to the value of \$1,500: Provided, That property specifically devised or bequeathed by the decedent, or otherwise specifically disposed of by him, may not be so retained or claimed if other assets are available for the exemption. The surviving husband or wife shall be a competent witness as to all matters pertinent to the issue of forfeiture of the right to exemption.

Source: This section is derived from Section 211 of the Fiduciaries Act of 1949, April 18, P.L. 512, last amended 1970, May 5, P.L. 336.

Section 3122. Payment or delivery of exemption.—(a) Items claimed.—The personal representative, if any, shall deliver to the spouse, child or children, parent or parents, the items of personal property claimed as the exemption, at the values fixed by the inventory and appraisement.

(b) Property set aside for minors.—When any spouse, child or parent entitled to all or part of the exemption is a minor, the guardian of his estate, and if no such guardian has been appointed then the personal representative, without request made to him by anyone, shall select, for the use and benefit of the minor, real or personal property to the full value to which he is entitled, and in so doing the guardian or personal representative shall be governed by the necessities of the minor under the circumstances of each case.

(c) Control of court.—On petition of any party in interest, the court, with or without appraisal and on such notice as it shall direct, may control the distribution and the valuation of articles of personal property retained or claimed.

Source: This section is derived from Section 212 of the Fiduciaries Act of 1949, April 18, P.L. 512, amended 1965, December 22, P.L. 1201.

Section 3123. Payment from real estate.—(a) Appraisement.—If the exemption is claimed in whole or in part out of real estate, the appraisement of the real estate shall be made by two appraisers appointed by the court, upon petition and after such notice as the court shall direct. The orphans' court division of the county where letters testamentary or of administration have been granted, or should no letters have been granted then of the county within which was the family or principal residence of the decedent, shall have jurisdiction concerning the exemption, whether the real estate is situate in that county or in any other county of the Commonwealth. When real estate is located outside of the county of original jurisdiction, the orphans' court division of the county of original jurisdiction may, in its discretion, direct that an application for the appointment of appraisers shall be made to the orphans' court division of the county in which the real estate is located. The appraisers so appointed shall fix the value of the real estate as of the date of presenting the petition for their appointment and shall receive such compensation as shall be allowed by the court appointing them. Exceptions to appraisements shall be filed with the court of original jurisdiction which may, in its discretion, refer the exceptions to the orphans' court division of the county in which the real estate is located. Upon compliance with such requirements of notice as the court shall direct, the court of original jurisdiction may confirm the appraisement and set apart the real estate to the surviving spouse, child or children, parent or parents entitled thereto.

(b) Real estate valued at more than amount claimed.—When the real estate of the decedent cannot be divided so as to set apart the amount claimed without prejudice to or spoiling the whole or any parcel of it and the appraisers shall value such real estate or parcel thereof at any sum exceeding the amount claimed, it shall be lawful for the orphans' court division of original jurisdiction to confirm the appraisement and to set apart such real estate or parcel thereof for the use of the surviving spouse, child or children, parent or parents, conditioned, however, that the surviving spouse, child or children, parent or parents shall pay the amount of the valuation in excess of the amount claimed, without interest, within six months from the date of confirmation of the appraisement. If the surviving spouse, child or children, parent or parents shall refuse to take the real estate or parcel thereof at the appraisement, or shall fail to make payment as provided above, the court, on application of any party in interest, may direct the personal representative or a trustee appointed by the court to sell the same and the sale in such case shall be upon such terms and security as the court shall direct.

(c) Payment of surplus.—The real estate, if taken by the surviving spouse, child or children, parent or parents, shall vest in him or them, upon his or their payment of the surplus above so much of the exemption as shall be claimed out of the real estate to the parties entitled thereto or to the personal representative of the decedent, as the court, in its discretion, shall direct. If the real estate is sold, so much of the exemption as shall be claimed out of it shall be paid out of the purchase money to the surviving spouse, child or children, parent or parents entitled thereto, and the balance, after payment of costs, shall be distributed to the parties entitled thereto or to the personal representative of the decedent, as the court, in its discretion, shall direct.

(d) Recording and registering decrees.—A certified copy of every decree confirming an appraisement of real estate and setting it apart to the surviving spouse, child or children, parent or parents shall be recorded in the deed book in the office of the recorder of deeds of each county where the real estate shall lie, shall be indexed by the recorder in the grantor's index under the name of the decedent and in the grantee's index under the name of such surviving spouse, child or children, parent or parents, and shall be registered in the survey bureau or with the proper authorities empowered to keep a register of real estate in the county: Provided, That no decree conditioned upon payment of any surplus by the surviving spouse, child or children, parent or parents shall be recorded or registered unless there is offered for recording, concurrently therewith, written evidence of the payment of such surplus.

(e) Costs and expenses.—All costs, appraisers' fees and expenses of recording and registering incurred in claiming the exemption shall be part of the general administration expenses of the estate.

Source: This section is derived from Section 213 of the Fiduciaries Act of 1949, April 18, P.L. 512, amended 1965, December 22, P.L. 1201.

Section 3124. Income.—When the family exemption does not exhaust the entire real and personal estate, the income of the estate shall be equitably prorated among the surviving spouse, child or children, parent or parents and the others taking the estate.

Source: This section is derived from Section 214 of the Fiduciaries Act of 1949, April 18, P.L. 512, amended 1965, December 22, P.L. 1201.

Section 3125. Other remedies.—The surviving spouse, child or children, parent or parents may also collect the exemption out of real and personal estate, together with income thereon, in the manner provided by law for the collection of legacies.

Source: This section is derived from Section 215 of the Fiduciaries Act of 1949, April 18, P.L. 512, amended 1965, December 22, P.L. 1201.

Section 3126. Grantee or lienholder.—(a) Rights accruing before death; purchase money obligation.—Nothing in Subchapters A and B shall be construed as impairing any lien existing at death for the purchase money of real estate.

(b) Rights accruing after death.—A decree setting apart a family exemption shall be void as against a subsequent bona fide grantee of, or holder of a lien on, real estate, unless the decree granting the exemption from real estate, or a duplicate original or certified copy thereof, is recorded in the deed book in the office of the recorder of deeds in the county in which the real estate lies, within one year after the death of the decedent, or, if thereafter, then before the recording or entering of the instrument or lien under which such grantee or lienholder claims.

Source: This section is derived from Section 216 of the Fiduciaries Act of 1949, April 18, P.L. 512.

SUBCHAPTER C PROBATE

Section 3131. Place of probate.—The will of a decedent domiciled in the Commonwealth at the time of his death shall be probated only before the register of the county where the decedent had his last family or principal residence. If the decedent had no domicile in the Commonwealth, his will may be probated before the register of any county where any of his property is located.

Source: This section is derived from Section 301 of the Register of Wills Act of 1951, June 28, P.L. 638.

Section 3132. Manner of probate.—All wills shall be proved by the oaths or affirmations of two competent witnesses and

(1) Will signed by testator. In the case of a will to which the testator signed his name, proof by subscribing witnesses, if there are such, shall be preferred to the extent that they are readily available, and proof of the signature of the testator shall be preferred to proof of the signature of a subscribing witness.

(2) Will signed by mark or by another. In the case of a will signed by mark or by another in behalf of the testator, the proof must be by subscribing witnesses, except to the extent that the register is satisfied that such proof cannot be adduced by the exercise of reasonable diligence. In that event other proof of the execution of the will, including proof of the subscribers' signatures, may be accepted, and proof of the signature of a witness who has subscribed to an attestation clause shall be prima facie proof that the facts recited in the attestation clause are true.

(3) Nuncupative will. In the case of a nuncupative will, the witnesses shall have been present when the will was declared and shall have reduced it to writing or directed it to be reduced to writing.

Source: This section is derived from Section 302 of the Register of Wills Act of 1951, June 28, P.L. 638.

Section 3133. Limit of time for probate.—(a) Original probate.—A will, other than a nuncupative will, may be offered for probate at any time.

(b) Conclusiveness of original probate.—The probate of a will shall be conclusive as to all property, real or personal, devised or bequeathed by it, unless an appeal shall be taken from probate as provided in section 908, or the probate record shall have been amended as authorized by section 3138.

(c) Effect upon grantee or mortgagee.—A will offered for original or subsequent probate more than two years after the decedent's death shall be void against a bona fide grantee or mortgagee of real estate of the decedent if the conveyance or mortgage is recorded before the will is offered for probate.

Source: This section is derived from Section 303 of the Register of Wills Act of 1951, June 28, P.L. 638, subsection (b) as amended 1967, October 9, P.L. 417.

Section 3134. Nuncupative wills.—A nuncupative will shall not be admitted to probate, nor shall letters thereon be issued, unless notice

has first been given to those who would be entitled to the estate in case of intestacy.

Source: This section is derived from Section 304 of the Register of Wills Act of 1951, June 28, P.L. 638.

Section 3135. Wills in foreign language.—A writing not in English shall not be filed for probate or for any other purpose in the office of the register unless there is attached to it and filed with it a translation into English, sworn to be correct. The register shall attach the translation to the original and shall file them in his office, and in all cases where a recording is now or hereafter may be required, both the original and the translation shall be recorded. A writing filed in violation of this section shall not constitute notice to any person.

Source: This section is derived from Section 305 of the Register of Wills Act of 1951, June 28, P.L. 638.

Section 3136. Wills probated outside the Commonwealth.—A duly authenticated copy of a will proved outside of the Commonwealth according to the law of the place of probate may be offered for probate before any register having jurisdiction, and letters testamentary or of administration with a will annexed may be granted thereon as though the original will had been offered before such register. If, in addition to such copy, there shall be produced a duly authenticated copy of the record of the probate proceeding of the original instrument, the will shall be entitled to probate in this Commonwealth and appropriate letters shall be issued thereon without the production or examination of the witnesses to prove such will, unless the will was probated outside of the United States and the record shows or it is satisfactorily proved that an essential requirement of Pennsylvania law for a valid will has not been met. If the will was probated outside of the United States, the probate proceedings may be supplemented by the submission of additional evidence to the register.

Source: This section is derived from Section 306 of the Register of Wills Act of 1951, June 28, P.L. 638, amended 1956, February 10, P.L. (1955) 1021.

Section 3137. Enforcing production of will.—The register, at the request of any party in interest, shall issue a citation to any person alleged to have possession or control of a will of a decedent requiring him to show cause why it should not be deposited with him. In the absence of good cause shown, the register shall order the will to be deposited with him.

Source: This section is derived from Section 307 of the Register of Wills Act of 1951, June 28, P.L. 638.

Section 3138. Later will or codicil.—If a later will or codicil is submitted to the register for probate within three months of the testator's death but after the register shall have probated an earlier instrument, the register, after such notice as he deems advisable, but with at least ten-days' notice to the petitioner who presented the probated instrument if he has not requested probate of the later will or codicil, shall have power to open the probate record, receive proof of the later instrument or instruments and amend his probate record.

Source: This section is derived from Section 308 of the Register of Wills Act of 1951, June 28, P.L. 638, added 1967, October 9, P.L. 417.

SUBCHAPTER D GRANT OF LETTERS

Section 3151. Proper county.—Letters testamentary or of administration on the estate of a decedent domiciled in the Commonwealth at the time of his death shall be granted only by the register of the county where the decedent had his last family or principal residence. If the decedent had no such domicile in the Commonwealth, letters testamentary or of administration may be granted by the register of any county wherein property of the estate shall be located and, when granted, shall be exclusive throughout the Commonwealth. If the decedent had no such domicile in the Commonwealth, and had no property located therein, and service of process is to be made in the Commonwealth upon his personal representative as authorized by law, then letters testamentary or of administration on his estate may be granted by the register of any county of the Commonwealth and, when granted, shall be exclusive throughout the Commonwealth.

Source: This section is derived from Section 301 of the Fiduciaries Act of 1949, April 18, P.L. 512, amended 1956, February 23, P.L. (1955) 1084.

Section 3152. When 21 years elapsed.—Letters testamentary or of administration shall not be granted after the expiration of 21 years from the decedent's death, except on the order of the court, upon cause shown.

Source: This section is derived from Section 302 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3153. Contents of petition.—A petition for the grant of letters testamentary or of administration shall state, under oath, so far as they are known:

(1) The decedent's name, age, state or country of domicile, his last family or principal residence, and the place, day and hour of his death.

(2) If the decedent died intestate, the name and residence address of the surviving spouse, if any, and the names, relationships and residence addresses of other heirs.

(3) If the decedent died testate, whether he has married or any child has been born to or adopted by him since the execution of the will.

(4) If the decedent was domiciled in the Commonwealth at the time of his death, the estimated value of all his personal property, and the estimated value and the location of his real property situated in the Commonwealth.

(5) If the decedent was not domiciled in the Commonwealth at the time of his death, the estimated value of his personal property in the Commonwealth, the estimated value of his personal property in the county in which the petition is filed, and the estimated value and location of his real property in the Commonwealth.

(6) The name and residence address of each person to whom letters are requested to be granted.

(7) Any other facts necessary to entitle the petitioner to letters.

Source: This section is derived from Section 303 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3154. Affidavit and oath.—The affidavit to a petition for the grant of letters and the oath of the fiduciary relative to the performance of his duties and the oath of a witness relative to probate of a will may be taken before and administered by:

(1) Within the Commonwealth. The register of any county of the Commonwealth.

(2) Outside of the Commonwealth. A public officer of another jurisdiction having duties similar to those of a register who has been authorized to do so by the register of the county where the application for letters is to be made.

Source: This section is derived from Section 304 of the Fiduciaries Act of 1949, April 18, P.L. 512, last amended 1963, May 15, P.L. 35.

Section 3155. Persons entitled.—(a) Letters testamentary.—Letters testamentary shall be granted by the register to the executor designated in the will, whether or not he has declined a trust under the will.

(b) Letters of administration.—Letters of administration shall be granted by the register, in such form as the case shall require, to one or more of those hereinafter mentioned and, except for good cause, in the following order:

- (1) Those entitled to the residuary estate under the will.
- (2) The surviving spouse.
- (3) Those entitled under the intestate law as the register, in his discretion, shall judge will best administer the estate, giving preference, however, according to the sizes of the shares of those in this class.
- (4) The principal creditors of the decedent at the time of his death.
- (5) Other fit persons.
- (6) If anyone of the foregoing shall renounce his right to letters of administration, the register, in his discretion, may appoint a nominee of the person so renouncing in preference to the persons set forth in any succeeding clause.

(c) Time limitation.—Except with the consent of those enumerated in clauses (1), (2) and (3), no letters shall be issued to those enumerated in clauses (4) and (5) of subsection (b) until seven days after the decedent's death.

Source: This section is derived from Section 305 of the Fiduciaries Act of 1949, April 18, P.L. 512, amended 1959, November 10, P.L. 1450.

Section 3156. Persons not qualified.—No person shall be qualified to serve as a personal representative who is:

- (1) Under 21 years of age.
- (2) A corporation not authorized to act as fiduciary in the Commonwealth.
- (3) A person, other than an executor designated by name or description in the will, found by the register to be unfit to be entrusted with the administration of the estate.

(4) The nominee of any beneficiary, legatee or person having any interest whatsoever, when such beneficiary, legatee or person is a citizen or resident of any country outside the territorial limits or possessions of the United States, when it shall appear doubtful to the register that in the distribution of the estate any such person will have the actual benefit, use, enjoyment or control of the money or other property representing his share or interest therein.

Source: This section is derived from Section 306 of the Fiduciaries Act of 1949, April 18, P.L. 512, clause (4) added 1953, July 28, P.L. 691.

Section 3157. Nonresidents.—(a) Discretion of register.—The register shall have discretion to refuse letters of administration to any individual not a resident of the Commonwealth.

(b) Power of attorney.—If a personal representative is or becomes a nonresident of the Commonwealth, the acceptance of his letters, or the act of becoming a nonresident, as the case may be, shall constitute the Secretary of the Commonwealth his attorney-in-fact upon whom service of process and notices may be made as to all causes of action relating to the decedent or the administration of his estate.

Source: This section is derived from Section 307 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3158. Letters of administration C.T.A.—When there is a will, but no executor qualifies, letters of administration cum testamento annexo may be granted to the person or persons entitled thereto.

Source: This section is derived from Section 308 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3159. Letters of administration D.B.N. or D.B.N.C.T.A.—When an entire vacancy occurs in the office of personal representative before administration is completed, the register, in a case of intestacy, shall grant letters of administration de bonis non, and in the case of testacy, letters de bonis non cum testamento annexo, to the person or persons entitled thereto.

Source: This section is derived from Section 309 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3160. Letters of administration durante minoritate, durante absentia, and pendente lite.—Whenever the circumstances of the case require, letters of administration durante minoritate, durante absentia, or pendente lite may be granted to any fit person or persons, after such notice, if any, as the register shall require.

Source: This section is derived from Section 310 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3161. Oath of personal representative.—Before letters shall be granted to a personal representative by the register, the personal representative shall swear that he will well and truly administer the estate according to law. The oath of a corporate personal representative may be taken by any of its officers.

Source: This section is derived from Section 311 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3162. Advertisement of grant of letters.—The personal representative, immediately after the grant of letters, shall cause notice thereof to be given in one newspaper published at or near the place where the decedent resided, and in the legal periodical, if any, designated

by rule of court for the publication of legal notices, once a week for three successive weeks, together with his name and address; and in every such notice, he shall request all persons having claims against the estate of the decedent to make known the same to him or his attorney, and all persons indebted to the decedent to make payment to him without delay.

Source: This section is derived from Section 312 of the Fiduciaries Act of 1949, April 18, P.L. 512, added 1951, August 17, P.L. 1258.

SUBCHAPTER E PERSONAL REPRESENTATIVE; BOND

Section 3171. Individual estate.—Except as hereinafter provided, before letters shall be granted to any personal representative, he shall execute and file a bond which shall be in the name of the Commonwealth, with sufficient surety, in such amount as the register considers necessary, having regard to the value of the personal estate which will come into the control of the personal representative, and conditioned in the following form:

(1) When one personal representative. The condition of this obligation is, that if the said personal representative shall well and truly administer the estate according to law, this obligation shall be void; but otherwise, it shall remain in force.

(2) When two or more personal representatives. The condition of this obligation is, that if the said personal representatives or any of them shall well and truly administer the estate according to law, this obligation shall be void as to the personal representative or representatives who shall so administer the estate; but otherwise, it shall remain in force.

Source: This section is derived from Section 321 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3172. Register's responsibility.—If any register shall grant letters without having taken such bond as is required by law, he and his surety shall be liable to pay all damages which shall accrue to any person by reason thereof. Nothing herein stated shall be deemed to relieve the personal representative from liability which would otherwise be imposed upon by him law.

Source: This section is derived from Section 401 of the Register of Wills Act of 1951, June 28, P.L. 638.

Comment: The words "is required" have been substituted for "may be required" in the first sentence to avoid ambiguity when read in connection with Section 3174(c), *infra*, thus making it clear that a register who, pursuant to his discretionary power, does not require a bond of a nonresident will not be subject to personal liability.

Section 3173. Fiduciary estate.—The register, in his discretion, upon the application of any party in interest, in addition to any bond required for the decedent's individual estate, may require a separate bond in the name of the Commonwealth, with sufficient surety, in such amount as the register shall consider necessary for the protection of the parties in interest in an estate of which the decedent was a fiduciary, and conditioned in the following form:

(1) When one personal representative. The condition of this obligation is, that if the said personal representative shall well and truly account for property held by the decedent as fiduciary according to law, this obligation shall be void; but otherwise, it shall remain in force.

(2) When two or more personal representatives. The condition of this obligation is, that if the said personal representatives or any of them shall well and truly account for property held by the decedent as fiduciary according to law, this obligation shall be void as to the personal representative or representatives who shall so account; but otherwise, it shall remain in force.

Source: This section is derived from Section 322 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3174. When not required.—(a) Corporate personal representative.—No bond shall be required of a bank and trust company or of a trust company incorporated in the Commonwealth, or of a national bank having its principal office in the Commonwealth, or, in the discretion of the register, of a foreign corporation, or of a national bank having its principal office out of the Commonwealth, otherwise qualified to act.

(b) Resident executor.—No bond shall be required of an individual executor who is a resident of the Commonwealth unless it is required by the will or is ordered by the court.

(c) Nonresident executor.—No bond shall be required of an individual executor not a resident of the Commonwealth who has been excused from filing a bond by the express direction of the testator in his will unless the register, for cause, deems it necessary, in which event the

register, in fixing the amount of the bond, shall have regard to all the circumstances, including the amount of transfer inheritance tax and estate tax due the Commonwealth and the amount of the decedent's debts.

Source: This section is derived from Section 323 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3175. Requiring or changing amount of bond.—The court, upon cause shown and after such notice, if any, as it shall direct, may require a surety bond, or increase or decrease the amount of an existing bond, or require more or less security therefor.

Source: This section is derived from Section 324 of the Fiduciaries Act of 1949, April 18, P.L. 512.

SUBCHAPTER F PERSONAL REPRESENTATIVE; REVOCATION OF LETTERS; REMOVAL AND DISCHARGE

Section 3181. Revocation of letters.—(a) When no will.—The register may revoke letters of administration granted by him whenever it appears that the person to whom the letters were granted is not entitled thereto.

(b) When a will.—The register may amend or revoke letters testamentary or of administration granted by him not in conformity with the provisions of a will admitted to probate.

Source: This section is derived from Section 402 of the Register of Wills Act of 1951, June 28, P.L. 638.

Section 3182. Grounds for removal.—The court shall have exclusive power to remove a personal representative when he:

(1) is wasting or mismanaging the estate, is or is likely to become insolvent, or has failed to perform any duty imposed by law; or

(2) has been adjudged a lunatic, a habitual drunkard, or a weak-minded person; or

(3) has become incompetent to discharge the duties of his office because of sickness or physical or mental incapacity and his incompetency is likely to continue to the injury of the estate; or

(4) has removed from the Commonwealth or has ceased to have a known place of residence therein, without furnishing such security or additional security as the court shall direct; or

(5) when, for any other reason, the interests of the estate are likely to be jeopardized by his continuance in office.

Source: This section is derived from Section 331 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3183. Procedure for and effect of removal.—The court on its own motion may, and on the petition of any party in interest alleging adequate grounds for removal shall, order the personal representative to appear and show cause why he should not be removed, or, when necessary to protect the rights of creditors or parties in interest, may summarily remove him. Upon removal, the court may direct the grant of new letters testamentary or of administration by the register to the person entitled and may, by summary attachment of the person or other appropriate orders, provide for the security and delivery of the assets of the estate, together with all books, accounts and papers relating thereto. Any personal representative summarily removed under the provisions of this section may apply, by petition, to have the decree of removal vacated and to be reinstated, and, if the court shall vacate the decree of removal and reinstate him, it shall thereupon make any orders which may be appropriate to accomplish the reinstatement.

Source: This section is derived from Section 332 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3184. Discharge of personal representative and surety.—After confirmation of his final account and distribution to the parties entitled, a personal representative and his surety may be discharged by the court from future liability. The court may discharge only the surety from future liability, allowing the personal representative to continue without surety, upon condition that no further assets shall come into the control of the personal representative until he files another bond with sufficient surety, as required by the register.

Source: This section is derived from Section 333 of the Fiduciaries Act of 1949, April 18, P.L. 512.

CHAPTER 33

ADMINISTRATION AND PERSONAL REPRESENTATIVES

SUBCHAPTER A INVENTORY

Section 3301. Duty of personal representative.—(a) General assets.—Within three months after his appointment, every personal representative shall file with the register an inventory, verified by his affidavit of all real and personal estate of the decedent, except real estate outside

of the Commonwealth: Provided, That an ancillary personal representative shall include therein only assets for which he is responsible.

(b) Real estate outside of Commonwealth.—The inventory shall include at the end a memorandum of real estate outside of the Commonwealth. The memorandum, at the election of the personal representative, may indicate the value of each item of real estate included therein, but the values so fixed shall not be extended into the total of the inventory or included as real estate in subsequent accountings.

Source: This section is derived from Section 401 of the Fiduciaries Act of 1949, April 18, P.L. 512, subsection (a) amended 1956, February 23, P.L. (1955) 1084.

Section 3302. Valuations.—The personal representative shall determine and state in figures opposite each item of the inventory its fair value as of the date of the decedent's death.

Source: This section is derived from Section 402 of the Fiduciaries Act of 1949, April 18, P.L. 512, amended 1956, February 23, P.L. (1955) 1084.

Section 3303. Supplemental inventory.—Whenever any property not included in the inventory comes to the knowledge of the personal representative, he shall file, within 30 days of its discovery, a supplemental inventory thereof with the register.

Source: This section is derived from Section 403 of the Fiduciaries Act of 1949, April 18, P.L. 512, amended 1956, February 23, P.L. (1955) 1084.

Section 3304. Claims against personal representative.—The appointment of a personal representative shall not operate as a discharge or bequest of any debt which he owes the decedent or of any claim which the decedent had against him, but any such debt or claim, if it survives, shall be included in the inventory.

Source: This section is derived from Section 404 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3305. Objections to inventory.—Objections to the inventory may be made by any party in interest at any time up to and including the time fixed by rule of court for making objections to the first account of the personal representative. Such objections in the discretion of the court may be heard at the audit of the account. Objections to the inventory also may be made in the form of objections to the account.

Source: This section is derived from Section 405 of the Fiduciaries Act of 1949, April 18, P.L. 512, added 1956, February 23, P.L. (1955) 1084.

SUBCHAPTER B
PERSONAL REPRESENTATIVES;
POWERS, DUTIES AND LIABILITIES

Section 3311. Possession of real and personal estate; exception.—A personal representative shall have the right to and shall take possession of, maintain and administer all the real and personal estate of the decedent, except real estate occupied at the time of death by an heir or devisee with the consent of the decedent. He shall collect the rents and income from each asset in his possession until it is sold or distributed, and, during the administration of the estate, shall have the right to maintain any action with respect to it and shall make all reasonable expenditures necessary to preserve it. The court may direct the personal representative to take possession of, administer and maintain real estate so occupied by an heir or a devisee if this is necessary to protect the rights of claimants or other parties. Nothing in this section shall affect the personal representative's power to sell real estate occupied by an heir or devisee.

Source: This section is derived from Section 501 of the Fiduciaries Act of 1949, April 18, P.L. 512, amended 1965, December 22, P.L. 1201.

Section 3312. Renunciation of right to administer property.—When any property is of no value to the estate, the court may authorize the personal representative to renounce his right to administer it.

Source: This section is derived from Section 502 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3313. Liability insurance.—The personal representative, at the expense of the estate, may protect himself, his employes and the beneficiaries by insurance from liability to third persons arising from the administration of the estate.

Source: This section is derived from Section 503 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3314. Continuation of business.—The court, aided by the report of a master if necessary, may authorize the personal representative to continue any business of the estate for the benefit of the estate and in doing so the court, for cause shown, may disregard the provisions of the governing instrument, if any. The order may be with or without notice. If prior notice is not given to all parties in interest, it shall be given within five days after the order or within such extended time as the court, for cause shown, shall allow. Any party in interest may, at any time, petition the court to revoke or modify the order. The order may provide:

(1) For the conduct of business, by the personal representative alone or jointly with others, or, unless restricted by the terms of the governing instrument, as a corporation to be formed;

(2) The extent of the liability of the estate or any part thereof, or of the personal representative, for obligations incurred in the continuation of the business;

(3) 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) The period of time the business may be conducted; and

(5) Such other regulations, including accountings, as the court shall deem advisable.

Source: This section is derived from Section 504 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Comment: The words "will" and "decedent" have been replaced by "governing instrument" and "estate" to allow for incorporation by reference in later chapters relating to estates other than those of a decedent. No change in substantive law is intended in this section or in any following sections where similar changes have been made.

Section 3315. Incorporation of estate's business.—After notice to all parties in interest, aided by the report of a master if necessary, the court, unless restricted by the terms of the governing instrument, may authorize the personal representative alone or jointly with others, to organize a corporation to carry on the business of the estate, whether the business was owned solely or with others, and may contribute for stock of the corporation, as capital, all or part of the property of the estate which was invested in the business.

Source: This section is derived from Section 505 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3316. Investment of funds.—Subject to his duty to liquidate the estate for prompt distribution and to the provisions of the will, if any, the personal representative may invest the funds of the estate but shall have no duty to do so. Any such investment, except as the court or the will may otherwise authorize or direct, shall be restricted to obligations of the United States or the United States Treasury, of the

Commonwealth, or of any political subdivision of the Commonwealth, and to interest bearing deposits authorized by section 7313 and to savings accounts in savings associations authorized in section 7310(b).

Source: This section is derived from Section 506 of the Fiduciaries Act of 1949, April 18, P.L. 512, amended 1971, November 5, No. 122.

Section 3317. Claims against co-fiduciary.—When one of two or more personal representatives shall be individually liable to the estate, the other or others shall take any legal action against him necessary to protect the estate.

Source: This section is derived from Section 507 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3318. Revival of judgments against personal representative.—When the estate holds a judgment which is a lien on the real estate of the personal representative, any party in interest may suggest his interest in the judgment upon the record thereof and bring an appropriate action to revive it and to continue its lien. Any judgment so revived shall remain for the use of all parties in interest.

Source: This section is derived from Section 508 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3319. Power of attorney; delegation of power over subscription rights and fractional shares; authorized delegations.—(a) Power of attorney.—A personal representative may convey real estate, transfer title to personal estate, or perform any other act of administration by an attorney or attorneys-in-fact. Nothing in this subsection authorizes the delegation of any discretionary power.

(b) Delegation of power over subscription rights and fractional shares.—Where there is more than one personal representative, one or more may delegate to another the power to decide whether rights to subscribe to stock should be sold or should be exercised, and also the power to decide whether a fractional share of stock should be sold or should be rounded out to a whole share through the purchase of an additional fraction, and also the power to carry out any such decision. Any delegation may extend to all subscription rights and fractional shares from time to time received by the personal representatives on account of stock held by them, or may be limited to any extent specified in the delegation. No exercise of any delegated power shall be valid, unless:

(1) The stock on which the subscription rights or fractional shares are issued are listed or traded on the New York Stock Exchange or any other exchange approved by the Secretary of Banking, and

(2) The shares held by the personal representatives on which the subscription rights or fractional shares are issued constitute less than 5% of the total outstanding shares of the same class of the same corporation.

(3) Nothing in this section precludes a delegation authorized by the government instrument.

Source: This section is derived from Section 509 of the Fiduciaries Act of 1949, April 18, P.L. 512, amended 1959, November 10, P.L. 1450.

Section 3320. Voting stock by proxy.—The personal representatives or a majority of them, either in person or by proxy, may vote stock owned by the estate.

Source: This section is derived from Section 510 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3321. Nominee registration; corporate fiduciary as attorney-in-fact.—(a) Corporate personal representative.—A bank and trust company or a trust company incorporated in the Commonwealth, or a national bank with trust powers having its principal office in the Commonwealth, may keep investments or fractional interests in investments held by it, either as sole personal representative or jointly with other personal representatives, in the name or names of the personal representatives or in the name of the nominee of the corporate personal representative: Provided, That the consent thereto of all the personal representatives is obtained: And provided further, That all such investments shall be so designated upon the records of the corporate personal representative that the estate to which they belong shall appear clearly at all times.

(b) Individual personal representative.—A personal representative serving jointly with a bank and trust company or a trust company incorporated in the Commonwealth, or with a national bank having its principal office in the Commonwealth, may authorize or consent to the corporate personal representative having exclusive custody of the assets of the estate and to the holding of such investments in the name of a nominee of such corporate personal representative, to the same extent and subject to the same requirements that the corporate personal representative, if it were the sole personal representative, would be authorized to hold such investments in the name of its nominee.

(c) Corporate fiduciary as attorney-in-fact.—An individual personal representative may employ a bank and trust company or a trust company incorporated in the Commonwealth, or a national bank with trust powers having its principal office in the Commonwealth, to act as

his attorney-in-fact in the performance of ministerial duties, including the safekeeping of estate assets, and such attorney-in-fact, when so acting, may be authorized to hold such investments in the name of its nominee to the same extent and subject to the same requirements that such attorney-in-fact, if it were the personal representative, would be authorized to hold such investments in the name of the nominee.

Source: This section is derived from Section 511 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3322. Acceptance of deed in lieu of foreclosure.—The personal representative may take for the estate from the owner of property encumbered by a mortgage owned by the estate, a deed in lieu of foreclosure, in which event the real estate shall be considered personalty to the same extent as though title were acquired by foreclosure at sheriff's sale. Any deed or deeds heretofore so accepted are hereby made valid in accordance with the provisions hereof.

Source: This section is derived from Section 512 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3323. Compromise of controversies.—(a) In general.—Whenever it shall be proposed to compromise or settle any claim, whether in suit or not, by or against an estate, or to compromise or settle any question or dispute concerning the validity or construction of any governing instrument, or the distribution of all or any part of any estate, or any other controversy affecting any estate, the court, on petition by the personal representative or by any party in interest setting forth all the facts and circumstances, and after such notice as the court shall direct, aided if necessary by the report of a master, may enter a decree authorizing the compromise or settlement to be made.

(b) Pending court action.—

(1) Court order. Whenever it is desired to compromise or settle an action in which damages are sought to be recovered on behalf of an estate, any court or division thereof in which such action is pending and which has jurisdiction thereof may, upon oral motion by plaintiff's counsel of record in such action, or upon petition by the personal representative of such decedent, make an order approving such compromise or settlement. Such order may approve an agreement for the payment of counsel fees and other proper expenses incident to such action.

(2) Order not subject to collateral attack. The order of the court approving such compromise or settlement or an agreement for the payment of counsel fees and other expenses shall not be subject to collateral attack in the orphans' court division in the settlement of an estate.

(3) Filing copy of order; additional security. The personal representative shall file a copy of the order of the court approving such compromise or settlement in the office of the register of wills or clerk of the court having jurisdiction of the estate. When the personal representative has been required to give bond, he shall not receive the proceeds of any such compromise or settlement until the court of the county having jurisdiction of his estate has made an order excusing him from entering additional security or requiring additional security, and in the latter event, only after he has entered the additional security.

Source: This section (a) is derived from Section 513 of the Fiduciaries Act of 1949, April 18, P.L. 512; (b) is derived from the act of 1953, July 28, P.L. 659.

Section 3324. Death or incompetency of fiduciary.—The personal representative of the estate of a deceased fiduciary or the guardian of an adjudged incompetent fiduciary by reason of his position shall not succeed to the administration of, or have the right to possess, any asset of an estate which was being administered by the deceased or incompetent fiduciary, except to protect it pending its delivery to the person entitled to it. The account of the deceased or incompetent fiduciary may be filed by the fiduciary of his estate and it shall be filed if the court shall so direct. The court may direct the fiduciary of a deceased or incompetent fiduciary to make the distribution and to make the transfers and assignments necessary to carry into effect a decree of distribution.

Source: This section is derived from Sections 514 and 515 of the Fiduciaries Act of 1949, April 18, P.L. 512, Section 515 amended 1959, November 10, P.L. 1450.

Section 3325. Administrator C.T.A.—An administrator with the will annexed shall have all the powers given by the will to the executor, unless otherwise provided by the will. When he has been required to give bond, no proceeds of real estate shall be paid to him until the court has made an order excusing him from entering additional security or requiring additional security, and in the latter event, only after he has entered the additional security.

Source: This section is derived from Section 516 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3326. Administrator D.B.N. and D.B.N.C.T.A.—An administrator de bonis non, with or without a will annexed, shall have the power to recover the assets of the estate from his predecessor in administration or from the personal representative of such predecessor and, except as the will shall provide otherwise, shall stand in his predecessor's stead for all purposes, except that he shall not be personally liable for the acts of his predecessor. When he has been required to give bond, no

proceeds of real estate shall be paid to him until the court has made an order excusing him from entering additional security or requiring additional security, and in the latter event, only after he has entered the additional security.

Source: This section is derived from Section 517 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3327. Surviving or remaining personal representatives.—Surviving or remaining personal representatives shall have all the powers of the original personal representatives, unless otherwise provided by the governing instrument.

Source: This section is derived from Section 518 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3328. Disagreement of personal representatives.—(a) Decision of majority.—If a dispute shall arise among personal representatives, the decision of the majority shall control unless otherwise provided by the governing instrument, if any. A dissenting personal representative shall join with the majority to carry out a majority decision requiring affirmative action and may be ordered to do so by the court. A dissenting personal representative shall not be liable for the consequences of any majority decision even though he joins in carrying it out, if his dissent is expressed promptly to all the other personal representatives: Provided, That liability for failure to join in administering the estate or to prevent a breach of trust may not be thus avoided.

(b) When no majority.—When a dispute shall arise among personal representatives as to the exercise or nonexercise of any of their powers and there shall be no agreement of a majority of them, unless otherwise provided by the governing instrument, the court, upon petition filed by any of the personal representatives or by any party in interest, aided if necessary by the report of a master, in its discretion, may direct the exercise or nonexercise of the power as the court shall deem for the best interest of the estate.

Source: This section is derived from Section 519 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3329. Effect of revocation of letters, probate of will, later will or codicil.—No act of administration performed by a personal representative in good faith shall be impeached by the subsequent revocation of his letters or by the subsequent probate of a will, of a later will or of a codicil: Provided, That regardless of the good or bad faith of the personal representative, no person who deals in good faith with a duly qualified personal representative shall be prejudiced by the

subsequent occurrence of any of these contingencies.

Source: This section is derived from Section 520 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3330. Notice of devise or bequest to corporation or association.—A personal representative to whom original letters are granted shall send a written notice, within three months after the grant of letters, to each corporation or association named as a beneficiary in the decedent's will, stating the date of the decedent's death, the county where the will has been probated, and that it is named as a beneficiary.

Source: This section is derived from Section 521 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3331. Liability of personal representative on contracts.—Unless he expressly contracts otherwise, in writing, a personal representative shall not be personally liable on any written contract which is within his authority as personal representative and discloses that he is contracting as personal representative of a named estate. Any action on such a contract shall be brought against the personal representative in his fiduciary capacity only, or against his successor in such capacity, and execution upon any judgment obtained therein shall be had only against property of the estate.

Source: This section is derived from Section 522 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3332. Inherent powers and duties.—Except as otherwise provided in this code, nothing in this code shall be construed to limit the inherent powers and duties of a personal representative.

Source: This section is derived from Section 523 of the Fiduciaries Act of 1949, April 18, P.L. 512.

SUBCHAPTER C SALES, PLEDGES, MORTGAGES, LEASES, OPTIONS AND EXCHANGES

Section 3351. Power to sell.—Except as otherwise provided by the will, if any, the personal representative may sell, at public or private sale, any personal property whether specifically bequeathed or not, and any real property not specifically devised, and with the joinder of the specific devisee real property specifically devised. When the personal representative has been required to give a bond, no proceeds of real estate shall be paid to him until the court has made an order excusing him from entering additional security or requiring additional security,

and in the latter event, only after he has entered the additional security.

Source: This section is derived from Section 541 of the Fiduciaries Act of 1949, April 18, P.L. 512, last amended 1970, May 5, P.L. 336.

Section 3352. Power to lease.—Except as otherwise provided by the will, if any, the personal representative may lease any real or personal property which he is entitled to possess. The lease may be for a term expiring not more than one year after the decedent's death unless it is terminable by the personal representative at any later time on 30-days' notice, or unless a longer term is approved by the court.

Source: This section is derived from Section 542 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3353. Order of court.—When the personal representative is not authorized to do so by this code or is not authorized or is denied the power to do so by the governing instrument, if any, or when it is advisable that a sale have the effect of a judicial sale, he may sell any real or personal property of the estate, including property specifically devised, at public or private sale, or may pledge, mortgage, lease, or exchange any such property, or grant an option for the sale, lease, or exchange of any such property, under order of the orphans' court division of the county where letters testamentary or of administration were granted, upon such terms and upon such security and after such notice as the court shall direct, whenever the court shall find such sale, pledge, mortgage, lease, exchange, or option to be desirable for the proper administration and distribution of the estate.

Source: This section is derived from Section 543 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3354. Power given in governing instrument.—A testamentary power given in the governing instrument to sell, unless expressly restricted, shall include the power to sell at public or private sale or to pledge or mortgage for any purpose of administration or distribution, but shall not include the right to grant an option without court order. A private sale may be made, with court approval, under the provisions of this code, although the governing instrument has directed a public sale. A power in the governing instrument to sell, pledge, mortgage, lease, or exchange, or to grant an option for a purchase, lease, or exchange of property not given to any person by name or description shall be deemed to have been given to the personal representative and may be exercised without court approval. When the personal representative has been required to give bond, no proceeds of real estate shall be paid to him until the court has made an order excusing him from entering

additional security or requiring additional security, and in the latter event, only after he has entered the additional security.

Source: This section is derived from Section 544 of the Fiduciaries Act of 1949, April 18, P.L. 512, amended 1959, November 10, P.L. 1463.

Section 3355. Restraint of sale.—The court, on its own motion or upon application of any party in interest, in its discretion, may restrain a personal representative from making any sale under an authority not given by the governing instrument or from carrying out any contract of sale made by him under an authority not so given. The order may be conditioned upon the applicant giving bond for the protection of parties in interest who may be prejudiced thereby. The order shall be void as against a bona fide grantee of, or holder of a lien on, real estate unless the decree restraining the sale, or a duplicate original or certified copy thereof, is recorded in the deed book in the office of the recorder of deeds in the county in which such real estate lies, before the recording or entering of the instrument or lien under which such grantee or lienholder claims.

Source: This section is derived from Section 545 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3356. Purchase by personal representative.—In addition to any right conferred by a governing instrument, if any, the personal representative, in his individual capacity, may bid for, purchase, take a mortgage on, lease, or take by exchange, real or personal property belonging to the estate, subject, however, to the approval of the court, and under such terms and conditions and after such reasonable notice to parties in interest as it shall direct. When the purchaser, mortgagee, or lessee is the sole personal representative, the court may make an order directing its clerk to execute a deed or other appropriate instrument to him.

Source: This section is derived from Section 546 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3357. Title of purchaser.—(a) If the personal representative has given such bond, if any, as shall be required in accordance with this code, any sale, mortgage, or exchange by him, whether pursuant to a decree or to the exercise of a testamentary power or of a power under this code, shall pass the full title of the decedent therein, unless otherwise specified, discharged from the lien of legacies, from liability for all debts and obligations of the decedent, from all liabilities incident to the administration of the decedent's estate, and from all claims of distributees and of persons claiming in their right, except that:

(1) no such sale, mortgage or exchange by a personal representative shall divest the interest of a grantee of, or a holder of a lien on, real property of the decedent who has acquired such interest for value under a prior recorded document from or through those entitled to the interest of the decedent in the real property by will or by intestacy, either:

(i) more than one year after the death of the decedent when no letters theretofore have been issued in the Commonwealth upon the decedent's estate; or

(ii) within such year if no letters upon the decedent's estate have been issued in the Commonwealth during that year, unless the sale by the personal representative is made under section 3353 for the purpose of divesting a lien existing at decedent's death; and

(2) only a sale under section 3353 shall divest liens of record at the time of the decedent's death.

(b) Persons dealing with the personal representative shall have no obligation to see to the proper application of the cash or other assets given in exchange for the property of the estate. Any sale or exchange by a personal representative pursuant to a decree under section 3353 shall have the effect of a judicial sale, but the court may decree a sale or exchange freed and discharged from the lien of any mortgage otherwise preserved from discharge by existing law, if the holder of such mortgage shall consent by writing filed in the proceeding. No such sale, mortgage, exchange, or conveyance shall be prejudiced by the terms of any will or codicil thereafter probated or by the subsequent revocation of the letters of the personal representative who made the sale, mortgage, exchange, or conveyance if the person dealing with the personal representative did so in good faith.

Source: This section is derived from Section 547 of the Fiduciaries Act of 1949, April 18, P.L. 512, amended 1965, December 22, P.L. 1199.

Section 3358. Collateral attack.—No decree entered pursuant to this code shall be subject to collateral attack on account of any irregularity if the court which entered it had jurisdiction to do so.

Source: This section is derived from Section 548 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3359. Record of proceedings; county where real estate lies.—Certified copies of proceedings of any court of the Commonwealth relating to or affecting real estate may be recorded in the office for the recording of deeds in any county in which the real estate lies.

Source: This section is derived from Section 549 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3360. Contracts, inadequacy of consideration or better offer; brokers' commissions.—(a) Inadequacy of consideration or better offer.—When a personal representative shall make a contract not requiring approval of court, or when the court shall approve a contract of a personal representative requiring approval of the court, neither inadequacy of consideration, nor the receipt of an offer to deal on other terms shall, except as otherwise agreed by the parties, relieve the personal representative of the obligation to perform his contract or shall constitute ground for any court to set aside the contract, or to refuse to enforce it by specific performance or otherwise: Provided, That this subsection shall not affect or change the inherent right of the court to set aside a contract for fraud, accident or mistake. Nothing in this subsection shall affect the liability of a personal representative for surcharge on the ground of negligence or bad faith in making a contract.

(b) Brokers' commissions.—When a personal representative shall enter into an agreement of sale of real estate in good faith, which is not binding under subsection (a) and which is set aside upon receipt of a higher offer for such real estate, he shall not be relieved from the payment of real estate broker or broker's commissions to the broker who had procured such agreement of sale, and in the event that more than one real estate broker is entitled to commissions for said agreements of sale, then such commissions shall be equally divided between or among such real estate brokers: Provided further, That the total aggregate commission paid as a percentage of the gross consideration of the final sale shall in no event exceed the prevailing rate of commission as recommended by the schedule of commissions of the board of realtors in the territory in which the property is located.

Source: This section is derived from the act of 1945, May 24, P.L. 944; (b) is derived from a paragraph following Section 9(p) of the Orphans' Court Act of 1917 which set forth the jurisdiction of the orphans' court. That paragraph was saved from repeal in Section 801(5) of the Orphans' Court Act of 1951, August 10, P.L.1163, amended 1968, March 13, P.L. — (Act No. 15).

SUBCHAPTER D ABATEMENT, SURVIVAL AND CONTROL OF ACTIONS

Section 3371. Actions which survive.—All causes of action or proceedings, real or personal, except actions for slander or libel, shall survive the death of the plaintiff or of the defendant, or the death of one or more joint plaintiffs or defendants.

Source: This section is derived from Section 601 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3372. Substitution of personal representative in pending action or proceedings.—Substitution of the personal representative of a deceased party to a pending action or proceeding shall be as provided by law.

Source: This section is new.

Comment: Former Section 602 of the Fiduciaries Act of 1949 has been suspended absolutely by Pa. R.C.P. No. 2375 (7).

Section 3373. Action by or against personal representative.—An action or proceeding to enforce any right or liability which survives a decedent may be brought by or against his personal representative alone or with other parties as though the decedent were alive.

Source: This section is derived from Section 603 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3374. Death or removal of fiduciary.—An action or proceeding to which a fiduciary is a party is not abated by his death or resignation or by the termination of his authority. The successor of the fiduciary may be substituted in the action or proceeding in the manner provided by law.

Source: This section is derived from Section 604 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Comment: Former Section 604 of the Fiduciaries Act of 1949 has been suspended insofar as it relates to the procedure for the substitution of the successor of a fiduciary by Pa. R.C.P. No. 2375 (8).

Section 3375. Abatement of action for failure to take out letters.—If a plaintiff or petitioner in any action or proceeding now pending or hereafter brought dies and a personal representative is not appointed within one year after a suggestion of such death is filed in the action or proceeding, any defendant or respondent may petition the court to abate the action as to the cause of action of the decedent. Copies of the petition shall be served upon the executor named in the will, if known to the defendant, and otherwise upon all known next of kin entitled to letters of administration. The court shall abate the action

as to the cause of action of the decedent if the delay is taking out letters is not reasonably explained.

Source: This section is derived from Section 605 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3376. Limitations against debt due estate.—Failure or delay in taking out letters testamentary or of administration shall not affect the operation of any statute of limitations applicable to a debt or liability owed the estate of a decedent

Source: This section is derived from Section 606 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3377. Execution on judgments.—(a) When prohibited.—No execution shall issue against, nor shall any levy be made upon, any real or personal property of the estate of a decedent by virtue of a judgment against him or his personal representative unless:

(1) agreed to by the personal representative in a writing filed in the action or proceeding; or

(2) approved by the orphans' court division of the county in which letters testamentary or of administration have been granted, or if none have been granted, then by the orphans' court division of the county in which the principal or family residence of the decedent was located. The court may require the giving of notice to the personal representative and to parties in interest or may waive all notice.

(b) When allowed.—The restrictions of subsection (a) shall not apply to actions or proceedings to enforce mortgages, ground rents, pledges, or conditional sales of real or personal property.

Source: This section is derived from Section 607 of the Fiduciaries Act of 1949, April 18, P.L. 512.

SUBCHAPTER E CLAIMS; CHARGES; RIGHTS OF CREDITORS

Section 3381. Liens and charges existing at death not impaired.—Nothing in this code shall be construed as impairing any lien or charge on real or personal estate of the decedent which existed at his death.

Source: This section is derived from Section 611 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3382. Judgments which are liens at death.—Any judgment which at the decedent's death was a lien on real estate then owned by him or on real estate which he had conveyed by deed not recorded during his life shall continue to bind the real estate for five years from

the inception or last revival of the lien or for one year from the decedent's death, whichever shall be longer, although the judgment be not revived after his death. During this period, the judgment shall rank according to its priority at the time of death, and after this period, it shall not continue to be a lien on the real estate, unless revived. Any judgment against the decedent which is a lien on real estate aliened by him may be revived by an action of scire facias brought against the decedent, but before any judgment shall be entered thereon, the personal representative shall be made a party defendant and served with process in the action.

Source: This section is derived from Section 612 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3383. Statutes of limitations; claims not barred at death.—The death of a person shall not stop the running of the statute of limitations applicable to any claim against him, but a claim which otherwise would be barred within one year after the death of the decedent shall not be barred until the expiration of one year after his death. Nothing in this section shall be construed to shorten the period which would have been allowed by any applicable statute of limitations if the decedent had continued to live.

Source: This section is derived from Section 613, of the Fiduciaries Act of 1949, April 18, P.L. 512, amended 1956, February 23, P.L. (1955) 1084.

Section 3384. Notice of claim.—(a) Written notice.—Written notice of any claim against a decedent given to the personal representative or his attorney of record before the claim is barred shall toll the statute of limitations.

(b) Acts equivalent to written notice.—Any of the following acts by a claimant shall be equivalent to the giving of written notice of a claim to the personal representative:

- (1) Instituting proceedings to compel the filing of an account.
- (2) Bringing an action against the personal representative in any court having jurisdiction of the claim and having the writ or pleading duly served on the personal representative.
- (3) Substituting the personal representative as a defendant in an action pending against the decedent.
- (4) Receiving a written acknowledgement by the personal representative or his attorney of record of the existence of the claim.

Source: This section is derived from Section 614 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3385. Limitation upon claims.—All claims against the decedent, subject only to the provisions of sections 3381 and 3382, shall become unenforceable after one year from the decedent's death against a bona fide grantee of, or holder of a lien on, real property of the decedent who has acquired his interest for value from or through those entitled to the property by will or by intestacy, either:

(1) More than one year after the death of the decedent and when no letters issued in the Commonwealth upon the decedent's estate were in effect; or

(2) Within such year if no letters upon the decedent's estate have been issued in the Commonwealth during that year.

Nothing in this section shall be construed to limit the right of a personal representative subsequently appointed to recover from the heir or devisee the value of property so sold or encumbered.

Source: This section is derived from Section 615 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3386. Failure to present claim at audit.—If any claimant whose claim is not reported to the court by the personal representative as an admitted claim shall fail to present it at the call for audit or confirmation, he shall not be entitled to receive any share of the real and personal estate distributed pursuant to such audit or confirmation, whether the estate of the decedent be solvent or insolvent.

Source: This section is derived from Section 616 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3387. Claims not due; certain to become due.—Upon satisfactory proof or admission of a claim which is not due but certain to become due, the court may provide for payment by one of the following methods:

(1) Awarding the present value of the claim, as agreed to by the claimant and the personal representative.

(2) Ordering the personal representative to retain or pay into the court sufficient assets to pay on maturity of the claim the whole amount then due, or a proportionate amount in case of insolvency.

Source: This section is derived from Section 617 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3388. Claims not certain to become due.—Upon satisfactory proof or admission of a claim which may or may not become due at a future time, the court may provide for payment by one of the following methods:

(1) Awarding the present value of the claim, as agreed to by the claimant and the personal representative.

(2) Ordering the personal representative to distribute the estate but to retain or pay into court sufficient assets to pay the claim, or a proportionate amount in case of insolvency, if and when it becomes absolute.

(3) Making such other provisions for the disposition or satisfaction of the claim as shall be equitable.

Source: This section is derived from Section 618 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3389. Claims subject to litigation in other courts.—When any claim not proved in the orphans' court division is being litigated in any other division or court, State or Federal, having jurisdiction thereof, the court may make such provision for the distribution or satisfaction of the claim as shall be equitable.

Source: This section is derived from Section 619 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3390. Specific performance of contracts.—(a) Application to court.—If any person makes a legally binding agreement to purchase or sell real or personal estate and dies before its consummation, his personal representative shall have power to consummate it, but if he does not do so, the court, on the application of any party in interest and after such notice and with such security, if any, as it may direct, in its discretion, may order specific performance of the agreement if it would have been enforced specifically had the decedent not died.

(b) Execution and effect of deed or transfer.—Any necessary deed or transfer shall be executed by the personal representative or by such other person as the court shall direct. The title of any purchaser under an agreement in which the decedent was the vendor shall be the same as though the decedent had conveyed or transferred such property in his lifetime.

(c) Indexing in judgment or ejectment and miscellaneous indexes.—When any petition for specific performance of an agreement to purchase or sell real estate is filed, the prothonotary of the court of common pleas where the real estate or any part of it lies, upon the receipt of a certificate of such fact by the clerk of the court where the petition was filed, shall enter the petition upon either the judgment or ejectment and miscellaneous indexes against the defendants as directed by local rules of court and shall certify it as *lis pendens* in any certificate of search which he is required to make by virtue of his office.

Source: This section is derived from Section 620 of the Fiduciaries Act of 1949, April 18, P.L. 512, subsection (c) amended 1961, September 18, P.L. 1473.

Section 3391. Proceeding against personal representative.—Any proceeding may be brought against a personal representative or the surety on his bond in the county where his letters have been granted, and if the personal representative or surety does not reside in that county, process may be served on either of them personally, or as follows:

(1) When resident of another county. By a duly deputized sheriff of any other county of the Commonwealth in which he shall be found.

(2) When a nonresident of the Commonwealth. By the sheriff of the county where letters have been granted sending, by registered mail, return receipt requested, a true and attested copy of the process to the Secretary of the Commonwealth, accompanied by the fee prescribed by law, and to the personal representative or surety at his last known address, with an endorsement thereon showing that service has been so made upon the Secretary of the Commonwealth.

Source: This section is derived from Section 621 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3392. Classification and order of payment.—If the applicable assets of the estate are insufficient to pay all proper charges and claims in full, the personal representative, subject to any preference given by law to claims due the United States, shall pay them in the following order, without priority as between claims of the same class:

(1) The costs of administration.

(2) The family exemption.

(3) The costs of the decedent's funeral and burial, and the costs of medicines furnished to him within six months of his death, of medical or nursing services performed for him within that time, of hospital services including maintenance provided him within that time, and of services performed for him by any of his employes within that time.

(4) The costs of a gravemarker.

(5) Rents for the occupancy of the decedent's residence for six months immediately prior to his death.

(6) All other claims, including claims by the Commonwealth.

Source: This section is derived from Section 622 of the Fiduciaries Act of 1949, April 18, P.L. 512, clause (3) amended 1961, June 13, P.L. 285.

Section 3393. Notice to Commonwealth and political subdivisions.—When the Commonwealth or a political subdivision thereof has a claim for maintaining in an institution a person who has died in the institution,

the personal representative, within three months after the grant of letters, shall give notice thereof to the Department of Revenue or to the proper officer of such political subdivision, as the case may be.

Source: This section is derived from Section 623 of the Fiduciaries Act of 1949, April 18, P.L. 512.

CHAPTER 35 ACCOUNTS AND DISTRIBUTION

SUBCHAPTER A ACCOUNTS

Section 3501. Accounting required.—Except as otherwise provided in this code every personal representative shall file an account of his administration at the expiration of six months from the first complete advertisement of the original grant of letters or when directed to do so by the court, and may be cited to file an account at any time after the expiration of that period. Unless it is directed by the court, no account shall be filed within six months of the first complete advertisement of the original grant of letters.

Source: This section is derived from Section 701 of the Fiduciaries Act of 1949, April 18, P.L. 512, amended 1951, August 17, P.L. 1258.

Section 3502. Where filed.—The account of the personal representative shall be filed in the office of the register.

Source: This section is derived from Section 702 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3503. Notice to parties in interest.—The personal representative shall give written notice of the filing of his account and of its call for audit or confirmation to every unpaid claimant who has given written notice of his claim to the personal representative or his attorney of record, and to every other person known to the accountant to have an interest in the estate as beneficiary, heir or next of kin.

Source: This section is derived from Section 703 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3504. Representation of parties in interest.—Persons interested in the estate as beneficiary, heir or next of kin, if minors or otherwise legally incompetent, and possible unborn or unascertained persons, when not already represented by a fiduciary, may be represented in an accounting by a guardian or trustee ad litem, if the court deems it

necessary. The court may dispense with the appointment of a guardian or trustee ad litem for a person legally incompetent, unborn or unascertained, when there is a living person sui juris having a similar interest or when such person is or would be issue of a living ancestor sui juris and interested in the estate whose interest is not adverse to his. If the whereabouts of any beneficiary or next of kin is unknown, or if there is doubt as to his existence the court shall make such provision for service of notice and representation in the accounting as it deems proper.

Source: This section is derived from Section 704 of the Fiduciaries Act of 1949, April 18, P.L. 512.

SUBCHAPTER B AUDITS

Section 3511. Audits in counties having separate orphans' court division.—In any county having a separate orphans' court division, the account of a personal representative shall be examined and audited by the court without expense to the parties, except when all parties in interest in a pending proceeding shall nominate an auditor whom the court may in its discretion appoint.

Source: This section is derived from Section 711 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3512. Audits in counties having no separate orphans' court division.—In any county having no separate orphans' court division, the account of a personal representative shall be confirmed by the court or by the clerk, as local rules shall prescribe, if no objections are presented within a time fixed by general rule of court. If any party in interest shall object to the account, or shall request its reference to an auditor, the court, in its discretion, may appoint an auditor.

Source: This section is derived from Section 712 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3513. Statement of proposed distribution.—A personal representative filing an account shall file a statement of proposed distribution or a request that distribution be determined by the court or by an auditor, as local rules may prescribe. The statement of proposed distribution shall be in such form, and such notice thereof shall be given by advertisement or otherwise, and objections thereto may be made, as local rules prescribe.

Source: This section is derived from Section 713 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3514. Confirmation of account and approval of proposed distribution.—No account shall be confirmed, or statement of proposed distribution approved, until an adjudication or a decree of distribution is filed in conformity with local rules by the court or by the clerk of the court, expressly confirming the account or approving the statement of proposed distribution and specifying or indicating by reference to the statement of proposed distribution the names of the persons to whom the balance available for distribution is awarded and the amount or share awarded to each.

Source: This section is derived from Section 714 of the Fiduciaries Act of 1949, April 18, P.L. 512.

SUBCHAPTER C REVIEW

Section 3521. Rehearing; relief granted.—If any party in interest shall, within five years after the final confirmation of any account of a personal representative, file a petition to review any part of the account or of an auditor's report, or of the adjudication, or of any decree of distribution, setting forth specifically alleged errors therein, the court shall give such relief as equity and justice shall require: Provided, That no such review shall impose liability on the personal representative as to any property which was distributed by him in accordance with a decree of court before the filing of the petition. The court or master considering the petition may include in his adjudication or report, findings of fact and of law as to the entire controversy, in pursuance of which a final order may be made.

Source: This section is derived from Section 721 of the Fiduciaries Act of 1949, April 18, P.L. 512, amended 1970, May 5, P.L. 336.

SUBCHAPTER D DISTRIBUTION

Section 3531. Estates not exceeding \$5,000.—When the gross real and personal estate of a decedent does not exceed the value of \$5,000, the personal representative, after the expiration of one year from the date of the first complete advertisement of the grant of letters, may present his petition to the court with an annexed account showing the administration of the estate, the distribution theretofore made and suggesting the proper distribution of the estate not theretofore distributed. Thereupon, the court, upon satisfactory proof of notice to all known parties in interest, may approve the distribution theretofore made and order distribution of the assets not theretofore distributed

and discharge the personal representative and his sureties from future liability without the expense of proceedings as in a formal account. The court may discharge only the surety from future liability, and may allow the personal representative to continue without surety upon condition that no further assets shall come into the possession of the personal representative until he files another bond, with sufficient surety, as required by the register.

Source: This section is derived from Section 731 of the Fiduciaries Act of 1949, April 18, P.L. 512, last amended 1970, May 5, P.L. 336.

Section 3532. At risk of personal representative.—(a) Rights of claimants against personal representatives.—A personal representative, at his own risk and without the filing, audit or confirmation of his account, may distribute real or personal property and such distribution shall be without liability to any claimant against the decedent who has not given notice of his claim as provided by this code within one year after the first complete advertisement of the grant of letters to such personal representative or thereafter but prior to such distribution.

(b) Rights of claimants against distributed property.—

(1) Personal property. No claimant shall have any claim against personal property distributed by a personal representative at his own risk pursuant to subsection (a) hereof, unless such claimant has given notice of his claim to the personal representative as provided by this code within one year after the first complete advertisement of the grant of letters, or thereafter but prior to such distribution.

(2) Real property. No claimant shall have any claim against real property conveyed by a personal representative in distribution at his own risk pursuant to subsection (a) hereof, unless such claimant, within one year after the decedent's death, files a written notice of his claim with the clerk. Such claim against real property shall expire at the end of five years after the decedent's death, unless within that time the personal representative files an account or the claimant files a petition to compel an accounting.

(3) Liens and charges existing at death. Nothing in this section shall be construed as affecting any lien or charge which existed at the time of the decedent's death on his real or personal property.

Source: This section is derived from Section 732 of the Fiduciaries Act of 1949, April 18, P.L. 521, amended 1956, February 23, P.L. (1955) 1084.

Section 3533. Award upon final confirmation of account.—A personal representative shall be relieved of liability with respect to all real and

personal estate distributed in conformity with a decree of court or in accordance with rule of court after confirmation of an account. In making any such distribution, the personal representative shall not be entitled to demand refunding bonds from the distributees, except as provided by this code or as directed by the court.

Source: This section is derived from Section 733 of the Fiduciaries Act of 1949, April 18, P.L. 521.

Section 3534. Distribution in kind.—The court, for cause shown, may order the estate to be distributed in kind to the parties in interest, including fiduciaries. In such case, when there are two or more distributees, distribution may be made of undivided interests in real or personal estate or the personal representative or a distributee may request the court to divide, partition and allot the property, or to direct the sale of the property. If such a request is made, the court, after such notice as it shall direct, shall fairly divide, partition and allot the property among the distributees in proportion to their respective interests, or the court may direct the personal representative to sell at a sale confined to the distributees, or at a private or public sale not so confined, any property which cannot be so divided, partitioned or allotted.

Source: This section is derived from Section 734 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3535. Delivery of possession of real estate.—Upon application of any party in interest and after such notice as the court shall direct, the court may order the personal representative to deliver to any distributee possession of any real estate to which he is entitled, provided that claimants and other distributees are not prejudiced thereby. The personal representative shall cease to be responsible for the maintenance of such real estate unless and until possession of it is returned to him with his consent or by order of court. The court, at any time prior to a final decree approving the distribution, may order the distributee to return the possession of any such real estate to the personal representative or may require the distributee to give security for the rents or rental value pending a decree of distribution.

Source: This section is derived from Section 735 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3536. Recording and registering decrees awarding real estate.—A certified copy of every adjudication or decree awarding real estate or an appropriate excerpt from either of them shall be recorded, at the expense of the estate, in the deed book in the office of the recorder of deeds of each county where the real estate so awarded lies, shall be

indexed by the recorder in the grantor's index under the name of the decedent and in the grantee's index under the name of the distributee, and shall be registered in the survey bureau or with the proper authorities empowered to keep a register of real estate in the county: Provided, That no adjudication or decree awarding real estate subject to the payment of any sum by the distributee shall be recorded or registered unless there is offered for recording, concurrently therewith, written evidence of the payment of such sum.

Source: This section is derived from Section 736 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Comment: Former Section 737 of the Fiduciaries Act of 1949, which would follow Section 3536 herein, was declared unconstitutional in *Demczuk Estate*, 444 Pa. 212 (1971), and has therefore been omitted from this code.

Section 3537. Compensation.—The court shall allow such compensation to the personal representative as shall in the circumstances be reasonable and just, and may calculate such compensation on a graduated percentage.

Source: This section is derived from Section 738 of the Fiduciaries Act of 1949, April 18, P.L. 512, added 1970, May 5, P.L. 336.

SUBCHAPTER E RIGHTS OF DISTRIBUTEES

Section 3541. Order of abatement.—(a) General rules.—Except as otherwise provided by the will, if the assets are insufficient to pay all claimants and distributees in full, the shares of distributees, without distinction between real and personal estate, shall have priority of distribution in the following order:

- (1) Property specifically devised or bequeathed to or for the benefit of the surviving spouse.
- (2) Property specifically devised or bequeathed to or for the benefit of the decedent's issue.
- (3) Property specifically devised or bequeathed to or for the benefit of other distributees.
- (4) Property disposed of by will in the form of a general bequest of cash, stocks or bonds.

(5) Property disposed of by general devise or bequest and not included in a residuary clause.

(6) Property devised or bequeathed in a residuary clause.

(7) Property not disposed of by the will.

(b) Demonstrative legacies.—Property out of which a demonstrative legacy is primarily to be paid shall be deemed to be specifically devised or bequeathed to the extent of such demonstrative legacy.

Source: This section is derived from Section 751 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3542. Contribution.—The court may make orders of contribution among legatees or devisees to accomplish an abatement in accordance with the provisions of section 3541, and may determine whether the amount thereof shall be paid before distribution or shall constitute a lien on particular property which is distributed.

Source: This section is derived from Section 752 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3543. Interest or income on distributive shares.—(a) Pecuniary legacy.—A pecuniary legacy bequeathed in trust shall bear interest at the rate of 3% per annum from the death of the decedent until the payment of the legacy, and when not in trust shall bear interest at the rate of 3% per annum from one year after the death of the decedent until the payment of the legacy.

(b) Specific legacy or devise.—A specific legatee or devisee shall be entitled to the net income from property given to him accrued from the date of the death of the decedent.

(c) Demonstrative legacy.—A demonstrative legacy shall bear interest from the death of the decedent until the payment of the legacy at the rate earned by the property out of which it is primarily payable, and to the extent that it is not paid from that source, shall bear interest at the rate of 3% per annum from one year after the death of the decedent until the payment of the legacy.

(d) Residuary legacy or devise.—All income from real and personal estate earned during the period of administration and not payable to others shall be distributed pro rata among the income beneficiaries of any trust created out of the residuary estate and the other persons entitled to the residuary estate.

(e) Future date.—A legacy payable at a future date, unless earlier set aside as a separate trust, shall not begin to bear interest or income until three months after the date fixed for payment or delivery.

(f) Relationship.—Interest or income shall be paid on distributive shares with no distinction because of the relationship of the distributee to the decedent.

(g) Testamentary provisions.—All rules set forth in this section are subject to the provisions of the decedent's will.

Source: This section is derived from Section 753 of the Fiduciaries Act of 1949, April 18, P.L. 512, subsection (e) amended 1965, December 22, P.L. 1198.

Section 3544. Liability of personal representative for interest.—A personal representative who has committed a breach of duty with respect to estate assets shall, in the discretion of the court, be liable for interest, not exceeding the legal rate on such assets.

Source: This section is derived from Section 754 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3545. Transcripts of balances due by personal representative.—(a) Filing in common pleas.—The prothonotary of any court of common pleas shall, on demand of any party in interest, file and docket a certified transcript or extract from the record showing that an orphans' court division has adjudged an amount to be due by a personal representative, and such transcript or extract shall constitute a judgment against the personal representative from the time of its filing with the same effect as if it had been obtained in an action in the court of common pleas. If the amount adjudged to be due by the personal representative shall be increased or decreased on appeal, the prothonotary shall, if the decree of the appellate court is certified to him, change his records accordingly, and if the appellate court has increased the amount, the excess shall constitute a judgment against the personal representative from the time when the records are so changed.

(b) Satisfaction and discharge.—If the orphans' court division shall order the personal representative to be relieved from any such judgment, the prothonotary shall, on demand of any party in interest, enter on his records a certified copy of such order, which shall operate as a satisfaction of the judgment.

Source: This section is derived from Section 755 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3546. Determination of title to decedent's interest in real estate.—When a person shall die leaving an interest in real estate within the Commonwealth and no letters testamentary or of administration have been granted on the estate of the decedent in the Commonwealth, and one year has expired since the decedent's death, or if a personal representative has been appointed and has not filed his account within

six years of the death of the decedent, any person claiming an interest in the real estate as or through an heir or devisee of the decedent may present a petition to establish title thereto in the orphans' court division of the county where the letters testamentary or of administration have been granted, or should no letters have been granted, then in the orphans' court division of the county within which was the family or principal residence of the decedent. If the decedent was a nonresident of the Commonwealth, the petition may be presented in the orphans' court division of any county wherein any of the real estate shall lie. The court, aided if necessary by the report of a master, may enter its decree nisi adjudging that the title to the decedent's interest in the real estate is in such person or persons as the court shall determine. Notice of the decree nisi shall be given to creditors and other parties in interest, by advertisement and otherwise, as the court shall direct. If no exception to the decree is filed within three months, it shall be confirmed absolutely, free of all decedent's debts not then liens of record, and regardless of the provisions of any testamentary writing of the decedent thereafter probated. A certified copy of the decree shall be recorded in the office of the recorder of deeds of each county where real estate included in the decree shall lie, shall be indexed by the recorder in the grantor's index under the name of the decedent and in the grantee's index under the name of each distributee, and shall be registered in the survey bureau or with the proper authorities empowered to keep a register of real estate in the county.

Source: This section is derived from Section 756 of the Fiduciaries Act of 1949, April 18, P.L. 512.

SUBCHAPTER F LEGACIES, ANNUITIES, AND OTHER CHARGES

Section 3551. Enforcement of payment.—When a sum of money is charged upon real or personal property by will, inter vivos trust or decree, and has become payable, the court having jurisdiction of the estate or trust, upon petition of a party in interest and after notice to all persons liable for its payment and to the owner of the property charged, may enter a decree directing payment by the person liable, and in default of payment, may direct the fiduciary or a trustee to be appointed to sell the property charged, or so much of it as shall be necessary, upon such terms and security as the court shall direct, in which event the proceeds of the sale shall be distributed under the direction of the court as in other cases of judicial sales, to the persons legally entitled to receive them.

Source: This section is derived from Section 801 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3552. Discharge of portion of property from charges payable in the future.—When a sum of money is charged upon real or personal property by will, inter vivos trust or decree, and is payable at a future date, the court having jurisdiction of the estate or trust, upon petition of a party in interest and after such notice as it shall direct, aided by the report of master if necessary, or at the audit of any accounting, may enter a decree not contrary to any expressed provision in the will or trust instrument, exonerating and discharging such portion of the real and personal property charged as to it may seem beyond the amount requisite for providing a sufficient continuing security for the payment of the charge, or may direct that excess income be accumulated for the further protection of the charge, or be distributed to the persons entitled thereto. When an annuity is not restricted by the will or trust instrument to the income of the property charged with its payment, the court may authorize the payment of the annuity from the principal of the property set apart to secure its payment, should income at any time prove insufficient.

Source: This section is derived from Section 802 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3553. Discharge of property from lien of charge.—(a) Payment into court.—When real or personal property by will, inter vivos trust or decree is subject to a charge which had become payable, the court which has jurisdiction of the estate or trust, upon petition of a party in interest and after such notice as it shall direct, shall enter a decree fixing the amount of the charge then payable, and directing that it be paid into court and that upon such payment the property shall be discharged from so much of the charge as shall be paid into court. When the amount of the charge does not appear as a matter of record, the court, by appointment of a master or by investigation in open court, may ascertain and fix the amount. A certified copy of every decree relieving real property of the lien of a charge shall be recorded in the deed book in the office of the recorder of deeds of each county where the real estate shall lie, and shall be indexed by the recorder in the grantor's index under the name of the decedent or settlor, as the case may be, and in the grantee's index under the name of the owner of the land: Provided, That no conditional decree shall be recorded unless there is offered for recording, concurrently therewith, written evidence of compliance with the condition.

(b) Distribution of moneys paid into court.—Any money paid into

court under the provisions of this section, subject to the laws of the Commonwealth relating to the payment of unclaimed funds into the State Treasury without escheat, shall remain there until the court, on petition of a party in interest and after such notice as it shall direct, aided by the report of a master if necessary, shall direct distribution to the persons entitled. The court may, in its discretion, appoint an auditor to make such distribution.

Source: This section is derived from Section 803 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 3554. Presumption of payment, release or extinguishment.—

(a) Lapse of 20 years.—When:

(i) for 20 years after the same or any part thereof becomes due, no payment has been made on account of a dower, recognizance, legacy, annuity instalment, or other charge, created by will, agreement, inter vivos trust or court decree, upon real property; or

(ii) no proceeding has been brought or no written acknowledgment of the existence thereof or no written promise to pay the same has been made within such period by the owner or owners of the property subject to the charge, a release of extinguishment thereof shall be presumed, and the charge shall thereafter be irrecoverable.

(b) Perpetuation of Evidence.—The evidence of any such payment or written acknowledgment or promise may be perpetuated by recording it in the office of the recorder of deeds of the county or counties in which the real property bound by the charge is situate. The recorder of deeds shall index such evidence in the grantor's index under the name of the record owner or owners of the real property and in the grantee's index under the name of the owner or owners of the charge.

(c) Renewal of evidence every 20 years.—If such evidence of the charge is so recorded and indexed within the said period of 20 years, it shall remain a charge on the real property for a period of 20 years from the time of indexing and no longer: Provided, That such evidence may be renewed within successive periods of 20 years, as often as necessary.

(d) Irrecoverable after 20 years.—If such evidence does not appear of record and is not indexed as herein provided within a period of 20 years or within the periods provided for a renewal thereof, then said dower, recognizance, legacy, annuity instalment or other charge shall be irrecoverable from any purchaser, mortgagee or other lien creditor.

Source: This section is derived from Section 804 of the Fiduciaries Act of 1949, April 18, P.L. 512, subsection (a) amended 1956, February 23, P.L. (1955) 1084; (d) amended 1951, June 30, P.L. 988.

CHAPTER 37

ESTATE TAX APPORTIONMENT

Section 3701. Definitions—The following words when used in this chapter, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this section:

“Person.” Includes a corporation, partnership, and association, as well as a natural person, whether acting in a separate or in a fiduciary capacity.

“Estate tax.” Means gross Federal estate tax, including interest and penalty thereon.

“Persons interested in property includible in gross estate.” Includes persons liable for payment of estate tax and persons whose property is subject to a lien for the estate tax. It includes personal representatives, guardians and trustees, individual or corporate.

“Gross estate.” Means all property of every description required to be included in computing the estate tax.

Source: This section is derived from Section 1 of the Estate Tax Apportionment Act of 1951, August 24, P.L. 1405.

Section 3702. Equitable apportionment.—Estate tax, except as provided in section 3703(a), shall be apportioned equitably, as near as may be in accordance with the principles hereinafter stated, among all persons interested in property includible in gross estate, whether residents or nonresidents of the Commonwealth, and they shall pay the amounts apportioned against them.

Source: This section is derived from Section 2 of the Estate Tax Apportionment Act of 1951, August 24, P.L. 1405.

Section 3703. General rules.—(a) Powers of testator or settlor.—A testator, settlor or possessor of any appropriate power of appointment may direct how the estate tax shall be apportioned or allocated or grant a discretionary power to another so to direct. Any such direction shall take precedence over the provisions of this chapter in so far as the direction provides for the payment of the estate tax or any part thereof from property, the disposition of which can be controlled by the instrument containing the direction or delegating the power to another.

(b) Present and remainder interests.—When estate tax shall be apportioned in a situation involving both a present and future interest, the amount apportioned, including interest and penalties, shall be paid entirely from principal, even though the holder of the present interest also has rights in the principal.

(c) Separate apportionment of interest and penalties; special circumstances.—When the orphans' court division shall find that it is inequitable to apportion interest and penalties in the same manner as the principal of the estate tax by reason of special circumstances, it may direct apportionment of interest and penalties in a manner different from principal.

(d) Outright devises and bequests.—No estate tax shall be apportioned against a distributee of a devise or bequest:

(1) Which passes by will, absolutely and in fee; and

(2) Which is not part of the residuary estate.

Any estate tax attributable thereto shall be paid entirely from the residuary estate, and charged in the same manner as a general administration expense, except that where a portion of the residuary estate is an interest described in section 3704(b) (1), such tax shall be paid from the portion of the residuary estate which is not such an interest.

Source: This section is derived from Section 3 of the Estate Tax Apportionment Act of 1951, August 24, P.L. 1405, subsection (d) added 1965, December 22, P.L. 1204.

Section 3704. Method of apportionment.—(a) Basis of apportionment.—Apportionment of the estate tax, except as provided in section 3703, shall be made among the persons interested in property includible in gross estate in the proportion that the value of the interest of each such person bears to the value of the net estate before exemption. The values used in determining the amount of tax liability shall be used for this purpose.

(b) Treatment of deductions and credits.—The following principles shall apply with respect to deductions and credits allowable:

(1) Deductions allowed by Federal revenue laws in determining the value of decedent's net estate. Any interest for which deduction is allowable under Federal revenue laws in determining the value of decedent's net estate, such as property passing to or in trust for a surviving spouse and charitable, public, or similar gifts or bequests to the extent of the allowed deduction, shall not be included in the computation provided in subsection (a) of this section, and to that extent no apportionment shall be made against such interest, except that when such an interest is subject to a prior present interest which is not allowable as a deduction, the estate tax apportionable against the present interest shall be paid from principal.

(2) Property previously taxed and gift tax. Any deduction for property previously taxed and any credit for gift taxes or taxes of a

foreign country paid by the decedent or his estate shall inure to the proportionate benefit of all persons liable to apportionment.

(3) Credit for State taxes. Any credit for inheritance, succession or estate taxes or taxes in the nature thereof in respect to property or interests includible in the gross estate shall inure to the benefit of the persons or interests chargeable with the payment of such taxes to the extent or in proportion that the tax paid or payable reduces the estate tax.

(4) Inheritance or death tax effect. To the extent that property passing to or in trust for a surviving spouse does not constitute an allowable deduction solely by reason of an inheritance tax or other death tax imposed upon and deductible from such property, it shall not be included in the computation provided for in subsection (a) of this section, and to that extent no apportionment shall be made against such property.

Source: This section is derived from Section 4 of the Estate Tax Apportionment Act of 1951, August 24, P.L. 1405, paragraph (b)(4) amended 1956, May 10, P.L. (1955) 1959.

Section 3705. Enforcement of contribution or exoneration.—(a) Fiduciary's duty.—The fiduciary charged with the duty to pay the tax shall be entitled, and it shall be his duty to recover, from persons liable to apportionment or from whoever is in possession of property includible in the gross estate not in the fiduciary's possession, the amounts of tax apportionable thereto.

(b) Suspending distribution.—Distribution of property includible in the gross estate to any person, other than a fiduciary charged with the duty to pay the tax, shall not be required of any fiduciary until the tax apportionable with respect thereto is paid or if the tax has not been determined and apportionment made, until adequate security for such payment is furnished to the person making such distribution.

(c) Court decrees.—The orphans' court division, upon petition or at an accounting or in any appropriate action or proceeding, shall make such decrees or orders as it shall deem advisable apportioning the tax. It may also direct a fiduciary to collect the apportioned amounts from the property or interests in his possession of any persons against whom such apportionment has been made and direct all other persons against whom the tax has been or may be apportioned or from whom any part of the tax may be recovered to make payment of such apportioned amounts to the fiduciary. When it is ascertained that the fiduciary holds property of the person liable to apportionment insufficient to

satisfy the apportioned tax, the court may direct that the balance of the apportioned amount of tax shall be paid to the fiduciary by the person liable. Should an overpayment of the tax be made by any person or on his behalf, the court may direct an appropriate reimbursement for the overpayment. If the court shall apportion any part of the tax against any person interested in nontestamentary property or among the respective interests created by any nontestamentary instrument, the court, in its discretion, may assess against such property or interests an equitable share of the expenses incurred in connection with the determination and apportionment of the tax. If the fiduciary cannot recover the tax apportioned against a person benefited, such an unrecovered amount shall be charged in such manner as the court may determine.

Source: This section is derived from Section 5 of the Estate Tax Apportionment Act of 1951, August 24, P.L. 1405, amended 1961, July 14, P.L. 633.

CHAPTER 41 FOREIGN FIDUCIARIES

SUBCHAPTER A POWERS AND DUTIES

Section 4101. In general.—A foreign fiduciary may institute proceedings in the Commonwealth, subject to the conditions and limitations imposed on nonresident suitors generally, and may exercise all the other powers of a similar local fiduciary, but a foreign personal representative shall have no such power when there is an administration in the Commonwealth. Except in the case of powers with respect to securities and bank accounts, for which special provision is made in section 4102 the maintenance of a proceeding or the exercise of any other power by a foreign fiduciary shall be subject to the following additional conditions and limitations:

(1) Copy of appointment. The foreign fiduciary shall file with the register of the county where the power is to be exercised, or the proceeding is instituted, or the property concerning which the power is to be exercised is located, an exemplified copy of his appointment or other qualification in the foreign jurisdiction, together with an exemplified copy of the will or other instrument, if any, in pursuance of which he has been appointed or qualified. When he is an executor, administrator c.t.a., testamentary trustee, or testamentary guardian under a will of a decedent who either died prior to April 1, 1956, or whose will was

probated outside of the United States, and wishes to exercise a power with respect to Pennsylvania real estate, the will must be admitted to probate in Pennsylvania as required by law.

(2) Affidavit. The foreign fiduciary shall execute and file an affidavit with the register of the county where the power is to be exercised or the proceeding is instituted or the property concerning which the power is to be exercised is located, stating that after diligent search and inquiry, the estate of which he is fiduciary is not, to his knowledge or so far as he has been able to discover, indebted to any person in the Commonwealth, and that he will not exercise any power which he would not be permitted to exercise in the jurisdiction of his appointment. The affidavit shall be attached to the copy of appointment.

(3) Time limitation. When the foreign fiduciary is a personal representative or a trustee under the will of a nonresident decedent, he shall not exercise any of his powers within the Commonwealth for one month after the decedent's death.

(4) Taxes. When the foreign fiduciary exercises a power to sell or mortgage any Pennsylvania real estate, all taxes due thereon to the Commonwealth or to any subdivision thereof must be paid or provided for.

Source: This section is derived from Section 1101 of the Fiduciaries Act of 1949, April 18, 1949, P.L. 512, clause (1) amended 1963, June 21, P.L. 151.

Section 4102. Powers with respect to securities and bank accounts.—
(a) Securities.—When there is no administration in the Commonwealth, a foreign fiduciary, upon submission of a certificate of his appointment, shall have all of the powers of a similar local fiduciary with respect to stock, bonds and other securities of a Pennsylvania corporation or of a Federal corporation located in Pennsylvania, and shall not be required to comply with the conditions and limitations of section 4101.

(b) Bank accounts.—When there is no administration in the Commonwealth, a foreign fiduciary, upon submission to the financial institution of:

- (i) a certificate of his appointment; and
- (ii) an affidavit stating that after diligent search and inquiry the estate of which he is fiduciary is not to his knowledge, or so far as he has been able to discover, indebted to any person in the Commonwealth and that any taxes owing by such estate to the Commonwealth or any subdivision thereof have been paid or provided for shall have all the powers of a similar local fiduciary with respect to money de-

posited or invested in a financial institution located in Pennsylvania and shall not be required to comply with the conditions and limitations of section 4101.

For the purpose of this subsection "financial institution" shall mean a bank, a bank and trust company, a trust company, a savings and loan association, a building and loan association, a credit union, a savings bank, a private bank and a national bank.

Source: This section is derived from Section 1102 of the Fiduciaries Act of 1949, April 18, P.L. 512, subsection (a) amended 1965, Dec. 1, P.L. 981; subsection (b) amended 1970, May 5, P.L. ____ (Act No. 108).

Section 4103. Service of process.—The acceptance by a foreign fiduciary of the privilege extended by the laws of the Commonwealth of exercising any of his powers within the Commonwealth shall constitute the Secretary of the Commonwealth his attorney-in-fact upon whom service of process and notices may be made in any suit or proceeding instituted in the courts of the Commonwealth arising out of, or by reason of, the exercise of any of his powers or the performance or nonperformance of any of his duties as such fiduciary.

Source: This section is derived from Section 1103 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 4104. Proof of authority in court proceedings.—Upon commencing any proceeding in any court of the Commonwealth, the foreign fiduciary, in addition to the requirements of section 4101, shall file with the court in which the proceeding is commenced, an exemplified copy of his official bond, if he has given a bond. If the court believes that he should furnish security or additional security in the Commonwealth or in the domiciliary jurisdiction, it may, at any time, order the action or proceeding stayed until sufficient security is furnished.

Source: This section is derived from Section 1104 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 4105. Effect of local proceedings.—No person who, before receiving actual notice of local administration or of application therefor, has changed his position by relying on the powers granted to foreign fiduciaries by this chapter shall be prejudiced by reason of the application for or grant of local administration.

Source: This section is derived from Section 1105 of the Fiduciaries Act of 1949, April 18, P.L. 512.

SUBCHAPTER B DISTRIBUTIONS TO FOREIGN FIDUCIARIES

Section 4111. To foreign personal representative.—When a share of

an estate administered in the Commonwealth is distributable to a deceased nonresident creditor or other distributee, the court may award it to his domiciliary personal representative or to some other person performing the function of a personal representative, unless it shall appear that the rights of any resident of the Commonwealth may be adversely affected or the court shall determine that for any reason ancillary administration within the Commonwealth is advisable.

Source: This section is derived from Section 1111 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 4112. To foreign trustee, guardian or committee.—When a share of an estate administered in the Commonwealth is distributable to a nonresident minor, a trustee subject to the jurisdiction of a foreign court, or a nonresident incompetent, the court may award it to the guardian or committee of the nonresident appointed in the foreign jurisdiction, or to such trustee: Provided, That the court shall be satisfied, in all cases where an applicable will or trust instrument does not direct distribution to the foreign guardian, committee or trustee, that adequate security or other protection has been provided in the domiciliary jurisdiction by the domiciliary law for the protection of the persons beneficially interested in the share so awarded.

Source: This section is derived from Section 1112 of the Fiduciaries Act of 1949, April 18, P.L. 512.

SUBCHAPTER C TRANSFER OF ADMINISTRATION

Section 4121. Award to foreign guardian when minor or incompetent becomes a nonresident.—When the minor or incompetent for whose estate a guardian has been appointed by the court is or becomes a nonresident of the Commonwealth, the court, upon satisfactory proof that it will be for the best interests of the minor or incompetent and that no rights of a resident of the Commonwealth will be adversely affected and that removal of the property will not conflict with any limitations upon the right of the minor or incompetent to such property, may direct the locally appointed guardian to transfer the assets of the minor or incompetent within his control to a duly qualified guardian or guardians in the jurisdiction where the minor or incompetent resides.

Source: This section is derived from Section 1121 of the Fiduciaries Act of 1949, April 18, P.L. 512.

CHAPTER 45

SURETIES

SUBCHAPTER A RIGHTS IN ADMINISTRATION

Section 4501. Agreement concerning deposit of assets.—A fiduciary may agree with his surety for the deposit of any or all moneys or other assets of the estate with a bank or bank and trust company or other depository approved by the court, if such deposit is otherwise proper, on such terms as to prevent the withdrawal of such moneys or other assets 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.

Source: This section is derived from Section 1301 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 4502. Notice.—Except as otherwise provided by contract, the surety of every fiduciary shall be entitled to written notice by the fiduciary of all accountings and of other court proceedings in which the fiduciary is a party. The fiduciary's failure to give notice hereby required shall not affect the rights or remedies of claimants and other parties in interest against the surety.

Source: This section is derived from Section 1302 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 4503. Participation in administration.—The surety of a fiduciary may intervene in any proceeding which may affect the liability of the fiduciary and shall have the right to except to and appeal from any action which may affect the fiduciary's liability. When the court has finally determined the liability of the fiduciary, the surety shall not be permitted thereafter to deny such liability in any proceeding to determine or enforce his individual liability, whether or not he received notice of the proceedings which established the liability of the fiduciary.

Source: This section is derived from Section 1303 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 4504. Information from fiduciary; accounting.—Upon the application of his surety, every fiduciary shall make available to him his complete files and records relating to the administration of the estate. The surety shall have the same right as a party in interest to enforce the filing of a court accounting and the performance of any duty of the fiduciary's office.

Source: This section is derived from Section 1304 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 4505. Release of surety before discharge of fiduciary.—For good cause, the court, upon the petition of any surety of a fiduciary, may order the surety's release and require the fiduciary to procure a new surety. In such case, the original surety shall remain liable for all breaches of the obligation of the bond occurring prior to the execution of the bond by the new surety and his approval by the court, but not for breaches thereafter.

Source: This section is derived from Section 1305 of the Fiduciaries Act of 1949, April 18, P.L. 512.

SUBCHAPTER B ENFORCEMENT OF BOND

Section 4521. Suits on bonds.—Any bond of a fiduciary shall be in the name of the Commonwealth for the use of those interested in the estate. Suit may be brought thereon by any person interested therein, as provided by law.

Source: This section is derived from Section 1311 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 4522. Service of process on nonresident surety.—If a surety is or becomes a nonresident of the Commonwealth, the execution of the bond of a fiduciary or the act of becoming a nonresident, as the case may be, shall constitute the Secretary of the Commonwealth his attorney-in-fact upon whom service of process may be made as to all causes of action relating to the administration of the estate or the surety's liability on the bond.

Source: This section is derived from Section 1312 of the Fiduciaries Act of 1949, April 18, P.L. 512.

CHAPTER 51

MINORS

SUBCHAPTER A SMALL ESTATES

Section 5101. When guardian unnecessary.—When the entire real and personal estate, wherever located, of a resident or nonresident minor has a net value of \$5,000 or less, all or any part of it may be received and held or disposed of by the minor, or by the parent or other person

maintaining the minor, without the appointment of a guardian or the entry of security, in any of the following circumstances:

(1) Award from the decedent's estate or trust. When the court having jurisdiction of a decedent's estate or of a trust in awarding the interest of the minor shall so direct.

(2) Interest in real estate. When the court having jurisdiction to direct the sale or mortgage of real estate in which the minor has an interest shall so direct as to the minor's interest in the real estate.

(3) Other circumstances. In all other circumstances, when the court which would have had jurisdiction to appoint a guardian of the estate of the minor shall so direct.

Source: This section is derived from Section 1001 of the Fiduciaries Act of 1949, April 18, P.L. 512, last amended 1970, June 22, P.L. 413.

Section 5102. Power of natural guardian.—The court may authorize or direct the parent, person or institution maintaining the minor to execute as natural guardian, any receipt, deed, mortgage or other appropriate instrument necessary to carry out a decree entered under section 5101 and, in such event, may require the deposit of money in a savings account or the care of securities in any manner considered by the court to be for the best interests of the minor. The decree so made, except as the court shall expressly provide otherwise, shall constitute sufficient authority to all transfer agents, registrars and others dealing with property of the minor to recognize the persons named therein as entitled to receive the property, and shall in all respects have the same force and effect as an instrument executed by a duly appointed guardian under court decree.

Source: This section is derived from Section 1002 of the Fiduciaries Act of 1949, April 18, P.L. 512.

SUBCHAPTER B APPOINTMENT OF GUARDIAN

Section 5111. County of appointment.—(a) Resident minor.—A guardian of the person or of the estate of a minor may be appointed by the court of the county in which the minor resides.

(b) Nonresident minor.—A guardian of the estate within the Commonwealth of a minor residing outside the Commonwealth may be appointed by the court of the county having jurisdiction of a decedent's estate or of a trust from which the minor's estate is derived. When the nonresident minor's estate is derived otherwise than from a decedent's

estate or a trust, a guardian may be appointed by the court of any county where an asset of the minor's estate is located.

(c) Exclusiveness of appointment.—When a court has appointed a guardian of a minor's estate pursuant to subsections (a) or (b), no other court shall appoint a similar guardian for the minor within the Commonwealth.

Source: This section is derived from Section 1011 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 5112. Persons not qualified to be appointed by the court.—The court shall not appoint as guardian of the estate of a minor any person who is:

(1) Under 21 years of age.

(2) A corporation not authorized to act as fiduciary in the Commonwealth.

(3) A parent of the minor, except that a parent may be appointed a co-guardian with another fiduciary or fiduciaries.

Source: This section is derived from Section 1012 of the Fiduciaries Act of 1949, April 18, P.L. 512, amended 1963, August 2, P.L. 503.

Section 5113. Persons preferred in appointment.—A person of the same religious persuasion as the parents of the minor shall be preferred as guardian of his person. A person nominated by a minor over the age of 14, if found by the court to be qualified and suitable, shall be preferred as guardian of his person or estate.

Source: This section is derived from Section 1013 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 5114. Service of process on nonresident guardian.—When a guardian is or becomes a nonresident of the Commonwealth, the acceptance of his appointment or the act of becoming a nonresident, as the case may be, shall constitute the Secretary of the Commonwealth his attorney-in-fact upon whom services of process and notices may be made as to all causes of action relating to the minor's estate.

Source: This section is derived from Section 1014 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 5115. Appointment of guardian in conveyance.—Any person, who makes a deed or gift inter vivos or exercises a right under an insurance or annuity policy to designate the beneficiary to receive the proceeds of such policy, may in such deed or in the instrument creating such gift or designating such beneficiary, appoint a guardian of the

estate or interest of each beneficiary named therein who shall be a minor or otherwise incompetent. Payment by an insurance company to the guardian of such beneficiary so appointed shall discharge the insurance company to the extent of such payment to the same effect as payment to an otherwise duly appointed and qualified guardian.

Source: This section is derived from the act of 1945, April 18, P.L. 253.

Section 5116. Orphan beneficiaries, charitable uses or trusts; administration, cities of first class.—Whenever any city of the first class of this Commonwealth shall be charged with the administration of any charitable use or trust for both the maintenance and education of orphans, it shall, without application to any court, act as guardian of the person and estate of each of such orphans, through the same agency that administers the charitable use or trust. In case any such orphan child, at or before the time said city is charged with the administration of such a charitable use or trust, or during the remaining time it acts as guardian of his estate, shall possess or become entitled to any effects or property, the said city shall be entitled, in like manner as other guardians, to demand and receive the same from any person having possession thereof, or owning the same, and to give acquittance therefor; and it shall be the duty of the said city to take care of the same as guardians, and to make the same productive as far as reasonably can be, and to deliver and pay over the same with the increase, less expenditures made in the exercise of a reasonable discretion, to the said orphan, on his attaining the age of 21 years, or to his legal representatives if he shall die before attaining that age.

Source: This section is derived from the act of 1969, July 18, P.L. 163.

SUBCHAPTER C BOND

Section 5121. Necessity, form and amount.—Except as hereinafter provided, every guardian of the estate of a minor shall execute and file a bond which shall be in the name of the Commonwealth, with sufficient surety, in such amount as the court considers necessary, having regard to the value of the personal estate which will come into the control of the guardian, and conditioned in the following form:

(1) When one guardian. The condition of this obligation is, that if the said guardian shall well and truly administer the estate according to law, this obligation shall be void; but otherwise, it shall remain in force.

(2) When two or more guardians. The condition of this obligation is, that if the said guardians or any of them shall well and truly administer the estate according to law, this obligation shall be void as to the guardian or guardians who shall so administer the estate; but otherwise, it shall remain in force.

Source: This section is derived from Section 1021 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 5122. When bond not required.—(a) Guardian named in conveyance.—No bond shall be required of a guardian appointed by or in accordance with the terms of a will, inter vivos instrument, or insurance contract as to the property acquired under the authority of such appointment, unless it is required by the conveyance, or unless the court, for cause shown, deems it advisable.

(b) Corporate guardian.—No bond shall be required of a bank and trust company or of a trust company incorporated in the Commonwealth, or of a national bank having its principal office in the Commonwealth, unless the court, for cause shown, deems it advisable.

(c) Nonresident corporation.—A nonresident corporation or a national bank having its principal office out of the Commonwealth, otherwise qualified to act as guardian, in the discretion of the court, may be excused from giving bond.

(d) Other cases.—In all other cases, the court may dispense with the requirement of a bond when, for cause shown, it finds that no bond is necessary.

Source: This section is derived from Section 1022 of the Fiduciaries Act of 1949, April 18, P.L. 512, subsection (a) amended 1959, Nov. 10, P.L. 1450.

Section 5123. Requiring or changing amount of bond.—The court, for cause shown, and after such notice, if any, as it shall direct, may require a surety bond, or increase or decrease the amount of an existing bond, or require more or less security therefor.

Source: This section is derived from Section 1023 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Comment: The 1965 amendment which validated certain jurisdiction acquired prior to its amendment has been omitted as no longer necessary.

SUBCHAPTER D REMOVAL AND DISCHARGE

Section 5131. Grounds and procedure.—The grounds and the procedure for the removal or discharge of a guardian and his surety and the effect of such removal or discharge shall be the same as are set forth in this code relating to the removal and discharge of a personal representative and his surety, with regard to the following:

- (1) Grounds for removal, as in section 3182.
- (2) Procedure for an effect of removal, as in section 3183, for which purpose the minor shall be deemed a party in interest.
- (3) Discharge of guardian and surety, as in section 3184.

Source: This section is derived from Section 1031 of the Fiduciaries Act of 1949, April 18, P.L. 512.

SUBCHAPTER E POWERS, DUTIES AND LIABILITIES; IN GENERAL

Section 5141. Possession of real and personal property.—The guardian of the estate of a minor appointed by the court until it is distributed or sold shall have the right to, and shall take possession of, maintain and administer, each real and personal asset of the minor to which his appointment extends, collect the rents and income from it, and make all reasonable expenditures necessary to preserve it. He shall also have the right to maintain any action with respect to such real or personal property of the minor.

Source: This section is derived from Section 1041 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 5142. Inventory.—Every guardian, within three months after real or personal estate of his ward comes into his possession, shall verify by oath and file with the clerk an inventory and appraisal of such personal estate, a statement of such real estate, and a statement of any real or personal estate which he expects to acquire thereafter.

Source: This section is derived from Section 1042 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 5143. Abandonment of property.—When any property is so burdensome or is so encumbered or is in such condition that it is of no value to the estate, the guardian may abandon it. When such property cannot be abandoned without transfer of title to another or without a

formal renunciation, the court may authorize the guardian to transfer or renounce it without consideration if it shall find that this will be for the best interests of the estate.

Source: This section is derived from Section 932 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Comment: Certain terms in this section have been changed to allow for incorporation by reference in later chapters relating to other types of estates. No change in substantive law is intended in this section or in any following sections where similar changes have been made.

Section 5144. Powers, duties and liabilities identical with personal representatives.—The provisions concerning the powers, duties and liabilities of a guardian appointed by the court shall be the same as those set forth in this code for the administration of a decedent's estate, with regard to the following:

- (1) Liability insurance, as in section 3313.
- (2) Continuation of business, as in section 3314.
- (3) Incorporation of business, as in section 3315.
- (4) Claims against co-guardian, as in section 3317.
- (5) Revival of judgment against guardian, as in section 3318.
- (6) Liability of guardian on contracts, as in section 3331.
- (7) Power of attorney and delegation of power over subscription rights and fractional shares, as in section 3319.
- (8) Voting stock by proxy, as in section 3320.
- (9) Nominee registration; corporate fiduciary as attorney-in-fact, as in section 3321.
- (10) Acceptance of deed in lieu of foreclosure, as in section 3322.
- (11) Compromise of controversies, as in section 3323.
- (12) When guardian dies or becomes incompetent, as in section 3324.
- (13) Surviving or remaining guardian, as in section 3327.
- (14) Disagreement of guardians, as in section 3328.

(15) Inherent powers and duties, as in section 3332.

Source: This section is derived from Section 1043 of the Fiduciaries Act of 1949, April 18, P.L. 512, amended 1959, Nov. 10, P.L. 1450; subsection (15) is derived from Section 1044 of the act, *supra*.

Section 5145. Investments.—Subject only to the provisions of a governing instrument, if any, a guardian may accept, hold, invest in and retain investments as provided by Chapter 73 of this code.

Source: This section is new.

Comment: There was no similar section in the Fiduciaries Act of 1949 but this cross-reference to Chapter 73, *infra*, is included here because of its importance among the powers of the guardian.

Section 5146. Guardian named in conveyance.—(a) In general.—The powers, duties and liabilities of a guardian not appointed by the court as to property of the minor to which his appointment lawfully extends shall be the same as the powers, duties and liabilities of a court appointed guardian, except as the instrument making the appointment shall provide otherwise.

(b) Substituted or succeeding guardian.—A substituted or succeeding guardian, except as otherwise provided by the instrument, if any, appointing the original guardian, in addition to the powers of a guardian appointed by the court, shall have all the powers, duties and liabilities of the original guardian. He shall have the power to recover the assets of the minor from his predecessor in administration or from the fiduciary of such predecessor and, except as otherwise provided in an applicable instrument, shall stand in the predecessor's stead for all purposes, except that he shall not be personally liable for the acts of his predecessor.

(c) Effect of removal, or of probate of later will or codicil.—No act of administration performed by a testamentary guardian in good faith shall be impeached by the subsequent revocation of the probate of the will from which he derives his authority, or by the subsequent probate of a later will or of a codicil, or by the subsequent dismissal of the guardian: Provided, That regardless of the good or bad faith of the testamentary guardian, no person who deals in good faith with a testamentary guardian shall be prejudiced by the subsequent occurrence of any of these contingencies.

Source: This section is derived from Section 1045 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 5147. Proceedings Against Guardian.—Any proceeding may be brought against a guardian or the surety on his bond in the court having jurisdiction of the estate, and if he does not reside in the county, process may be served on him personally, or as follows:

(1) When resident of another county. By a duly deputized sheriff of any other county of the Commonwealth in which he shall be found;

(2) When a nonresident of the Commonwealth. By the sheriff of the county of the court having jurisdiction of the estate sending, by registered mail, return receipt requested, a true and attested copy of the process to the Secretary of the Commonwealth, accompanied by the fee prescribed by law, and to the guardian or surety at his last known address, with an endorsement thereon showing that service has been so made upon the Secretary of the Commonwealth.

Source: This section is derived from Section 937 of the Fiduciaries Act of 1949, April 18, P.L. 512.

SUBCHAPTER F SALES, PLEDGES, MORTGAGES, LEASES, OPTIONS AND EXCHANGES

Section 5151. Power to sell personal property.—A guardian appointed by the court may sell, at public or private sale, any personal property of the minor.

Source: This section is derived from Section 1061 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 5152. Power to lease.—A guardian appointed by the court may lease any real or personal property of the minor. Unless a longer term is approved by the court, the lease shall not extend beyond the date when the minor, if living, will attain his majority, nor for more than five years after the date it is executed.

Source: This section is derived from Section 1062 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 5153. Provisions identical to other estates.—The provisions concerning minors' estates shall be the same as those set forth in this code for the administration of decedents' estates with regard to the following:

- (1) Order of court, as in section 3353.
- (2) Restraint of sale, as in section 3355.
- (3) Purchase by guardian, as in section 3356.

(4) Collateral attack, as in section 3358.

(5) Record of proceedings; county where real estate lies, as in section 3359.

Source: This section is derived from Sections 1063, 1064, 1065, 1067 and 1068 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 5154. Title of purchaser.—If the guardian has given the bond, if any, required in accordance with this act, any sale, pledge, mortgage or exchange by him, whether pursuant to a decree or to a power under this act, shall pass the full title of the minor therein, unless otherwise specified. Persons dealing with the guardian shall have no obligation to see to the proper application of the cash or other assets given in exchange for the property of the minor. Any sale or exchange by a guardian pursuant to a decree under section 5153(1) shall have the effect of a judicial sale as to the discharge of liens, but the court may decree a sale or exchange freed and discharged from the lien of any mortgage otherwise preserved from discharge by existing law, if the holder of such mortgage shall consent by writing filed in the proceeding. No such sale, mortgage, exchange or conveyance shall be prejudiced by the subsequent dismissal of the guardian, nor shall any such sale, mortgage, exchange or conveyance by a testamentary guardian be prejudiced by the terms of any will or codicil thereafter probated, if the person dealing with the guardian did so in good faith.

Source: This section is derived from Section 1066 of the Fiduciaries Act of 1949, April 18, P.L. 512.

SUBCHAPTER G ACCOUNTS, AUDITS, REVIEWS, DISTRIBUTION

Section 5161. When accounting filed.—A guardian shall file an account of his administration promptly at the termination of his guardianship, or at such earlier time or times as shall be directed or authorized by the court.

Source: This section is derived from Section 1081 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 5162. Where accounts filed.—All accounts of guardians shall be filed in the office of the clerk.

Source: This section is derived from Section 1082 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 5163. Notice, audits, reviews and distribution.—The provisions concerning accounts, audits, reviews, distribution and rights

of distributees in a minor's estate shall be the same as those set forth in this code for the administration of a decedent's estate, with regard to the following:

- (1) Notice to parties in interest, as in section 3503.
- (2) Representation of parties in interest, as in section 3504.
- (3) Audits in counties having a separate orphans' court, as in section 3511.
- (4) Audits in counties having no separate orphans' court, as in section 3512.
- (5) Statement of proposed distribution, as in section 3513.
- (6) Confirmation of account and approval of proposed distribution, as in section 3514.
- (7) Rehearing; relief granted, as in section 3521.
- (8) Award upon final confirmation of account, as in section 3533.
- (9) Distribution in kind, as in section 3534.
- (10) Recording and registering decrees awarding real estate, as in section 3536.
- (11) Award to nonresident beneficiary, as in section 3537.
- (12) Liability for interest, as in section 3544.
- (13) Transcripts of balances due, as in section 3545.

Source: This section is derived from Section 1083 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 5164. Distributions for support and education.—All income received by a guardian of the estate of a minor, in the exercise of a reasonable discretion, may be expended in the care, maintenance and education of the minor without the necessity of court approval. The court, for cause shown, may authorize or direct the payment or application of any or all of the income or principal of the estate of a minor for the care, maintenance or education of the minor, his spouse or children, or for the reasonable funeral expenses of the minor's spouse, child or indigent parent. In proper cases, the court may order payment of amounts directly to the ward for his maintenance or for incidental expenses and may ratify payments made for these purposes.

Source: This section is derived from Section 1084 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 5165. Notice to guardian or guardian ad litem.—The guardian of the estate of a minor shall be given notice of proceedings affecting the interest of his ward in any property to which his appointment extends, in the same manner as is provided for notice to persons of full age having similar interests. If the minor has no guardian authorized to act for him in respect to the interest involved, the court in which the proceedings are pending, upon petition or on its own motion, may appoint a guardian ad litem for the minor, to whom the required notice can be given. Nothing herein shall be construed to require the appointment of a guardian ad litem to represent the interest of a minor in an estate unless the court, upon petition or on its own motion, shall consider such appointment to be advisable. The court may dispense with the appointment of a guardian ad litem when there is a living person sui juris having a similar interest, or where the minor is issue of a living ancestor sui juris interested in the estate whose interest is not adverse to that of the minor.

Source: This section is derived from Section 1085 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 5166. Death of minor.—Upon the audit of the account of the guardian of a person who has died during minority, the auditing judge or auditor passing on the account, in his discretion, may award distribution to those entitled to receive the minor's property, unless the estate is, or is likely to be, involved in litigation making it advisable to distribute the balance to a personal representative of the minor's estate.

Source: This section is derived from Section 1086 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 5167. Failure to present claim at audit.—(a) Any person who at the audit of a guardian's account has a claim which arose out of the administration of the estate of a minor or arises out of the distribution of a minor's estate or upon an accounting of the guardian of the estate of a minor, whether the minor is still a minor or has attained his majority, and which is not reported to the court as an admitted claim, and who shall fail to present his claim at the call for audit or confirmation, shall be forever barred, against:

(1) Any property of the minor distributed pursuant to such audit or confirmation;

(2) The minor, if then of full age; and

(3) Except as otherwise provided in section 3521, any property of the minor awarded back to a continuing or succeeding guardian pursuant to such audit or confirmation.

(b) Nothing in this section shall be construed as impairing any lien or charge on real or personal estate of the minor existing at the time of audit.

Source: This section is derived from Section 1087 of the Fiduciaries Act of 1949, April 18, P.L. 512, added 1965, December 22, P.L. 1196.

CHAPTER 53

PENNSYLVANIA UNIFORM GIFTS TO MINORS ACT

Section 5301. Short title; registration of ownership.—For the purpose of evidencing the ownership of property this chapter shall be known and may be cited as the “Pennsylvania Uniform Gifts to Minors Act.”

Source: This section is derived from Section 1 of the Pennsylvania Uniform Gifts to Minors Act, 1957, June 21, P.L. 358.

Section 5302. Definitions.—The following words, terms and phrases when used in this chapter shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

An “adult” is a person who has attained the age of 21 years.

A “bank” is a bank, bank and trust company, trust company, savings and loan association, building and loan association, national banking association or institution, savings bank or credit union incorporated under the laws of the United States or under the laws of this Commonwealth.

A “broker” is a person engaged in the business of effecting transactions in securities for the account of others. The term includes a bank which effects such transactions. The term also includes a person lawfully engaged in buying and selling securities, for his own account, through a broker or otherwise as a part of a regular business.

“Court” means the orphans’ court division having jurisdiction over the minor or the property.

The “custodial property” includes:

(i) all securities, money, life or endowment insurance policies and annuity contracts under the supervision of the same custodian for the same minor as a consequence of a gift or gifts made to the minor in a manner prescribed in this chapter:

- (ii) the income from the custodial property: and
- (iii) the proceeds, immediate and remote, from the sale, exchange, conversion, investment, reinvestment or other disposition of such securities, money, life or endowment insurance policies and annuity contracts and income.

A "custodian" is a person so designated in a manner prescribed in this chapter; the term includes a successor custodian.

A "guardian" of a minor includes the general guardian, guardian, tutor or curator of his property, estate or person.

An "issuer" is a person who places or authorizes the placing of his name on a security (other than as a transfer agent) to evidence that it represents a share, participation or other interest in his property or in an enterprise, or to evidence his duty or undertaking to perform an obligation evidenced by the security, or who becomes responsible for or in place of any such person.

A "legal representative" of a person is his executor or the administrator, general guardian, guardian, committee, conservator, tutor or curator of his property or estate.

A "member" of a "minor's family" means any of the minor's parents, grandparents, brothers, sisters, uncles and aunts, whether of the whole blood or the half blood, or by or through legal adoption.

A "minor" is a person who has not attained the age of 21 years.

A "security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease, or in payments out of production under such title or lease, collateral trust certificate, transferable share, voting trust certificate, or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in any temporary or interim certificate, receipt or certificate of deposit for or any warrant or right to subscribe to or purchase any of the foregoing. The term does not include a security of which the donor is the issuer. A security is in "registered form" when it specifies a person entitled to it, or to the rights it evidences, and its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer.

A "transfer agent" is a person who acts as authenticating trustee, transfer agent, registrar or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrendered securities.

A "trust company" is any corporation authorized under the laws of this Commonwealth to act as a fiduciary.

"Life or endowment insurance policies and annuity contracts" means only life or endowment insurance policies and annuity contracts on the

life of an individual in whose life the minor has an insurable interest.

Source: This section is derived from Section 2 of the Pennsylvania Uniform Gifts to Minors Act, 1957, June 21, P.L. 358, "bank," amended 1965, December 8, P.L. 1053; "custodian," amended 1968, June 24, P.L. ____ (Act No. 114); "Life or endowment insurance policies and annuity contracts," added 1965, September 2, P.L. 478.

Section 5303. Manner of making gift.—(a) An adult person may, during his lifetime, make a gift of a security, money, a life or endowment policy or an annuity contract to a person who is a minor on the date of the gift:

(1) If the subject of the gift is a security in registered form, by registering it in the name of the donor, another adult person or a trust company, followed in substance by the words "as custodian for
..... under the Pennsylvania Uniform Gifts
(name of minor)
to Minors Act."

(2) If the subject of the gift is a security not in registered form, by delivering it to a guardian of the minor or a trust company, accompanied by a statement of gift in the following form in substance, signed by the donor and the person designated as custodian.

"Gift under the Pennsylvania
Uniform Gifts to Minors Act

I hereby deliver to
(name of donor)
..... as custodian for
(name of custodian) (name of
..... the Pennsylvania Uniform Gifts to Minors Act, the
minor)
following security(ies): (insert an appropriate description of the security
or securities delivered sufficient to identify it or them).

.....
(signature of donor)
..... hereby acknowledges receipt of the above
(name of custodian)
described security(ies) as custodian for the above minor under the
Pennsylvania Uniform Gifts to Minors Act.

Dated " "
(signature of custodian)

(3) If the subject of the gift is money, by paying or delivering it to a broker or a bank, for credit to an account in the name of the donor,

another adult person, an adult member of the minor's family, a guardian of the minor, or a bank with trust powers, followed in substance by the words "as custodian for under the
(name of minor)
Pennsylvania Uniform Gifts to Minors Act."

(4) If the subject of the gift is a life or endowment insurance policy or an annuity contract the donor shall cause the ownership of such policy or contract to be recorded on a form satisfactory to the insurance company or fraternal benefit society, in the name of the donor, another adult person, a guardian of the minor, or a bank with trust powers, followed in substance by the words, "as custodian for
(name of
..... under the Pennsylvania Uniform Gifts to
minor)
Minors Act," and such policy or contract shall be delivered to the person in whose name it is thus registered as custodian.

(b) Any gift made in a manner prescribed in subsection (a) may be made to only one minor and only one person may be the custodian.

(c) A donor who makes a gift to a minor in a manner prescribed in subsection (a) shall promptly do all things within his power to put the subject to the gift in the possession and control of the custodian, but neither the donor's failure to comply with this subsection nor his designation of an ineligible person as custodian, nor renunciation by the person designated as custodian affects the consummation of the gift.

Source: This section is derived from Section 3 of the Pennsylvania Uniform Gifts to Minors Act, 1957, June 21, P.L. 358, amended 1965, September 2, P.L. 478.

Section 5304. Effect of gift.—(a) A gift made in a manner prescribed in this chapter is irrevocable, and conveys to the minor indefeasibly vested legal title to the custodial property given, but no guardian of the minor has any right, power, duty or authority with respect to the custodial property, except as provided in this chapter.

(b) By making a gift in a manner prescribed in this chapter, the donor incorporates in his gift all the provisions of this chapter and grants to the custodian and to any issuer, transfer agent, bank, life insurance company, broker or third person, dealing with a person designated as custodian, the respective powers, rights and immunities provided in this chapter.

Source: This section is derived from Section 4 of the Pennsylvania Uniform Gifts to Minors Act, 1957, June 21, P.L. 358, amended 1968, June 24, P.L. ____ (Act No. 114).

Section 5305. Duties and powers of custodian.—(a) The custodian shall collect, hold, manage, invest and reinvest the custodial property.

(b) The custodian shall pay over to the minor for expenditure by him or expend for the minor's benefit so much of or all the custodial property as the custodian deems advisable for the support, maintenance, education and benefit of the minor, in the manner, at the time or times, and to the extent that the custodian, in his discretion, deems suitable and proper, with or without court order, with or without regard to the duty of himself or of any other person to support the minor, or his ability to do so, and with or without regard to any other income or property of the minor, which may be applicable or available for any such purpose.

(c) The court on the petition of a parent or guardian of the minor, or of the minor if he has attained the age of 14 years, may order the custodian to pay over to the minor for expenditure by him or to expend so much of or all the custodial property as is necessary for the minor's support, maintenance or education.

(d) To the extent that the custodial property is not so expended, the custodian shall deliver or pay it over to the minor on his attaining the age of 21 years, or if the minor dies before attaining the age of 21 years, he shall thereupon deliver or pay it over to the estate of the minor.

(e) The custodian, notwithstanding statutes restricting investments by fiduciaries, shall invest and reinvest the custodial property as would a prudent man of discretion and intelligence who is seeking a reasonable income and the preservation of his capital, except that he may, in his discretion and without liability to the minor or his estate, retain a security given to the minor in a manner prescribed in this chapter or hold money so given in an account in the financial institution to which it was paid or delivered by the donor.

(f) The custodian may sell, exchange, convert or otherwise dispose of custodial property, in the manner, at the time or times, for the price or prices, and upon the terms he deems advisable. He may vote in person, or by general or limited proxy, a security which is custodial property. He may consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of an issuer, a security which is custodial property, and to the sale, lease, pledge or mortgage of any property by or to such an issuer, and to any other action by such an issuer. He may execute and deliver any and all instruments in writing, which he deems advisable to carry out any of his powers as custodian.

(g) The custodian shall register each security which is custodial property, and in registered form in the name of the custodian followed

in substance by the words "as custodian for
(name of minor)

under the Pennsylvania Uniform Gifts to Minors Act." The custodian shall keep all other custodial property separate and distinct from his own property in a manner to identify it clearly as custodial property.

(h) If the subject of the gift is a life or endowment insurance policy or annuity contract the custodian shall have all the incidents of ownership in such policy or contract which he may hold as custodian to the same extent as if he were the owner thereof, except that the designated beneficiary of any policy or contract held by a custodian shall always be the minor or in the event of his death the minor's estate.

(i) The custodian shall keep records of all transactions with respect to the custodial property, and make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor if he has attained the age of 14 years.

(j) A custodian has, with respect to the custodial property in addition to the rights and powers provided in this chapter, all the rights and powers which a guardian has with respect to property not held as custodial property.

Source: This section is derived from Section 5 of the Pennsylvania Uniform Gifts to Minors Act, 1957, June 21, P.L. 358; subsection (e) amended 1968, June 24, P.L. ____ (Act No. 114); and subsection (h) added 1965, September 2, P.L. 478.

Section 5306. Custodian's expenses, compensation, bond and liabilities.—(a) A custodian is entitled to reimbursement from the custodial property for his reasonable expenses incurred in the performance of his duties.

(b) A custodian may act without compensation for his services.

(c) Unless he is a donor, a custodian may receive from the custodial property reasonable compensation for his services, which may be specified by the donor when the gift is made.

(d) Except as otherwise provided in this chapter, a custodian shall not be required to give a bond for the performance of his duties.

(e) A custodian not compensated for his services is not liable for losses to the custodial property, unless they result from his bad faith, intentional wrong-doing or gross negligence, or from his failure to maintain the standard of prudence in investing the custodial property provided in this chapter.

Source: This section is derived from Section 6 of the Pennsylvania Uniform Gifts to Minors Act, 1957, June 21, P.L. 358.

Section 5307. Exemption of third persons from liability.—No issuer, transfer agent, bank, life insurance company, fraternal benefit society, broker or other person, acting on the instructions of or otherwise dealing with any person purporting to act as a donor or in the capacity of a custodian, is responsible for determining whether the person designated as custodian by the purported donor, or by the custodian or purporting to act as a custodian, has been duly designated, or whether any purchase, sale or transfer to or by or any other act of any person purporting to act in the capacity of custodian is in accordance with or authorized by this chapter, or is obliged to inquire into the validity or propriety under this chapter of any instrument or instructions executed or given by a person purporting to act as a donor or in the capacity of a custodian, or is bound to see to the application by any person purporting to act in the capacity of a custodian of any money or other property paid or delivered to him. No issuer, transfer agent, bank, life insurance company, fraternal benefit society, broker or other person acting on any instrument of designation of a successor custodian, executed as provided in subsection (a) of section 5308 of this chapter by a minor to whom a gift has been made in a manner prescribed in this chapter and who has attained the age of 14 years, is responsible for determining whether the person designated by the minor as successor custodian has been duly designated, or is obliged to inquire into the validity or propriety under this chapter of the instrument of designation.

Source: This section is derived from Section 7 of the Pennsylvania Uniform Gifts to Minors Act, 1957, June 21, P.L. 358, amended 1968, June 24, P.L. ____ (Act No. 114).

Section 5308. Resignation, death or removal of custodian; bond; designation of successor custodian.—(a) Only an adult member of the minor's family, a guardian of the minor or a trust company is eligible to become successor custodian. A custodian may designate his successor by executing and dating an instrument of designation before a subscribing witness other than the successor; the instrument of designation may but need not contain the resignation of the custodian. If the custodian does not so designate his successor before he dies or becomes legally incapacitated, and the minor has no guardian and has attained the age of 14 years, the minor may designate a successor custodian by executing an instrument of designation before a subscribing witness other than the successor. A successor custodian has all the rights, powers, duties and immunities of a custodian designated in a manner prescribed by this chapter.

(b) The designation of a successor custodian as provided in subsection

(a) takes effect as to each item of the custodial property when the custodian resigns, dies or becomes legally incapacitated and the custodian or his legal representative:

(1) Causes the item, if it is a security in registered form or a life insurance policy or annuity contract, to be registered, with the issuing insurance company in the case of a life insurance policy or annuity contract, in the name of the successor custodian followed, in substance by the words "as custodian for
(name of minor)
under the Pennsylvania Uniform Gifts to Minors Act"; and

(2) Delivers or causes to be delivered to the successor custodian any other item of the custodial property, together with the instrument of designation of the successor custodian or a true copy thereof and any additional instruments required for the transfer thereof to the successor custodian.

(c) A custodian who executes an instrument of designation of his successor containing the custodian's resignation as provided in subsection (a) shall promptly do all things within his power to put each item of the custodial property in the possession and control of the successor custodian named in the instrument. The legal representative of a custodian who dies or becomes legally incapacitated shall promptly do all things within his power to put each item of the custodial property in the possession and control of the successor custodian named in an instrument of designation executed as provided in subsection (a) by the custodian or, if none, by the minor if he has no guardian and has attained the age of 14 years, or in the possession and control of the guardian of the minor if he has a guardian. If the custodian has executed as provided in subsection (a) more than one instrument of designation, his legal representative shall treat the instrument dated on an earlier date as having been revoked by the instrument dated on a later date.

(d) If a person designated as custodian or as successor custodian by the custodian as provided by subsection (a) is not eligible, dies or becomes legally incapacitated before the minor attains the age of 21 years and if the minor has a guardian, the guardian of the minor shall be successor custodian. If the minor has no guardian and if no successor custodian who is eligible and has not died or not become legally incapacitated has been designated as provided in subsection (a), a donor, his legal representative, the legal representative of the custodian, or an adult member of the minor's family, may petition the court for the designation of a successor custodian.

(e) A donor, the legal representative of a donor, a successor custodian, an adult member of the minor's family, a guardian of the minor or the

minor if he has attained the age of 14 years, may petition the court that, for cause shown in the petition, the custodian be removed and a successor custodian be designated, or, in the alternative, that the custodian be required to give bond for the performance of his duties.

(f) Upon the filing of a petition as provided in this section, the court shall grant an order, directed to the persons and returnable on such notice as the court may require, to show cause why the relief prayed for in the petition should not be granted, and in due course grant such relief as the court finds to be in the best interests of the minor.

Source: This section is derived from Section 8 of the Pennsylvania Uniform Gifts to Minors Act, 1957, June 21, P.L. 358, amended 1968, June 24, P.L. ____ (Act. No. 114).

Section 5309. Accounting by custodian.—(a) The minor if he has attained the age of 14 years, or the legal representative of the minor, an adult member of the minor's family or a donor or his legal representative, may petition the court for an accounting by the custodian or his legal representative.

(b) The court in a proceeding under this chapter or otherwise may require or permit the custodian or his legal representative to account and if the custodian is removed, shall so require and order, delivery of all custodial property to the successor custodian and the execution of all instruments required for the transfer thereof.

Source: This section is derived from Section 9 of the Pennsylvania Uniform Gifts to Minors Act, 1957, June 21, P.L. 358.

Section 5310. Construction.—(a) This chapter shall be so construed as to effectuate its general purpose, to make uniform the law of those states which enact it.

(b) This chapter shall not be construed as providing an exclusive method for making gifts to minors.

Source: This section is derived from Section 10 of the Pennsylvania Uniform Gifts to Minors Act, 1957, June 21, P.L. 358.

CHAPTER 55 INCOMPETENTS

SUBCHAPTER A MEANING OF INCOMPETENT

Section 5501. Meaning of incompetent.—“Incompetent” means a

person who, because of mental infirmities of old age, mental illness, mental deficiency, drug addiction or inebriety, is unable to manage his property, or is liable to dissipate it or become the victim of designing persons.

Source: This section is derived from Section 102 of the Incompetents' Estates Act, 1956, February 28, P.L. (1955) 1154, amended 1963, June 11, P.L. 125.

SUBCHAPTER B SMALL ESTATES

Section 5505. Provisions similar to small estates of minors' estates.—The provisions concerning small estates of incompetents shall be the same as are set forth in this code relating to minors' estates, with regard to the following:

- (1) When guardian unnecessary, as in section 5101.
- (2) Power of natural guardian, as in section 5102.

Source: This section is derived from Sections 201 and 202 of the Incompetents' Estates Act, 1956, February 28, P.L. (1955) 1154, amended 1957, July 11, P.L. 794.

Comment: Former Section 201 of the Incompetents' Estates Act of 1955, as amended, provided that a guardian was unnecessary if the gross estate had a value of \$2,500 or less. By the cross-reference in clause (1) to the otherwise identical provision of Section 5101, *supra*, the gross amount as to incompetents' estates has been increased to \$5,000.

SUBCHAPTER C APPOINTMENT OF GUARDIAN; BONDS; REMOVAL AND DISCHARGE

Section 5511. Petition and hearing.—(a) Resident.—The court, upon petition and a hearing at which good cause is shown, may find a person domiciled in the Commonwealth to be incompetent and appoint a guardian or guardians of his person or estate. The petitioner may be the alleged incompetent's spouse, a relative, a creditor, a debtor, or any person interested in the alleged incompetent's welfare. Notice of the petition and hearing shall be given in such manner as the court shall direct to the alleged incompetent, to all persons residing within the Commonwealth who are sui juris and would be entitled to share in the estate of the alleged incompetent if he died intestate at that time, and

to such other parties as the court may direct. The alleged incompetent shall be present at the hearing unless:

(i) the court is satisfied, upon the presentation of positive testimony, that because of his physical or mental condition his welfare would not be promoted by his presence; or

(ii) it is impossible for him to be present because of his absence from the Commonwealth. It shall not be necessary for the alleged incompetent to be represented by a guardian ad litem in the proceeding.

(b) Nonresident.—The court may find a person not domiciled in the Commonwealth, having property in the Commonwealth, to be incompetent and may appoint a guardian of his estate. The appointment may be made after petition, hearing and notice, as in the case of a person domiciled in the Commonwealth, or upon the submission of an exemplified copy of a decree establishing his incompetency in another jurisdiction. The court shall give preference in its appointment to the foreign guardian of the nonresident incompetent, unless it finds that such appointment will not be for the best interests of the incompetent.

Source: This section is derived from Section 301 of the Incompetents' Estates Act, 1956, February 28, P.L. (1955) 1154, subsection (a) amended 1961, July 14, P.L. 634.

Section 5512. County of appointment.—(a) Resident incompetent.—A guardian of the person or estate of an incompetent may be appointed by the court of the county in which the incompetent is domiciled.

(b) Nonresident incompetent.—A guardian of the estate within the Commonwealth of an incompetent domiciled outside of the Commonwealth may be appointed by the court of the judicial district having jurisdiction of a decedent's estate or of a trust in which the incompetent has an interest. When the nonresident incompetent's estate is derived otherwise than from a decedent's estate or a trust within the Commonwealth, a guardian may be appointed by the court of any county where an asset of the incompetent is located.

(c) Exclusiveness of appointment.—When a court has appointed a guardian of an incompetent's person or estate pursuant to subsection (a) or (b), no other court shall appoint a similar guardian for the incompetent within the Commonwealth.

Source: This section is derived from Section 302 of the Incompetents' Estates Act, 1956, February 28, P.L. (1955) 1154, amended 1961, July 14, P.L. 634.

Section 5513. Temporary guardian.—Notwithstanding the provisions of section 5511, the court, upon petition and a hearing at which good cause is shown, may appoint a temporary guardian or guardians of the

person or estate of a person alleged to be incompetent, when it appears that a failure to make such appointment will result in irreparable harm to the person or estate of the alleged incompetent. The provisions of section 5511 shall be applicable to such proceedings, except that only such notice of the petition and hearing shall be required as shall appear to the court to be feasible in the circumstances, and need not be given at such times or to such persons as would be required by the provisions of section 5511 in a proceeding for the appointment of a guardian. A temporary guardian so appointed for the person or estate of an alleged incompetent shall only have and be subject to such powers, duties and liabilities and serve for such time as the court shall direct in its decree.

Source: This section is derived from Section 301(c) of the Incompetents' Estates Act, 1956, February 28, P.L. (1955) 1154, added 1967, October 9, P.L. 390.

Section 5514. To fill vacancy; co-guardian.—The court, after such notice to parties in interest as it shall direct, may appoint a succeeding guardian to fill a vacancy in the office of guardian or may appoint a co-guardian of the estate of a person found to be incompetent without a hearing.

Source: This section is derived from Section 304 of the Incompetents' Estates Act, 1956, February 28, P.L. (1955) 1154, added 1961, July 14, P.L. 634.

Comment: See also "Fiduciaries in Military Service," Chapter 84, Subchapter A, *infra*.

Section 5515. Provisions similar to other estates.—The grounds and the procedure for the removal or discharge of a guardian and his surety and the effect of such removal or discharge shall be the same as are set forth in this code relating to the removal and discharge of a personal representative or a guardian of a minor and their sureties, with regard to the following:

- (1) Service of process on nonresident guardian, as in section 5114.
- (2) Appointment of guardian in conveyance, as in section 5115.
- (3) Necessity of bond; form and amount, as in section 5121.
- (4) When bond not required, as in section 5122.
- (5) Requiring or changing amount of bond, as in section 5123.
- (6) Grounds for removal, as in section 3182.

(7) Procedure for and effect of removal, as in section 3183, for which purpose the incompetent shall be deemed a party in interest.

(8) Discharge of guardian and surety, as in section 3184.

Source: This section is new.

Section 5516. Fiduciary estate.—The court, in its discretion, upon the application of any party in interest, in addition to any bond required for the incompetent's individual estate, may require a separate bond in the name of the Commonwealth, with sufficient surety, in such amount as the court shall consider necessary for the protection of the parties in interest in an estate of which the incompetent is a fiduciary and conditioned in the following form:

(1) When one guardian. The condition of this obligation is that, if the said guardian shall well and truly account for property held by the incompetent as fiduciary according to law, this obligation shall be void; but otherwise it shall remain in force.

(2) When two or more guardians. The condition of this obligation is that, if the said guardians or any of them shall well and truly account for property held by the incompetent as fiduciary according to law, this obligation shall be void as to the guardian or guardians who shall so account; but otherwise it shall remain in force.

Source: This section is derived from Section 312 of the Incompetents' Estates Act, 1956, February 28, P.L. (1955) 1154, amended 1957, July 11, P.L. 794.

Section 5517. Adjudication of competency.—The court, upon petition and after such notice as it shall direct, may find, after a hearing at which good cause is shown, that a person previously adjudged incompetent has become competent.

Source: This section is derived from Section 323 of the Incompetents' Estates Act, 1956, February 28, P.L. (1955) 1154, amended 1957, July 11, P.L. 794.

Section 5518. Evidence of mental condition.—In any hearing relating to the mental condition of a person whose competency is in question, the deposition of, or sworn statement by, a superintendent, manager, physician or psychiatrist of any State-owned mental hospital or veterans' administration hospital or a physician or psychiatrist at any hospital or institution shall be admissible in evidence as to the condition of an inmate of such hospital in lieu of his appearance and testimony, unless by special order, the court directs his appearance and testimony in person.

Source: This section is derived from Section 331 of the Incompetents' Estates Act, February 28, P.L. (1955) 1154, amended 1959, September 23, P.L. 964.

Comment: The former restriction that the hospital or institution be “municipally-owned” has been deleted from this section.

SUBCHAPTER D
POWERS, DUTIES AND LIABILITIES OF GUARDIANS

Section 5521. Provisions concerning powers, duties and liabilities.— The provisions concerning the powers, duties and liabilities of guardians of incompetents’ estates shall be the same as those set forth in this code relating to decedents’ or minors’ estates with regard to the following:

- (1) Possession of real and personal property, as in section 5141.
- (2) Inventory, as in section 5142.
- (3) Abandonment of property, as in section 5143.
- (4) Liability insurance, as in section 3313.
- (5) Continuation of business, as in section 3314.
- (6) Incorporation of business, as in section 3315.
- (7) Claims against co-guardian, as in section 3317.
- (8) Proceedings against guardian, as in section 5147.
- (9) Revival of judgment against guardian, as in section 3318.
- (10) Liability of guardian on contracts, as in section 3331.
- (11) Investments, as in section 5145.
- (12) Power of attorney and delegation of power over subscription rights and fractional shares, as in section 3319.
- (13) Voting stock by proxy, as in section 3320.
- (14) Nominee registration; corporate fiduciary as attorney-in-fact, as in section 3321.
- (15) Acceptance of deed in lieu of foreclosure, as in section 3322.
- (16) Compromise of controversies, as in section 3323.
- (17) When guardian dies or becomes incompetent, as in section 3324.
- (18) Surviving or remaining guardian, as in section 3327.
- (19) Disagreement of guardians, as in section 3328.

- (20) Inherent powers and duties, as in section 3332.
- (21) Guardian named in conveyance, as in section 5146.
- (22) Power to sell personal property, as in section 5151.
- (23) Order of court, as in section 3353.
- (24) Restraint of sale, as in section 3355.
- (25) Purchase by guardian, as in section 3356.
- (26) Title of purchaser, as in section 5154.
- (27) Record of proceedings; county where real estate lies, as in section 3359.
- (28) Substitution of guardian and pending action or proceedings, as in section 3372.
- (29) Death or removal of guardian, as in section 3374.
- (30) Specific performance of contracts, as in section 3390.

Source: This section is new.

Section 5522. Power to lease.—A guardian may lease any real or personal property of the incompetent for a term not exceeding five years after its execution.

Source: This section is derived from Section 442 of the Incompetents' Estates Act, 1956, February 28, P.L. (1955) 1154, amended 1957, July 11, P.L. 794.

Section 5523. Collateral attack.—No decree entered pursuant to this chapter shall be subject to collateral attack on account of any irregularity if the court which entered it had jurisdiction to do so.

Source: This section is derived from Section 447 of the Incompetents' Estates Act, 1956, February 28, P.L. (1955) 1154, amended 1965, July 22, P.L. 236.

Section 5524. Effect of determination of incompetency.—An incompetent shall be incapable of making any contract or gift or any instrument in writing after he is adjudged incompetent and before he is adjudged to have regained his competency. This section shall not impair the interest in real estate acquired by a bona fide grantee of, or a bona fide holder of a lien on, real estate in a county other than that in which the decree establishing the incompetency is entered, unless the decree or a duplicate original or certified copy thereof is recorded in the office of the recorder of deeds in the county in which the real estate lies before the recording or entering of the instrument or lien under which the grantee or lienholder claims.

Source: This section is derived from Section 511 of the Incompetents' Estates Act, 1956, February 28, P.L. (1955) 1154, amended 1957, July 11, P.L. 794.

Section 5525. Notice to Commonwealth and political subdivisions.—When the Commonwealth or a political subdivision thereof has a claim for maintaining an incompetent in an institution, the guardian within three months of his appointment, shall give notice thereof to the Department of Revenue or the proper officer of such political subdivision, as the case may be.

Source: This section is derived from Section 513 of the Incompetents' Estates Act, 1956, February 28, P.L. (1955) 1154, amended 1957, July 11, P.L. 794.

SUBCHAPTER E ACCOUNTS, AUDITS, REVIEWS AND DISTRIBUTION

Section 5531. When accounting filed.—A guardian shall file an account of his administration promptly at the termination of his guardianship, or at such earlier time or times as shall be directed or authorized by the court.

Source: This section is derived from Section 601 of the Incompetents' Estates Act, 1956, February 28, P.L. (1955) 1154, amended 1957, July 11, P.L. 794.

Comment: The change in language of this section is made to conform with Section 5161, *supra*.

Section 5532. Where accounts filed.—All accounts of guardians shall be filed in the office of the clerk.

Source: This section is derived from Section 602 of the Incompetents' Estates Act, 1956, February 28, P.L. (1955) 1154, amended 1957, July 11, P.L. 794.

Section 5533. Notice, audits, reviews and distribution.—The provisions concerning accounts, audits, reviews, distribution and rights of distributees in an incompetent's estate shall be the same as those set forth in this code for the administration of a decedent's or minor's estate, with regard to the following:

- (1) Notice to parties in interest, as in section 3503.
- (2) Representation of parties in interest, as in section 3504.
- (3) Audits in counties having a separate orphans' court, as in section 3511.

(4) Audits in counties having no separate orphans' court, as in section 3512.

(5) Statement of proposed distribution, as in section 3513.

(6) Confirmation of account and approval of proposed distribution, as in section 3514.

(7) Failure to present claim at audit, as in section 5167.

(8) Rehearing, relief granted, as in section 3521.

(9) Award upon final confirmation of account, as in section 3533.

(10) Distribution in kind, as in section 3534.

(11) Recording and registering decrees awarding real estate, as in section 3536.

(12) Award to nonresident beneficiary, as in section 3537.

(13) Liability for interest, as in section 3544.

(14) Transcripts of balances due, as in section 3545.

Source: This section is new.

Section 5534. Recognition of claims.—Upon the audit of the account of the guardian of a person who has died during incompetency, the auditing judge or auditor passing on the account shall not pass upon any claims against the estate of the incompetent other than necessary administration expenses, including compensation of the guardian and his attorney. All claims remaining unpaid at the incompetent's death shall be presented to the personal representative.

Source: This section is derived from Section 613 of the Incompetents' Estates Act, 1956, February 28, P.L. (1955) 1154, amended 1957, July 11, P.L. 794.

Section 5535. Disposition of trust income.—Except as otherwise provided by the trust instrument, the trustee of an inter vivos or testamentary trust, with the approval of the court having jurisdiction of the trust, may pay income distributable to an incompetent beneficiary for whose estate no guardian has been appointed directly to the incompetent, or expend and apply it for his care and maintenance or the care, maintenance and education of his dependents.

Source: This section is derived from Section 643 of the Incompetents' Estates Act, 1956, February 28, P.L. (1955) 1154, amended 1957, July 11, P.L. 794.

Section 5536. Distributions of income and principal during incompetency.—All income received by a guardian of the estate of an incom-

petent, in the exercise of a reasonable discretion, may be expended in the care and maintenance of the incompetent, without the necessity of court approval. The court, for cause shown, may authorize or direct the payment or application of any or all of the income or principal of the estate of an incompetent for the care, maintenance or education of the incompetent, his spouse, children or those for whom he was making such provision before his incompetency, or for the reasonable funeral expenses of the incompetent's spouse, child or indigent parent. In proper cases, the court may order payment of amounts directly to the incompetent for his maintenance or for incidental expenses and may ratify payments made for these purposes.

Source: This section is derived from Section 644 of the Incompetents' Estates Act, 1956, February 28, P.L. (1955) 1154, amended 1957, July 11, P.L. 794.

Section 5537. Reserve for funeral.—The court may authorize the guardian to retain such assets not exceeding \$600 in value as are deemed appropriate for the anticipated expense of the incompetent's funeral, including the cost of a burial lot or other resting place, which shall be exempt from all claims including claims of the Commonwealth. The court with notice thereof to the institution or person having custody of the incompetent may also authorize the guardian or another person to set aside such assets in the form of a savings account in a financial institution which account shall not be subject to escheat during the lifetime of the incompetent. Such assets may be disbursed by the guardian or person who set aside such assets or by the financial institution for such funeral expenses without further authorization or accounting. Any part of such assets not so disbursed shall constitute a part of the deceased incompetent's estate. Should the incompetent become competent or should such assets become excessive, the court, upon petition of any party in interest, may make such order as the circumstances shall require. For the purpose of this section "financial institution" includes a bank, a bank and trust company, a trust company, a savings and loan association, a building and loan association, a savings bank, a private bank and a national bank.

Source: This section is derived from Section 645 of the Incompetents' Estates Act, 1956, February 28, P.L. (1955) 1154, added 1965, December 22, P.L. 1190.

CHAPTER 57

ABSENTEES AND PRESUMED DECEDENTS

Section 5701. Proof of death.—(a) Finding of death.—When a person domiciled in the Commonwealth disappears and is absent from his place

of residence without being heard of after diligent inquiry, the court of the county where he last resided, aided by the report of a master if necessary, upon the petition of any party in interest, and, if a trustee has been appointed for the absentee, at any time during the trusteeship, may make a finding and decree that the absentee is dead and of the date of his death, provided the notice required by section 5704 has been given to the absentee.

(b) Presumption from absence.—When the death of a person or the date thereof is in issue, his unexplained absence from his last known place of residence and the fact that he has been unheard of for seven years may be a sufficient ground for finding that he died seven years after he was last heard of.

(c) Exposure to specific peril.—The fact that an absentee was exposed to a specific peril of death may be sufficient ground for finding that he died less than seven years after he was last heard of.

(d) Competency of witnesses.—All persons shall be competent to testify concerning the death or disappearance of an absentee regardless of relationship by marriage to him or of interest in his estate.

Source: This section is derived from Section 1201 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 5702. Trustee for absentee.—(a) Appointment.—When a person domiciled or having property in the Commonwealth disappears and is absent from his last known place of residence for a period of one year without being heard of after diligent inquiry, the court of the county where the absentee last resided or, if a nonresident, the court of the county where any of his property shall be located, aided by the report of a master if necessary, upon the petition of any person who would be a party in interest were the absentee deceased or of any insurer or creditor of the absentee, after notice as provided in section 5704, upon good cause being shown, may find that the absentee's property requires protection and that he was last heard of on a date certain and may appoint a trustee to take charge of his estate. The absentee shall be made a party to the proceeding and any other person who would have an interest in the property of the absentee were he deceased, upon direction of the court, may be made a party to the proceeding. The above period of one year may be shortened in the discretion of the court.

(b) Bonds, powers, duties and liabilities.—A trustee for an absentee shall give such bond, shall be removed and discharged, and, except as otherwise expressly provided, shall have the same powers, duties and liabilities in the administration of the absentee's real and personal estate

as are provided in Chapter 51 with respect to a guardian in the administration of a minor's estate and, in addition, shall have the right to pay premiums on policies of insurance insuring the life of the absentee and, with the approval of the court, to pay or expend and apply so much of the absentee's property or the income therefrom, as may be necessary for the support of anyone whom the absentee, if living, would be under a legal duty to support, or for the education of his minor children. He shall not have the power to sell or dispose of any asset of the estate or to enter into any lease without prior court approval.

(c) Temporary trustee.—Upon the filing of a petition for the appointment of a trustee for an absentee, the court, if it finds it necessary to protect the property of the absentee, may appoint a temporary trustee to take charge of it and to conserve it, in the manner directed by the court, pending a hearing on the petition. The temporary trustee shall give such bond as the court shall require. Should a permanent trustee be appointed, the temporary trustee shall deliver to the permanent trustee all property of the absentee in his possession, less such as may be necessary to cover his expenses and compensation, as allowed by the court, shall file his final account, and upon its confirmation may be discharged. Should the petition for a permanent trustee be denied, the court shall make appropriate orders for the disposition of the property.

Source: This section is derived from Section 1202 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 5703. Distribution of property of absentee.—Upon the entry of a decree establishing the death of a person domiciled in the Commonwealth, based in whole or in part upon his absence from his place of residence, the real and personal property of the absentee shall be administered by his personal representative as in the case of other decedents. However, the personal representative shall make no distribution of such property to the persons entitled thereto by will or by intestacy, nor shall such persons acquire indefeasible title thereto, except under decree of court. The court, in awarding distribution, shall require that a refunding bond, with or without security and in such form and amount as the court shall direct, shall be executed by each distributee and filed with the clerk. The bond shall be conditioned that, if it shall later be established that the absentee was in fact alive at the time of distribution, the distributee upon demand will return the property received by him or, if it has been disposed of, will make such restitution therefor as the court shall deem equitable. Should a distributee not execute the bond, the court shall appoint a trustee to receive and hold his share until further order of the court.

Source: This section is derived from Section 1203 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 5704. Notice to absentee.—The court, if satisfied concerning the interest of the petitioner, shall cause to be advertised in a newspaper of general circulation in the county of the absentee's last known residence and in the legal journal, if any, designated by rule of court for publication of legal notices, once a week for four successive weeks, and to be otherwise advertised as the court according to the circumstances of the case shall deem advisable, the fact of such application, together with notice that on a specified day, which shall be at least two weeks after the last appearance of any such advertisement, the court, or a master appointed by the court for that purpose, will hear evidence concerning the alleged absence, including the circumstances and duration thereof.

Source: This section is derived from Section 1204 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 5705. Search for absentee.—The court, on its own motion or upon the application of any party in interest, may direct the trustee to search for the absentee in any manner which the court shall deem appropriate, or may appoint a master, investigator or appropriate agency to do so. The expenses of such a search shall be paid out of the property of the absentee.

Source: This section is derived from Section 1205 of the Fiduciaries Act of 1949, April 18, P.L. 512.

CHAPTER 61

ESTATES

Section 6101. Definitions.—The following words and phrases, when used in this chapter unless the context clearly indicates otherwise, shall have meanings ascribed to them in this section:

“Charity” or “charitable purposes.” Includes but is not limited to the relief of poverty, the advancement of education, the advancement of religion, the promotion of health, governmental or municipal purposes, and other purposes the accomplishment of which is beneficial to the community.

“Conveyance.” Means an act by which it is intended to create an interest in real or personal property whether the act is intended to have inter vivos or testamentary operation. Except as used in section 6111,

it shall include an act by which a power of appointment whenever given is exercised.

Source: This section is derived from Section 1 of the Estates Act of 1947, April 24, P.L. 100; "conveyance," amended 1961, July 25, P.L. 844.

Section 6102. Termination of trusts.—(a) Failure of original purpose.—The court having jurisdiction of a trust heretofore or hereafter created, regardless of any spendthrift or similar provision therein, in its discretion may terminate such trust in whole or in part, or make an allowance from principal to a conveyor, his spouse, issue, parents, or any of them, who is an income beneficiary, provided the court after hearing is satisfied that the original purpose of the conveyor cannot be carried out or is impractical of fulfillment and that the termination, partial termination, or allowance more nearly approximates the intention of the conveyor, and notice is given to all parties in interest or to their duly appointed fiduciaries. But, distributions of principal under this section, whether by termination, partial termination or allowance, shall not exceed an aggregate value of \$25,000 from all trusts created by the same conveyor.

(b) Distribution of terminated trust.—Whenever the court shall decree termination or partial termination of a trust under the provisions of this section, it shall thereupon order such distribution of the principal and undistributed income as it deems proper and as nearly as possible in conformity with the conveyor's intention.

(c) Other powers.—Nothing in this section shall limit any power of the court to terminate or reform a trust under existing law.

Source: This section is derived from Section 2 of the Estates Act of 1947, April 24, P.L. 100, amended 1956, Feb. 17, P.L. (1955) 1073.

Section 6103. Release or disclaimer of powers or interests.—(a) Powers and interests releasable.—Any power of appointment, or power of consumption, whether general or special, other than a power in trust which is imperative, and any interest in, to, or over real or personal property held or owned outright, or in trust, or in any other manner which is reserved or given to any person by deed, will or otherwise, and irrespective of any limitation of such power or interest by virtue of any restriction in the nature of a so-called spendthrift trust provision, or similar provision, may be released or disclaimed, either with or without consideration by written instrument signed by the person possessing the power or the interest and delivered as hereinafter provided, but nothing in this section shall authorize an income beneficiary of a spendthrift trust to release or disclaim his right to such income, unless as a

result of the release or disclaimer the released or disclaimed income will pass to one or more of the beneficiary's descendants.

(b) Form of release or disclaimer.—A power or interest which is releasable or disclaimable may be released or disclaimed either absolutely or conditionally, and may also be released or disclaimed in such manner as to reduce or limit the persons or objects or classes of persons or objects in whose favor such power or interest would otherwise be exercisable. No release or disclaimer of a power or of an interest shall be deemed to make imperative a power or interest which was not imperative prior to such release or disclaimer unless the instrument of release or disclaimer expressly so provides.

(c) Delivery of release or disclaimer.—Such release or disclaimer may be delivered to any one of the following:

(1) Any person specified for such purpose in the instrument creating the power or interest.

(2) Any trustee of the property to which the power or interest relates.

(3) The clerk of the court having jurisdiction of the trust for filing in said court.

(4) The recorder of deeds for recording in the county in which the person possessing the power or interest resides, or in which the deed, will, or other instrument creating the power or interest is recorded or filed.

(d) Grantee or lienholder.—A release or disclaimer shall be void as against a bona fide grantee of or holder of a lien on real estate in any county unless the release or disclaimer or a duplicate original or certified copy thereof is recorded in the county where the real estate lies before the recording or entering of the instrument or lien under which such grantee or lienholder claims.

(e) Application of section.—This section shall apply to releases and disclaimers heretofore and hereafter delivered, but shall not invalidate any release or disclaimer delivered pursuant to the law in effect prior to the effective date of this act.

Source: This section is derived from Section 3 of the Estates Act of 1947, April 24, P.L. 100, subsection (a) amended 1956, February 17, P.L. (1955) 1073.

Section 6104. Rule against perpetuities.—(a) General.—No interest shall be void as a perpetuity except as herein provided.

(b) Void interest; exceptions.—Upon the expiration of the period allowed by the common law rule against perpetuities as measured by actual rather than possible events, any interest not then vested and

any interest in members of a class the membership of which is then subject to increase shall be void. This subsection shall not apply to:

(1) Interest exempt at common law. Interests which would not have been subject to the common law rule against perpetuities.

(2) Cemetery trusts. Interests which are directed to be used for the maintenance, care, or adornment of any cemetery, churchyard, or other place for the burial of the dead, or any portion thereof, or any grave therein or any improvement on or about the same, and which are subject to no condition precedent at the end of the period described in subsection (b).

(3) Pension or profit-sharing plans. Interests created by a bona fide trust inter vivos primarily for the benefit of business employes, their families or appointees, under a stock bonus, pension, disability or death benefit, profit-sharing or other employe benefit plan.

(4) Administrative powers. Powers which contribute to the effective management of trust assets, including powers to sell, mortgage, or lease trust assets, powers relating to investment of trust assets, powers to determine what is principal and what is income, and powers to name successor trustees.

(5) Time for beginning period. The period allowed by the common law rule against perpetuities under clause (2) of subsection (b) of this section shall be measured from the expiration of any time during which one person while living has the unrestricted power to transfer to himself the entire legal and beneficial interest in the property.

Source: This section is derived from Section 4 of the Estates Act of 1947, April 24, P.L. 100.

Section 6105. Rule against perpetuities; disposition when invalidity occurs.—(a) Valid interests following void interests.—A valid interest following a void interest in income shall be accelerated to the termination date of the last preceding valid interest.

(b) Void interests on condition subsequent or special limitation.—A void interest following a valid interest on condition subsequent or special limitation shall vest in the owner of such valid interest.

(c) Other void interests.—Any other void interest shall vest in the person or persons entitled to the income at the expiration of the period subscribed in section 6104(b).

Source: This section is derived from Section 5 of the Estates Act of 1947, April 24, P.L. 100.

Section 6106. Income accumulations; when valid.—(a) General.—No

direction or authorization to accumulated income shall be void, except as herein provided.

(b) Void accumulations; exceptions.—Upon the expiration of the period allowed by the common law rule against perpetuities as measured by actual rather than possible events, any direction or authorization to accumulate income shall be void. This subsection shall not apply to:

(1) Directions or authorizations to accumulate income in a trust for any charitable purpose or purposes.

(2) Directions or authorizations to accumulate income in a bona fide trust inter vivos primarily for the benefit of business employes, their families or appointees, under a stock bonus, pension, disability or death benefit, profit-sharing or other employe benefit plan.

(c) Time for beginning period.—The period allowed by the common law rules against perpetuities under subsection (b) of this section shall be measured from the expiration of any time during which one person while living has the unrestricted power to transfer to himself the entire legal and beneficial interest in the property.

Source: This section is derived from Section 6 of the Estates Act of 1947, April 24, P.L. 100, added 1956, February 17, P.L. (1955) 1073.

Section 6107. Income accumulations; disposition when invalidity occurs.—Income subject to a void direction or authorization to accumulate shall be distributed to the person or proportionately to the persons in whom the right to such income has vested by the terms of the instrument or by operation of law.

Source: This section is derived from Section 7 of the Estates Act of 1947, April 24, P.L. 100, added 1956, February 17, P.L. (1955) 1073.

Section 6108. Designation of beneficiaries of insurance or employe death benefits not testamentary.—The designation of beneficiaries of life insurance, annuity or endowment contracts, or of any agreement entered into by an insurance company in connection therewith, supplemental thereto or in settlement thereof, and the designation of beneficiaries of benefits payable upon or after the death of a participant under any pension, bonus, profit-sharing, retirement annuity, or other employe benefit plan, shall not be considered testamentary and shall not be subject to any law governing the transfer of property by will. This section shall apply regardless of whether the insurance contract or the employe benefit plan designates the ultimate beneficiaries or makes the proceeds payable, directly or indirectly, to a trustee of a trust under a will or under a separate trust instrument which designates the ultimate beneficiaries, and regardless of whether any such trust is

amendable or revocable, or both, or is funded or unfunded, and notwithstanding a reservation to the settlor of all rights of ownership in the insurance contracts or under the employe benefit plans. Unless otherwise expressly provided in the conveyance, funds or other property so passing to a trust under a will shall become and be a part of the testamentary trust to be administered and disposed of in accordance with the provisions thereof, without forming any part of the testator's estate for administration by his personal representative. The provisions of this section relating to the designation of beneficiaries of benefits payable under employe benefit plans shall apply to designations made prior or subsequent to January 1, 1970, by persons who die on or after said date, and shall not be deemed to create any implication of invalidity of any such designation made by any person who dies before said date.

Source: This section is derived from Section 8 of the Estates Act of 1947, April 24, P.L. 100, added 1957, July 11, P.L. 792, amended 1970, Nov. 27, P.L. ____ (Act No. 260).

Section 6109. Combination of charitable trusts.—Whenever two or more trusts heretofore have been or hereafter shall be created for substantially the same charitable purposes, and the court having jurisdiction over any such trust, upon the application of any party in interest, shall find that they can be more effectively administered if they are combined, the court in its discretion, after such notice as the court shall direct, may combine them in the manner and to the extent that the court shall approve, but not so as to violate any express provision to the contrary in any conveyance creating any of the trusts so combined.

Source: This section is derived from Section 9 of the Estates Act of 1947, April 24, P.L. 100.

Section 6110. Administration of charitable estates.—Except as otherwise provided by the conveyor, if the charitable purpose for which an interest shall be conveyed shall be or become indefinite or impossible or impractical of fulfillment, or if it shall not have been carried out for want of a trustee or because of the failure of a trustee to designate such purpose, the court may, on application of the trustee or of any interested person or of the Attorney General of the Commonwealth, after proof of notice to the Attorney General of the Commonwealth when he is not the petitioner, order an administration or distribution of the estate for a charitable purpose in a manner as nearly as possible to fulfill the intention of the conveyor, whether his charitable intent be general or specific.

Source: This section is derived from Section 10 of the Estates Act of 1947, April 24, P.L. 100.

Section 6111. Conveyances to defeat marital rights.—(a) In general.—A conveyance of assets by a person who retains a power of appointment by will, or a power of revocation or consumption over the principal thereof, shall, at the election of his surviving spouse, be treated as a testamentary disposition so far as the surviving spouse is concerned to the extent to which the power has been reserved, but the right of the surviving spouse shall be subject to the rights of any income beneficiary whose interest in income becomes vested in enjoyment prior to the death of the conveyor. The provisions of this subsection shall not apply to any contract of life insurance purchased by a decedent, whether payable in trust or otherwise, nor to employe death benefits described in section 6108 of this chapter, whether payable in trust or otherwise.

(b) Determination of share.—The spouse may elect to take against any such conveyance and shall be entitled to one-third thereof if the conveyor is survived by more than one child, or by one or more children and the issue of a deceased child or children, or by the issue of more than one deceased child, and in all other circumstances one-half thereof.

(c) Election against other conveyances.—A spouse electing under this section also must elect to take against the will, if he is a beneficiary thereunder, and against all other conveyances within the scope of subsection (a) of which he is a beneficiary.

(d) Procedure.—The election to treat a conveyance as testamentary shall be made in the same manner as an election to take against the will. If there is a will, such election shall be made within the same time limitations as an election to take against the will. If there is no will, such election shall be made within one year of the conveyor's death, and the orphans' court, on application of the surviving spouse made within such period, may extend the time for making the election. It can be made only if there has been no forfeiture of the right to make an election. The court having jurisdiction of the deceased conveyor's estate shall determine the rights of the surviving spouse in the property included in the conveyance.

Source: This section is derived from Section 11 of the Estates Act of 1947, April 24, P.L. 100, subsection (a) amended and subsections (b), (c) and (d) added, 1956, February 17, P.L. (1955) 1073.

Comment: The phrase of the last sentence "nor to employe benefits described in Section 6108 of this chapter whether payable in trust or otherwise" is added to insure understanding of the legislative clarification contained in the amendment of November 27, 1970 (Act No. 260) to

Section 8 of the Estates Act of 1947, now found in Section 6108, *supra*. The 1970 amendment expressly made benefits under annuity, endowment and employe benefit plans non-testamentary, *Maley Estate*, 21 Fiduc. Rep. 618 (1971), notwithstanding.

Section 6112. Spendthrift trusts.—Income of a trust subject to spendthrift or similar provisions shall nevertheless be liable for the support of anyone whom the income beneficiary shall be under a legal duty to support.

Source: This section is derived from Section 12 of the Estates Act of 1947, April 24, P.L. 100.

Section 6113. Limited estates in personalty and in the proceeds of the conversion of real estate.—A person having a present interest in personal property, or in the proceeds of the conversion of real estate, which is not in trust, and which is subject to a future interest, shall be deemed to be a trustee of such property, and not a debtor to the remainderman, with the ordinary powers and duties of a trustee, except that he shall not be required to change the form of the investment to an investment authorized for Pennsylvania fiduciaries, nor shall he be entitled to compensation as trustee. Such person, unless given a power of consumption or excused from entering security by the terms of the conveyance, shall be required to enter such security for the protection of persons entitled to the future interests as the court in its discretion shall direct. If a person having a present interest shall not enter security as directed, the court shall appoint a trustee who shall enter such security as the court shall direct, and who shall exercise all the ordinary powers and duties of a trustee, except that he shall not be required to change the form of the investment to an investment authorized for Pennsylvania fiduciaries.

Source: This section is derived from Section 13 of the Estates Act of 1947, April 24, P.L. 100.

Section 6114. Rules of interpretation.—In the absence of a contrary intent appearing therein, conveyances shall be construed, as to real and personal estate, in accordance with the following rules:

(1) Meaning of “heirs” and “next of kin,” etc.; time of ascertaining class. A conveyance of real or personal property, whether directly or in trust, to the conveyor’s or another designated person’s “heirs” or “next of kin” or “relatives” or “family” or to “the persons thereunder entitled under the intestate laws,” or to persons described by words of similar import, shall mean those persons, including the spouse, who

would take under the intestate laws if such conveyer or other designated person were to die intestate at the time when such class is to be ascertained, a resident of the Commonwealth, and owning the property so conveyed: Provided, That the share of a spouse other than the spouse of the conveyer, shall not include the allowance under the intestate laws. The time when such class is to be ascertained shall be when the conveyance to the class is to take effect in enjoyment.

(2) Time for ascertaining class. In construing a conveyance to a class other than a class described in section 6114(1), the class shall be ascertained at the time the conveyance is to take effect in enjoyment, except that the issue then living of any member of the class who is then dead shall take per stirpes the share which their deceased ancestor would have taken if he had then been living.

(3) Meaning of "die without issue" and similar phrases. In any conveyance of real or personal estate, the words "die without issue," "die without leaving issue," "have no issue," or other words importing either a want or failure of issue of any person in his lifetime or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in his lifetime or at his death, and not an indefinite failure of his issue.

(4) Adopted children. In construing a conveyance to a person or persons described by relationship to the conveyer or to another, any person adopted before the effective date of the conveyance shall be considered the child of his adopting parent or parents and not the child of his natural parents: Provided, That if a natural parent shall have married the adopting parent before the effective date of the conveyance, the adopted person shall also be considered the child of such natural parent.

(5) Persons born out of wedlock. In construing a conveyance to a person or persons described by relationship to the conveyer or to another, a person born out of wedlock shall be considered the child of his mother and not of his father: Provided, That when the parents of a person born out of wedlock shall have married each other, he shall thereafter be considered legitimate.

(6) Inheritance tax. The inheritance tax imposed by the Inheritance and Estate Tax Act of 1961 upon the conveyance of any estate, income or interest, for a term of years, for life, or for other limited period, shall be paid out of the principal of the property by which the estate, income or interest is supported.

Source: This section is derived from Section 14 of the Estates Act of 1947, April 24, P.L. 100; clause (1) amended 1970, February 24, P.L. 59; (2) added 1970, June 22, P.L. 401; (5) amended 1971, June 17, P.L. ____ (Act No. 20); and (6) added 1961, September 15, P.L. 1344.

Section 6115. Estates pur auter vie.—An interest conveyed to a person for the life of another, whether or not such conveyance is to him and his heirs, shall, on his death before expiration of the interest, be considered as personal property forming a part of his estate and shall be subject to distribution in like manner as a lease for a term of years.

Source: This section is derived from Section 15 of the Estates Act of 1947, April 24, P.L. 100.

Section 6116. Estates in fee tail abolished.—Whenever by any conveyance an estate in fee tail would be created according to the common law of the Commonwealth, it shall pass an estate in fee simple, and as such shall be inheritable and freely alienable.

Source: This section is derived from Section 16 of the Estates Act of 1947, April 24, P.L. 100.

Section 6117. Rule in Shelley's case.—The rule in Shelley's case and its corollaries shall not be applied, and a conveyance directly or in trust which shall express an intent to create an estate for life with remainder to the life tenant's heirs or the heirs of his body or his issue or his next of kin or persons described by words of similar import, shall not operate to give such life tenant an estate in fee in real estate or an absolute estate in personalty.

Source: This section is derived from Section 17 of the Estates Act of 1947, April 24, P.L. 100.

CHAPTER 71

TRUST ESTATES

SUBCHAPTER A

APPOINTMENT OF TRUSTEES

Section 7101. To fill vacancy.—The court, after such notice to parties in interest as it shall direct, may appoint a trustee to fill a vacancy in the office of trustee, subject to the provisions, if any, of the trust instrument.

Source: This section is derived from Section 901 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 7102. Service of process on nonresident trustee.—If a trustee is or becomes a nonresident of the Commonwealth, the acceptance of the trusteeship or the act of becoming a nonresident, as the case may be, shall constitute the Secretary of the Commonwealth his attorney-in-fact upon whom service of process and notices may be made as to all causes of action relating to the trust estate.

Source: This section is derived from Section 902 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 7103. Resident co-trustee.—When no trustee shall be a resident of the Commonwealth, the court, after such notice as it shall direct, may appoint one or more additional trustees resident within the Commonwealth to serve with the nonresident trustee or trustees.

Source: This section is derived from Section 903 of the Fiduciaries Act of 1949, April 18, P.L. 512.

SUBCHAPTER B BOND OF TRUSTEES

Section 7111. Necessity, form and amount.—(a) When required.—Except as hereinafter provided, the court, in its discretion, may require any trustee, whether or not a resident of the Commonwealth, to execute and file a bond which shall be in the name of the Commonwealth, with sufficient surety, in such amount as the court considers necessary having regard to the value of the personal estate in the control of the trustee.

(b) When not required.—

(1) When named in or provided for in trust instrument. No bond shall be required of a trustee, whether or not a resident of the Commonwealth, who is named in or whose appointment is to be made in a manner specified by the trust instrument, unless such instrument requires a bond or the court, for cause shown, deems it advisable.

(2) Corporate trustee. No bond shall be required of a bank and trust company or trust company incorporated in the Commonwealth, or of a national bank having its principal office in the Commonwealth, unless the court, for cause shown, deems it advisable.

(c) Condition.—

(1) When one trustee. The condition of this obligation is, that if the said trustee shall well and truly administer the trust according to law, this obligation shall be void; but otherwise, it shall remain in force.

(2) When two or more trustees. The condition of this obligation is,

that if the said trustees or any of them shall well and truly administer the trust according to law, this obligation shall be void as to the trustee or trustees who shall so administer the trust; but otherwise, it shall remain in force.

Source: This section is derived from Section 911 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 7112. Requiring or changing amount of bond.—The court, for cause shown, and after such notice, if any, as it shall direct, may require a surety bond, or increase or decrease the amount of the existing bond, or require more or less security therefor.

Source: This section is derived from Section 912 of the Fiduciaries Act of 1949, April 18, P.L. 512.

SUBCHAPTER C REMOVAL AND DISCHARGE

Section 7121. Grounds and procedure.—The grounds and the procedure for the removal or discharge of a trustee and his surety and the effect of such removal or discharge shall be the same as are set forth in this code relating to the removal and discharge of a personal representative and his surety, with regard to the following:

- (1) Grounds for removal, as in section 3182.
- (2) Procedure for and effect of removal, as in section 3183.
- (3) Discharge of trustee and surety, as in section 3184.

Source: This section is derived from Section 921 of the Fiduciaries Act of 1949, April 18, P.L. 512.

SUBCHAPTER D POWERS, DUTIES AND LIABILITIES

Section 7131. Possession of real and personal property.—Except as otherwise provided in the trust instrument, the trustee, until it is distributed or sold, shall have the right to and shall take possession of, maintain and administer each real and personal asset of the trust, collect the rents and income from it, and make all reasonable expenditures necessary to preserve it. He shall also have the right to maintain any action with respect to real or personal property of the trust.

Source: This section is derived from Section 931 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 7132. Abandonment of property.—When any property is so burdensome or is so encumbered or is in such condition that it is of no value to the trust, the trustee may abandon it. When such property cannot be abandoned without transfer of title to another or without a formal renunciation, the court may authorize the trustee to transfer or renounce it without consideration if it shall find that this will be for the best interests of the trust.

Source: This section is derived from Section 932 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 7133. Powers, duties and liabilities identical with personal representatives.—The provisions concerning the powers, duties and liabilities of a trustee shall be the same as those set forth in this code for the administration of a decedent's or minor's estate with regard to the following:

- (1) Liability insurance, as in section 3313.
- (2) Continuation of business, as in section 3314.
- (3) Incorporation of business, as in section 3315.
- (4) Claims against co-trustee, as in section 3317.
- (5) Revival of judgments against trustee, as in section 3318.
- (6) Power of attorney, as in section 3319.
- (7) Voting stock by proxy, as in section 3320.
- (8) Nominee registration, as in section 3321.
- (9) Acceptance of deed in lieu of foreclosure, as in section 3322.
- (10) Compromise of controversies, as in section 3323.
- (11) Death or incompetency of trustee, as in section 3324.
- (12) Surviving or remaining trustee, as in section 3327.
- (13) Disagreement of trustees, as in section 3328.
- (14) Liability of trustee on contracts, as in section 3331.
- (15) Inherent powers and duties, as in section 3332.
- (16) Order of court, as in section 3353.
- (17) Power given in the trust instrument, as in section 3354.
- (18) Restraint of sale, as in section 3355.

(19) Purchase by trustee, as in section 3356.

(20) Collateral attack, as in section 3358.

(21) Record of proceedings; county where real estate lies, as in section 3359.

(22) Proceedings against trustee, as in section 5147.

Source: This section is new.

Section 7134. Investments.—Subject only to the provisions of a governing instrument, if any, a trustee may accept, hold, invest in and retain investments as provided by Chapter 73 of this code.

Source: This section is similar to Section 940 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Comment: The change in language here is made to conform to Section 5145, *supra*.

Section 7135. Substituted or succeeding trustee.—A substituted or succeeding trustee, except as otherwise provided by the trust instrument, shall have all the powers, duties and liabilities of the original trustee. He shall have the power to recover the assets of the trust from his predecessor in administration or from the fiduciary of such predecessor and, except as otherwise provided by the governing instrument, shall stand in the predecessor's stead for all purposes, except that he shall not be personally liable for the acts of his predecessor.

Source: This section is derived from Section 947 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 7136. Effect of removal, or of probate of later will or codicil.—No act of administration performed by a testamentary trustee in good faith shall be impeached by the subsequent revocation of the probate of the will from which he derives his authority, or by the subsequent probate of a later will or of a codicil, or by the subsequent dismissal of the trustee: Provided, That regardless of the good or bad faith of the testamentary trustee, no person who deals in good faith with a testamentary trustee shall be prejudiced by the subsequent occurrence of any of these contingencies.

Source: This section is derived from Section 950 of the Fiduciaries Act of 1949, April 18, P.L. 512.

SUBCHAPTER E
SALES, PLEDGES, MORTGAGES, LEASES, OPTIONS AND
EXCHANGES

Section 7141. Power to sell.—Except as otherwise provided by the trust instrument, the trustee, for any purpose of administration or distribution, may sell, at public or private sale, any real or personal property of the trust. When the trustee has been required to give bond, no proceeds of real estate shall be paid to him until the court has made an order excusing him from entering additional security or requiring additional security, and in the latter event, only after he has entered the additional security.

Source: This section is derived from Section 961 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 7142. Power to lease.—Except as otherwise provided by the trust instrument, the trustee may lease any real or personal property of the trust for a term not exceeding five years after its execution, unless a longer term is approved by the court.

Source: This section is derived from Section 962 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 7143. Title of purchaser.—If the trustee has given such bond, if any, as shall be required in accordance with this code, any sale, pledge, mortgage, or exchange by a trustee, whether pursuant to a decree or to the exercise of a power conferred by the trust instrument or of a power under this code, shall pass the full title of the trust therein, unless otherwise specified. Persons dealing with the trustee shall have no obligation to see to the proper application of the cash or other assets given in exchange for the property of the trust. Any sale or exchange by a trustee pursuant to a decree under section 7133(16) shall have the effect of a judicial sale as to the discharge of liens, but the court may decree a sale or exchange freed and discharged from the lien of any mortgage otherwise preserved from discharge by existing law, if the holder of such mortgage shall consent by writing filed in the proceeding. No such sale, mortgage, exchange, or conveyance shall be prejudiced by the subsequent dismissal of the trustee nor shall any such sale, mortgage, exchange, or conveyance by a testamentary trustee be prejudiced by the terms of any will or codicil thereafter probated, if the person dealing with the trustee did so in good faith.

Source: This section is derived from Section 967 of the Fiduciaries Act of 1949, April 18, P.L. 512.

SUBCHAPTER F
ACCOUNTS, AUDITS, REVIEWS AND DISTRIBUTIONS

Section 7181. When account filed.—A trustee shall file an account of his administration at the termination of the trust and may file an account at any other time. The court may direct him to file an account at any time.

Source: This section is derived from Section 981 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 7182. Where accounts filed.—All accounts of trustees shall be filed in the office of the clerk.

Source: This section is derived from Section 982 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 7183. Notice, audits, reviews and distribution.—The provisions concerning accounts, audits, reviews, distributions and rights of distributees in trust estates shall be the same as those set forth in this code for the administration of a decedent's estate, with regard to the following:

- (1) Notice to parties in interest, as in section 3503.
- (2) Representation of parties in interest, as in section 3504.
- (3) Audits in counties having a separate orphans' court division, as in section 3511.
- (4) Audits in counties having no separate orphans' court division, as in section 3512.
- (5) Statement of proposed distribution, as in section 3513.
- (6) Confirmation of accounts and approval of proposed distribution, as in section 3514.
- (7) Rehearing; relief granted, as in section 3521.
- (8) Award upon final confirmation of account, as in section 3533.
- (9) Distribution in kind, as in section 3534.
- (10) Recording and registering decrees awarding real estate, as in section 3536.
- (11) Award to nonresident beneficiary, as in section 3537.
- (12) Liability for interest, as in section 3544.

(13) Transcripts of balances due, as in section 3545.

Source: This section is derived from Section 983 of the Fiduciaries Act of 1949, April 18, P.L. 512, clause (11) added 1956, February 23, P.L. (1955) 1084.

Section 7184. Disposition of income.—Except as otherwise provided by the trust instrument, the trustee with the approval of the court, may pay income distributable to a minor or incompetent beneficiary for whose estate no guardian has been appointed directly to the minor or incompetent, or expend and apply it for his maintenance or education.

Source: This section is derived from Section 984 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Comment: This section has been enlarged to provide the same authority to guardians of incompetents as was formerly given to guardians of minors.

Section 7185. Compensation.—(a) When allowed.—The court shall allow such compensation to the trustee as shall in the circumstance be reasonable and just, and may take into account the market value of the trust at the time of the allowance, and calculate such compensation on a graduated percentage.

(b) Allowed out of principal or income.—Neither the fact that a fiduciary's service has not ended nor the fact that the trust has not ended shall be a bar to the fiduciary's receiving compensation for his services out of the principal of the trust. Whenever it shall appear either during the continuance of a trust or at its end, that a fiduciary has rendered services for which he has not been fully compensated, the court having jurisdiction over his accounts, shall allow him such original or additional compensation out of the trust income or the trust principal or both, as may be necessary to compensate him for the services theretofore rendered by him. The provisions of this section shall apply to ordinary and extraordinary services alike.

(c) Compensation prescribed by will or other instrument.—Where the compensation of a fiduciary is expressly prescribed either by provisions of a will or deed of trust or other instrument under which he is acting or by provisions of an agreement between him and the creator of a trust, nothing in this section shall change in any way the rights of any party in interest or of the fiduciary.

(d) Cemetery lots.—The provisions of this section shall not apply to trusts created by cemetery lot owners as endowments for the endowed care and maintenance of burial or cemetery lots, where the corpus or

principal sum involved is or does not exceed \$5,000, in order that the corpus or principal sum for such endowments should remain undiminished.

Source: This section is new; subsection (a) is derived from Section 985 of the Fiduciaries Act of 1949, April 18, P.L. 512, added 1963, July 25, P.L. 305; (b), (c) and (d) are derived from the Act of 1953, May 1, P.L. 190.

Section 7186. Failure to present claim at audit.—Any person who at the audit of a trustee's account has a claim which arose out of the administration of trust property, or arises out of the distribution of such property upon any interim or final accounting of the trust, and which is not reported to the court as an admitted claim, and who shall fail to present his claim at the call for audit or confirmation, shall be forever barred, against:

(1) any trust property distributed pursuant to such audit or confirmation;

(2) any distributee of trust property distributed pursuant to such audit or confirmation; and

(3) except as otherwise provided in section 7183(7) any trust property awarded back upon further trust pursuant to such audit or confirmation. Nothing in this section shall be construed as impairing any lien or charge on real or personal estate of the trust existing at the time of the audit.

Source: This section is derived from Section 986 of the Fiduciaries Act of 1949, April 18, P.L. 512, added 1965, December 22, P.L. 1196.

Section 7187. Interest or income on distributive shares.—Except as otherwise provided by the trust instrument or by the provisions of section 3543 of this code:

(1) Pecuniary gift. When a sum of money is directed to be set aside at a specified time as a separate trust, it shall bear interest at the rate of 3% per annum from the date it was to be set aside until it is set aside. When a sum of money is directed to be paid outright, it shall bear interest at the rate of 3% per annum from three months after it became payable until it is paid.

(2) Specific gift. A donee of a gift of specific real or personal property directed to be distributed from a trust shall be entitled to the net income from property given to him accrued from the date it became distributable to him.

(3) Residuary gift. All income from real and personal property earned during the administration of a trust and not payable to others

shall be distributed pro rata among the income beneficiaries of any continuing trust of a residuary share and other persons entitled to residuary shares of the trust.

Source: This section is derived from Section 986 of the Fiduciaries Act of 1949, April 18, P.L. 512, added 1965, December 22, P.L. 1198.

SUBCHAPTER G SEPARATION AND COMBINATION OF TRUSTS

Section 7191. Separate trusts.—The court, for cause shown and with the consent of all parties in interest, may divide a trust into two or more separate trusts.

Source: This section is derived from Section 991 of the Fiduciaries Act of 1949, April 18, P.L. 512.

Section 7192. Combination of trusts.—Whenever the trust instrument provides for the creation of separate trusts, the court, for cause shown and with the consent of all parties in interest, may authorize the trusts to be combined.

Source: This section is derived from Section 992 of the Fiduciaries Act of 1949, April 18, P.L. 512.

CHAPTER 73 FIDUCIARIES INVESTMENTS

Section 7301. Definition of fiduciary.—The term “fiduciary” as used in this chapter shall include guardians, trustees and other fiduciaries, whether domiciliary or ancillary, subject to the jurisdiction of the common pleas court but shall not include a personal representative.

Source: This section is derived from Section 1 of the Fiduciaries Investment Act of 1949, May 26, P.L. 1828.

Comment: This definition of “fiduciary” differs from that used elsewhere in the code (see Section 102, *supra*) in that it excludes personal representatives whose investment powers are more limited in scope (see Section 3316, *infra*).

Section 7302. Authorized investments; in general.—(a) Specifically authorized.—Subject only to the provisions of the governing instrument, if any, a fiduciary may accept, hold, invest in, and retain, any of the investments authorized by this chapter, and shall not be liable for loss on such investments so long as he exercises due care and prudence in

the performance of his duties in regard to them. "Legal investment" or "authorized investment" or words of similar import used in a trust instrument shall be construed to mean any investment authorized by this chapter.

(b) Prudent man rule.—Any investment shall be an authorized investment if purchased or retained in the exercise of that degree of judgment and care, under the circumstances then prevailing, which men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income to be derived therefrom as well as the probable safety of their capital. The authorization to make and retain investments pursuant to this subsection shall be in addition to, and independent of, authorizations to make investments pursuant to other provisions of this chapter and requirements applicable under other provisions of this chapter shall not affect investments also authorized by this subsection.

Source: This section is derived from Section 2 of the Fiduciaries Investment Act of 1949, May 26, P.L. 1828, subsection (b) added 1968, June 25, P.L. ____ (Act No. 119).

Section 7303. Government obligations.—Obligations of the following governmental bodies shall be authorized investments:

(1) United States. Obligations of the United States or the United States Treasury or those for the payment of which the faith and credit of the United States is pledged, including obligations of the District of Columbia.

(2) Pennsylvania. Obligations of the Commonwealth of Pennsylvania or those for the payment of which the faith and credit of the Commonwealth is pledged.

(3) State and local government. Obligations of any commonwealth or state of the United States, or any county, city, borough, town, township, school district, institution district or other political subdivision, having the power to levy taxes, of any such commonwealth or state: Provided, That the faith and credit of such commonwealth, state or political subdivision thereof, is pledged for the payment of said obligations: And provided further, That at the date of the investment in such obligations, such commonwealth, state or political subdivision, is not in default in the payment of any part of the principal or interest owing by it upon any part of its funded indebtedness.

(4) International bank for reconstruction and development. Bonds, notes or other obligations issued, assumed or guaranteed by the Inter-

national Bank for Reconstruction and Development which contain an unconditional promise to pay by the International Bank for Reconstruction and Development, or an unconditional guarantee by the International Bank for Reconstruction and Development of the payment of the interest thereon regularly, and the principal thereof on or before a specified date, in lawful currency of the United States. Not more than 2% of the funds in the custody or under the control of the fiduciary at the time of making the investment shall be invested in such bonds, notes or obligations. The principal office of the obligor shall be located within the United States.

Source: This section is derived from Section 3 of the Fiduciaries Investment Act of 1949, May 26, P.L. 1828, clause (4) added 1955, October 22, P.L. 728.

Section 7304. Obligations of Federal organizations.—Obligations of the following organizations constituted under the laws of the United States shall be authorized investments:

(1) National Housing Administration. Obligations issued pursuant to any housing act of the United States heretofore or hereafter enacted, but only if fully and unconditionally guaranteed as to principal and interest by the United States.

(2) Federal land banks. Obligations of any Federal land bank and consolidated obligations, being the joint and several obligations of all Federal land banks, issued pursuant to the act of Congress of July 17, 1916 (39 Stat. 380), and its amendments and supplements heretofore or hereafter enacted.

(3) Federal home loan banks. Obligations of any Federal home loan bank and consolidated obligations, being the joint and several obligations of all Federal home loan banks, issued pursuant to the act of Congress of July 22, 1932 (47 Stat. 725), and its amendments and supplements heretofore or hereafter enacted.

(4) Federal intermediate credit banks. Consolidated obligations, being the joint and several obligations of all Federal intermediate credit banks, issued pursuant to the act of Congress of March 4, 1923 (42 Stat. 1456), and its amendments and supplements heretofore or hereafter enacted.

(5) Federal National Mortgage Association. Obligations of the Federal National Mortgage Association issued pursuant to the act of Congress of August 2, 1954 (68 Stat. 612), and its amendments and supplements.

(6) Banks for cooperatives. Obligations of the Central Bank for Cooperatives and consolidated obligations of the Central Bank for Cooperatives, and the regional banks for cooperatives issued pursuant to the provisions of the act of Congress of June 16, 1933, known as the "Farm Credit Act of 1933" (48 Stat. 257), and its amendments and supplements heretofore or hereafter enacted.

(7) Tennessee Valley Authority. Obligations issued, assumed or guaranteed by the Tennessee Valley Authority.

Source: This section is derived from Section 4 of the Fiduciaries Investment Act of 1949, May 26, P.L. 1828, subsection (5) added 1957, July 10, P.L. 638; (6) added 1959, June 16, P.L. 464; (7) added 1968, June 25, P.L. ____ (Act No. 119).

Section 7305. Obligations of Pennsylvania governmental organizations.—Obligations of the following Pennsylvania governmental organizations shall be authorized investments:

(1) General State Authority and other State authorities. Obligations issued by The General State Authority and other authorities created by the General Assembly of the Commonwealth of Pennsylvania, for the payment of which faith and credit of the authority is pledged.

(2) Housing authorities. Obligations of any housing authority issued pursuant to the laws of the Commonwealth relating to the creation or operation of housing authorities.

(3) Pennsylvania Housing Agency. Bonds and notes of the Pennsylvania Housing Agency created by the "Housing Agency Law."

(4) Municipality authorities. Obligations of any municipality authority issued pursuant to the laws of the Commonwealth relating to the creation or operation of municipality authorities, if the obligations are not in default and if the project for which the obligations were issued is under lease to a school district or school districts, or if the obligations are not in default and if the project for which the obligations were issued is under lease to a municipality or municipalities or subject to a service contract with a municipality or municipalities, pursuant to which the authority will receive lease rentals or service charges available for fixed charges on the obligations, which will average not less than one and one-fifth times the average annual fixed charges of such obligations over the life thereof, or if the obligations are not in default and if for the period of five fiscal years next preceding the date of acquisition, the income of such authority available for fixed charges has averaged not less than one and one-fifth times its average annual fixed charges

of such obligations over the life of such obligations. As used in this clause, the term "income available for fixed charges" shall mean income after deducting operating and maintenance expenses, and, unless the obligations are payable in serial, annual maturities, or are supported by annual sinking fund payments, depreciation, but excluding extraordinary nonrecurring items of income or expenses; and the term "fixed charges" shall include principal, both maturity and sinking and sinking fund, and interest on bonded debt. In computing such income available for fixed charges for the purposes of this section, the income so available of any corporation acquired by any municipality authority may be included, such income to be calculated as though such corporation has been operated by a municipality authority and an equivalent amount of bonded debt were outstanding.

The eligibility for investment purposes of obligations of each project of a municipality authority shall be separately considered hereunder.

(5) Parking authorities, public auditorium authorities, and port authorities. Obligations of any parking authority, public auditorium authority, or port authority issued pursuant to the Parking Authority Law, the Public Auditorium Authorities Law or the Second Class County Port Authority Act, as the same have been heretofore or may be hereafter amended, if the obligations are not in default and if the project or facility for which the obligations were issued is under lease to a municipality or municipalities or is subject to a service contract or grant contract with a municipality or municipalities, and if the term of such lease or contract is not less than the term of the final maturity of the obligations, and if the authority will receive or is entitled to receive under such lease or contract annual rentals, service charges, or grants available for fixed charges on such obligations of not less than the average annual fixed charges on such obligations over the life thereof, or if the obligations are not in default, and if for the period of five fiscal years next preceding the date of acquisition the income of such authority available for fixed charges has averaged not less than one and one-fifth times its average fixed charges of such obligation over the life of such obligations. As used in this clause, the term "income available for fixed charges" shall mean income after deducting operating and maintenance expenses and, unless the obligations are payable in serial, annual maturities, or are supported by annual sinking fund payments, depreciation, but excluding extraordinary nonrecurring items of income or expenses, and the term "fixed charges" shall include principal, both maturity and sinking fund, and interest on bonded debt.

(6) Delaware River Joint Commission. Obligations of the Delaware

River Joint Commission issued pursuant to the act of June 12, 1931, P.L. 575, and its amendments and supplements heretofore or hereafter enacted.

(7) Delaware River Joint Toll Bridge Commission. Obligations of the Delaware River Joint Toll Bridge Commission issued pursuant to the act of June 25, 1931, P.L. 1352, and its amendments and supplements heretofore or hereafter enacted.

(8) Delaware Tunnel Board. Obligations issued by or with the approval of the Delaware Tunnel Board pursuant to the act of July 8, 1947, P.L. 1452, and its amendments and supplements heretofore or hereafter enacted.

(9) Pennsylvania Turnpike Commission. Obligations of the Pennsylvania Turnpike Commission issued pursuant to:

(i) the act of May 21, 1937, P.L. 774;

(ii) the Pennsylvania Turnpike Philadelphia Extension Act of May 16, 1940, P.L. (1941) 1949; and

(iii) the Western Pennsylvania Turnpike Extension Act of June 11, 1941, P.L. 101;

and the amendments and supplements of each heretofore or hereafter enacted.

(10) Pennsylvania Parkway Commission. Obligations of the Pennsylvania Parkway Commission, issued pursuant to the act of July 16, 1941, P.L. 386, and its amendments and supplements heretofore or hereafter enacted.

(11) Redevelopment authorities. Obligations of any redevelopment authority issued pursuant to the laws of the Commonwealth relating to the creation or operation of redevelopment authorities.

(12) The Pennsylvania State University. Obligations of The Pennsylvania State University.

(13) Municipalities issuing nondebt revenue bonds. Obligations issued pursuant to subdivision (b) of Article VI of the act of June 25, 1941, P.L. 159, known as the "Municipal Borrowing Law," and its amendments, if the obligations are not in default and if, for the period of five fiscal years next preceding the date of acquisition the income of the municipality issuing such obligations from the facility from which revenues are pledged for the payment for such obligations, available for fixed charges has averaged not less than one and one-fifth times the average annual fixed charges of such obligations over the life of such obligations. As used in this clause, the term "income available for fixed

charges” shall mean income after deducting operating and maintenance expenses, and, unless the obligations are payable in serial, annual maturities, or are supported by annual sinking fund payments, depreciation, but excluding extraordinary nonrecurring items of income or expenses; and the term “fixed charges” shall include principal, both maturity and sinking fund, and interest on bonded debt.

Source: This section is derived from Section 5 of the Fiduciaries Investment Act of 1949, May 26, P.L. 1828, subsection (3) added 1959, December 3, P.L. 1710; (4) last amended 1956, May 29, P.L. (1955) 1833; (5) added 1963, August 24, P.L. 1224; (11) added 1951, September 28, P.L. 1557; (12) added 1957, July 10, P.L. 638; and (13) added 1965, June 8, P.L. 103.

Section 7306. Obligations of governmental organizations existing pursuant to the laws of Pennsylvania, other states and the District of Columbia.—Obligations of any authority, commission or similar governmental organization existing pursuant to the laws of this Commonwealth or the laws of any other state or of the District of Columbia shall be authorized investments if purchased or retained in the exercise of that degree of judgment and care, under circumstances then prevailing, which men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income to be derived therefrom as well as the probable safety of their capital. The authorization to make and retain investments pursuant to this section shall be in addition to, and independent of, authorizations to make investments pursuant to other provisions of this chapter shall not affect investments also authorized by this section.

Source: This section is derived from Section 5.1 of the Fiduciaries Investment Act of 1949, May 26, P.L. 1828, added 1966, January 6, P.L. (1965) 1290.

Section 7307. Corporate bonds.—Any interest-bearing obligation, including bonds, notes, debentures, and car-trust certificates, issued, guaranteed, or assumed by, a corporation organized under the laws of the United States, of any commonwealth or state thereof, or of the District of Columbia, shall be an authorized investment if purchased or retained in the exercise of that degree of judgment and care, under the circumstances then prevailing, which men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income to be derived therefrom as well as the probable safety of their capital.

“Corporation” as used in this section shall include a voluntary association, a joint-stock association or company, a business trust, a Massachusetts trust, a common-law trust, a municipal or quasi-municipal

corporation by whatever name called, and any other organization organized and existing for any lawful purpose and which, like a corporation, continues to exist notwithstanding changes in the personnel of its members or participants, and conducts its affairs through a committee, a board, or some other group acting in a representative capacity.

Source: This section is derived from Section 6 of the Fiduciaries Investment Act of 1949, May 26, P.L. 1828, amended 1961, September 28, P.L. 1720.

Section 7308. Mortgages.—One or more bonds or other obligations secured by one or more mortgages, or in connection with which the obligor gives one or more mortgages to indemnify the insurer of the obligation, shall be an authorized investment if:

(1) Insured by Federal Housing Administrator. Insured by the Federal Housing Administrator pursuant to the National Housing Act of June 27, 1934 (48 Stat. 1246), and its amendments and supplements heretofore or hereafter enacted; or

(2) Guaranteed or insured under Federal Servicemen's Readjustment Act. Guaranteed or insured under the Federal Servicemen's Readjustment Act of June 22, 1944 (58 Stat. 284), and its amendments and supplements heretofore or hereafter enacted: Provided, That at the date of acquisition the guaranty shall be in an amount not less than one-third of the sum invested, or, if an insured mortgage, the insurance shall be in an amount not less than 15% thereof; or

(3) Insured by the Farmers Home Administration, United States Department of Agriculture. Insured by the Farmers Home Administration, United States Department of Agriculture, pursuant to the Bankhead-Jones Farm Tenant Act of July 22, 1937 (50 Stat. 522), and its amendments and supplements heretofore or hereafter enacted, or pursuant to the act of August 28, 1937 (50 Stat. 869), and its amendments and supplements heretofore or hereafter enacted; or

(4) Other mortgages. At the date of the acquisition or of any extension of the mortgage it shall meet the following requirements:

(i) contain an unconditional promise to pay the principal of and interest upon obligations which it secures.

(ii) be a first lien upon improved real estate situated within the Commonwealth, including improved farm lands, prior to all other liens except the lien of taxes previously levied or assessed but not then payable and except taxes then due or payable or delinquent for the payment of which taxes provision is made in the mortgage settlement.

(iii) the unpaid principal amount of the obligations shall not exceed four-fifths of the fair value of the real estate as fixed by two persons familiar with real estate values in the vicinity who shall have actually inspected it and shall so certify in a written appraisal preserved among the records of the fiduciary.

(iv) the principal debt evidenced by the obligations shall be payable in not more than five years after the date of acquisition by the fiduciary, or be amortized within a period of not exceeding 30 years from the date of the acquisition in substantially equal payments at successive intervals of not more than one year each and in an amount sufficient to pay the principal debt and interest thereon within the term of the loan.

(v) all interest has been paid in full to the next preceding interest payment due.

(vi) nothing in this clause (4) shall be construed to be a limitation upon the power of a fiduciary to accept a purchase money obligation in exchange for an asset of the estate or trust upon such terms and conditions and with such security as shall be reasonable under the circumstances.

Source: This section is derived from Section 7 of the Fiduciaries Investment Act of 1949, May 26, P.L. 1828, amended and subsection (3) added 1959, October 13, P.L. 1300; (4) (iii) amended 1967, October 9, P.L. 388; (4) (iv) amended 1966, Jan. 6, P.L. (1965) 1291.

Section 7309. Fractional interests.—(a) Mortgages.—A fractional interest in an obligation naming a fiduciary as the obligee, secured by one or more mortgages, shall be an authorized investment for an estate of which the fiduciary is sole fiduciary or co-fiduciary, if the whole of the obligation would be an authorized investment under the provisions of section 7308 of this chapter. Appraisal of the real estate subject to the lien of such mortgage or mortgages need not be made concurrently with the acquisition of such fractional interest, if:

(1) it is a fractional interest in a mortgage referred to in clauses (1) and (2) of section 7308 of this chapter; or

(2) an appraisal has been made within three years immediately preceding the acquisition, in accordance with the requirements of clause (4) of section 7308 of this chapter, and if a person qualified at the time of the acquisition to serve as an appraiser of the real estate shall certify, in a writing to be preserved among the fiduciary's records, that at the date of the acquisition the unpaid principal amount of the obligation does not exceed four-fifths of the fair value of the real estate.

(b) Government obligations.—A fractional interest in a governmental

obligation, the whole of which would be an authorized investment under section 7303 of this chapter, whether it be in bearer form or names the fiduciary as the obligee, shall be an authorized investment for an estate of which the fiduciary is sole fiduciary or co-fiduciary.

Source: This section is derived from Section 8 of the Fiduciaries Investment Act of 1949, May 26, P.L. 1828, subsection (a) amended 1967, October 9, P.L. 388.

Section 7310. Stocks.—(a) Preferred and common stock.—Preferred and common stock of any corporation organized under the laws of the United States or of any commonwealth or state thereof, or of the District of Columbia, shall be an authorized investment if purchased or retained in the exercise of that degree of judgment and care, under the circumstances then prevailing, which men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income to be derived therefrom as well as the probable safety of their capital.

“Corporation” as used in this subsection shall include an investment company (as hereinafter defined), a voluntary association, a joint-stock association or company, a business trust, a Massachusetts trust, a common-law trust, and any other organization organized and existing for any lawful purpose and which, like a corporation, continues to exist notwithstanding changes in the personnel of its members or participants, and conducts its affairs through a committee, a board, or some other group acting in a representative capacity.

“Investment company” as used in this subsection shall mean a corporation (as defined in this subsection) which is registered as an investment company under the Federal Investment Company Act of 1940, as from time to time amended, and which has no preferred stock, bonds, loans or any other outstanding securities having preference or priority as to assets or earnings over its common stock and which shall have net assets of not less than \$10,000,000 at the date of purchase.

“Common stock” as used in this subsection shall include the stock certificates, certificates of beneficial interests or trust participation certificates issued by any corporation or unincorporated association included under the definition of “corporation” in this subsection.

(b) Savings accounts insured by Federal savings and loan insurance corporation.—Savings accounts of any savings association incorporated under the laws of the Commonwealth, or of any Federal savings and loan association incorporated under the laws of the United States shall be an authorized investment if the withdrawal or repurchase value thereof is insured by the Federal savings and loan insurance corporation

pursuant to the act of Congress of June 27, 1934 (48 Stat. 1255), and its supplements and amendments heretofore or hereafter enacted.

Source: This section is derived from Section 9 of the Fiduciaries Investment Act of 1949, May 26, P.L. 1828, subsection (a) last amended 1961, September 28, P.L. 1720; (b) amended 1971, November 5, P.L. _____ (Act No. 123).

Section 7311. Real estate.—Real estate located in Pennsylvania, other than ground rents, shall be an authorized investment if the court, upon petition, aided if necessary by the report of a master, and being of the opinion that the investment will be for the advantage of the estate and that no change will be made in the course of succession by the investment, shall direct such investment.

Source: This section is derived from Section 10 of the Fiduciaries Investment Act of 1949, May 26, P.L. 1828.

Section 7312. Ground rent.—A ground rent secured upon unencumbered improved real estate located within the Commonwealth shall be an authorized investment if the reserved annual rent, capitalized at the rate of 5% per annum, shall not exceed four-fifths of the fair value of the real estate out of which it issues, determined by appraisal, as in the case of mortgages.

Source: This section is derived from Section 11 of the Fiduciaries Investment Act of 1949, May 26, P.L. 1828, amended 1967, October 9, P.L. 388.

Section 7313. Interest-bearing deposit.—An interest-bearing deposit in any bank, bank and trust company, savings bank, or national banking association, located within the Commonwealth, shall be an authorized investment if:

(1) The maturity date or the permissible date of withdrawal does not exceed one year from the date of the deposit or any renewal thereof; and

(2) Such deposits do not exceed the amount which is fully insured by the Federal Deposit Insurance Corporation, pursuant to the act of Congress of June 16, 1933 (48 Stat. 168), and its supplements and amendments, heretofore or hereafter enacted.

Source: This section is derived from Section 12 of the Fiduciaries Investment Act of 1949, May 26, P.L. 1828, last amended 1963, May 15, P.L. 38.

Section 7314. Common trust fund and mortgage investment fund.—Any corporate fiduciary and its co-fiduciary if any, may invest in:

(1) Common trust fund. A common trust fund containing only investments authorized for fiduciaries, established and maintained by the corporate fiduciary in conformity with the laws of the Commonwealth and of the United States; and

(2) Mortgage investment fund. A mortgage investment fund containing only mortgages and other investments authorized for fiduciaries, established and maintained by the corporate fiduciary in conformity with the laws of the Commonwealth and of the United States.

Source: This section is derived from Section 13 of the Fiduciaries Investment Act of 1949, May 26, P.L. 1828.

Section 7315. Retention of investments.—A fiduciary, if he exercises the same care and prudence as he would in the case of an authorized investment, may retain without liability for resulting loss:

(1) Any asset received in kind, even though it is not an authorized investment; and

(2) Any asset purchased in reliance upon a construction, by the court, of the instrument or a provision contained therein even though the court in a subsequent proceeding adopts a contrary construction thereof.

Source: This section is derived from Section 14 of the Fiduciaries Investment Act of 1949, May 26, P.L. 1828, amended 1967, October 9, P.L. 418.

Section 7316. Life insurance, building and loan shares, and similar assets.—A fiduciary receiving in kind a contract of life insurance, stock in a building and loan association, or any similar asset providing for periodic payments, may retain it and continue to make the periodic payments and otherwise comply with the provisions thereof without liability for resulting loss so long as he, in the exercise of due care and prudence, shall consider advisable under the circumstances.

Source: This section is derived from Section 15 of the Fiduciaries Investment Act of 1949, May 26, P.L. 1828.

Section 7317. Investments which become unauthorized.—A fiduciary may retain without liability for resulting loss any investment which was authorized when received or made although such investment no longer qualifies as an authorized investment, provided he exercises due care and prudence in the disposition or retention of any such nonlegal investment.

Source: This section is derived from Section 16 of the Fiduciaries Investment Act of 1949, May 26, P.L. 1828.

Section 7318. Court direction.—A fiduciary appointed by the court and not acting under a trust instrument, in addition to or in place of the investments authorized by this chapter, may make and retain without liability for resulting loss, such investments as the court, upon petition of the fiduciary or of any party in interest, and after such notice as it shall direct, aided by the report of a master if necessary,

shall authorize or direct, subject only to such conditions and limitations as shall be fixed by the court in the decree authorizing or directing the investment.

Source: This section is derived from Section 17 of the Fiduciaries Investment Act of 1949, May 26, P.L. 1828.

Section 7319. Directions of testator or settlor.—(a) General rule.—The testator or settlor in the instrument establishing a trust may prescribe the powers, duties and liabilities of the fiduciary regarding the investment or noninvestment of principal and income and the acquisition by purchase or otherwise, retention, and disposition, by sale or otherwise, of any property which, at any time or by reason of any circumstance, shall come into his control; and whenever any such provision shall conflict with this chapter, such provision shall control notwithstanding this chapter, unless the court having jurisdiction over the trust shall otherwise decree pursuant to the following subsection (b). In the absence, however, of an express restriction to the contrary in the trust instrument, the fiduciary may invest in any investment authorized by this chapter.

(b) Exception; failure of purpose.—Where the instrument establishing a trust contains a restriction on the fiduciary's power of investment, the court having jurisdiction, in its discretion, may release the fiduciary from the investment restriction to the extent and subject to such conditions, if any, as the court may deem appropriate, if after hearing it is satisfied that the original purpose of the testator or the settlor cannot be carried out, or is impractical of fulfillment, and that the authorized release will more nearly approximate the intention of the testator or settlor.

Source: This section is derived from Section 18 of the Fiduciaries Investment Act of 1949, May 26, P.L. 1828, amended 1967, October 9, P.L. 418.

CHAPTER 81

PRINCIPAL AND INCOME

Section 8101. Definition of terms.—“Principal.” As used in this chapter means any realty or personalty which has been so set aside or limited by the owner thereof, or a person thereto legally empowered, that it and any substitutions for it are to remain in trust perpetually,

or are eventually to be conveyed, delivered or paid to a person, while the return therefrom, or use thereof, or any part of such return or use, is in the meantime to be taken or received by, or held for accumulation for, the same or another person.

“Income.” As used in this chapter means the return derived from principal.

“Tenant.” As used in this chapter means the person to whom income is presently or currently payable, or for whom it is accumulated, or who is entitled to the beneficial use of the principal presently and for a time prior to its distribution.

“Remainderman.” As used in this chapter means the person ultimately entitled to the principal, whether named or designated by the terms of the transaction by which the principal was established, or determined by operation of law.

“Trustee.” As used in this chapter includes the original trustee of any trust to which the principal may be subject and also any succeeding or added trustee.

Source: This section is derived from Section 1 of the Principal and Income Act of 1947, July 3, P.L. 1283.

Section 8102. Application of the chapter; powers of settlor.—This chapter shall govern the ascertainment of income and principal and the apportionment of receipts and expenses between tenants and remaindermen in all cases where a principal has been established with or, unless otherwise stated hereinafter, without the interposition of a trust: Provided, That the person establishing the principal may himself direct the manner of ascertainment of income and principal and the apportionment of receipts and expenses or grant discretion to the trustee or other person, to do so and such provision and direction, where not otherwise contrary to law, shall control, notwithstanding this chapter.

Source: This section is derived from Section 2 of the Principal and Income Act of 1947, July 3, P.L. 1283.

Section 8103. Income and principal; disposition.—(a) All receipts of money or other property, paid or delivered as rent of realty, or hire of personalty, or corporate distributions deemed to be income under section 8105, or interest on money loaned, or interest on or the rental or use value of property wrongfully withheld or tortiously damaged, or otherwise in return for the use of principal, shall be deemed income, unless otherwise expressly provided in this chapter.

(b) All receipts of money or other property paid or delivered as the consideration for the sale, or other transfer, not a leasing or letting of property, forming a part of the principal, or as a repayment of loans

or in liquidation of the assets of a corporation, or as the proceeds of property taken in eminent domain proceedings, where separate awards to tenant and remainderman are not made, or as proceeds of insurance upon property forming a part of the principal, except where such insurance has been issued for the benefit of either tenant or remainderman alone, or otherwise as a refund or replacement or change in form of principal, shall be deemed principal, unless otherwise expressly provided in this chapter. Any profit or loss, resulting from any change in form of principal, shall enure to or fall upon principal, unless otherwise expressly provided in this chapter.

(c) All income, after payment of expenses properly chargeable to it, shall be paid and delivered to the tenant or retained by him, if already in his possession, or held for accumulation, where legally so directed by the terms of the transaction by which the principal was established; while the principal shall be held for ultimate distribution as determined by the terms of the transaction by which it was established, or by law.

(d) Nothing in this section shall apply to property in the nature of wasting assets, such as timber, minerals, coal, stone, oil, gas or other natural resources or to property subject to depletion such as leaseholds, patents, copyrights and royalty rights, but this section shall apply to the shares of corporations which own such property.

Source: This section is derived from Section 3 of the Principal and Income Act of 1947, July 3, P.L. 1283, amended 1963, August 1, P.L. 442.

Section 8104. Apportionment of income.—Whenever a tenant shall have the right to income from periodic payments, which shall include rent, interest on loans and annuities, but shall not include dividends on corporate shares, and such right shall cease and determine by death, or in any other manner at a time other than the date when such periodic payments should be paid, he or his personal representative shall be entitled to that portion of any such income next payable, which amounts to the same percentage thereof as the time elapsed from the last due date of such periodic payments to and including the day of the determination of his right is of the total period during which such income would normally accrue. The remaining income shall be paid to the person next entitled to income by the terms of the transaction by which the principal was established. But no action shall be brought by the trustee or tenant to recover such apportioned income, or any portion thereof, until after the day on which it would have become due to the tenant but for the determination of the right of the tenant entitled thereto. The provisions of this section shall apply whether an ultimate remainderman is specifically named or not. Likewise, when the right

of the first tenant accrues at a time other than a payment date of such periodic payments, he shall only receive that portion of such income which amounts to the same percentage thereof as the time during which he has been so entitled is of the total period during which such income would normally accrue, and the balance shall be a part of the principal.

Source: This section is derived from Section 4 of the Principal and Income Act of 1947, July 3, P.L. 1283.

Section 8105. Corporate dividends and share rights.—(a) Corporate distributions made to a trustee in the shares of the distributing corporation, however described or designated by the distributing corporation, shall be deemed principal but if the number of shares of any class distributed to shareholders of such class is 6% or less of the number of shares of that class outstanding on the record date for such distribution, the shares so distributed shall be deemed income. Except as provided above and in other subsections of this section all dividends payable otherwise than in shares of the distributing corporation, including ordinary and extraordinary cash dividends and dividends payable in shares or other securities or obligations of corporations other than the distributing corporation, shall be deemed income. Where the trustee shall have the option of receiving a dividend, either in cash or in the shares of the distributing corporation, it shall be considered as a cash dividend and deemed income, irrespective of the choice made by the trustee.

(b) All rights to subscribe to the shares or other securities or obligations of a corporation, accruing on account of the ownership of shares or other securities in such corporation, and the proceeds of any sale of such rights shall be deemed principal. All rights to subscribe to the shares or other securities or obligations of a corporation, accruing on account of the ownership of shares or other securities in another corporation, and the proceeds of any sale of such rights shall be deemed income.

(c) Where the assets of a corporation are liquidated, wholly or partially, amounts paid upon corporate shares as cash dividends, declared before such liquidation began, or as arrears of cumulative preferred, or guaranteed dividends shall be deemed income, all other amounts paid upon corporate shares on disbursement of the corporate assets to the stockholders shall be deemed principal. All disbursements of corporate assets to the stockholders, whenever made, which are designated by the corporation as a return of capital or division of corporate property, shall be deemed principal. Any profit or loss resulting from the sale or liquidation of corporate shares shall enure to or fall upon principal.

(d) Where a corporation is a party to a merger, consolidation or reorganization, or otherwise acquires the assets of another corporation, or where the capital structure of a corporation is changed, either with or without merger or consolidation, and the securities of the surviving, succeeding, reorganized or acquiring corporation with or without cash or other properties are issued to the shareholders of the original corporation in like proportion to, or in substitution for their shares in the original corporation and prior to the effective date of such merger, consolidation or reorganization there were arrearages of cumulative preferred or guaranteed dividends, and such arrearages are eliminated in the merger, consolidation or reorganization, so much of the securities and cash and other properties received as is designated by the corporation as a payment in settlement of such arrearages, shall be allocated to such arrearages, and the balance of the securities and cash and other properties received shall be deemed principal. In case the corporation does not so designate, the securities received in like proportion to or in substitution for shares upon which there were such arrearages of cumulative preferred or guaranteed dividends at their value as of the effective date of such merger, and the cash and other properties received shall be allocated first to principal, in the amount of the inventory value of the said shares of the original corporation, or in default thereof, of their market value at the time the principal was established, or of their cost where purchased later; second, to the arrearages of cumulative preferred or guaranteed dividends, or in satisfaction thereof if less than such amount; and third, the balance, if any, to principal.

(e) Except as otherwise provided in subsection (d) of this section, where a corporation is a party to a merger, consolidation or reorganization or otherwise acquires the assets of another corporation and shares of stock of whatsoever character or whatsoever class or classes of the surviving, succeeding, reorganized or acquiring corporation with or without cash or other securities or properties are issued to the shareholders of a corporation which is a party to such merger, consolidation, reorganization or acquisition of assets in like proportion to or in substitution for their shares in such corporation, all shares of stock so issued and also all cash and other securities and properties which may be so issued shall be principal.

(f) In applying this section, the date when a dividend accrues to the person who is entitled to it shall be held to be the date specified by the corporation as the one on which the stockholders entitled thereto are determined, or in default thereof, the date of declaration of the dividend.

(g) The trustee in his discretion may either distribute in kind any whole or fractional shares of stock or rights to subscribe which are

deemed income under this section, or may sell such shares or rights and distribute the net proceeds.

Source: This section is derived from Section 5 of the Principal and Income Act of 1947, July 3, P.L. 1283, amended 1963, August 1, P.L. 442.

Section 8106. Premium and discount bonds.—Where any part of the principal consists of bonds or other obligations for the payment of money, they shall be deemed principal at their inventory value, or in default thereof, at their market value at the time the principal was established, or at their cost where purchased later, regardless of their par or maturity value, and upon their respective maturities or upon their sale, any loss or gain realized thereon shall fall upon or enure to the principal: Provided, however, that:

(1) The scheduled increment in value of bonds, issued on a discount basis and subject to definite appreciation in value on a fixed schedule, shall constitute income as of each date on which an increment occurs, and shall be made available as income for such disposition as is provided by the terms of the transaction under which the principal was established by transferring from the principal on each such date an amount equivalent to the increment then occurring; and

(2) The increment in value of United States Treasury bills issued on a discount basis and subject to definite appreciation in value upon maturity but not on a fixed schedule shall constitute income at maturity.

Source: This section is derived from Section 6 of the Principal and Income Act of 1947, July 3, P.L. 1283, amended 1963, July 25, P.L. 314.

Section 8107. Principal used in business.—(a) Whenever a trustee or tenant is authorized by the terms of the transaction by which the principal was established, or by law, to use any part of the principal in the continuance of a business, which the original owner of the property comprising the principal had been carrying on, the net profits of such business attributable to such principal shall be deemed income.

(b) Where such business consists of buying and selling property, the net profits for any period shall be ascertained by deducting from the gross proceeds during, and the inventory value of the property at the end of such period, the expenses during, and the inventory value of the property at the beginning of such period.

(c) Where such business does not consist of buying and selling property, the net income shall be computed in accordance with the customary practice of such business, but not in such way as to decrease the principal.

(d) Any increase in the value of the principal used in such business

shall be deemed principal, and all losses in any one calendar year, after the income from such business for that year has been exhausted, shall fall upon principal.

Source: This section is derived from Section 7 of the Principal and Income Act of 1947, July 3, P.L. 1283.

Section 8108. Principal comprising animals.—Where any part of the principal consists of animals employed in business, the provisions of section 8107 shall apply, and in other cases where the animals are held as a part of the principal, partly or wholly, because of the offspring or increase which they are expected to produce, all offspring or increase shall be deemed principal to the extent necessary to maintain the original number of such animals, and the remainder shall be deemed income, and in all other cases, such offspring or increase shall be deemed income.

Source: This section is derived from Section 8 of the Principal and Income Act of 1947, July 3, P.L. 1283.

Section 8109. Disposition of natural resources.—Where any part of the principal consists of property in lands from which may be taken timber, minerals, coal, stone, oil, gas or other natural resources and the trustee or tenant is authorized by the terms of the transaction by which the principal was established or by order of court to sell, lease or otherwise develop such natural resources, or where such natural resources have been leased or developed prior to the transaction by which the principal was established, and no provision is made for the disposition of the net proceeds thereof after the payment of expenses and carrying charges on such property, one-third of the net proceeds, if received as rent or payment on a lease, or as royalties, shall be deemed income, and the remaining two-thirds thereof shall be deemed principal to be invested to produce income: Provided, That if a surviving spouse of the person establishing the principal shall be the sole tenant, he shall be entitled to such proportion of the net proceeds as he would be entitled to under the intestate laws, if the person establishing the principal were to die intestate at the time of the receipt of such proceeds, a resident of the Commonwealth and owning such proceeds, but this shall not include the \$10,000 allowance. Such proceeds if received as consideration for the permanent severance of such natural resources from the land, payable otherwise than as rents, or royalties, shall be deemed principal to be invested to produce income.

Nothing in this section shall be construed to abrogate or extend any right, which may otherwise have accrued by law to a tenant to develop or work such natural resources for his own use.

Source: This section is derived from Section 9 of the Principal and Income Act of 1947, July 3, P.L. 1283.

Section 8110. Interest-bearing obligations in default.—(a) Whenever the interest on an interest-bearing obligation, owned by a trust, shall be in default, in whole or in part, and the obligation shall be converted into money or property which can be fairly apportioned, or both, before the principal is finally distributed, then the tenant, or in case of his death, his personal representative shall be entitled to share in the net proceeds received from the property as delayed income to the extent hereinafter stated.

(b) Such delayed income shall be the difference between the net proceeds received from the conversion and the amount which, had it been placed at simple interest at the rate of 4% per annum for the period during which such interest was in default, in whole or in part, would have produced the net proceeds at the time of conversion. In no event shall delayed income exceed the defaulted interest upon the obligation. The net proceeds shall consist of the gross proceeds, including property other than money received from the conversion, less any expenses incurred in converting and preserving the asset, and less all carrying charges which have been paid out of principal, pending conversion, but shall not include net income received pending conversion.

(c) The tenant shall be entitled to receive from time to time and to keep the net income from any form of property or obligation into which such interest-bearing obligation may be converted, until it is finally converted into money or property which can be fairly apportioned, or both, and his share of the delayed income shall be reduced by the amount of income received and by the value of any beneficial use of the property which he may have had.

(d) In the case of successive tenants, the delayed income shall be divided among them, or their representatives, according to the length of the period for which each was entitled to income.

Source: This section is derived from Section 10 of the Principal and Income Act of 1947, July 3, P.L. 1283.

Section 8111. Expenses; trust estates.—(a) All ordinary expenses and charges, incurred in connection with the trust estate or with its administration and management, shall be paid out of income, but such expenses, where incurred in disposing of or as carrying charges on unproductive estate, shall be paid out of principal, and where incurred in disposing of, or as carrying charges on underproductive estate, shall be paid out of principal to the extent that the income from the property shall not be equal to such expenses.

(b) Trustees' compensation, compensation of assistants and court costs and attorneys' and other fees may be apportioned between income and principal as the court may direct.

(c) All other expenses including cost of investing or reinvesting principal, and other costs incurred in maintaining or defending any action to protect the trust or the property or assure the title thereof, unless due to the fault or cause of the tenant, and costs of or assessments for improvements to property, forming part of the principal, shall be paid out of the principal. Any tax levied by any authority, Federal, State or foreign, upon profits or gain defined as principal under the terms of subsection (b) of section 8103 shall be paid out of principal, notwithstanding said tax may be denominated a tax upon income by the taxing authority.

(d) Interest and penalties on inheritance and estate taxes, levied by any authority, Federal, State or foreign, shall be paid out of principal to the extent that such interest and penalties are in excess of the rate of return which has been or shall be realized from the estate during the time that such interest and penalty have accrued.

(e) Expenses paid out of income, according to subsection (a) hereof, which represent regularly recurring charges, shall be considered to have accrued from day to day, and shall be apportioned on that basis, whenever the right of the tenant begins or ends at some date other than the payment date of the expenses. Where the expenses to be paid out of income are of unusual amount, the trustee may distribute them throughout an entire year, or part thereof, or throughout a series of years. After such distribution, where the right of the tenant ends during the period, the expenses shall be apportioned between tenant and remainderman on the basis of such distribution.

Source: This section is derived from Section 11 of the Principal and Income Act of 1947, July 3, P.L. 1283.

Section 8112. Expenses; nontrust estates.—(a) The provisions of section 8111 so far as applicable shall govern the apportionment of expenses between tenants and remaindermen where no trust has been created; subject, however, to any legal agreement of the parties, or any specific direction of the taxing, or other statutes, but where either tenant or remainderman has incurred an expense for the benefit of his own estate, and without the consent or agreement of the other he shall pay such expense in full.

(b) The special taxes or assessments for an improvement, representing an addition of value to property, forming part of the principal, shall be paid by the tenant, where such improvement cannot reasonably be

expected to outlast the estate of the tenant. In all other cases a portion thereof only shall be paid by the tenant, while the remainder shall be paid by the remainderman. Such portion shall be ascertained by taking that percentage of the total which is found by dividing the present value of the tenant's estate by the present value of an estate of the same form as that of the tenant, except that it is limited for a period corresponding to the reasonably expected duration of the improvement. The computation of present values of the estates shall be made on the expectancy basis set forth in the American experience tables of mortality and no other evidence of duration of expectancy shall be considered.

Source: This section is derived from Section 12 of the Principal and Income Act of 1947, July 3, P.L. 1283.

CHAPTER 82

REVISED PRICE ACT

Section 8201. Powers of courts to authorize sale, etc., of certain lands.—The orphans' court division in all cases where real estate, or a ground-rent issuing thereout, shall be or shall have been acquired by descent or last will, partly by deed and partly by descent or last will, or by purchase by a trustee, executor, or guardian, and concurrently with the court of common pleas in all cases where real estate, or a ground-rent issuing thereout, shall be or shall have been acquired by deed or last will, partly by deed and partly by last will, or by purchase by a trustee of a trust inter vivos subject to the jurisdiction of the orphans' court division and in all other cases, the court of common pleas of each county of this Commonwealth, shall have jurisdiction with respect to real estate situate within the county, and, in the cases hereinafter specified, to authorize or confirm:

(1) The sale, mortgaging, conveying on ground-rent, and leasing thereof, or the extinguishment or assignment of ground-rents issuing thereout.

(2) The amicable partition and exchange thereof.

(3) The squaring and adjusting of lines between adjoining owners.

(4) The consolidation and combination of mining lands with other adjoining mining lands, so that they shall form one tract, and the leasing thereof in such manner that the several persons interested therein

shall be seized of undivided interests in the whole, proportionate to their several undivided interests before such combination and consolidation; the rents or royalties received under the lease to be apportioned among them in like proportions.

(5) The joining by owners of undivided interests in making and taking conveyances, in order to change, in part or in whole, the route or location of any right-of-way or passage existing over and upon adjoining or other lands.

(6) The subdivision of the premises so as to command the highest price or greatest rents; and for such purpose, where the premises shall admit of or require it, the laying out and dedication of roads, streets, and alleys, or the vacating of such as shall not have been paid for or received into actual use by the public, if found to be inconvenient and to make an unprofitable division of the property: Provided, That such court shall be of the opinion that such decree will be to the interest and advantage of all those interested therein, and without prejudice to any trust, charity, or purpose for which the real estate or ground-rent shall be held, and without the violation of any law which may confer an immunity or exempt from sale or alienation.

Source: This section is derived from Section 1 of the Revised Price Act, 1917, June 7, P.L. 388, amended 1939, May 12, P.L. 126.

Section 8202. When jurisdiction to be exercised.—(a) The several courts aforesaid shall exercise the jurisdiction conferred by section 8201 of this chapter in all cases.

(1) Where the legal title is held:

(i) by minors, lunatics, or habitual drunkards so duly found by inquisition, or by weak-minded persons for whom guardians have been appointed.

(ii) by a wife whose husband is a minor, or by a married minor whose spouse is a minor, or by a married woman or married man whose spouse is a lunatic, or has abandoned him or her for one year, or has been absent and unheard of for seven years, or who is one of the tenants of an estate by entireties, and whose spouse, the other tenant of such estate by entireties, has been absent and unheard from for seven years under those circumstances from which the law would presume his or her decease.

(iii) by corporations of any kind having no capacity to convey, or by any unincorporated association.

(iv) by any religious, beneficial, or charitable society or association, incorporated or unincorporated, and the total is subject to forfeiture

if real estate is held in excess of the amount prescribed by its charter, or now or hereafter prescribed by law.

(v) by a corporation of any kind, or individual or individuals, and is subject to a trust of any description whatever.

(vi) by any person who may have been absent and unheard from for seven years under those circumstances from which the law would presume his or her decease.

(vii) or any interest therein is held by any person under legal disability to dispose thereof.

(viii) by a husband and wife as tenants by the entireties and either spouse has been declared a weak-minded or mentally incompetent person and the spouse who is of sound mind joins in the petition to the court.

(2) Where the legal title is an estate tail or is subject to contingent remainders, executory devises, or remainders to a class, some or all of whom may not be in being or ascertained at the time of the entry of the decree.

(3) In all cases where estates shall have been devised or granted for special purposes.

(4) Where there is a power of sale; but

(i) the time may not have arrived for its exercise;

(ii) any preliminary act may not have been done to bring it into exercise;

(iii) the time limited for its exercise may have expired;

(iv) any one or more persons required to consent or join in its exercise may be a minor, non compos mentis, removed out of the State, have died, refuse to act, unreasonably withhold consent, or be absent and unheard of.

(5) Where there has been or shall be a defective appointment in any deed or will, and the necessary power is not given to the executor, devisee, or appointee to make sale and conveyance of real estate.

(6) Where a trust has been created, and no power conferred on the trustee to do any of the acts which the court is empowered to authorize or confirm under the provisions of section 8201 hereof.

(b) Such jurisdiction may be exercised whether the ownership or interest in real estate be held in severalty, joint tenancy, or tenancy in common, or by husband and wife as tenants by entireties.

Source: This section is derived from Section 2 of the Revised Price Act, 1917, June 7, P.L. 388, paragraph (1) last amended 1941, August 5, P.L. 824; subclauses

(i) and (viii) of (1) repealed insofar as applicable to estates of incompetents 1951, June 28, P.L. 612, Section 802.

Section 8203. Jurisdiction where land wholly in one county.—In all proceedings under the provisions of this chapter where the real estate shall lie wholly within one county the petition shall be presented only in the court of that county.

Source: This section is derived from Section 19(a) of the Revised Price Act, 1917, June 7, P.L. 388.

Section 8204. Jurisdiction and proceedings where land in two counties; recording mortgages.—When an application shall be made under the provisions of this chapter for the sale, mortgaging, leasing, or other proceedings relating to real estate, through which real estate the line dividing two or more counties runs, the court of the county in which the mansion-house is situated; or, if there be no mansion-house, the court of the county where the principal improvements may be; or, if there be no improvements, the court of either county, may exercise jurisdiction as to the whole of such real estate, irrespective of the county line; and any such sale, mortgaging, leasing, or other decree relating to real estate, shall be as effectual as if the whole of such real estate had been within the county whereof said court has jurisdiction. Notices of said proceedings as required by this chapter shall be given in all the counties in which the land is situated, and a certified copy of all proceedings shall be filed in the proper court, of each county in which said land is situated. Any mortgage taken to secure the purchase-money, or any part thereof, shall be duly recorded in each of the counties in which said lands lie, as required by law.

Source: This section is derived from Section 19(b) of the Revised Price Act, 1917, June 7, P.L. 388.

Section 8205. Existing laws, rights and powers not affected.—Nothing herein contained shall be taken to repeal or impair the authority of any act of Assembly, general or private, authorizing the sale of real estate, by decree of court or otherwise; nor to affect or impair any rights or powers, otherwise existing in any person or corporation, to do any of the acts which the court is empowered to authorize or confirm under the provisions of section 8201 of this chapter.

Source: This section is derived from Section 3 of the Revised Price Act, 1917, June 7, P.L. 388.

Section 8206. Petition, citation and proceedings.—All jurisdiction conferred by this chapter on the orphans' court division or the court of common pleas shall be exercised on the petition of any party in interest,

supported by oath or affirmation; and, if all proper parties shall not voluntarily appear as petitioners or respondents, the court shall fix a day for them to appear, and cause a citation to be served, on all persons in being who shall not have appeared, and who shall have any present or expectant interest in the premises, warning them to appear and that they shall be heard on the day designated; and, for those who cannot otherwise be served, cause advertisement to be made in manner most likely to afford notice; and service made in any part of the United States and the territories and possessions thereof or elsewhere, with oath or affirmation of the fact, taken before any judge or justice of the peace or notary public or any person authorized by laws of the United States to take oaths or affirmations in foreign countries, and filed of record, shall be good service. Service having been made as aforesaid, the court shall on the day fixed make such decree as shall be proper in the premises. Guardians shall be notified and appear for their wards; and, if minors have no guardian, the court may appoint one for them, in the manner now or hereafter prescribed by law for the appointment of guardians; and such appointment may be made on the petition of any party interested with notice to the persons who shall by law be charged with the duty of petitioning for the appointment of a guardian. Committees and guardians shall be notified and appear for lunatics, habitual drunkards, and weak-minded persons, and in each of such cases notice shall be given to the next of kin: Provided, That if it shall appear to the court that, after due investigation, it cannot be ascertained who are such next of kin, the court may direct that notice be given by advertisement, as above provided, to the next kin generally without naming or otherwise identifying them. Trustees shall be notified and appear for the cestuis que trust; provided cestuis que trust, of age and sound mind, having vested interests, or interests subject to a condition precedent, shall also be notified; and all cestuis que trust not in being, or unascertained, shall be represented by the trustees aforesaid.

Source: This section is derived from Section 4 of the Revised Price Act, 1917, June 7, P.L. 388, last amended 1923, June 29, P.L. 952.

Section 8207. Sale of land in which minor has remainder; disposition of proceeds.—Where lands and tenements are held by will, or otherwise, for life or pur auter vie, by any person or persons, with remainder to any minor or minors, and it shall appear to the court that it would be to the interests of such minor or minors that the same should be sold, in every such case, upon the application of the tenant or tenants for life or pur auter vie, as the case may be, the said court shall appoint a trustee to make sale of said lands; and the said trustee shall receive and

hold the proceeds of such sale in trust for the parties in interest therein, and shall invest the same in investments authorized by law, and shall pay the interest thereof as it shall accrue to the tenants for life or pur auter vie, until the estate for life or pur auter vie shall have terminated, and shall then pay over the principal sum to the person or persons entitled to such remainder.

Source: This section is derived from Section 6 of the Revised Price Act, 1917, June 7, P.L. 388.

Section 8208. Effect of decree; requisites of petition.—Every such decree made by the court shall have the effect, as to the title authorized to be transferred:

(1) Of a common recovery to bar an estate tail or a remainder, whether contingent or to a class.

(2) Of barring executory devises.

(3) Of defeating the right of the Commonwealth to forfeit real estate that may have been held by or for any corporation in excess of the amount now or hereafter duly authorized by law, only, however, in the case where no proceedings to procure a forfeiture shall have been commenced before the filing of the petition.

(4) Of discharging the lien of decedents' debts not of record.

In all cases where the proceedings shall be for the purpose of freeing the title of any of the limitations or defeasibility described in this section, that purpose shall be set forth in the petition, in addition to the explanation of the title.

Source: This section is derived from Section 7 of the Revised Price Act, 1917, June 7, P.L. 388.

Section 8209. Appointment of master.—In all cases where an application shall be made to the court for a decree authorized under any of the provisions of this chapter, the court may appoint a suitable person as master to investigate the facts of the case, and to report upon the expediency of granting the application, and, in cases where authority is asked to make a sale or mortgage, upon the amount to be raised thereby; and, upon such report being made, the court may decree accordingly.

Source: This section is derived from Section 12 of the Revised Price Act, 1917, June 7, P.L. 388.

Section 8210. Bond to secure application of moneys.—In all cases where the carrying out of any decree of the court, under the provisions

of this chapter, shall involve the receipt of money by the person carrying it out, the court shall direct the person acting under the decree to file a bond to the Commonwealth, in a sufficient amount, conditioned for the proper application of all moneys to be received; which bond shall inure to the benefit of all parties interested, and be executed by two individual sureties, or by one corporate surety, approved by the court; and, before any such decree shall be executed, such bond, with sureties as may be required, shall be filed: Provided, That where a corporation duly authorized by law shall be designated to carry out any such decree, the court may, in lieu of security as aforesaid, permit such corporation to enter its own bond without surety.

Source: This section is derived from Section 13 of the Revised Price Act, 1917, June 7, P.L. 388.

Section 8211. Execution of conveyances.—In all cases where, under the provisions of this chapter, sales, mortgages, leases, or conveyances on ground-rent shall be authorized or directed the same shall be made by executors, administrators, guardians, trustees, committees, or owners having a present vested interest, or trustees appointed for the purpose, as the court may order.

Source: This section is derived from Section 5 of the Revised Price Act, 1917, June 7, P.L. 388.

Section 8212. Title acquired; nonliability of purchaser.—The title transferred in pursuant of any such decree of the court shall be such as is authorized in the decree, which title shall be indefeasible by any person, ascertained or unascertained, or any class of persons mentioned in the petition or decree and having a present or expectant interest in the premises, and shall be unprejudiced by any error in the proceedings of the court; and where security shall be entered, in accordance with the provisions hereof, no party who shall pay over money in pursuance of the decree of the court shall be liable to see to the application thereof, or be in any manner liable for or affected by any lien of debts of a decedent not of record, or by any trust limitation of or defects in the title set out in the petition or decree in pursuance of which the money is paid over.

Source: This section is derived from Section 8 of the Revised Price Act, 1917, June 7, P.L. 388.

Section 8213. Payment or foreclosure of mortgage.—In all cases where the court shall authorize or confirm the making of a mortgage in any of the cases provided for in this chapter, the title shall, upon the mortgage being duly paid and satisfied of record, revert to its former condition, except that nothing herein contained shall operate to extend

the lien of the debts of a decedent not of record beyond the time now or hereafter allowed by law; and, upon legal proceedings being brought upon the mortgage or bond accompanying the same, as may now or hereafter be provided by law, and the title being sold at sheriff's sale in pursuance of such proceedings, the surplus proceeds of the sale, if any, after paying the mortgage, with interest and all costs, and liens which may by law be payable out of the fund, shall be paid over to the party who made the mortgage, or such other person as the court may direct or appoint for that purpose, to be held by him as part of the mortgage-money and subject to the same liens or limitations: Provided, That the sheriff shall not pay over any such sum until such additional bond shall be filed as the orphans' court division may require under the circumstances of the case.

Source: This section is derived from Section 9 of the Revised Price Act, 1917, June 7, P.L. 388.

Section 8214. Title to money or property received on sale, exchange, etc.; distribution, investment or application.—The purchase-money, mortgage-money, ground or other rents reserved or the title received in the case of an exchange or partition, for the title subject to a lien or limitation, shall be held for and applied to the use and benefit of the same person and for the same interests, legal or equitable, present or future, vested, contingent or executory, as the title so sold, mortgaged, conveyed on ground-rent, let, partitioned, or exchanged had been subject or held, excepting only the case of an estate tail, or the title of a corporation subject to forfeiture, which in each case shall by the proceedings, without the necessity of a bond being filed by either the corporation or the tenant in tail, be converted into an absolute estate in fee simple; and all remainders, whether contingent or to a class, executory devises, and debts of a decedent not of record, shall be transferred to the fund or title raised by the proceedings in pursuance of the decree, as to which fund or title they shall take effect, in like manner as they would have taken effect as to the title transferred under the decree. The court shall make such order or orders, from time to time, as to the distribution or investment of such funds, as may become entitled thereto, or to any part thereof. In every case of a sale, mortgage, lease, or conveyance on ground-rent, under the provisions hereof, the purchase-money, mortgage-money, ground-rent or other rents reserved, shall, nevertheless, have and retain the quality of real estate as respects the devolution, under the intestate laws, of the interest of any infant, lunatic, or person non compos mentis, as whose property the land was sold, mortgaged, leased, or conveyed on ground-rent. The court may

direct the application of such proceeds, or part thereof, for the maintenance and education of minor parties whose personal estate shall be insufficient for such purposes; or, generally, for the maintenance or education of parties having the like interest, vested or expectant; provided such moneys can be equally and equitably so applied, and without diminution of the capital that may of right become the property of parties having unbarred interests or title in remainder or by executory devise.

Source: This section is derived from Section 10 of the Revised Price Act, 1917, June 7, P.L. 388.

Section 8215. How moneys expended.—No principal moneys raised by sale or mortgage, as aforesaid, shall be expended for any other purpose than for the payment of liens upon or the improvement of the same real estate when mortgaged, or other real estate when held for the same uses and persons, except as provided in section 8214 of this chapter, and it shall be the duty of the court to decree the proper application of all purchase-moneys and rents, with the aid of an auditor when deemed necessary, to the discharge of liens, and to parties interested, as and when they may be entitled.

Source: This section is derived from Section 11 of the Revised Price Act, 1917, June 7, P.L. 388.

Section 8216. Before whom instruments may be acknowledged.—All deeds, mortgages, or leases executed in pursuance of any decree of the court, under the provisions of this chapter, may be acknowledged before any officer or person now or hereafter authorized by the laws of this Commonwealth to take the acknowledgment of deeds and other instruments of writing to be recorded therein.

Source: This section is derived from Section 16 of the Revised Price Act, 1917, June 7, P.L. 388.

Section 8217. Title not affected by defect in appointment.—Whenever any person therein described as a trustee, guardian, executor, administrator, or as standing in any other fiduciary relation to the parties interested, shall grant and convey or mortgage any real estate, in which proceedings security shall be duly entered by him or her under the order or decree of the court, no irregularity or defect in his or her original appointment, or the absence of any proper qualification in respect thereto, shall affect the title of the grantee, purchaser, or mortgagee, or the liability of the sureties, but the same shall be as valid in all respects as if such irregularity or defect had not existed.

Source: This section is derived from Section 17(f) of the Revised Price Act, 1917, June 7, P.L. 388.

Section 8218. Nonliability of purchaser for misapplication of purchase price.—Whenever a public or private sale of real estate shall be authorized, directed, or confirmed by any court, under the provisions of this chapter, the person or persons purchasing the real estate so sold, and taking title in pursuance of the decree of the court, shall take such title free and discharged of any obligation to see to the application of the purchase-money.

Source: This section is derived from Section 23 of the Revised Price Act, 1917, June 7, P.L. 388.

Section 8219. Notice of public sales.—Whenever, by the provisions of this chapter, it shall be lawful for the court to order the public sale of real estate, public notice of such sale shall be given by the person who is to make the sale, once a week, for a period of three weeks before the day appointed therefor, by advertisement in the legal periodical, if any, designated by rule of court for the publication of legal notices, and in at least one newspaper published in the county, if there be one, or, if there be none, then in an adjoining county; and in all cases notice shall also be given by handbills, one of which shall be posted at a conspicuous place on the real estate proposed to be sold, and at least three of which shall be posted at three of the most public places in the vicinity of such estate.

Source: This section is derived from Section 14 of the Revised Price Act, 1917, June 7, P.L. 388.

Section 8220. Terms of sale; security for unpaid purchase money.—Whenever, under the provisions of this chapter, the court has power to authorize or confirm a sale of real estate, the same may be made upon such terms as the court shall approve; all unpaid purchase-money to be secured on the premises by mortgage.

Source: This section is derived from Section 15 of the Revised Price Act, 1917, June 7, P.L. 388.

Section 8221. Effect of sale on liens.—All public sales of real estate under the provisions of this chapter, shall have the effect of judicial sales as to the discharge of liens upon the real estate so sold, but private sales shall not discharge the liens of debts of record.

Source: This section is derived from Section 22 of the Revised Price Act, 1917, June 7, P.L. 388.

Section 8222. Confirmation of sales.—All public sales of real estate under the provisions of this chapter, shall be subject to confirmation by said court; but, in the case of private sales authorized or directed

under the provisions of this chapter, no return or confirmation shall be necessary.

Source: This section is derived from Section 21 of the Revised Price Act, 1917, June 7, P.L. 388.

Section 8223. Proceedings where fiduciary dies or is removed or neglects to execute deed.—In all cases where the sale of real estate shall be made by an executor, administrator, guardian, or trustee, under an order of or confirmed by the court, or where the making of a mortgage by such fiduciary shall be authorized by said court, and the letters testamentary or of administration shall be revoked, or the executor, administrator, guardian, or trustee shall be removed or shall die or become insane, or otherwise be incapable, before a conveyance is made to the purchaser or before a mortgage is executed and delivered, it shall be lawful for the successor of such executor, administrator, guardian, or trustee, having first given security, to be approved by the said court, for the faithful appropriation of the proceeds of such sale, to execute and deliver to the purchaser a deed of conveyance for the estate so sold, on the purchaser's full compliance with the terms and conditions of sale, or to execute and deliver said mortgage. If there shall be no such successor who shall have given security as aforesaid, the said court shall have power, on petition of the purchaser, to direct the clerk of the court to execute and deliver to the purchaser the necessary deed of conveyance, on his full compliance with the terms and conditions of sale, paying into court the moneys payable, and executing and delivering to the clerk any bond and mortgage required by the said terms and conditions; which moneys and bond and mortgage shall remain subject to the disposition of the court; or, where the making of a mortgage by a fiduciary shall be authorized by said court, the court under the circumstances aforesaid shall have power to direct the clerk of the court to execute and deliver such mortgage. The like proceedings may be had where an executor, administrator, guardian, or trustee shall neglect or refuse to execute and deliver such deed or mortgage for the space of 30 days after due notice of an order of the court requiring him to execute and deliver the same.

Source: This section is derived from Section 17(a) of the Revised Price Act, 1917, June 7, P.L. 388.

Section 8224. Where joint fiduciary dies or becomes incapacitated.—In all cases where the sale of real estate shall be made by co-executors, co-administrators, co-guardians, or co-trustees, under an order of or confirmed by the court, or where the making of a mortgage by such co-fiduciaries shall be authorized by said court, and if one or more of

such co-fiduciaries shall be removed or shall die or become insane, or otherwise be incapable, before a conveyance is made to the purchaser or before such mortgage is executed and delivered, said court may, upon the facts being made to appear, by petition duly verified, authorize the surviving or remaining fiduciary or fiduciaries to execute and deliver to the purchaser a deed of conveyance for the real estate so sold, on the purchaser's full compliance with the terms and conditions of sale, or to execute and deliver such mortgage.

Source: This section is derived from Section 17(b) of the Revised Price Act, 1917, June 7, P.L. 388.

Section 8225. Where joint fiduciary dies or becomes incapable before sale is made.—Where authority is or shall be given by decree of any court to executors, administrators, guardians, or trustees to sell real estate, and any of such executors, administrators, guardians, or trustees shall have died, been removed, become insane, or otherwise be incapable, or cease to act, before a sale is effected, in all such cases said court may, upon the facts being made to appear by petition duly verified, authorize the surviving or remaining fiduciary or fiduciaries to effect such sales, with as full effect in all particulars as it effected or executed by the executors, administrators, guardians, or trustees in office at the time the sale was originally decreed.

Source: This section is derived from Section 17(c) of the Revised Price Act, 1917, June 7, P.L. 388.

Section 8226. Effect of sale or conveyance.—Every sale made, and every deed or mortgage executed and delivered, in pursuance of and agreeably to the provisions of sections 8217, 8223, 8224, 8225, 8226, or 8227, shall vest the property therein described in the grantee or mortgagee as fully and effectually as if the same had been made, executed, and delivered by all the fiduciaries to whom the authority to sell or mortgage was originally given.

Source: This section is derived from Section 17(d) of the Revised Price Act, 1917, June 7, P.L. 388.

Section 8227. Title not affected by subsequent removal of fiduciary.—In all cases of sales or mortgages under the order of or confirmed by the court, the title of the purchaser or mortgagee shall not be affected by the subsequent revocation of the letters testamentary or of administration of the executor or administrator making such sale or mortgage, or

by the subsequent removal of the executor, administrator, guardian, or trustee making such sale or mortgage.

Source: This section is derived from Section 17(e) of the Revised Price Act, 1917, June 7, P.L. 388.

Section 8228. Sale or mortgage to fiduciary.—Whenever any court, having jurisdiction under this chapter, to decree a sale or mortgage of real estate, shall issue its order to any executor, administrator, guardian, or trustee, specially appointed for the purpose, or otherwise, to sell or mortgage such real estate, and shall in any case within its jurisdiction give authority to any executor, administrator, guardian, or trustee to bid at such sale, and shall confirm the sale to such fiduciary; or shall authorize the making of such mortgage to any executor, administrator, guardian, or trustee; the said court may make an order directing its clerk to execute a deed or mortgage, as the case may be, for said real estate, to such purchaser or mortgagee, who shall give security and shall account for the amount of said purchase-money or mortgage-money in the settlement of his accounts to said court.

Source: This section is derived from Section 18 of the Revised Price Act, 1917, June 7, P.L. 388.

Section 8229. Private sale may be authorized.—The courts of the several counties of this Commonwealth, in all cases where under the provisions of this chapter such courts have power to order the sale of real estate, may authorize or direct a private sale, if, in the opinion of the court, under all the circumstances, a better price can be obtained at private than at public sale, as where the interest shall be undivided, or for any other sufficient cause.

Source: This section is derived from Section 20(a) of the Revised Price Act, 1917, June 7, P.L. 388.

Section 8230. Objects to private sale and proceedings thereon.—Any party interested as heir, devisee, or intending purchaser, or any legatee whose legacy is by the express terms of the will or by law charged on such real estate, may appear and object to such private sale on account of the insufficiency of the price, and, if such objection be sustained, may offer to give or pay a substantial increase for such property; and the court, at its discretion, may thereupon authorize or direct such sale, or refuse to authorize or direct the same, and accept any substantially increased offer, and may authorize the sale of such property to such new bidder, upon compliance with the conditions of sale and giving such security as shall be directed by the court; or such party interested or legatee may appear, as aforesaid, and object to such sale on any

legal or equitable grounds: Provided, That nothing herein contained shall be construed to affect the existing law with respect to objections to public sales.

Source: This section is derived from Section 20(b) of the Revised Price Act, 1917, June 7, P.L. 388.

Section 8231. Appeals.—In all cases and proceedings under this chapter appeals may be taken to the proper appellate court, from the orphans' court division as now provided by law in other cases, and from the court of common pleas as provided in equity cases: Provided, That if any decree be carried into execution before the appeal be perfected and written notice thereof given to any vendee, mortgagee, or lessee, any reversal thereof shall not affect the right or title of such vendee, mortgagee, or lessee; but the purchase- or mortgage-moneys or rents shall stand in lieu of the premises sold or mortgaged or leased, so far as thus encumbered: Provided further, That before any decree be carried into effect to afford such indemnity, 21 days be allowed from its entry to take and perfect such appeal.

Source: This section is derived from Section 24 of the Revised Price Act, 1917, June 7, P.L. 388.

Section 8232. Ratification of certain sales heretofore made.—All sales of lands and tenements subject to vested remainders liable to open and let in after-born children, heretofore made by order of any court and purporting to have been made under and by virtue of said chapter, are hereby ratified and confirmed.

Source: This section is derived from the act of 1897, June 14, P.L. 144.

Section 8233. Sales heretofore made under decree of court validated.—All sales, mortgages, or lettings, or conveyances upon ground-rent, heretofore made under decrees of the orphans' court division, or courts of common pleas of this Commonwealth in cases within the scope and operation of this chapter, and which have been fully consummated in good faith, are hereby validated.

Source: This section is derived from the act of 1897, June 15, P.L. 159.

Section 8234. Sales of real estate of lunatics confirmed.—In all cases where sales of the real estate of lunatics have been made under the act of April 18, 1853, P.L. 503, entitled "An act relating to the Sale and Conveyance of Real Estate," the same shall be valid and effectual, notwithstanding such real estate may have been derived by descent or will.

Source: This section is derived from the act of 1856, April 21, P.L. 486.

CHAPTER 84
MILITARY SERVICE

SUBCHAPTER A
FIDUCIARIES IN MILITARY SERVICE

Section 8401. Definition of terms.—When used in this act:

“Fiduciary.” Includes an executor, administrator, trustee under a will, deed or declaration, trustee *durante absentia*, guardian of the estate of a minor, weak-minded person, habitual drunkard or incompetent and committee of a lunatic.

Whenever a reference is made to a “fiduciary in military service” this shall include fiduciaries who are members of the armed forces of the United States of any allied or associated power or who are detailed by proper authority for duty with such armed forces.

Source: This section is derived from Section 1 of the act of March 20, 1942, (Ex. Sess.) P.L. 13.

Section 8402. Powers of courts with respect to fiduciaries in military service.—Whenever and for so long as any fiduciary is or shall be in military service the court having jurisdiction of the accounts of such fiduciary shall have power in its discretion:

(1) To authorize the co-fiduciary or co-fiduciaries, if any to exercise all of the power of such fiduciary, whether discretionary or ministerial, or

(2) To appoint a substituted fiduciary *pro tem* to act in place of such fiduciary and to authorize such substituted fiduciary *pro tem* to exercise all of the powers and discretion of the fiduciary in military service.

Source: This section is derived from Section 2 of the act of March 20, 1942, (Ex. Sess.) P.L. 13.

Section 8403. Petition for relief; joinder of parties; notice.—The relief authorized by section 8402 of this chapter may be granted upon petition of any party in interest, including the fiduciary in military service or any co-fiduciary. It shall not be necessary to secure the joinder of any other party in interest in such petition, but notice of the presentation of the petition shall be given to all parties in interest who are *sui juris* at such time and in such manner as the court may direct by general rule or special order.

Source: This section is derived from Section 3 of the act of March 20, 1942, (Ex. Sess.) P.L. 13.

Section 8404. Security by substituted fiduciaries; duties and responsibilities.—Any substituted fiduciary pro tem appointed under the provision of section 8402 of this chapter shall enter such security, if any, as the court may direct and shall receive such compensation as the court may allow. Such substituted fiduciary pro tem shall be subject to the same duties and responsibilities with respect to accounting, and otherwise, during the period that he hold office as the fiduciary in military service would have been if not in such service.

Source: This section is derived from Section 4 of the act of March 20, 1942, (Ex. Sess.) P.L. 13.

Section 8405. Duration of decree; impeachment of acts.—Any decree entered pursuant to the provisions of section 8402 of this chapter shall remain in force until revoked by the court upon cause shown and no act done by any substituted fiduciary pro tem or co-fiduciary or co-fiduciaries while such decree is in force shall be impeached on the ground that a fiduciary was not in or had ceased to be in military service.

Source: This section is derived from Section 5 of the act of March 20, 1942, (Ex. Sess.) P.L. 13.

Section 8406. Fiduciaries relieved of duties and liabilities while in military service.—So long as any decree entered pursuant to the provisions of section 8402 of this chapter remains in force the fiduciary named therein as being in military service shall exercise none of his or her fiduciary powers or discretion and shall be under no liability for any acts or omissions of the substituted fiduciary pro tem or of any co-fiduciary or co-fiduciaries during that period: Provided, That nothing contained in this chapter shall relieve a fiduciary who enters military service from liability for the administration of the estate before the entry of a decree under the provisions of section 8402 of this chapter and upon the reinstatement of such fiduciary or at such time as the said court deems meet such fiduciary may be required by said court to file an accounting of his administration of said estate.

Source: This section is derived from Section 6 of the act of March 20, 1942, (Ex. Sess.) P.L. 13.

Section 8407. Power to control, remove, discharge and settle accounts.—The court appointing a substituted fiduciary pro tem under the provisions of section 8402 of this chapter shall have the same powers of control, removal, discharge and settlement of the accounts of such substituted fiduciary as are conferred upon it by existing law with respect to other fiduciaries.

Source: This section is derived from Section 7 of the act of March 20, 1942, (Ex. Sess.) P.L. 13.

SUBCHAPTER B

NOTICE TO VETERANS' BUREAU

Section 8411. Notice of action to United States Veterans' Bureau.—In any action brought under any law of this Commonwealth for the appointment of a committee or guardian for a veteran of any war, or a minor child, or incompetent dependent of a veteran of any war, on whose account benefits of compensation or insurance or other gratuity is payable by the United States Veterans' Bureau, or its successor, or upon the filing of any petition or account by any such committee or guardian of any such person, notice of such action, or of the filing of such petition or account, and of the hearing thereon, shall be mailed the attorney of the United States Veterans' Bureau office having jurisdiction over such person. In all such cases, the United States Veterans' Bureau, or its successor, shall be a party in interest, and a certified copy of each account filed in the court shall be supplied the said bureau by the committee or guardian.

Source: This section is derived from Section 1 of the Act of 1929, April 24, P.L. 647.

Section 8412. Veterans' Bureau's objection to account; costs.—In any action or proceeding wherein the attorney of the bureau objects to the account of the committee or guardian, and such committee or guardian is removed for cause, costs shall not be allowed out of the ward's estate, but may be taxed against the defaulting committee or guardian.

Source: This section is derived from Section 2 of the Act of 1929, April 24, P.L. 647.

CHAPTER 85

SIMULTANEOUS DEATH

Section 8501. 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 he had survived, except as provided otherwise in this chapter.

Source: This section is derived from Section 1 of the act of June 19, 1941, P.L. 138.

Section 8502. Beneficiaries of another person's disposition of prop-

erty.—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.

Source: This section is derived from Section 2 of the act of June 19, 1941, P.L. 138.

Section 8503. Joint tenants or tenants by the entirety.—Where there is no sufficient evidence that two joint tenants or tenants by the entirety 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.

Source: This section is derived from Section 3 of the act of June 19, 1941, P.L. 138.

Section 8504. 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.

Source: This section is derived from Section 4 of the act of June 19, 1941, P.L. 138.

Section 8505. Chapter does not apply if decedent provides otherwise.—This chapter shall not apply in the case of wills, living trusts, deeds or contracts of insurance wherein provision has been made for distribution of property different from the provisions of this chapter.

Source: This section is derived from Section 6 of the act of June 19, 1941, P.L. 138.

CHAPTER 86

ANATOMICAL GIFTS

Section 8601. Definitions.—As used in this chapter:

“Bank or storage facility.” Means a facility licensed, accredited, or

approved under the laws of any state for storage of human bodies or parts thereof.

“Decedent.” Means a deceased individual and includes a stillborn infant or fetus.

“Donor.” Means an individual who makes a gift of all or part of his body.

“Hospital.” Means a hospital licensed, accredited, or approved under the laws of any state; includes a hospital operated by the United States Government, a state, or a subdivision thereof, although not required to be licensed under state laws.

“Part.” Means organs, tissues, eyes, bones, arteries, blood, other fluids and any other portions of a human body.

“Person.” Means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

“Physician” or “surgeon.” Means a physician or surgeon licensed or authorized to practice under the laws of any state.

“State.” Includes any state, district, commonwealth, territory, insular possession, and any other area subject to the legislative authority of the United States of America.

“Board.” Means the Humanity Gifts Registry.

Source: This section is derived from Section 1 of the act of 1969, December 16, P.L. 366, amended 1971, November 5, P.L.—(Act. No. 126).

Section 8602. Persons who may execute an anatomical gift.—(a) Any individual of sound mind and 21 years of age or more may give all or any part of his body for any purpose specified in section 8603, the gift to take effect upon death. A gift of the whole body shall be invalid unless made in writing at least 15 days prior to the date of death.

(b) Any of the following persons, in order of priority stated, when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class, may give all or any part of the decedent’s body for any purpose specified in section 8603:

- (1) The spouse;
- (2) An adult son or daughter;
- (3) Either parent;
- (4) An adult brother or sister;

(5) A guardian of the person of the decedent at the time of his death; and

(6) Any other person authorized or under obligation to dispose of the body.

(c) If the donee has actual notice of contrary indications by the decedent or that a gift by a member of a class is opposed by a member of the same or a prior class, the donee shall not accept the gift. The persons authorized by subsection (b) may make the gift after or immediately before death.

(d) A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended.

(e) The rights of the donee created by the gift are paramount to the rights of others except as provided by section 8607(d).

Source: This section is derived from Section 2 of the act of 1969, December 16, P.L. 366.

Section 8603. Persons who may become donees; purposes for which anatomical gifts may be made.—The following persons may become donees of gifts of bodies or parts thereof for the purposes stated:

(1) Any hospital, surgeon, or physician, for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation; or

(2) Any accredited medical or dental school, college or university for education, research, advancement of medical or dental science, or therapy; or

(3) Any bank or storage facility, for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation; or

(4) Any specified individual for therapy or transplantation needed by him; or

(5) The board.

Source: This section is derived from Section 3 of the act of 1969, December 16, P.L. 366.

Section 8604. Manner of executing anatomical gifts.—(a) A gift of all or part of the body under section 8602(a) of this chapter may be made by will. The gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated, or if it is declared invalid for testamentary purposes, the gift, to the extent that it has been acted upon in good faith, is nevertheless valid and effective.

(b) A gift of all or part of the body under section 8602(a) may also be made by document other than a will. The gift becomes effective upon the death of the donor. The document, which may be a card designed to be carried on the person, must be signed by the donor in the presence of two witnesses who must sign the document in his presence. If the donor is mentally competent to signify his desire to sign the document but is physically unable to do so, the document may be signed for him by another at his direction and in his presence in the presence of two witnesses who must sign the document in his presence. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid.

(c) The gift may be made to a specified donee or without specifying a donee. If the latter, the gift may be accepted by the attending physician as donee upon or following death. If the gift is made to a specified donee who is not available at the time and place of death, the attending physician upon or following death, in the absence of any expressed indication that the donor desired otherwise, may accept the gift as donee. The physician who becomes a donee under this subsection shall not participate in the procedures for removing or transplanting a part.

(d) Notwithstanding section 8607(b), the donor may designate in his will, card, or other document of gift the surgeon or physician to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the gift may employ or authorize any surgeon or physician for the purpose.

(e) Any gift by a person designated in section 8602(b), shall be made by a document signed by him or made by his telegraphic, recorded telephonic, or other recorded message.

Source: This section is derived from Section 4 of the act of 1969, December 16, P.L. 366.

Section 8605. Delivery of document of gift.—If the gift is made by the donor to a specified donee, the will, card, or other document, or an executed copy thereof, may be delivered to the donee to expedite the appropriate procedures immediately after death. Delivery is not necessary to the validity of the gift. The will, card, or other document, or an executed copy thereof, may be deposited in any hospital, bank or storage facility or registry office that accepts it for safekeeping or for facilitation of procedures after death. On request of any interested party upon or after the donor's death the person in possession shall produce the document for examination.

Source: This section is derived from Section 5 of the act of 1969, December 16, P.L. 366.

Section 8606. Amendment or revocation of the gift.—(a) If the will, card, or other document or executed copy thereof, has been delivered to a specified donee, the donor may amend or revoke the gift by:

- (1) The execution and delivery to the donee of a signed statement; or
- (2) An oral statement made in the presence of two persons and communicated to the donee; or
- (3) A statement during a terminal illness or injury addressed to an attending physician and communicated to the donee; or
- (4) A signed card or document found on his person or in his effects.

(b) Any document of gift which has not been delivered to the donee may be revoked by the donor in the manner set out in subsection (a), or by destruction, cancellation, or mutilation of the document and all executed copies thereof.

(c) Any gift made by a will may also be amended or revoked in the manner provided for amendment or revocation of wills, or as provided in subsection (a).

Source: This section is derived from Section 6 of the act of 1969, December 16, P.L. 366.

Section 8607. Rights and duties at death.—(a) The donee may accept or reject the gift. If the donee accepts a gift of the entire body, he shall subject to the terms of the gift, authorize embalming and the use of the body in funeral services if the surviving spouse or next of kin as determined in section 8602(b) requests embalming and use of the body for funeral services. If the gift is of a part of the body, the donee, upon the death of the donor and prior to embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the surviving spouse, next of kin, or other persons under obligation to dispose of the body.

(b) The time of death shall be determined by a physician who tends the donor at his death, or, if none, the physician who certifies the death. The physician who certifies death or any of his professional partners or associates shall not participate in the procedures for removing or transplanting a part.

(c) A person who acts in good faith in accord with the terms of this act or with the anatomical gift laws of another state or a foreign country is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for his act.

(d) The provisions of this act are subject to the laws of this State prescribing powers and duties with respect to autopsies.

Source: This section is derived from Section 7 of the act of 1969, December 16, P.L. 366.

CHAPTER 87

EMPLOYEE BENEFITS

Section 8701. Existing trust may continue for term necessary to accomplish purpose.—Any trust created prior to January 1, 1948, primarily for the benefit of employes, their families or appointees, under any stock, bonus, pension, disability, death benefit, profit sharing or other employe benefit plan, to which contributions are made by the employer or employes or both for the purpose of distributing to or for the benefit of the employes, their families, or appointees, the earnings or the principal, or both earnings and principal of the fund held in trust, may continue in perpetuity, or for such time as may be necessary to accomplish the purpose for which it was created, and shall not be invalid as violating any statute or rule of law against perpetuities, or against accumulations or concerning the suspension of the power of alienation of the title to property.

Source: This section is derived from Section 1 of the act of 1947, June 5, P.L. 477.

Section 8702. Combining trusts.—Whenever two or more trusts heretofore have been or hereafter shall be created primarily for the benefit of the employes of the same employer or their families or appointees under any stock, bonus, pension, disability, death benefit, profit sharing or other employe benefit plan or plans and the court of common pleas having jurisdiction over any one of such trusts, upon the application of the employer who established such trusts, any trustee thereof or any other party in interest, shall find that such trusts can be more effectively administered if they are combined, the court, in its discretion, after such notice to parties in interest as the court shall direct, may order that they be combined into one trust, which may be one of such existing trusts, in the manner and to the extent that the court shall approve, but not so as to violate any express provision to the contrary in any conveyance creating any of the trusts so combined.

Source: This section is derived from Section 1 of the act of 1959, September 21, P.L. 923.

Section 8703. Transfer of assets to corporate trustee; investments; common trust funds.—The trustee or trustees of any employe benefit plan, such as a pension, welfare, profit sharing, share, purchase, or other plan, may transfer any part of the property and assets of the plan, in trust, to a corporate trustee which shall be a bank and trust company or trust company, incorporated under the laws of Pennsylvania, or a national banking association, having fiduciary powers and having its

principal office in Pennsylvania, and may authorize such corporate trustee to invest and reinvest such property and assets subject to the same powers, restrictions and obligations with respect to investment and reinvestment of such property and assets as are applicable to the trustee or trustees making such transfer, and to contribute such property and assets to any common trust fund which the transferee may be otherwise authorized to maintain and to pay over the net income therefrom at such intervals as may be agreed: Provided, however, That such transfer in trust may be at any time revoked by action of the trustee or trustees so making transfer.

Source: This section is derived from Section 1 of the act of 1959, December 1, P.L. 1637.

Section 8704. Payments upon employes death; third party claims.—The trustee, custodian or committee charged with the responsibility of disbursing funds from any trust, custodial account, annuity or other funding arrangement under a pension, profit sharing, stock bonus, deferred compensation, disability, death benefit or other plan established by an employer for the benefit of its employes and their beneficiaries may pay funds upon the death of an employe or former employe to the beneficiaries entitled thereto under the plan or under a designation by the employe made pursuant to the plan and by making such payment shall be released from all claims by third parties. Pending such payment, such trustee, custodian or committee shall not be required to recognize any claim by third parties or to withhold disbursement pending the resolution of such claims, in the absence of an appropriate court order directed to it restraining such disbursement until further order of such court or instructing it to make disbursement of the account as provided in the order. Any person to whom payment is made shall be answerable therefor to anyone prejudiced thereby.

Source: This section is derived from Section 1 of the act of 1967, August 11, P.L. 224.

CHAPTER 88

SLAYERS

Section 8801. Definition of terms.—As used in this chapter:

“Slayer.” Means any person who participates, either as a principal or as an accessory before the fact, in the wilful and unlawful killing of any other person.

“Decedent.” Means any person whose life is so taken.

“Property.” Includes any real and personal property and any right or interest therein.

Source: This section is derived from Section 1 of the act of 1941, August 5, P.L. 816.

Section 8802. Slayer not to acquire property as result of slaying.—No slayer shall in any way acquire any property or receive any benefit as the result of the death of the decedent, but such property shall pass as provided in the sections following.

Source: This section is derived from Section 2 of the act of 1941, August 5, P.L. 816.

Section 8803. Descent, distribution, dower, curtesy and statutory rights as survivor.—The slayer shall be deemed to have predeceased the decedent as to property which would have passed from the decedent or his estate to the slayer under the statutes of descent and distribution or have been acquired by dower, by curtesy or by statutory right as surviving spouse.

Source: This section is derived from Section 3 of the act of 1941, August 5, P.L. 816.

Section 8804. Legacies.—Property which would have passed to or for the benefit of the slayer by devise or legacy from the decedent shall be distributed as if he had predeceased the decedent.

Source: This section is derived from Section 4 of the act of 1941, August 5, P.L. 816, amended 1947, May 23, P.L. 302.

Section 8805. Tenancies by the entirety.—One-half of any property held by the slayer and the decedent as tenants by the entirety shall pass upon the death of the decedent to his estate, and the other half shall be held by the slayer during his life, subject to pass upon his death to the estate of the decedent.

Source: This section is derived from Section 5 of the act of 1941, August 5, P.L. 816.

Section 8806. Joint tenants, joint owners and joint obligees.—(a) One-half of any property held by the slayer and the decedent as joint tenants, joint owners or joint obligees shall pass upon the death of the decedent to his estate, and the other half shall pass to his estate upon the death of the slayer, unless the slayer obtains a separation or severance of the property or a decree granting partition.

(b) As to property held jointly by three or more persons, including the slayer and the decedent, any enrichment which would have accrued to the slayer as a result of the death of the decedent shall pass to the

estate of the decedent. If the slayer becomes the final survivor, one-half of the property shall immediately pass to the estate of the decedent and the other half shall pass to his estate upon the death of the slayer, unless the slayer obtains a separation or severance of the property or a decree granting partition.

(c) The provisions of this section shall not affect any enforceable agreement between the parties or any trust arising because a greater proportion of the property has been contributed by one party than by the other.

Source: This section is derived from Section 6 of the act of 1941, August 5, P.L. 816.

Section 8807. Reversions and vested remainders.—Property in which the slayer holds a reversion or vested remainder and would have obtained the right of present possession upon the death of the decedent shall pass to the estate of the decedent during the period of the life expectancy of the decedent; if he held the particular estate or if the particular estate is held by a third person it shall remain in his hands for such period.

Source: This section is derived from Section 7 of the act of 1941, August 5, P.L. 816.

Section 8808. Interests dependent on survivorship or continuance of life.—Any interest in property, whether vested or not, held by the slayer, subject to be divested, diminished in any way or extinguished, if the decedent survives him or lives to a certain age, shall be held by the slayer during his lifetime or until the decedent would have reached such age, but shall then pass as if the decedent had died immediately thereafter.

Source: This section is derived from Section 8 of the act of 1941, August 5, P.L. 816.

Section 8809. Contingent remainders and executory or other future interests.—As to any contingent remainder or executory or other future interest held by the slayer, subject to become vested in him or increased in any way for him upon the condition of the death of the decedent:

(1) If the interest would not have become vested or increased if he had predeceased the decedent, he shall be deemed to have so predeceased the decedent.

(2) In any case the interest shall not be vested or increased during the period of the life expectancy of the decedent.

Source: This section is derived from Section 9 of the act of 1941, August 5, P.L. 816.

Section 8810. Powers of appointment.—(a) Property appointed by the will of the decedent to or for the benefit of the slayer shall be distributed as if the slayer had predeceased the decedent.

(b) Property held either presently or in remainder by the slayer, subject to be divested by the exercise by the decedent of a power of revocation or a general power of appointment shall pass to the estate of the decedent, and property so held by the slayer, subject to be divested by the exercise by the decedent of a power of appointment to a particular person or persons or to a class of persons, shall pass to such person or persons, or in equal shares to the members of such class of persons, exclusive of the slayer.

Source: This section is derived from Section 10 of the act of 1941, August 5, P.L. 816, amended 1947, May 23, P.L. 302.

Section 8811. Proceeds of insurance.—(a) Insurance proceeds payable to the slayer as the beneficiary or assignee of any policy or certificate of insurance on the life of the decedent, or as the survivor of a joint life policy, shall be paid to the estate of the decedent, unless the policy or certificate designates some person not claiming through the slayer as alternative beneficiary to him.

(b) If the decedent is beneficiary or assignee of any policy or certificate of insurance on the life of the slayer, the proceeds shall be paid to the estate of the decedent upon the death of the slayer, unless the policy names some person other than the slayer or his estate as alternative beneficiary, or unless the slayer by naming a new beneficiary or assigning the policy performs an act which would have deprived the decedent of his interest in the policy if he had been living.

Source: This section is derived from Section 11 of the act of 1941, August 5, P.L. 816.

Section 8812. Bona fide payment by insurance company or obligor.— Any insurance company making payment according to the terms of its policy or any bank or other person performing an obligation for the slayer as one of several joint obligees shall not be subject to additional liability by the terms of this chapter, if such payment or performance is made without notice of the killing by a slayer.

Source: This section is derived from Section 12 of the act of 1941, August 5, P.L. 816.

Section 8813. Bona fide purchasers.—The provisions of this chapter, but all proceeds received by the slayer from such sale shall be held by him in trust for the persons entitled to the property under the provisions of this code, and the slayer shall also be liable both for any portion of

such proceeds which he may have dissipated and for any difference between the actual value of the property and the amount of such proceeds.

Source: This section is derived from Section 13 of the act of 1941, August 5, P.L. 816.

Section 8814. Record of conviction as evidence.—The record of his conviction of having participated in the wilful and unlawful killing of the decedent shall be admissible in evidence against a claimant of property in any civil action arising under this code.

Source: This section is derived from Section 14 of the act of 1941, August 5, P.L. 816.

Section 8815. Broad construction; policy of State.—This chapter shall not be considered penal in nature, but shall be construed broadly in order to effect the policy of this State that no person shall be allowed to profit by his own wrong, wherever committed.

Source: This section is derived from Section 15 of the act of 1941, August 5, P.L. 816.

COMPARATIVE STATUTE TABLE

This table compares sections of selected laws (as last amended) with their disposition in Purdon's Pennsylvania Statutes Annotated and in the proposed Title 20 of the Consolidated Pennsylvania Statutes, the "Probate, Estates and Fiduciaries Code."

The sections of the acts starred (*) indicate sections omitted from the Probate, Estates and Fiduciaries Code as unnecessary, duplicative, held unconstitutional or covered by rules of court or laws other than the code.

	Page
Anatomical Gift Act.....	214
Estates Act of 1947.....	214
Estate Tax Apportionment Act.....	215
Fiduciaries Act of 1949.....	215
Fiduciaries Investment Act of 1949.....	221
Incompetents' Estates Act of 1951.....	221
Intestate Act of 1947.....	224
Orphans' Court Act of 1951.....	224
Principal and Income Act of 1947.....	226
Register of Wills Act.....	226
Revised Price Act.....	227
Simultaneous Death Act.....	228
Slayers Act.....	229
Uniform Gifts to Minors Act.....	229
Wills Act of 1947.....	229

Anatomical Gift Act	35 Purdon's Statutes	Consolidated Pennsylvania Statutes, Title 20
Section	Section	Section
1	6101	8601
2	6102	8602
3	6103	8603
4	6104	8604
5	6105	8605
6	6106	8606
7	6107	8607
8	6108	*
9	6109	*
10	6110	*
11	6111	*

Estates Act	20 Purdon's Statutes	Consolidated Pennsylvania Statutes, Title 20
Section	Section	Section
1	301.1	6101
2	301.2	6102
3	301.3	6103
4	301.4	6104
5	301.5	6105
6	301.6	6106
7	301.7	6107
8	301.8	6108
9	301.9	6109
10	301.10	6110
11	301.11	6111
12	301.12	6112
13	301.13	6113
14	301.14	6114
15	301.15	6115
16	301.16	6116
17	301.17	6117
18	301.18	*
19	301.19	*
20	301.20	*
21	301.21	*

Estate Tax Apportionment Act	20 Purdon's Statutes	Consolidated Pennsylvania Statutes, Title 20
Section	Section	Section
1	881	3701
2	882	3702
3	883	3703
4	884	3704
5	885	3705
6	886	*
7	887	*

Fiduciaries Act	20 Purdon's Statutes	Consolidated Pennsylvania Statutes, Title 20
Section	Section	Section
101	320.101	*
102	320.102	*
103	320.103	301
104	320.104	301
105,106	320.105	*
201	320.201	3101
202	320.202	3102
211	320.211	3121
212	320.212	3122
213	320.213	3123
214	320.214	3124
215	320.215	3125
216	320.216	3126
301	320.301	3151
302	320.302	3152
303	320.303	3153
304	320.304	3154
305	320.305	3155
306	320.306	3156
307	320.307	3157
308	320.308	3158
309	320.309	3159
310	320.310	3160
311	320.311	3161
312	320.312	3162
321	320.321	3171

Fiduciaries Act	20 Purdon's Statutes	Consolidated Pennsylvania Statutes, Title 20
Section	Section	Section
322	320.322	3173
323	320.323	3174
324	320.324	3175
331	320.331	3182
332	320.332	3183
333	320.333	3184
401	320.401	3301
402	320.402	3302
403	320.403	3303
404	320.404	3304
405	320.405	3305
501	320.501	3311
502	320.502	3312
503	320.503	3313
504	320.504	3314
505	320.505	3315
506	320.506	3316
507	320.507	3317
508	320.508	3318
509	320.509	3319
510	320.510	3320
511	320.511	3321
512	320.512	3322
513	320.513	3323
514	320.514	3324
515	320.515	3324
516	320.516	3325
517	320.517	3326
518	320.518	3327
519	320.519	3328
520	320.520	3329
521	320.521	3330
522	320.522	3331
523	320.523	3332
541	320.541	3351
542	320.542	3352
543	320.543	3353
544	320.544	3354

Fiduciaries Act	20 Purdon's Statutes	Consolidated Pennsylvania Statutes, Title 20
Section	Section	Section
545	320.545	3355
546	320.546	3356
547	320.547	3357
548	320.548	3358
549	320.549	3359
601	320.601	3371
602	320.602	3372
603	320.603	3373
604	320.604	3374
605	320.605	3375
606	320.606	3376
607	320.607	3377
611	320.611	3381
612	320.612	3382
613	320.613	3383
614	320.614	3384
615	320.615	3385
616	320.616	3386
617	320.617	3387
618	320.618	3388
619	320.619	3389
620	320.620	3390
621	320.621	3391
622	320.622	3392
623	320.623	3393
701	320.701	3501
702	320.702	3502
703	320.703	3503
704	320.704	3504
711	320.711	3511
712	320.712	3512
713	320.713	3513
714	320.714	3514
721	320.721	3521
731	320.731	3531
732	320.732	3532
733	320.733	3533
734	320.734	3534

Fiduciaries Act	20 Purdon's Statutes	Consolidated Pennsylvania Statutes, Title 20
Section	Section	Section
735	320.735	3535
736	320.736	3536
737	320.737	*
738	320.738	3537
751	320.751	3541
752	320.752	3542
753	320.753	3543
754	320.754	3544
755	320.755	3545
756	320.756	3546
801	320.801	3551
802	320.802	3552
803	320.803	3553
804	320.804	3554
901	320.901	7101
902	320.902	7102
903	320.903	7103
911	320.911	7111
912	320.912	7112
921	320.921	7121
931	320.931	7131
932	320.932	7132
933	320.933	7133(1)
934	320.934	7133(2)
935	320.935	7133(3)
936	320.936	7133(4)
937	320.937	7133(22)
938	320.938	7133(5)
939	320.939	7133(14)
940	320.940	7134
941	320.941	7133(6)
942	320.942	7133(7)
943	320.943	7133(8)
944	320.944	7133(9)
945	320.945	7133(10)
946	320.946	7133(11)
947	320.947	7135
948	320.948	7133(12)

Fiduciaries Act	20 Purdon's Statutes	Consolidated Pennsylvania Statutes, Title 20
Section	Section	Section
949	320.949	7133(13)
950	320.950	7136
951	320.951	7133(15)
961	320.961	7141
962	320.962	7142
963	320.963	7133(16)
964	320.964	7133(17)
965	320.965	7133(18)
966	320.966	7133(19)
967	320.967	7143
968	320.968	7133(20)
969	320.969	7133(21)
981	320.981	7181
982	320.982	7182
983	320.983	7183
984	320.984	7184
985	320.985	7185
986	320.986	7186
986[sic]	320.986a	7187
991	320.991	7191
992	320.992	7192
1001	320.1001	5101
1002	320.1002	5102
1011	320.1011	5111
1012	320.1012	5112
1013	320.1013	5113
1014	320.1014	5114
1021	320.1021	5121
1022	320.1022	5122
1023	320.1023	5123
1031	320.1031	5131
1041	320.1041	5141
1042	320.1042	5142
1043	320.1043	5144
1044	320.1044	5144(15)
1045	320.1045	5146
1061	320.1061	5151
1062	320.1062	5152

Fiduciaries Act	20 Purdon's Statutes	Consolidated Pennsylvania Statutes, Title 20
Section	Section	Section
1063	320.1063	5153(1)
1064	320.1064	5153(2)
1065	320.1065	5153(3)
1066	320.1066	5154
1067	320.1067	5153(4)
1068	320.1068	5153(5)
1081	320.1081	5161
1082	320.1082	5162
1083	320.1083	5163
1084	320.1084	5164
1085	320.1085	5165
1086	320.1086	5166
1087	302.1087	5167
1101	320.1101	4101
1102	320.1102	4102
1103	320.1103	4103
1104	320.1104	4104
1105	320.1105	4105
1111	320.1111	4111
1112	320.1112	4112
1121	320.1121	4121
1201	320.1201	5701
1202	320.1202	5702
1203	320.1203	5703
1204	320.1204	5704
1205	320.1205	5705
1301	320.1301	4501
1302	320.1302	4502
1303	320.1303	4503
1304	320.1304	4504
1305	320.1305	4505
1311	320.1311	4521
1312	320.1312	4522
1401	320.1401	*

Fiduciaries Investment Act	20 Purdon's Statutes	Consolidated Pennsylvania Statutes, Title 20
Section	Section	Section
1	821.1	7301
2	821.2	7302(a)
2.1	821.2a	7302(b)
3	821.3	7303
4	821.4	7304
5	821.5	7305
5.1	821.5a	7306
6	821.6	7307
7	821.7	7308
8	821.8	7309
9	821.9	7310
10	821.10	7311
11	821.11	7312
12	821.12	7313
13	821.13	7314
14	821.14	7315
15	821.15	7316
16	821.16	7317
17	821.17	7318
18	821.18	7319
19	821.19	*
20	821.20	*
21	821.21	*
22	821.22	*

Incompetents' Estates Act	50 Purdon's Statutes	Consolidated Pennsylvania Statutes, Title 20
Section	Section	Section
101	3101	*
102	3102	5501
103	3103	302
104	3104	*
105	3105	*
106	3106	*
201	3201	5505(1)
202	3202	5505(2)
301	3301	5511

Incompetents' Estates Act	50 Purdon's Statutes	Consolidated Pennsylvania Statutes, Title 20
Section	Section	Section
302	3302	5512
303	3303	5515(1)
304	3304	5514
311	3311	5515(3)
312	3312	5516
313	3313	5515(4)
314	3314	5515(5)
321	3321	5515(6)
322	3322	5515(7)
323	3323	5517
324	3324	5515(8)
331	3331	5518
401	3401	5521(1)
402	3402	5521(2)
403	3403	5521(3)
404	3404	5521(4)
405	3405	5521(5)
406	3406	5521(6)
407	3407	5521(7)
408	3408	5521(8)
409	3409	5521(9)
410	3410	5521(10)
411	3411	5521(11)
412	3412	5521(12)
413	3413	5521(13)
414	3414	5521(14)
415	3415	5521(15)
416	3416	5521(16)
417	3417	5521(17)
418	3418	5521(18)
419	3419	5521(19)
420	3420	5521(20)
441	3441	5521(22)
442	3442	5522
443	3443	5521(23)
444	3444	5521(24)
445	3445	5521(25)
446	3446	5521(26)

Incompetents' Estates Act	50 Purdon's Statutes	Consolidated Pennsylvania Statutes, Title 20
Section	Section	Section
447	3447	5523
448	3448	5521(27)
501	3501	5521(28)
502	3502	5521(29)
511	3511	5524
512	3512	5521(30)
513	3513	5525
601	3601	5531
602	3602	5532
603	3603	5533(1)
611	3611	5533(3)
612	3612	5533(4)
613	3613	5534
614	3614	5533(5)
615	3615	5533(6)
616	3616	5533(7)
621	3621	5533(8)
631	3631	5533(9)
632	3632	5533(11)
641	3641	5533(13)
642	3642	5533(14)
643	3643	5535
644	3644	5536
645	3645	5537
701	3701	4101
702	3702	4102
703	3703	4103
704	3704	4104
705	3705	4105
711	3711	4111
712	3712	4112
721	3721	4121
801	3801	*

Intestate Act	20 Purdon's Statutes	Consolidated Pennsylvania Statutes, Title 20
Section	Section	Section
1	1.1	2101
2	1.2	2102
3	1.3	2103
4	1.4	2104
5	1.5	2105
6	1.6	2106
7	1.7	2107
8	1.8	2108
9	1.9	2109
10	1.10	2110
11	1.11	2111
12	1.12	2112
13	1.13	2113
14	1.14	2114
15	1.15	*
16	1.16	*
17	1.17	*

Orphans' Court Act	20 Purdon's Statutes	Consolidated Pennsylvania Statutes, Title 20
Section	Section	Section
101	2080.101	*
102	2080.102	*
103	2080.103	*
104	2080.104	*
201	2080.201	*
202,203	2080.202, 2080.203	701
204	2080.204	*
205	2080.205	702
206	2080.206	703
301	2080.301	711, 713
302	2080.302	712
303	2080.303	714
304	2080.304	715
305	2080.305	721
306	2080.306	722
307	2080.307	723

Orphans' Court Act	20 Purdon's Statutes	Consolidated Pennsylvania Statutes, Title 20
Section	Section	Section
308	2080.308	724
309	2080.309	725
401	2080.401	731
402	2080.402	*
403	2080.403	732
404	2080.404	*
501	2080.501	741
502	2080.502	742
503	2080.503	743
504	2080.504	744
505	2080.505	745
506	2080.506	746
511	2080.511	747
512	2080.512	748
601	2080.601	751
602	2080.602	752
603	2080.603	753
604	2080.604	754
701	2080.701	761
702	2080.702	762
703	2080.703	763
704	2080.704	764
705	2080.705	765, 774
706	2080.706	766
707	2080.707	767
711	2080.711	768
721	2080.721	769
731	2080.731	771
732	2080.732	772
741	2080.741	773
742	2080.742	774
743	2080.743	775
744	2080.744	776
745	2080.745	777
746	2080.746	778
751	2080.751	781
752	2080.752	782
753	2080.753	783

Orphans' Court Act	20 Purdon's Statutes	Consolidated Pennsylvania Statutes, Title 20
Section	Section	Section
754	2080.754	784
755	2080.755	785
756	2080.756	786
761	2080.761	791
771	2080.771	792
772	2080.772	793
773	2080.773	794
801	2080.801	*

Principal and Income Act	20 Purdon's Statutes	Consolidated Pennsylvania Statutes, Title 20
Section	Section	Section
1	3470.1	8101
2	3470.2	8102
3	3470.3	8103
4	3470.4	8104
5	3470.5	8105
6	3470.6	8106
7	3470.7	8107
8	3470.8	8108
9	3470.9	8109
10	3470.10	8110
11	3470.11	8111
12	3470.12	8112
13	3470.13	*
14	3470.14	*
15	3470.15	*

Register of Wills Act	20 Purdon's Statutes	Consolidated Pennsylvania Statutes, Title 20
Section	Section	Section
101	1840.101	*
102	1840.102	*
103	1840.103	*
104	1840.104	*
201	1840.201	901

Register of Wills Act	20 Purdon's Statutes	Consolidated Pennsylvania Statutes, Title 20
Section	Section	Section
202	1840.202	902
203	1840.203	903
204	1840.204	904
205	1840.205	905
206	1840.206	906
207	1840.207	907
208	1840.208	908
209	1840.209	909
301	1840.301	3131
302	1840.302	3132
303	1840.303	3133
304	1840.304	3134
305	1840.305	3135
306	1840.306	3136
307	1840.307	3137
308	1840.308	3138
401	1840.401	3172
402	1840.402	3181
403	1840.403	910
501	1840.501	921
502	1840.502	922
503	1840.503	923
504	1840.504	924
601	1840.601	*

Revised Price Act	20 Purdon's Statutes	Consolidated Pennsylvania Statutes, Title 20
Section	Section	Section
1	1561	8201
2	1562, 1563, 1564	8202
3	1581	8205
4	1601	8206
5	1641	8211
6	1621	8207
7	1622	8208
8	1642	8212

Revised Price Act	20 Purdon's Statutes	Consolidated Pennsylvania Statutes, Title 20
Section	Section	Section
9	1643	8213
10	1644	8214
11	1645	8215
12	1623	8209
13	1624	8210
14	1661	8219
15	1662	8220
16	1646	8216
17(a)	1721	8223
17(b)	1722	8224
17(c)	1723	8225
17(d)	1724	8226
17(e)	1725	8227
17(f)	1647	8217
18	1741	8228
19(a)	1565	8203
19(b)	1566	8204
20(a)	1761	8229
20(b)	1762	8230
21	1701	8222
22	1681	8221
23	1648	8218
24	1781	8231

Simultaneous Death Act	68 Purdon's Statutes	Consolidated Pennsylvania Statutes, Title 20
Section	Section	Section
1	521	8501
2	522	8502
3	523	8503
4	524	8504
5	525	*
6	526	*
7	527	*
8	528	*
9	*	*
10	529	*

Slayers Act	20 Purdon's Statutes	Consolidated Pennsylvania Statutes, Title 20
Section	Section	Section
1	3441	8801
2	3442	8802
3	3443	8803
4	3444	8804
5	3445	8805
6	3446	8806
7	3447	8807
8	3448	8808
9	3449	8809
10	3450	8810
11	3451	8811
12	3452	8812
13	3453	8813
14	3454	8814
15	3455	8815
16	3456	*

Uniform Gifts to Minors Act	20 Purdon's Statutes	Consolidated Pennsylvania Statutes, Title 20
Section	Section	Section
1	3601	5301
2	3602	5302
3	3603	5303
4	3604	5304
5	3605	5305
6	3606	5306
7	3607	5307
8	3608	5308
9	3609	5309
10	3610	5310
11	3611	*

Wills Act	20 Purdon's Statutes	Consolidated Pennsylvania Statutes, Title 20
Section	Section	Section
1	180.1	2501
2	180.2	2502

Wills Act	20 Purdon's Statutes	Consolidated Pennsylvania Statutes, Title 20
Section	Section	Section
3	180.3	2503
4	180.4	2504
5	180.5	2505
6	180.6	2506
7	180.7	2507
8	180.8	2508
9	180.9	2509
10	180.10	2510
11	180.11	2511
12	180.12	2512
13	180.13	2513
14	180.14	2514
14.1	180.14(a)	2515
15	180.15	2516
16	180.16	2517
17	180.17	2518
18	180.18	2519
19	180.19	2520
20	180.20	*
21	180.21	*
22	180.22	*